

Now & Next

Higher Education Alert

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Federal investigations take aim at higher education funding

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Federal agencies unleash an expanding wave of investigations of colleges and universities, with millions of dollars in federal grants and funding at risk



What's the impact?

- Federal investigations of colleges are surging, and compliance demands can quickly expand in scope, requiring careful legal strategy to preserve access to funds while avoiding future liability.
- Institutions face immediate threats, including funding freezes, loss of tax-exempt status, and potential litigation.

The first few months of the second Trump administration have witnessed an extraordinary surge of investigative and enforcement activity directed at colleges and universities. Focusing on alleged campus antisemitism, diversity initiatives that may run afoul of recent executive orders, and allegedly impermissible race-conscious admission practices, agency civil rights investigators have issued a barrage of demands to school administrators. Federal officials are seeking both

documents and witness testimony as part of a rapidly evolving federal effort to scrutinize institutions of higher learning.

The threat of potential federal scrutiny extends to public and private institutions of every size and location, and the stakes for colleges and universities could not be higher. Access to federal grants and contract funds are on the line, and substantial compliance demands are in play. Colleges and universities must prudently and proactively position themselves to respond to investigations that can quickly expand to include much broader areas of inquiry and the involvement of additional federal agencies, in addition to potential threats of litigation that may follow.

In this Alert, we review the relevant statutes and players, highlight the various enforcement theories that the administration has employed to date, survey the typical investigation process, and outline the risks and considerations for colleges and universities facing potential enforcement actions by the government.

Focus of enforcement activity against higher education institutions

ANTISEMITISM INVESTIGATIONS

To date, much of the administration's enforcement focus has been directed at perceived inadequacies in the response of target institutions in addressing protest activity that emerged on American campuses in the wake of the October 7, 2023, Hamas attacks on Israel. Title VI of the Civil Rights Act of 1964 has emerged as the primary enforcement vehicle for federal civil rights enforcers.

Title VI prohibits discrimination on the basis of race, color, and national origin by institutions that receive federal funding. In the context of higher education, when prohibited discrimination—which may either be purposeful or the result of deliberate indifference on the part of the institution—impermissibly prevents students from accessing campus facilities and educational opportunities, the institution risks Title VI violations and the loss of federal dollars. Because “national origin” includes shared ancestry, including Jewish ancestry, antisemitic conduct can be actionable under Title VI.

On February 3, 2025, the Department of Justice [announced](#) the formation of a Task Force to Combat Antisemitism, that includes DOJ, as well as the Departments of Education, Health and Human Services (HHS), and other agencies, charged with “root[ing] out anti-Semitic harassment in schools and on college campuses.”

That same day, the Department of Education's Office of Civil Rights (ED OCR) [announced probes](#) into potential antisemitism at five colleges and universities, accusing the institutions of tolerating

antisemitism and fostering “institutional indifference to the wellbeing of Jewish students on American campuses.” This list was later [expanded](#) to 60 colleges and universities, all informed that they faced Title VI scrutiny for allegedly failing to protect Jewish students from antisemitism that interfered with their “uninterrupted access to campus facilities and educational opportunities” in violation of Title VI. In some cases, the administration has already frozen, or threatened to freeze, federal funding, including grants for research programs. As a result, the consequences can be immediate and impactful.

DIVERSITY, EQUITY, AND INCLUSION (DEI) SCRUTINY

The administration has also taken aim at colleges and universities for what it has termed “illegal DEI” initiatives. Here, agencies have focused on schools’ compliance with *Students for Fair Admissions v. Harvard (SFFA)*, the landmark 2023 Supreme Court decision that held race-conscious affirmative action (i.e., consideration of an applicant’s race as a factor in making an admissions decision) to be unconstitutional under the Equal Protection Clause of the Fourteenth Amendment and Title VI.

On February 14, 2025, ED OCR issued a “Dear Colleague” [letter](#) stating that, in light of *SFFA*, race-conscious initiatives and programs, including those that pertain to “admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life,” ED OCR gave institutions 14 days to eliminate any such “illegal DEI” or risk losing federal funding. As of April 24, two federal courts in New Hampshire and Maryland have temporarily blocked enforcement of the letter.

Although this “Dear Colleague” letter remains the subject of litigation in multiple jurisdictions, the administration has nonetheless pressed forward with efforts to seek binding commitments from institutions to reform their DEI practices, including through other channels. For example, the administration has also sought to eliminate DEI through other means, such as through the [reform](#) of accreditation processes, including by the American Bar Association (ABA) and the Liaison Committee on Medical Education and Accreditation Council for Graduate Medical Education. The administration alleges that accreditors have “abused their authority by imposing discriminatory diversity, equity, and inclusion (DEI)-based standards” in accreditation determinations.

SCRUTINIZING FOREIGN FUNDING AND RELATIONSHIPS

In recent weeks, the administration has also opened a new front of higher educational scrutiny, making clear its intention to enforce and monitor institutions’ compliance with Section 117 of the Higher Education Act of 1965 (20 U.S.C. § 1011f). That statute requires annual disclosures by postsecondary institutions receiving federal financial assistance of foreign gifts or contracts valued at more than \$250,000. Section 117 disclosure requirements are backed by the threat of

referral for enforcement to the Justice Department, as well as potential loss of federal funding eligibility.

This renewed focus on Section 117 is consistent with the first-term Trump administration's close scrutiny of foreign nationals' ties to and affiliations with US research institutions, which included criminal investigations and prosecutions under the so-called "[China Initiative](#)." While that effort has not been formally resurrected, its shadow, and the administration's general skepticism toward foreign relationships with US institutions, make foreign contacts with American schools a likely new front in investigative and enforcement efforts.

The evolution of a typical government investigation

Typically, the government commences compliance inquiries with an investigative letter addressed to the subject college or university. That letter may contain direct and immediate demands that a school take specific action to address an alleged Title VI violation, or may instead simply announce the opening of an inquiry. The institution is invited to cooperate by providing documents and records to the government, by making witnesses available for interview, and/or by implementing reforms demanded by the administration. An institution may also attempt to narrow or limit the scope of the government's investigation by sending a formal response to investigators or engaging in negotiations regarding the scope of the inquiry. However, the administration's actions to date suggest that initially narrow inquiries can be broadened, and/or supplemented by further demands from other agencies that provide funding to the institution.

Some institutions may decide to comply with the administration's requests. In response to federal scrutiny, at least one national university announced policy and organizational changes, including adding additional law enforcement resources (personnel and equipment), reforming its disciplinary processes, instituting a new approach to anti-discrimination and harassment complaints, and reforming its disciplinary rules, especially as they relate to student demonstrations and protests.

Other institutions have encouraged institutional resistance and indicated that they will likely refuse to comply with the administration's demands, largely on the grounds that threatened cancellation of federal funding represents a threat to scholarship and American leadership in research, and have called on universities and their leaders to speak out and oppose the administration in court. In at least one instance, a major national research university has done so, suing in federal district court, and alleging that the administration's demands are unconstitutional under the First Amendment, and violate the procedures required by Title VI.

In addition to these statements, there have been other signs of cohesion among higher education institutions and their leaders. On April 22, the American Association of Colleges and Universities, in coordination with the American Academy of Arts & Sciences and college presidents and leaders, released a [public statement](#) to "speak with one voice against the

unprecedented government overreach and political interference now endangering American higher education.” The statement criticizes the government for its “coercive use of public research funding” and “oppose[s] undue government intrusion in the lives of those who learn, live, and work on our campuses,” and calls for “constructive engagement” instead. As of May 14, there are 644 signatories, all of whom are current leaders of colleges, universities, and scholarly societies.

Neither the conciliatory nor the litigative approach, however, has put a stop to further action by the administration, which has threatened institutions with a loss of tax-exempt status, a blockade on the receipt of new grants, and the potential loss of authorization to enroll international students, even in some instances where schools have acceded to initial demands.

How can colleges and universities prepare for enforcement activity?

Enforcement against colleges and universities is quickly evolving, but several key takeaways are already evident:

- / This administration is taking a whole-of-government, multi-agency investigative approach—schools should not be confident that an initially narrow inquiry will not expand, or that additional agencies or enforcers will not appear with additional and more expansive investigative demands;
- / Similarly, given overlapping agency enforcement mandates and the backstop role of the Justice Department as the government’s enforcer in litigation, institutions should proceed on the assumption that information provided to one agency in a narrow context may well be shared with other agencies as part of broader enforcement and scrutiny;
- / The administration has made extraordinarily far-reaching compliance demands of at least some colleges and universities—in some cases, modifying or imposing additional requirements even after initial demands are met;
- / Regardless of a school’s chosen approach to federal inquiries, every stage of the investigative process—from planning in anticipation of a demand, through response, witness representation, and negotiation—requires careful engagement between institutional stakeholders and experienced legal counsel who can best position schools to respond.

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