

## Higher Education Facing Increasing Enforcement and Legal Risks

Litigation Alert

03.13.2025

On March 10, 2025, the Department of Education (ED) Office of Civil Rights notified 60 colleges and universities that they are "presently under investigation for Title VI violations relating to antisemitic harassment and discrimination." The announcement is the latest in a series of actions targeting higher education, even while the ED faces challenges regarding its own future. Five institutions have been [under investigation](#) since February and the ED's recent [press release](#) stated that another 55 schools "are under investigation or monitoring in response to complaints filed with the Office of Civil Rights."

In parallel, March 1 marked the deadline set by Attorney General Pam Bondi in her February 5 [memorandum](#) directing the Department of Justice Civil Rights Division and Office of Legal Policy to submit a report to the Associate Attorney General that, among other things, identifies "proposals for criminal investigations and for up to nine potential civil compliance investigations" of large-endowment institutions of higher education, as well as other entities.

### Emerging Challenges for Institutions of Higher Education

These developments have followed a series of other actions since the end of January, including executive orders (E.O.s) and public pronouncements from the Trump administration that have created a unique set of emerging and ongoing risks for higher education institutions. While some litigation has commenced and courts have started to issue [rulings](#), colleges and universities facing enforcement activity should not wait to assess their risks. Key issues include:

- **Enforcement Action Based on Diversity, Equity, Inclusion, and Accessibility (DEI and DEIA) Programs** . Through E.O.s and a [February 14 letter](#) to educational institutions from the Acting Assistant Secretary for Civil Rights at ED and associated [FAQ document](#), the Trump administration has taken aim at "illegal" DEI on campus. The Trump administration's [Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#) E.O. specifically raised the prospect of enforcement activity against colleges and universities, instructing the attorney general to submit a report to the White House by the end of May with a proposed "strategic enforcement plan" prepared in coordination with the "heads of all agencies." Pursuant to the E.O., each agency shall identify "up to nine potential civil compliance investigations" of targets including "institutions of higher education with endowments of over \$1 billion." *See also* [Ending Radical and Wasteful Government DEI Programs and Preferencing](#) E.O.
- **New Requirements for Recipients of Federal Funds** . Executive agencies have been directed to take actions to terminate DEI practices across virtually every industry with a nexus to federally funded programs and new requirements have been imposed on grantees, government contractors, and other recipients of federal financial support, including institutions of higher education. Legal challenges to this E.O. are advancing, but on its face, it requires recipients of federal funds to certify that they do not operate any programs promoting DEI that violate applicable federal anti-discrimination laws and – importantly for False Claims Act (FCA) purposes – that compliance with such laws is material to the government's payment decisions. This certification will open entities that willfully fail to comply with federal requirements to potential FCA liability, which can include treble damages, civil penalties, and even criminal prosecution. The administration's approach to DEI issues may also embolden would-be whistleblowers who can file FCA cases on behalf of the government under the law's *qui tam* provisions.
- **Balancing Compliance with Existing Law** . Importantly, institutions have ongoing legal and regulatory obligations to prohibit harassment and discrimination and provide a safe environment for employees and students. Institutions must take care that efforts to comply with E.O.s do not run afoul of other mandates under federal law, including the anti-discrimination provisions of Titles VI, VII, and IX of the Civil Rights Act. With media and enforcement attention aimed at higher education, reports of harassment or discrimination misconduct at universities can spread like wildfire, quickly grabbing headlines and presenting additional challenges.

- **Investigations by the New Congress.** Following last year's well-publicized hearings focused on higher education, we anticipate further activity in Congress targeting universities and their programs, including investigations and public hearings related to DEI and federal grants, as well as free speech and antisemitism. The Senate Committees on Commerce, Health, Education, Labor, and Pensions (HELP) and the Judiciary, and the House Committees on the Judiciary and Education and the Workforce are likely to focus on these issues in the 119th Congress. The Chairman of the Senate Committee on Commerce, for example, has prioritized [investigation of "woke DEI grants"](#) from the federal government to universities and other research institutions in recent months, calling out "extreme research projects that were spearheaded by professors who were also promoting antisemitic protests on college campuses." The bright public spotlight of a congressional investigation presents unique challenges for university leaders and requires a focus on reputational and other interests while minimizing potential exposure in concurrent or future government actions.
- **Potential Increased Taxation of Colleges and Universities** . It is anticipated that Congress will enact tax legislation this year that could impact colleges and universities. President Trump, Vice President Vance, and certain congressional Republicans have suggested increased taxation of colleges and universities as a potential mechanism to fund other priorities. Reportedly under consideration is a significant increase in the tax rate applicable to university endowment funds and reconsideration of the tax-exempt status of colleges and universities.

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Miller & Chevalier works with our clients, including universities, university boards, and professionals, to navigate these issues. Our experienced team can assist with addressing the risks posed for colleges and universities by conducting risk assessments, reviewing existing and proposed practices, evaluating allegations, conducting investigations, counseling on government contracts, responding to litigation or congressional inquiries, or helping to achieve tax policy objectives. Other relevant articles, including [Ten Rules of the Road for Responding to a Crisis in Your University Athletics Organization](#), can be found [here](#). For more information please contact:

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