

Now & Next

Higher Education Alert

July 14, 2026

Higher Ed Rules to Watch: Department of Education sets 2026 higher ed rule agenda

By Alexandra A. Mitropoulos and Steven M. Richard

ED's 2026 regulatory agenda previews additional changes for colleges on Title IV eligibility, Title IX, DEI, FERPA, accreditation, and Clery.



What's the impact?

- The Education Department's (ED) 2026 agenda previews major higher ed rulemaking on Title IV eligibility, accreditation, Title IX, FERPA, Clery, and foreign gift reporting.
- Colleges should prepare for continued scrutiny of DEI, race-conscious programs, definitions of sex, and civil rights compliance.
- Institutions considering transactions, vendor changes, or foreign funding disclosures should monitor upcoming rules and assess compliance risks now.

On July 4, 2026, the US Department of Education (ED) released its Semiannual Regulatory Agenda, identifying its anticipated rulemaking priorities for the coming months. While regulatory agendas are not binding and often change, they provide the clearest indication of the department's policy direction and enforcement priorities.

This newsletter is intended as an information source for the clients and friends of Nixon Peabody LLP. The content should not be construed as legal advice, and readers should not act upon information in the publication without professional counsel. This material may be considered advertising under certain rules of professional conduct. Copyright © 2026 Nixon Peabody LLP. All rights reserved.

For colleges and universities, the agenda reflects several consistent themes that have emerged over the past 18 months, including efforts to reshape accreditation and Title IV oversight, narrow the scope of federal civil rights enforcement, redefine Title IX protections based on biological sex, increase scrutiny of race-conscious programs, and strengthen oversight of foreign funding.

Below is a summary of the higher education rulemakings, organized by the department's anticipated publication timeline:

July 2026

TITLE IV ELIGIBILITY (NEGOTIATED RULEMAKING)

ED plans to initiate negotiated rulemaking addressing numerous Title IV eligibility regulations, including change of ownership, administrative capability, financial responsibility, cash management, and program length requirements. The department has indicated it intends to reduce regulatory requirements it views as unnecessarily burdensome, particularly for faith-based and proprietary institutions. Notably, it appears this rule would seek to eliminate the 90/10 Rule, which requires for-profit colleges to derive at least 10% of their revenue from non-federal sources.

Institutions considering mergers, acquisitions, ownership changes, or other significant organizational transactions should monitor this rulemaking closely, as it could substantially revise existing approval and eligibility requirements.

ACCREDITATION REFORM (NEGOTIATED RULEMAKING)

Pursuant to [Executive Order 14279](#), the department intends to begin negotiated rulemaking to revise the federal accreditation framework.

Among the anticipated proposals are greater flexibility for institutions seeking to change accreditors, reduced barriers for recognition of new accrediting agencies, and increased emphasis on institutional outcomes, such as student success and workforce preparation, rather than process-based requirements. The administration has also signaled continued scrutiny of accreditor standards relating to diversity, equity, and inclusion, as well as greater attention to free speech and viewpoint diversity.

TITLE VI: ELIMINATION OF DISPARATE IMPACT REGULATIONS (FINAL RULE)

Pursuant to [Executive Order 14821](#), the department intends to rescind portions of the Title VI regulations that use a disparate impact theory of race-based discrimination. The proposal reflects the administration's [broader position](#) that federal civil rights enforcement should focus on intentional discrimination rather than policies producing disparate statistical outcomes.

Although Title VI's prohibition against intentional discrimination remains unchanged, institutions should expect federal investigations to focus increasingly on evidence of intentional discriminatory conduct.

OCR INVESTIGATION PROCEDURES (FINAL RULE)

The department plans to amend the procedural regulations that apply to the ED's Office for Civil Rights's evaluation, dismissal, investigation, and administrative enforcement governing investigations under Title VI, Title IX, and Section 504 to streamline complaint resolution and enforcement. The proposal follows ED's recent agreement with the Department of Justice (DOJ), under which the DOJ will play a substantially larger role in investigating and resolving civil rights complaints.

TITLE IX: DEFINITION OF SEX (FINAL RULE)

ED intends to amend the Title IX regulations to define sex as biological sex, consistent with [Executive Order 14168](#). The rule will follow the Supreme Court's June 30 decision in [West Virginia v. B.P.J.](#), which upheld two laws in Idaho and West Virginia barring transgender women and girls from competing on athletic teams for women and girls. The Court ruled that state laws banning transgender women and girls from athletic teams do not violate Title IX or the Equal Protection Clause.

In anticipation of this proposed rule, institutions should continue reviewing policies governing athletics, housing, and other sex-separated programs while monitoring both the final regulations and ongoing litigation.

August 2026

TITLE VI: DEI AND RACE-CONSCIOUS PROGRAMS (FINAL RULE)

The department expects to issue final regulations providing clarification on how Title VI's protections impact development and implementation of diversity, equity, and inclusion programs and how they apply to race-based, race-exclusive, or race-conscious educational programs or criteria. As discussed in our [June 17](#) and [June 30](#) alerts, this follows agency action and executive directives expanding federal scrutiny of DEI initiatives beyond the admissions context highlighted by the Supreme Court's decision in *Students for Fair Admission v. Harvard*.

In anticipation of this proposed rule, institutions should continue evaluating race-conscious programming, scholarships, partnerships, and affinity initiatives to assess compliance under the department's rapidly evolving enforcement approach.

September 2026

FERPA (NEGOTIATED RULEMAKING)

The department plans to propose revisions to FERPA regulations addressing the definition of education records, disclosures to third-party vendors, responses to law enforcement requests, complaint procedures, and enforcement mechanisms.

Rulemaking could significantly affect institutional data governance, vendor agreements, and student privacy compliance practices. Further, if conservative policy agendas are followed, the proposed rule may include a private right of action enabling parents and eligible students to seek injunctive and declaratory relief (including, potentially, attorneys' fees) against institutions that violate FERPA or reinforcing the ability of the department to suspend or terminate federal funding for a FERPA violation.

November 2026

SECTION 117 FOREIGN GIFT REPORTING (NEGOTIATED RULEMAKING)

The department intends to propose regulations implementing [Executive Order 14282](#). The proposal is expected to strengthen reporting requirements under Section 117 of the Higher Education Act and increase federal scrutiny of foreign financial relationships involving colleges and universities. Because the executive order specifically requires the addition of updated certifications to Section 117 reporting linking compliance with False Claims Act liability, institutions should consider whether current disclosures (due July 31) are sufficiently accurate and robust and whether historical reporting may have gaps requiring voluntary correction before a final rule goes into place.

CLERY ACT (NEGOTIATED RULEMAKING)

The department plans to initiate negotiated rulemaking concerning the Clery Act, including implementation of the Stop Campus Hazing Act (SCHA). The anticipated regulations will address hazing reporting, prevention policies, and the new campus hazing transparency requirements that are already taking effect. For now, institutions should continue preparing for the October 1, Clery reporting deadline (which must include hazing statistics pursuant to the SCHA) while monitoring additional regulatory guidance.

Looking ahead

Although publication dates in the regulatory agenda are often aspirational, the agenda provides a useful roadmap for the department's priorities over the coming year. Together, these initiatives reflect a continued effort to reshape federal oversight of higher education.

Nixon Peabody's Higher Education team helps colleges and universities navigate evolving federal oversight, assess compliance risks, and respond strategically to investigations, enforcement actions, and rule changes.

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

Steven M. Richard

401.454.1020

srichard@nixonpeabody.com