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# Back to School: What to Watch This Year in Higher Education Law and Policy

**Client Alerts**

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As institutions of higher education prepare for the 2026-2027 academic year, colleges and universities remain in the federal regulatory spotlight. Key areas of expected federal regulatory and enforcement activity include Title VI, federal grants and contracts, accreditation, immigration, foreign gifts and contracts, student loans, gender identity and Title IX, college athletics, and antitrust. Understanding and anticipating these developments will help institutions navigate new compliance obligations and enforcement priorities in the year ahead.

## Title VI Enforcement and Regulatory Changes

The administration is implementing its "race-blind" interpretation of civil rights laws through new and continued rulemaking and enforcement efforts, including:

### Forthcoming Title VI Regulations from the US Department of Education

The US Department of Education (ED) plans to issue a final rule clarifying how Title VI's protections affect diversity, equity, and inclusion (DEI) programs and how the statute applies to any "race-based, race-exclusive, or race-conscious educational programs or criteria." The rule is expected to effectively convert the US Department of Justice's (DOJ) July 2025 post-*SFFA* guidance into binding regulations reaching campus programming of all types.

### DOJ's Aggressive SFFA Enforcement in Admissions

DOJ has adopted an aggressive interpretation of *SFFA* in its findings letters issued as part of its investigations into institutions' compliance with *SFFA* in their admissions processes. Pro-diversity value statements and post-*SFFA* commitments to diversity are cited as evidence of discriminatory intent; holistic review of applicants is presumed to be a mechanism for considering race; facially race-neutral criteria such as socioeconomic indicators are treated as unlawful racial proxies in admissions; and even an interviewer's or reader's mere knowledge of an applicant's race is treated as illegal use of that knowledge. Institutions should expect to see additional investigations into *SFFA* compliance, more findings letters coming out of these investigations, and likely litigation, in the event that institutions cannot reach resolution agreements with the administration.

#### HUD Scrutiny of Affinity Group Housing

The administration's broad interpretation of SFFA and its impact on civil rights laws is a multi-agency project that extends far beyond higher education admissions. For example, the US Department of Housing and Urban Development (HUD) issued a Dear Colleague Letter in June asserting that college or university housing for affinity groups violates the Fair Housing Act's ban on discrimination in housing. While the letter expressly disclaims having the force of law, it advances an aggressive Fair Housing Act theory under which open-to-all housing policies are insufficient to insulate designated housing from the administration's efforts to stamp out DEI—and, crucially, signals HUD's enforcement priorities.[1]

#### Continued Antisemitism Investigations by ED and DOJ

The administration has maintained its focus on antisemitism on campus across agencies. ED opened more than 60 antisemitism investigations in the immediate aftermath of the January 2025 Executive Order *Additional Measures to Combat Anti-Semitism*, and has opened additional investigations as recently as this month.[2] DOJ has also brought suits against the University of California system alleging Title VI and Title VII violations stemming from antisemitism.[3] Just last week, a federal district judge dismissed DOJ's Title VI suit against Harvard, finding that the alleged incidents of antisemitism were "too isolated and episodic" to support a finding of Title VI noncompliance.[4]

#### Final ED Rule Eliminating Disparate-Impact Liability Under Title VI

Several agencies, including DOJ, have eliminated disparate-impact liability from their Title VI regulations, in accordance with last year's Executive Order directing them to do so; ED finalized its own rule to that effect just last month.[5] That means these agencies can only find an institution liable for violating Title VI if it intentionally discriminated based on race, color, or national origin. The administration's threshold for what constitutes "intentional" discrimination, however, seems easily satisfied, at least with respect to *SFFA* compliance.

### Federal Grants and Contracts Policy Developments

#### OMB's Proposed Changes to Uniform Guidance

The US Office of Management and Budget (OMB) has proposed significant changes to the rules governing federal grantmaking, known as the "Uniform Guidance," drawing media attention and significant opposition, including from Congress. OMB's proposed rule would, among other dramatic changes, give senior political appointees unprecedented discretion over the grantmaking and grant review process.[6] Commenters filed hundreds of thousands of comments during the notice and comment period. But the rule's outlook remains uncertain at present, as the US Senate's recent stopgap funding bill includes a provision temporarily prohibiting OMB from finalizing the rule. If the

US House of Representatives adopts this provision when it returns from recess, the rule will be stalled until at least December.

### Indirect Cost Recovery for Federal Research Funding

Institutions secured a significant win on indirect cost recovery earlier this year when the First Circuit affirmed a permanent injunction blocking the National Institutes of Health's (NIH) 15% flat cap on indirect cost reimbursement rates.[7] The government later abandoned its appeals of rulings regarding similar policies at three other agencies. While OMB's proposed Uniform Guidance rule would not impose a cap, and despite Congress passing appropriations riders banning several agencies from adopting such a cap,[8] the US Department of Health and Human Services' (HHS) FY2027 budget again proposes a 15% across-the-board cap for NIH.[9]

### Federal Contractor Executive Order on DEI Compliance

On the contracting side, the Executive Order targeting federal contractors' DEI efforts, issued in March, requires contractors and subcontractors (including universities) to agree that they will not engage in "racially discriminatory DEI activities." Notwithstanding multiple legal challenges, both the Order and the resulting new Federal Acquisition Regulatory Council (FAR) Clause remain in effect pending those challenges.[10] It is not yet clear how aggressive the government's interpretation of the Clause will be—in its filings defending the Clause in litigation, the government acknowledged that disparate treatment remains a legal term of art specific to intentional discrimination.[11]

### Accreditation Reform and Oversight

The accreditation landscape could see major changes this year. Recent US House of Representatives hearings have scrutinized professional school accreditors such as the American Bar Association (ABA) and the Liaison Committee on Medical Education (LCME) over DEI requirements.[12] If Republicans maintain control of Congress after the upcoming midterm elections, this legislative scrutiny will likely continue.

In line with last year's Executive Order directing accreditation reform, ED's Accreditation, Innovation, and Modernization (AIM) has published a proposed rule amending the accreditation framework, under which accreditors would need to evaluate whether institutions' academic freedom protections apply consistently to all faculty and whether their policies "appropriately prioritize intellectual diversity and the free exchange of ideas among faculty." The proposed regulations would also refocus accreditation reviews on student outcomes while limiting purported institutional burdens. Other provisions would lower the barriers for new accreditors to enter the playing field, strengthen conflict-of-interest controls between accreditors and trade or professional organizations, and make it easier for institutions to switch accreditors. The notice of proposed rulemaking was issued on August 20, with a comment period running until September 21. The regulation has a proposed effective date of July 2027.

### Immigration Policy Changes Affecting International Students and Scholars

The administration continues to pursue changes to longstanding programs for international students, scholars, and employees.

#### Proposed Fees for H-1B and OPT Programs

A federal court recently struck down the $100,000 H-1B fee established by a September 2025 presidential proclamation, but litigation is ongoing.[13] The US Department of Homeland Security (DHS) has now proposed a separate $103,265 fee on all cap-subject H-1B petitions, under a different authorizing statute. This rule would not impact cap-exempt petitions, but DHS has also indicated that it separately intends to further reform the H-1B visa program through an additional rulemaking that would revise eligibility for cap exemptions, which could impact universities' reliance on cap-exempt H-1B filings for faculty and researchers and render them liable for the new $103,265 fee, should it go into effect. Perhaps in response to courts striking down the H-1B fee, the administration is also reportedly considering imposing a $100,000 fee on the use of Optional Practical Training (OPT) for F-1 visa holders.[14]

#### Increased ICE Scrutiny of CPT Authorization

In a broadcast message on Curricular Practical Training (CPT) earlier this month, US Immigration and Customs Enforcement's (ICE) Student and Exchange Visitor Program (SEVP) warned that it is "increasing its scrutiny of CPT approvals to ensure compliance with federal regulations," emphasizing that CPT must be an integral part of the curriculum to be authorized. Signaling enforcement of this restrictive interpretation, the message cautions that if an institution is suspected of "abusing CPT to create work opportunities," its SEVP certification is at risk, and it may be subject to further investigation.

#### New DHS Rule on Duration of Status for International Students

On July 17, DHS published a final rule eliminating the duration-of-status framework, set to take effect on September 15, 2026. That final rule caps admissions for F and J visa holders at four years, with any extensions adjudicated by US Citizenship and Immigration Services (USCIS). A coalition of higher education organizations has recently challenged this rule in federal court.[15]

#### DOJ Litigation Over In-State Tuition for Undocumented Students

DOJ's litigation targeting in-state tuition for undocumented students continues to accelerate: courts have now struck down such policies in multiple states.[16] DOJ is currently appealing the decision of a federal district court in Minnesota rejecting DOJ's theory, and suits in other states remain pending.[17] DOJ also continues to bring new lawsuits, filing suits against New York, Connecticut, and Vermont just last week.

### Foreign Gift and Contract Disclosure Requirements

The administration has recently set its sights on institutions' foreign funding disclosures. Earlier this year, the administration proposed a new information collection request for foreign gift and contract disclosures under Section 117 of the Higher Education Act of 1965. While the information ED collects from institutions about their foreign gifts and contracts will remain the same as it has been for the past few years, institutions can no longer designate donor information as exempt from mandatory public disclosure under the Freedom of Information Act (FOIA). Moreover, ED has indicated it intends to publish the names of individual foreign donors it previously collected under an express promise that such names would be for internal use only, purportedly in the interest of transparency and national security. ED is also expected to propose new regulations this fall—the first ever promulgated under this statute—likely implementing additional changes in line with the 2025 Executive Order calling for enhanced enforcement of Section 117. The government has also signaled that it may scrutinize provisions in gifts and contracts that provide preferences based on where the beneficiaries are from, as an alleged violation of Title VI's bar on national origin discrimination.

### Federal Student Loan Program Changes

Sweeping changes to federal student loan programs took place this summer, but challenges in court have limited their impact thus far:

#### New Federal Loan Limits Under the One Big Beautiful Bill Act

The One Big Beautiful Bill Act's (OBBBA) changes to federal student loan programs took effect on July 1, 2026—eliminating Grad PLUS loans for new borrowers, capping Parent PLUS loans at $20,000 per student, and limiting graduate student loans to $50,000 annually for "professional" programs and $20,500 for other graduate programs.[18] But litigation quickly followed. A coalition of states challenged ED's narrowing of the definition of a professional degree to exclude professions like nursing, as did the American Nurses Association and the American Association of Nurse Practitioners.[19] Just last week, a coalition of labor organizations challenged the rule as an arbitrary restriction on access to federal student loans.[20] A federal judge recently blocked implementation of ED's limited definition of "professional" degrees, leading the Department to expand its list to include health-related professions like nursing and physician associates for the duration of the court's order.

#### Public Service Loan Forgiveness Rule Struck Down in Court

Meanwhile, ED's Public Service Loan Forgiveness (PSLF) rule is also mired in litigation. That rule, finalized last fall, seeks to exclude employers with a "substantial illegal purpose," defined broadly to include issues like "aiding and abetting violations of immigration law" and providing gender-affirming care to minors in violation of law, from PSLF participation.[21] The day before the rule's effective date of July 1, two federal district courts struck it down, holding that the rule impermissibly tied PSLF eligibility to the administration's policy priorities, reached beyond established criminal statutes, and was unconstitutionally vague.[22] While an appeal from these decisions is likely, PSLF eligibility currently remains governed by the prior rules.

### Gender Identity and Title IX Enforcement

The administration continues to advance its interpretation of Title IX through investigations and enforcement actions, drawing on the Supreme Court's decision in *West Virginia v. B.P.J.* that state laws excluding transgender girls from female athletics teams do not violate Title IX.[23] The decision sets up future litigation as to whether federal law, including Title IX, *requires* the exclusion of transgender students from teams that align with their gender identity. In addition to athletic participation, agencies have focused their Title IX attention on facilities use, especially for "intimate spaces" like bathrooms and locker rooms.

### College Athletics and NIL Regulation

Name, image, and likeness (NIL) issues in college athletics have emerged as a priority for the federal government, with the White House pressing for change through executive action as Congress continues to debate a legislative framework. In April 2026, the President issued an Executive Order titled *Urgent National Action to Save College Sports,*[24] which directed the National Collegiate Athletic Association (NCAA) to update its rules on eligibility limits, transfer restrictions, revenue-sharing limits, and NIL policies by August 1, 2026. The deadline has passed without official changes by the NCAA, and the organization's president instead urged Congress to act. But congressional attempts to address college sports have not borne fruit. In the US House of Representatives, the SCORE Act, which would establish a national NIL framework, grant the NCAA a limited antitrust exemption, and bar student-athletes from being classified as employees, saw its scheduled House floor vote canceled in December 2025 and was pulled from the floor again in May 2026. The US Senate's bipartisan Protect College Sports Act, co-sponsored by Senators Ted Cruz and Maria Cantwell, has advanced further. The bill would not address the employee classification question, but it would give the NCAA limited antitrust immunity, impose a revenue share cap, set national transfer and eligibility rules, and restrict movement in the largest conferences. The bill was voted out of committee, and a revised version was filed in early August, but the Senate pushed its planned floor vote to September. President Trump has personally taken up lobbying for the bill in recent weeks, and its fate this fall could shape the future of college athletics.

### Antitrust Risks for Higher Education Institutions and Accreditors

Even aside from NIL-related developments, antitrust liability has become a source of risk for both higher education institutions and their accreditors.

#### Antitrust Compliance in Proposed Accreditation Rulemaking

The administration is focused on accreditors' antitrust compliance. Its proposed accreditation rulemaking emphasizes that recognized accreditors remain subject to antitrust laws and includes antitrust compliance control requirements, such as ensuring that the accreditor does not facilitate coordination or collusive activities among institutions that violate antitrust laws or unnecessarily restrict access to employment in an occupation.

### Private Antitrust Lawsuits Over Admissions and Financial Aid

Private antitrust litigation against institutions of higher education has focused on admissions practices, tuition, and financial aid. For instance, in a suit alleging that elite universities conspired to fix financial aid awards through a shared "Consensus Methodology," a federal district court denied institutions' summary judgment motion earlier this year and later certified a class of tens of thousands of students, with potential damages reaching approximately $2 billion.[25] The Seventh Circuit just granted the schools' petition to review the district court's class certification decision. In this and similar litigation, private plaintiffs have seized upon institutions' membership in associations and organizations as evidence of collusion or information-sharing. This litigation could result in renewed interest from state and federal officials.

Jenner & Block's higher education practice group advises colleges and universities on the federal regulatory and enforcement issues outlined above. Our lawyers counsel institutions on compliance strategy, represent clients in litigation and government investigations, and monitor regulatory developments affecting higher education nationwide. To discuss how these developments may affect your institution, please contact practice group Co-Chairs Ishan Bhabha (ibhabha@jenner.com), Lauren Hartz (lhartz@jenner.com), and Terri Mascherin (tmascherin@jenner.com).

## Footnotes

[1] Within weeks of the letter, HUD's Office of Fair Housing and Equal Opportunity opened investigations into two universities, the University of Connecticut and the University of Minnesota, in response to Equal Protection Project complaints alleging that identity-themed residence programs unlawfully "steer" students by race or national origin in violation of the Fair Housing Act, even where the programs are open to all.

[2] On August 3, 2026, OCR opened investigations into San José State University and San Francisco State University to determine whether the universities violated Title VI by failing to respond to alleged antisemitic harassment, including complaints that Jewish students were threatened, shunned, and made to feel unwelcome because of their Jewish ancestry.

[3] *See United States v. Regents of the University of California*, No. 2:26-cv-05589 (C.D. Cal. filed May 26, 2026); *United States v. Regents of the University of California*, No. 2:26-cv-01946 (C.D. Cal. filed Feb. 24, 2026).

[4] *United States v. President & Fellows of Harvard Coll.*, No. 1:26-cv-11352 (D. Mass. filed Mar. 20, 2026).

[5] *See* Rescinding Portions of the Department of Education Title VI Regulations To Align With the Statutory Text and Conform to Executive Order 14281, 91 Fed. Reg. 46733 (July 24, 2026). *See also* Exec. Order No. 14281, Restoring Equality of Opportunity and Meritocracy, 90 Fed. Reg. 17537 (Apr. 28, 2025); Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 Fed. Reg. 57141 (Dec. 10, 2025); *DOJ Eliminates Disparate-Impact Liability Under Title VI. What's Next?*, Jenner & Block Client Alert (Dec. 17, 2025), https://www.jenner.com/en/news-insights/client-alerts/doj-eliminates-disparate-impact-liability-under-title-vi-whats-next

[6] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198 (proposed May 29, 2026).

[7] *Commonwealth of Massachusetts v. NIH*, No. 25-1343 (1st Cir. Jan. 5, 2026), aff'g No. 25-cv-10912 (D. Mass. June 30, 2025). The government did not seek Supreme Court review before its April 6, 2026 deadline, ending the case.

[8] Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. A, tit. VIII, § 8146 (Department of Defense), div. B, tit. II, § 224 (HHS). Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Act, 2026, Pub. L. No. 119-74, 140 Stat. 5, div. A, tit. V, § 542 (Commerce, NASA, NSF), *id*. div. B, tit. III, § 313 (Department of Energy).

[9] Exec. Order No. 14332, Improving Oversight of Federal Grantmaking, 90 Fed. Reg. 38,929 (Aug. 7, 2025).  U.S. Dep't of Health & Hum. Servs., Fiscal Year 2027 Budget in Brief, https://www.hhs.gov/sites/default/files/fy-2027-budget-in-brief.pdf.

[10] *See Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 8:26-cv-01532 (D. Md. filed Apr. 20, 2026).

[11] Defs' Mem. Opp'n to Pls.' Mot. For Prelim. Inj., *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, No. 8:26-cv-01532 (D. Md.), ECF No. 32.

[12] Hearing on "Training Activists, Not Physicians: The Impact of DEI on Medical Schools," H. Comm. on Educ. & Workforce (July 14, 2026).

[13] *State of California v. Mullin*, No. 25-cv-13829 (D. Mass. June 8, 2026), *appeal docketed*, No. 26-1699 (1st Cir. June 12, 2026). The government moved for a stay of the decision pending appeal, which the First Circuit denied. Order of Court, *California v. Mullin*, No. 26-1699 (1st Cir. July 24, 2026).

[14] According to reporting, the administration is considering a $100,000 fee tied to Optional Practical Training (OPT), the program that allows F-1 students to work in the United States for up to three years after graduation. Because OPT is a primary reason many international students choose U.S. institutions, a fee of this magnitude could substantially depress international enrollment, which could hamstring qualified research labor and choke a key pipeline of graduates for U.S. employers.

[15] *Presidents' Alliance on Higher Educ. & Immigr. v. Dep't of Homeland Sec.*, No. 1:26-cv-13799 (D. Mass. filed Aug. 18, 2026).

[16] *United States v. Illinois*, No. 3:25-cv-01691 (S.D. Ill. July 24, 2026). Illinois is the first state to have its policy invalidated after state officials contested the suit; in earlier matters against Texas, Kentucky, Oklahoma, and Nebraska, state officials consented to or did not oppose vacatur of these policies.

[17] *United States v. Walz*, No. 0:25-cv-02668 (D. Minn. Mar. 27, 2026), *appeal docketed*, No. 26-1886 (8th Cir.).

[18] One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72 (2025).

[19] *See Maryland v. U.S. Dep't of Educ.*, No. 1:26-cv-01957 (D. Md. filed May 19, 2026); *American Nurses Ass'n v. U.S. Dep't of Educ.*, No. 1:26-cv-12443 (D. Mass. filed May 29, 2026); *American Ass'n of Nurse Practitioners v. McMahon*, No. 1:26-cv-01780 (D.D.C. filed May 21, 2026).

[20] *AFL-CIO v. U.S. Dep't of Educ.*, 1:26-cv-02833 (D.D.C. filed Aug. 11, 2026).

[21] William D. Ford Federal Direct Loan (Direct Loan) Program, 90 Fed. Reg. 48966 (Oct. 31, 2025).

[22] *Commonwealth of Massachusetts v. U.S. Dep't of Educ.*, No. 1:25-cv-13242 (D. Mass. June 30, 2026) (Joun, J.). *Robert F. Kennedy Human Rights v. U.S. Dep't of Educ.*, No. 1:25-cv-03860 (D.D.C. June 30, 2026) (Ali, J.).

[23] *West Virginia v. B.P.J.*, 609 U.S. ___ (June 30, 2026).

[24] For more information, see our previous client alert, *Full Court Press: New Executive Order Targets College Athletics Spending on Multiple Fronts*

[25] *Henry v. Brown University*, No. 1:22-cv-00125 (N.D. Ill. Jan. 13, 2026); In re Cornell University, No. 26-8014 (7th Cir. Aug. 24, 2026).

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