

What to Expect in 2026 for Higher Education

Client Alerts

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After a year of significant upheaval for higher education institutions, additional changes are on the horizon in 2026. The most recent Unified Agenda, the One Big Beautiful Bill Act, and other developments mean additional changes for—as outlined below—civil rights enforcement, admissions, foreign gift reporting, accreditation, visa requirements and eligibility, grant funding, student loans, patent revenue, and student privacy. Understanding and anticipating these developments will help position institutions to navigate new compliance obligations and enforcement priorities in the year ahead.

I. KEY DRIVERS OF CHANGE

- In the Unified Agenda of Regulatory and Deregulatory Actions, released by the Office of Information and Regulatory Affairs (OIRA) twice a year, federal agencies report on regulatory actions they plan to take over the next year. The Trump Administration released its Spring 2025 Unified Agenda on September 4.^[1] Inclusion in the Unified Agenda is not a guarantee that agencies will follow through on listed actions, either at all or on the timelines listed. And the executive branch can still use other mechanisms, like executive orders and emergency rules for good cause, without ever listing items on the Unified Agenda. But it is a helpful indication of agencies' plans for the next 6-12 months.
- Various executive orders issued in 2025 direct agencies to take actions related to higher education, and in many cases those actions have not yet occurred or been made public.
- The One Big Beautiful Act, which was signed into law in July, introduced changes to, among other things, federal student financial aid programs.
- Project 2025, which in many ways has guided the Administration's policies toward higher education institutions thus far, also offers insight into what may lie ahead.

II. WHAT'S ON THE HORIZON FOR HIGHER EDUCATION IN 2026

A number of agencies forecasted regulations in the Unified Agenda that will affect institutions of higher education, some of which respond to earlier executive orders signed by President Trump.

A. ANTIDISCRIMINATION LAW AND CIVIL RIGHTS ENFORCEMENT

Throughout 2025, the Administration used Title VI, Title IX, and other civil rights laws to enforce its theory of antidiscrimination law (*e.g.*, by interpreting Title IX to bar transgender women's participation in women's sports). The Administration is poised to usher in a range of regulatory changes in 2026 that will facilitate its enforcement efforts.

- **Civil Rights Enforcement.** We anticipate future amendments to the Department of Education (ED)'s Title VI and Title IX regulations, which will "streamlin[e] the process by which" the federal government can terminate federal funding for "institutions that intentionally violate Federal civil rights laws and refuse to voluntarily come into compliance." In 2025, the Administration threatened to freeze and/or revoke federal funding at multiple institutions of higher education on the basis of alleged civil rights violations, often using that leverage in negotiations with institutions. These amendments seem geared toward making that easier, thus increasing the government's leverage.
- **Disparate Impact Liability.** We expect that ED will rescind the Title VI regulation "that utilizes a disparate impact theory of race-based discrimination," so Title VI violations would need to "rest upon intentional discrimination." This follows from an April executive order, *Restoring Equality of Opportunity and Meritocracy*, which instructed agencies to amend or repeal disparate impact liability regulations. DOJ has already rescinded its own disparate-impact liability regulations; read more on that development [here](#).
- **Sports Participation.** In May 2025, the Department of Energy (DOE) issued a direct final rule rescinding regulations requiring federal funding recipients that sponsor sports teams for members of one sex to allow members of the opposite sex to try out for that team. DOE explained that the rule was motivated by a February executive order, *Keeping Men Out of Women's Sports*, although the executive order did not specifically require agencies to make this change. While we have not yet seen other agencies propose similar changes to their regulations, that may come in 2026.
- **Affirmative Action & Age-Based Discrimination.** Also in May 2025, DOE issued a notice of proposed rulemaking (NPRM) proposing to rescind regulatory provisions that allowed federal funding recipients to take affirmative action to remedy the effects of discrimination on the basis of age, even absent an express finding of discrimination. The period for comments closed on July 15, 2025.
- **Discrimination in Health Care.** An NPRM issued by the Department of Health and Human Services (HHS) in December 2025 seeks to reverse a Biden-era rule that included "gender dysphoria" within the definition of a "disability," meaning that the Rehabilitation Act would not bar HHS funding recipients from implementing policies that prevent or limit gender-affirming care.

- **Provision of Gender-Affirming Care.** Additional NPRMs issued by HHS in December 2025 would prohibit Medicaid and CHIP funds from being used for gender-affirming care for minors and would prohibit hospitals that receive Medicare and Medicaid funding from performing gender-affirming care for minors.

B. ADMISSIONS

The Administration has adopted an expansive reading of *Students for Fair Admissions v. Harvard* (SFFA), where the Supreme Court struck down race-conscious admissions programs at Harvard and UNC^[2]. In addition to expanding the decision's reasoning to new contexts,^[3] the Administration appears to be ramping up its efforts to leverage *SFFA* within the admissions context, including through recent changes to institutions' admissions data reporting requirements.

- **Significantly Expanded IPEDS Reporting Requirements.** OMB recently approved a new ED rule that will expand institutions' reporting requirements with regard to admissions data as part of the Integrated Postsecondary Education Data System (IPEDS) collection. The rule was issued in response to an April presidential memorandum titled *Ensuring Transparency in Higher Education Admissions*. Under the requirements, in effect now, institutions must report a number of admissions statistics (*e.g.*, number of applicants, admitted students, and enrolled students), disaggregated by race and sex, in order to remain eligible for Title IV funding.

C. FOREIGN GIFTS AND CONTRACTS

The federal government has made foreign gift and contract reporting requirements an enforcement priority during both Trump Administrations, with Congress now showing increased interest as well. We expect this heightened focus to continue in 2026.

- **Updates to Section 117 Regulations.** We anticipate that ED will propose regulations to implement an April executive order, *Transparency Regarding Foreign Influence at American Universities*, which directed Secretary McMahon to "hold accountable higher education institutions that fail to comply" with the foreign funding reporting requirements under Section 117 of the Higher Education Act. Enforcement mechanisms may include revocation of federal funding or False Claims Act investigations.
- **New Reporting Portal.** ED has announced that it will launch an updated portal this month through which universities will report their foreign funding. One of the new portal's goals is to provide "executive summary visualizations to improve public transparency," though it is unclear if new information will be made public once the new portal is live.
- **Efforts to Lower Reporting Thresholds.** Congressional Republicans have introduced a bill called the DETERRENT Act, which would significantly lower the reporting threshold for foreign gifts and contracts, to \$50,000, from \$250,000. It would also require reporting gifts or contracts of any

amount from certain foreign countries or entities “of concern,” and implement new penalties for noncompliant institutions, like fines and the loss of Title IV funding. The House passed the bill in March 2025, and it is currently in committee in the Senate.

- **Possible Action on Export Controls.** Project 2025 also urged the tightening of policies governing licenses to countries of concern, like China, including by updating the definition of “fundamental research” exempt from foreign controls. These increased export controls, if implemented, could make some research projects less viable and would increase compliance costs for universities.

D. ACCREDITATION

Under Secretary of Education Nicholas Kent has referred to accreditation as a “secret weapon” to transform higher education, and the Administration has sought to deploy that weapon in a number of ways.

- **Adding New Accreditation Agencies.** We expect that ED will propose regulations to “clarify institutional flexibility to pursue changes of accreditors” and “remove... barriers to entry for new accreditation agencies.” These regulations implement an April executive order, *Reforming Accreditation To Strengthen Higher Education*, which directed Secretary McMahon to “streamline” the process for changing accreditors to, among other things, “ensure institutions are not forced to comply with standards that are antithetical to institutional values and mission.” An NPRM is expected as soon as this month.
- **New Accreditation Regulations for Medical Schools.** Relatedly, we expect that HHS will propose a rule to address “regulations related to HHS Graduate Medical Education (GME) funding and new accrediting bodies.” That NPRM is expected as soon as May 2026.

E. CHANGES TO VISA AND EXCHANGE PROGRAMS

Following actions like the \$100,000 fee for new H-1B visas, the sweeping termination of international students’ SEVIS records, and DOJ’s lawsuits against states that allow undocumented students to pay in-state tuition, all of which are the subject of ongoing legal challenges,^[4] the Administration is continuing efforts to reshape immigration through changes to visa programs, many of which will affect higher education institutions, their students, and their faculty and employees.

- **Visa Duration Limits.** The Department of Homeland Security (DHS) issued an NPRM that would limit all F, J, and I nonimmigrant visas to only the duration of a visa holder’s program, not to exceed four years. Visa holders wishing to stay beyond four years would need to apply to DHS for an extension or exit the country and seek readmission. Extensions will require a “compelling academic reason,” “documented illness or medical condition,” or “circumstances beyond the student’s control.” The proposed rule would also decrease the allowed period for F-1 nonimmigrants to depart from the United States after completion of their programs, prohibit F-1 graduate students from changing programs, and transition current F and J visa holders to a fixed

end date. The NPRM justifies the policy changes on the basis of fraud and national security concerns, and by reasoning that undergraduate students can typically complete their studies within four years, while many graduate programs are shorter than four years. The comment period closed on October 27, 2025, so the final rule could issue any time.

- **Practical Training.** We expect that DHS will propose a rule amending the practical training regulations, which will likely have implications for the curricular practical training (CPT) program, the optional practical training (OPT) program, and STEM OPT extensions for F-1 students in science, engineering, tech, and related fields. The proposal justifies the changes as necessary to “address fraud and national security concerns, protect U.S. workers from being displaced by foreign nationals, and enhance the [Student Exchange Visitor Program (SEVP)]’s capacity to oversee the program.”
- **Changes to the Student and Exchange Visitor Program.** We expect that the State Department will propose a rule setting forth the circumstances under which a sponsor can update Student and Exchange Visitor Information System (SEVIS) records to extend duration of stay and correct minor or technical infractions, and when sponsors may request extension or reinstatement of visitors’ SEVIS records to valid program status.
- **Changes to the Exchange Visitor Program.** We also expect that the State Department will propose another rule increasing the maximum deductible for health insurance for all exchange visitors and their dependents, and changing coverage requirements from per accident or illness to per contract. This may implicate the insurance options universities offer to Exchange Visitor Program participants and dependents, as well as recruitment.
- **Petition for Immigrant Worker Reforms.** We expect that DHS will propose to amend the regulations governing employment-based immigrant petitions in the first (EB-1), second (EB-2), and third classifications (EB-3), which are filed by employers (or, in some EB-1 cases, noncitizens on their own behalf) to bring noncitizens with certain talents and skills, such as professors or other advanced degree holders, to the United States. The announcement suggests that it will, as relevant to universities, “update provisions governing extraordinary ability and outstanding professors and researchers” and “modernize outdated provisions for individuals of extraordinary ability and outstanding professors and researchers.” An NPRM is scheduled to issue as soon as this month.

F. GRANT PROGRAMS AND GUIDANCE

The Administration has been focused on federal grants, from widespread grant terminations, resetting of agencies’ priorities across the government, and attempts to dramatically change reimbursement for indirect costs associated with federal grants, all the subject of ongoing litigation.

[5] In the coming year, we anticipate more efforts to expand the executive’s control over federal grant funding.

- **OMB Changes to the Uniform Guidance.** We expect that the Office of Management and Budget (OMB) will take steps to implement the August 7, 2025, executive order titled *Improving Oversight of Federal Grantmaking*. The order directed OMB to make several changes to its Uniform Guidance for grants, which provides guidance to all grantmaking agencies, including to limit the use of grant funds for indirect costs and require all discretionary grants to permit termination for convenience, including when the grant “no longer advances agency priorities or the national interest.”
- **Implementation of the Federal Grantmaking Executive Order.** Other grantmaking agencies are expected to continue implementing the *Federal Grantmaking EO* as well, including:
 - o The National Institutes of Health (NIH), which has developed guidelines about how to determine whether grants align with the Administration’s “priorities,” and if not, how to renegotiate or terminate them.
 - o The National Science Foundation (NSF), which is reportedly using automated review tools to identify grant submissions that are misaligned with agency priorities and is also making other changes to expedite review of grant proposals, *e.g.*, reducing the role of outside experts in reviewing grant proposals and reducing the amount of feedback the agency gives to researchers whose grants are rejected.
 - o DOE, which has reportedly begun including a lower institutional indirect cost rate among its selection criteria for discretionary awards.
- **Defunding “Illegal DEI” Programs.** The Administration has already taken a number of steps to defund programs that it views as promoting “illegal DEI,” and more is expected in 2026. For example, we expect that HHS will rescind its grant program for minority biomedical research support, which is intended to comply with a February executive order titled *Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative*. That EO directed agencies to rescind regulations that are unlawful or undermine the national interest. NIH apparently reviewed the program and found it to be “obsolete and legally problematic” after the Supreme Court’s decision in *SFFA*. An NPRM is expected as soon as this month.

G. LOAN REPAYMENT AND FORGIVNESS

While student loans have not been one of the Administration’s central areas of focus to date, there are nonetheless major changes on the horizon in 2026.

- **Statutory Changes to Student Loan Programs.** Under the One Big Beautiful Bill Act, a number of changes to student loans will go into effect on July 1, 2026:

- o At the undergraduate level: Parent PLUS loans will be capped at \$20,000 per student per year, and students will no longer be eligible for Pell Grants if their Student Aid Index is greater than twice the annual Pell award for that year.
 - o For graduate students: Grad PLUS loans will be phased out, and new direct loan limits will go into effect: up to \$50,000 for “professional” programs and \$20,500 for other graduate programs. “Professional” is defined narrowly: it includes programs like law and medicine but excludes programs like nursing.
 - o ED recently finished a negotiated rulemaking process to implement the graduate loan caps, and an NPRM is expected soon.
- **Stricter Requirements for PSLF Employers.** ED’s finalized Public Service Loan Forgiveness (PSLF) regulations, issued in October 2025, exclude “organizations that engage in activities” that have “a substantial illegal purpose” from participating in PSLF. The final rule defines “substantial illegal purpose” broadly, to include actions like aiding and abetting violations of immigration laws or illegal discrimination; providing gender-affirming care to minors in states where it is illegal; and supporting terrorism. Under the final rule, after July 1, 2026, payments made by borrowers will not be credited if their employer is found by the Secretary of Education to have a “substantial illegal purpose.” The rule is currently being challenged in litigation.^[6]

H. PATENT REVENUE

- In a September 2025 interview, Commerce Secretary Howard Lutnick said that the Administration was considering taking 50% of patent revenues generated by universities. This would upend the current system created by the Bayh-Dole Act of 1980, which allows universities to retain ownership of patents achieved through federal funding. Earlier last year, Lutnick initiated a review of Harvard University’s compliance with the Bayh-Dole Act. No further plans have been released since Lutnick’s interview, and there has been no public indication that he has launched similar investigations into other higher education institutions.

I. STUDENT PRIVACY

- **Updated FERPA Regulations.** We expect ED to issue amended Family Educational Rights and Privacy Act (FERPA) regulations that will clarify: (1) the definition of “education record”; (2) provisions governing “non-consensual disclosure of personally identifiable information in education records to third parties”; (3) “disclosures in response to law enforcement warrants or judicial subpoenas”; and (4) FERPA “complaint and investigation procedures and remedies.” An NPRM is expected as soon as this month.

III. WHAT THIS MEANS FOR YOU

The federal government is unlikely to slow down when it comes to regulatory and other changes for institutions of higher education. In addition to preparations related to the specific rules outlined above, institutions should consider the following:

1. Prepare to comment on relevant proposed regulations. Although agencies have not yet issued proposed rules for most of the items discussed above, institutions and the membership organizations to which they belong should consider submitting comments once such proposals are released, to ensure that their perspectives are heard in agencies' rulemaking processes (and, if necessary, to prepare for litigation if agencies fail to consider those comments).

2. Conduct internal compliance reviews. Given the increasingly high stakes for institutions that are found to have violated federal civil rights laws, reporting requirements for foreign gifts and contracts, and more, it is more important than ever that institutions ensure that their processes and practices are in compliance with relevant statutes and implementing regulations, and that new rules or enforcement priorities are incorporated into those reviews as soon as they are effective.

3. Monitor new developments. Because the regulatory landscape for higher education institutions is changing constantly, it is essential to keep a careful eye on the Federal Register, agency press releases, and other sources of agency guidance.

4. Consider interaction with state law. Remember that, although the Administration has introduced plenty of federal regulatory changes, higher education institutions also have obligations under state law. It is important to understand places where state and federal obligations may be in tension and to tailor your institution's compliance accordingly.

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Footnotes

[1] It is not unusual for the first Unified Agenda of a President's term to come out later in the year, which is why the latest version is called "Spring" even though it came out in the Fall.

[2] 600 U.S. 181 (2023).

[3] For example, under a Dear Colleague Letter issued in February 2025, ED interpreted the *SFFA* decision as applying to DEI programming. See Dear Colleague Letter from Craig Trainor (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>. A district court vacated the Letter in August 2025, and that decision is currently on appeal in the Fourth Circuit. See *Am. Fed'n of Tchrs. v. Dep't of Educ.*, 796 F. Supp. 3d 66 (D. Md. 2025). A July 2025 memorandum issued by

Attorney General Bondi takes a similarly expansive view of the decision. See Memorandum from Attorney General Pam Bondi to All Federal Agencies, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (July 29, 2025).

[4] See, e.g., *Chamber of Commerce v. DHS*, 25-5473 (D.C. Cir.); *Global Nurse Force v. Trump*, 25-cv-8454 (N.D. Cal.); *California v. Noem*, 25-cv-1382 (D. Mass.) (all challenging the H-1B visa fee); *Pasula v. DHS*, 25-133 (D.N.H.) (challenging SEVIS record terminations); *S.Y. v. Noem*, 25-cv-03244 (N.D. Cal.) (same); *United States v. Texas*, 25-cv-55 (N.D. Tex.) (challenging Texas’s policy of allowing undocumented students to pay in-state tuition); *United States v. Walz*, 25-cv-2668 (D. Minn.) (same, in Minnesota); *United States v. Illinois*, 25-cv-1691 (S.D. Ill.) (same, in Illinois).

[5] See, e.g., *Association of American Universities v. DOE*, 25-1727 (1st Cir.) (challenging DOE’s indirect cost recovery limits); *Massachusetts v. Kennedy*, 25-1612 (1st Cir.) (challenging mass grant terminations by NIH); *New Jersey v. OMB*, 25-cv-11816 (D. Mass.) (challenging agencies’ termination of grants based on changes in “agency priorities”); *National Association of Diversity Officers in Higher Education v. Trump*, 25-1189 (4th Cir.) (challenging grant termination provisions of two DEI-related executive orders).

[6] See *National Council of Nonprofits v. McMahon*, 25-cv-13242 (D. Mass.); *Massachusetts v. ED*, 25-cv-13244 (D. Mass.); *Robert F. Kennedy Center for Justice and Human Rights v. McMahon*, 1:25-cv-03860 (D.D.C.).

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