

Now & Next

Higher Education Alert

June 17, 2026

DEI in Higher Education: Federal enforcement expansions

By Alexandra Mitropoulos, Sarah Quinn, and Steven Richard

Federal agencies have expanded DEI scrutiny beyond admissions reaching hiring, scholarships, research funding, accreditation, academic programs, and institutional governance. Here's where we are now, and what colleges and universities should be evaluating next.



What's the impact?

- Federal DEI scrutiny now extends beyond admissions to hiring, research, academic affairs, athletics, accreditation, and student life—requiring a campus-wide compliance lens.
- Agencies like the Equal Employment Opportunity Commission, Department of Justice, and Department of Education are applying the federal government's interpretation of anti-discrimination principles across institutional operations.
- Litigation is evolving, but institutions should review and document program rationales, ensure access is open to all, and align risk tolerance with mission, funding, and state law.

For the past several years—and especially over the past eighteen months—diversity, equity, and inclusion (DEI) initiatives have been a central concern in legal and policy discussions within

higher education. Initially, much of that attention focused on admissions practices and the Supreme Court's landmark June 2023 decisions in *Students for Fair Admissions v. President and Fellows of Harvard College* and *University of North Carolina (UNC)*.

Since January 2025, a series of federal executive orders, agency directives, enforcement initiatives, proposed regulations, grant conditions, and litigation positions have expanded federal scrutiny beyond admissions. Recent actions by the Equal Employment Opportunity Commission (EEOC), Department of Justice (DOJ), Department of Education (DOE), federal grantmaking agencies, and the White House make clear that DEI-related compliance concerns now reach nearly every institutional function—from hiring and admissions to research, athletics, accreditation, student life, and academic affairs.

Although many of these federal initiatives have been challenged in court, modified, rescinded, or enjoined, colleges and universities are increasingly confronting a whole-of-government approach to civil rights enforcement that applies anti-discrimination principles across multiple areas of institutional operations.

The relevant question for institutions is no longer whether they maintain a formal DEI office. Rather, institutions must continuously assess (and re-assess as new guidance or orders are issued) whether DEI-related considerations are embedded within any aspect of institutional operations. At the same time, judicial rulings evolve nationally across federal district courts, with ongoing appeals among the federal circuits, and with the Supreme Court addressing issues earlier through its “interim docket” prior to the full briefing and argument.

***Students for Fair Admissions* continue to shape the landscape**

Although *Students for Fair Admissions (SFFA)* addressed only admissions practices, its influence has extended far beyond the admissions office. In striking down race-conscious admissions programs at Harvard and UNC, the Supreme Court emphasized that educational institutions may not make decisions based on race in a manner inconsistent with the Equal Protection Clause and Title VI. At the same time, the Court acknowledged that applicants remain free to discuss how race affected their lives and experiences.

The Trump administration and federal agencies have increasingly cited *SFFA*'s reasoning to support broader scrutiny of race-conscious institutional practices. The DOE's now-vacated February 2025 Dear Colleague Letter, the DOJ's [July 2025 memorandum](#), and numerous agency enforcement initiatives have all cited *SFFA* and reflect an effort to extend anti-discrimination principles beyond admissions and into other aspects of institutional decision-making.

Whether courts ultimately endorse these broader applications remains an open question. Nevertheless, federal agencies increasingly view *SFFA* as a foundational principle supporting more expansive scrutiny of race-conscious institutional practices.

Employment: The EEOC's new enforcement framework

The EEOC's recently issued National Enforcement Plan represents one of the clearest examples of the federal government's evolving approach to DEI-related issues. Replacing the EEOC's prior Strategic Enforcement Plan, the new framework identifies "DEI-related discrimination" as a significant enforcement priority and signals increased scrutiny of employment practices that may provide opportunities, benefits, or preferences based on protected characteristics.

The EEOC has specifically identified hiring, promotion, compensation, training, leadership development, and workplace initiatives as areas warranting its increased attention. As a result, institutions should anticipate heightened scrutiny of their programs and practices, including diversity hiring initiatives, employee resource groups, fellowship programs, diversity statements, and performance metrics tied to diversity objectives, and should plan to review each of these to ensure that they are open to all, including in promotional materials, website content, and in practice.

The EEOC's approach also reflects a broader shift toward disparate-treatment theories and away from disparate-impact theories, which have historically been an important component of federal civil rights enforcement. That shift was reinforced by the administration's [April 2025 Executive Order](#) directing federal agencies to curtail reliance on disparate-impact liability theories. Nonetheless, it is important to note that disparate-impact theories remain viable under Title VII judicial proceedings.

For colleges and universities, these developments underscore the importance of the continued evaluation of faculty and staff recruitment and hiring practices, professional development programs, and employment-related initiatives.

Student programs, scholarships, and campus initiatives

Student-facing programs have become another significant focus of federal attention.

Although the DOE's February 2025 Dear Colleague Letter was ultimately vacated and withdrawn, subsequent guidance from the DOJ advanced similarly expansive interpretations of *Students for Fair Admissions* and federal civil rights laws. In particular, the DOJ's July 2025 memorandum stated that race-conscious scholarships, mentorship programs, affinity initiatives, outreach programs, and other student-facing activities may raise legal concerns under the administration's interpretation of federal anti-discrimination statutes. The guidance did not go so far as to say that the mere existence of such programs are a per se violation of federal anti-discrimination laws, but has required institutions to review all such programs at minimum to make explicitly clear that all are welcome to participate, that outreach is not directed to one group over another, and, in some case, to consider refocusing on the celebration of or education of a culture or cultural history.

Importantly, however, the legal status of many such programs remains unsettled, even with such changes. Institutions should continue to anticipate increased scrutiny and recognize that federal agencies may increasingly focus not only on formal eligibility requirements, but also on whether programs are structured or administered in ways that could be viewed as conferring benefits based on protected characteristics, even if they are facially open to all.¹

Research funding, grants, and federal contracting

Federal funding has emerged as a key tool for influencing institutional assessments of initiatives and their funding. Several federal agencies have reviewed grant-funded projects involving DEI-related activities, while [proposed revisions to the Uniform Grants Regulations](#) would expand federal oversight of grant administration and compliance obligations. Institutions receiving federal grant funding can anticipate continued scrutiny of grant applications, grant-funded activities, and certifications regarding compliance with federal civil rights requirements.

Recent executive actions have similarly focused on federal contractors and subcontractors. A March 2026 executive order directed agencies to require contractors to certify compliance with federal anti-discrimination requirements and avoid certain forms of race-conscious programming. Although litigation challenging those requirements remains ongoing, the administration's conditioning of federal funding and contracting authority underscores the broad reach of current enforcement efforts.

Accreditation and institutional accountability

Federal policymakers have also [turned their attention to accreditation](#). The DOE has proposed significant changes that would reduce or eliminate certain diversity-related accreditation expectations, while emphasizing workforce outcomes, institutional autonomy, and student success metrics.

At the same time, federal officials have increasingly linked accreditation to broader concerns regarding institutional accountability and ideological neutrality. While many of these proposals remain under development, they reflect another avenue through which federal policy may influence institutional approaches to DEI-related initiatives.

¹ These tensions were recently illustrated by an Iowa Supreme Court decision holding that the University of Iowa could not repurpose a private scholarship designated for Black chemistry students to serve first-generation students instead, finding the substitution contrary to donor intent—even as the court acknowledged that administering the scholarship under its original race-based criteria may itself be legally impracticable in light of *SFFA*

Academic freedom and curriculum

Perhaps the most complex questions arise at the intersection of anti-discrimination enforcement and longstanding principles of academic freedom.

Many academic disciplines—including, among many others, Africana Studies, Women's and Gender Studies, Middle East Studies, Latinx Studies, Indigenous Studies, and LGBTQ+ Studies—necessarily engage with issues of race, gender, identity, inequality, and discrimination. While federal guidance and enforcement efforts have generally focused on institutional programs and policies, rather than classroom instruction, various federal regulatory proposals and initiatives have begun to address academic freedom more directly. For example, the proposed [Compact for Academic Excellence in Higher Education](#) would require signatories to adopt a policy on academic freedom that would “recognize that academic freedom is not absolute” and would have institutions commit to revising governance structures to create an environment where “no single ideology [is] dominant, both along political and other relevant lines.” Similarly, the proposed accreditation regulations, as currently drafted, would require accreditors to evaluate whether an institution maintains academic freedom protections and applies them consistently to faculty regardless of race.

Nonetheless, the emerging question is not whether institutions may teach subjects involving race, sex, ethnicity, or identity. Rather, it is whether evolving federal interpretations of the legality of DEI activities may create uncertainty regarding academic programs, research centers, faculty development initiatives, trainings, and other activities that necessarily engage those topics.

Recent federal actions outside the higher education context illustrate these concerns. In March 2025, President Trump issued an executive order directing federal officials to “eliminate improper, divisive, or anti-American ideology” from Smithsonian museums and other federally supported historical institutions. More recently, federal officials directed the removal of interpretive plaques at Boston's Bunker Hill Monument that addressed topics, including slavery, immigration, and suffrage, though a federal judge in Massachusetts subsequently issued a preliminary injunction requiring their restoration, concluding that the selective removal of materials raised significant concerns regarding censorship and the partial presentation of history.

Although museums and universities operate in distinct legal contexts, these disputes reflect a broader national debate over who determines how issues of race, gender, inequality, and historical injustice are presented in publicly funded institutions. For colleges and universities, particularly those offering programs focused on race, gender, ethnicity, and identity, the ongoing tension between anti-discrimination enforcement, institutional autonomy, and academic freedom is likely to remain a significant governance issue.

To date, courts have long recognized the importance of academic freedom and institutional autonomy within higher education. As litigation challenging various federal initiatives proceeds,

institutions should remain attentive to the evolving distinction between discriminatory conduct and protected academic inquiry.

Looking beyond guidance: What recent settlements reveal

While executive orders and agency guidance often receive the most attention, recent settlement agreements may provide the clearest indication of emerging federal enforcement priorities.

Recent agreements involving several prominent universities have extended beyond traditional allegations of discrimination to include commitments related to admissions reporting, Title IX compliance, international student enrollment, institutional governance, training requirements, and ongoing federal oversight.

Although the specific terms of these agreements vary, they collectively suggest that federal agencies increasingly view DEI-related compliance as part of a broader institutional accountability framework rather than a standalone issue. Institutions can, therefore, expect federal reviews to focus not only on individual programs, but also on governance structures, reporting practices, compliance systems, and institutional decision-making processes.

Looking ahead

The current federal approach to DEI-related enforcement is notable not because of any single executive order, agency action, or court decision. Rather, it reflects an increasingly coordinated effort to apply anti-discrimination principles across institutional operations.

While significant legal uncertainty remains and litigation continues to shape the boundaries of federal authority, colleges and universities should prepare for sustained scrutiny that reaches beyond admissions and employment and into all aspects of campus life. In that environment, several steps warrant consideration. Institutions should conduct comprehensive reviews of programs, scholarships, policies, and communications across all functional areas—not limited to those historically associated with DEI—to identify practices that may attract scrutiny under current federal interpretations. Decision-making processes and the rationale supporting them should be carefully documented, particularly where institutions elect to maintain or modify programs with race-conscious elements. Institutions should also evaluate their risk tolerance in light of their mission, state legal environment, funding profile, and governance structure, recognizing that the appropriate course will vary across institutions.

Institutions should also be mindful that the compliance landscape is not shaped by federal action alone. A number of states have enacted their own restrictions on DEI-related programs or practices within public higher education. In contrast, others have adopted protections for diversity-related initiatives or academic freedom. The interplay between federal and state

requirements will differ significantly by jurisdiction, and institutions should assess their obligations and exposures under both frameworks.

Nixon Peabody's Litigation team helps colleges and universities anticipate, manage, and defend DEI-related investigations and lawsuits—while aligning compliance strategies with institutional mission and risk tolerance. We partner with in-house teams to respond quickly to agency inquiries, mitigate exposure, and navigate fast-moving federal and state developments.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Alexandra A. Mitropoulos

617.345.6177

amitropoulos@nixonpeabody.com

Sarah K. Quinn

312.977.9290

squinn@nixonpeabody.com

Steven M. Richard

401.454.1020

srichard@nixonpeabody.com

