



# Federal Update for Higher Education

## October 3, 2025



- This information is good as of now. In an hour, it might not be. Stay tuned for new Executive Orders (EOs) and judicial or legislative responses.
- The political aspects of this are undeniable, but our first priority is simple: clarity.
- Remember not to lose the forest for the trees. What is the big picture? That will help guide our next steps.

# Disclaimers

**We can't help ourselves. We're Lawyers.**

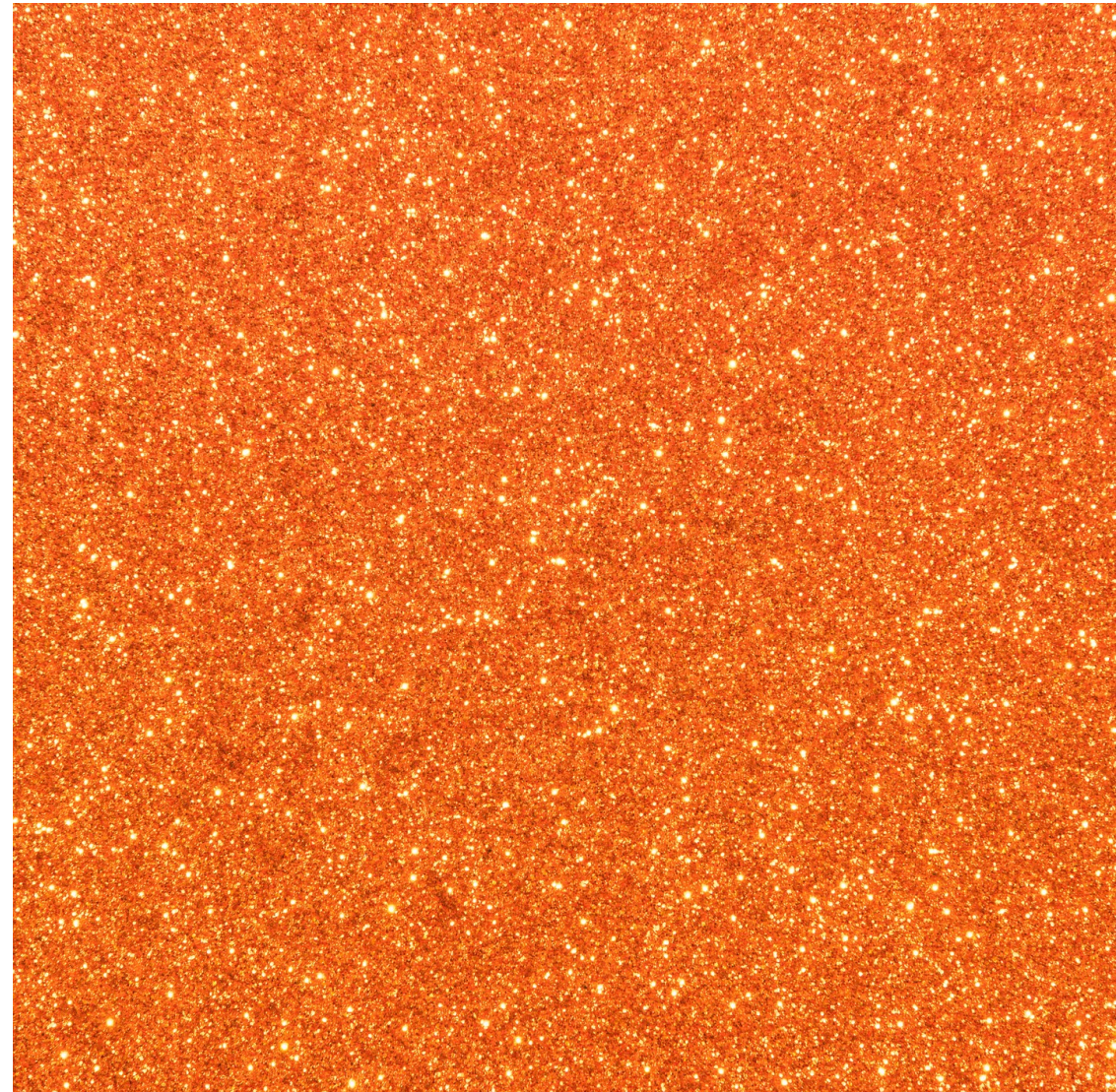
- We are not giving you legal advice.
- Consult with legal counsel regarding specific situations.
- You will receive slides for today's presentation after we've concluded.
- No, we aren't recording this – because we expect things to shift quickly.

# Life of A [Higher Education Attorney] (Bricker Graydon's Version)



## Today's Run of Show:

- Spring Regulatory Agenda
- Countering Domestic Terrorism and Organized Political Violence EO
  - Clery Reminders
- Harvard Status Update
- Visa Updates
- Government Shutdown
- Withdrawal of funding to Minority Serving Institutions
- "Compact for Academic Excellence in Higher Education"
- Pockets of Joy (BG Team Updates)



# Spring Regulatory Agenda

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- The Regulatory Agenda gets issued twice per year
- Much shorter list than in previous years
- All have been previously announced (in some form...) except for two relating to Title VI

- "The Department proposes to engage in negotiated rulemaking to address accreditation issues to clarify institutional flexibility to pursue changes of accreditors without prior Department approval and remove other burdensome requirements that erect barriers to entry for new accreditation agencies."
- Notice of Intent to Commence Negotiated Rulemaking was supposed to be issued in September
- NPRM to be issued January 2026
- Comments due March 2026
- Final Action due August 2026

# Title IV Eligibility

- "The Department proposes to address Title IV eligibility issues to remove requirements that unnecessarily target faith-based or for-profit institutions and interfere with efficient and beneficial mergers, sales, and transfers of institutions of higher education. Such issues to be addressed in the context of institutional eligibility for participation of Federal student financial aid include rules governing change of ownership, cash management, administrative capability standards, and financial responsibility requirements.."
- Notice of Intent to Commence Negotiated Rulemaking expected in October 2025
- Second\* NPRM to be issued March 2026
- Comments due April 2026
- Final Action due August 2026

# Elimination of Disparate Impact under Title VI

- "The Department intends to remove the regulation under Title VI of the 1964 Civil Rights Act that utilizes a disparate impact theory of race-based discrimination, to align Department regulations with Supreme Court precedent that requires Title VI violations to rest upon intentional discrimination."
- NPRM was expected August 2025
- Final Action due March 2026



# Foreign Gifts – Section 117 of HEA of 1965

- "The Department intends to propose regulations covering institutions' reporting of statutorily defined gifts, contracts, and/or restricted and conditional gifts or contracts from or with defined foreign sources, pursuant to the requirements of section 117 of the Higher Education Act of 1965, as amended (HEA)."
- NPRM was expected September 2025
- Final Action due March 2026
- Bonus: On August 25, 2025, ED and other federal partners issued "Safeguarding Academia" to help IHEs mitigate foreign threats to research

# Procedures for Investigations and Enforcement of Title VI Violations (Plus Title IX!)

- "The Department intends to amend procedural regulations that apply to administrative enforcement under Title VI and under Title IX of the Educational Amendments of 1972, to better ensure that such procedures are consistent with statutory requirements while streamlining the process by which OCR seeks termination of Federal financial assistance to institutions that intentionally violate Federal civil rights laws and refuse to voluntarily come into compliance."
- NPRM was expected September 2025
- Final Action due June 2026

- "The Department intends to amend the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR part 99, to update, clarify, and improve the current regulations by clarifying the definition of education record, the provisions governing non-consensual disclosure of personally identifiable information in education records to third parties (including commercial vendors), disclosures in response to law enforcement warrants or judicial subpoenas, and the complaint and investigation procedures and remedies that apply to the Department's enforcement of FERPA."
- NPRM expected January 2026
- Final Action due May 2026

# Countering Domestic Terrorism and Organized Political Violence EO



Issued Sept. 25, 2025: [Countering Domestic Terrorism and Organized Political Violence – The White House](#)

Purpose: "The United States requires a national strategy to investigate and disrupt networks, entities, and organizations that foment political violence so that law enforcement can intervene in criminal conspiracies before they result in violent political acts. Through this comprehensive strategy, law enforcement will disband and uproot networks, entities, and organizations that promote organized violence, violent intimidation, conspiracies against rights, and other efforts to disrupt the functioning of a democratic society."

Key features:

- National Joint Terrorism Task Force to "coordinate and supervise" a national strategy.
- Disrupt financial streams (revoke tax exempt status)
- DOJ/AG can designate domestic terror groups
- Designate National Priority to "develop appropriate grant programs to allocate funding for law enforcement.

# Clery Reminders for Campus Emergencies

- **Timely Warnings:** Are required when **Clery-reportable crimes (like homicide, aggravated assault, and hate crimes) pose a serious and ongoing threat to the community.** These warnings are required for crimes that occur **within your Clery geography.** The communication should include information that will enable individuals to protect themselves, such as a description of the incident, suspect details (if available), safety tips, and any ongoing investigation efforts.
- **Emergency Notifications:** Required for any **immediate threat to the health and safety of the campus community when that occurs on campus.** These notifications are not limited to Clery reportable crimes. Emergency notifications should include the type of threat, location, recommended protective actions, and updates as the situation evolves. The notification must be **provided without delay**, using methods that reach the entire campus community (emails, text alerts, public address systems, etc.).

# Clery Reminders Continued

- Upon receiving a report of a campus emergency, campus safety/campus authorities must:
  - Assess the credibility and specifics of the report
  - Consult with law enforcement and emergency personnel
  - Determine whether the situation requires an emergency notification or timely warning.
  - Document, Document, Document
- What can you do now?
  - Meet with your campus safety team, understand your process, and plan/practice.

- September 19 – DOE FSA announced that it was placing Harvard on "heightened cash monitoring"
- September 19 - DOE OCR issued a Denial of Access letter for failure to provide admissions data
- September 29 – HHS OCR referred Harvard for suspension and debarment decision
- September 30 – Trump announced that the White House was close to reaching a settlement agreement with Harvard

# Visa Updates – H-1B

- "Restriction on Entry of Certain Nonimmigrant Workers" issued Sept. 19, 2025 by Presidential Proclamation
  - Restricts entry into the United States for nonimmigrants under an H-1B visa except where petition is accompanied by a payment of \$100,00
  - Effective date declared as September 21, 2025
  - Proclamation appeared to apply to current holders and future holders of H-1B visas, creating chaos for a weekend for those who were traveling outside the country
- September 20, 2025 guidance from USCIS makes clear it applies only to new petitions submitted on or after September 21, 2025
- Unclear whether the \$100k fee for new H-1Bs applies to institutions of higher education
- Intention for DOL to propose rules to raise prevailing wage levels to "upskill" the H-1B workers



# Government Shutdown

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- We are on Day 3 of the shutdown
- Last shutdown (2018) was also the longest – 34 days
- Expecting mass RIFs today and through the weekend
- ED has furloughed most staffers (87%), but federal student aid will continue to flow
- Out of office messages at ED have reportedly been changed to reflect partisan politics, raising Hatch Act concerns
- If you have federal deadlines: meet them and document it electronically

## DOE Ends Funding to Discretionary Grant Programs at MSIs

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- "Approximately \$350 million in discretionary funds were expected to be allocated to support these programs in fiscal year 2025. These funds will be reprogrammed into programs that do not include discriminatory racial and ethnic quotas and that advance Administration priorities."
  - Hispanic-serving institutions
  - Alaska Native and Native Hawaiian-Serving Institutions
  - Predominantly Black Institutions
  - Asian American- and Native American Pacific Islander-Serving Institutions
  - Native American-Serving Nontribal Institutions

# "Compact for Academic Excellence in Higher Education"

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- October 2 – "Compact" sent to 9 public and private institutions
- Areas of Priority:
  - Equality in Admissions
  - Marketplace of Ideas and Civil Discourse
  - Nondiscrimination in Faculty and Administrative Hiring
  - Institutional Neutrality
  - Student Learning
  - Student Equality
  - Financial Responsibility
  - Foreign Entanglements

# "Compact for Academic Excellence in Higher Education" (Cont.)

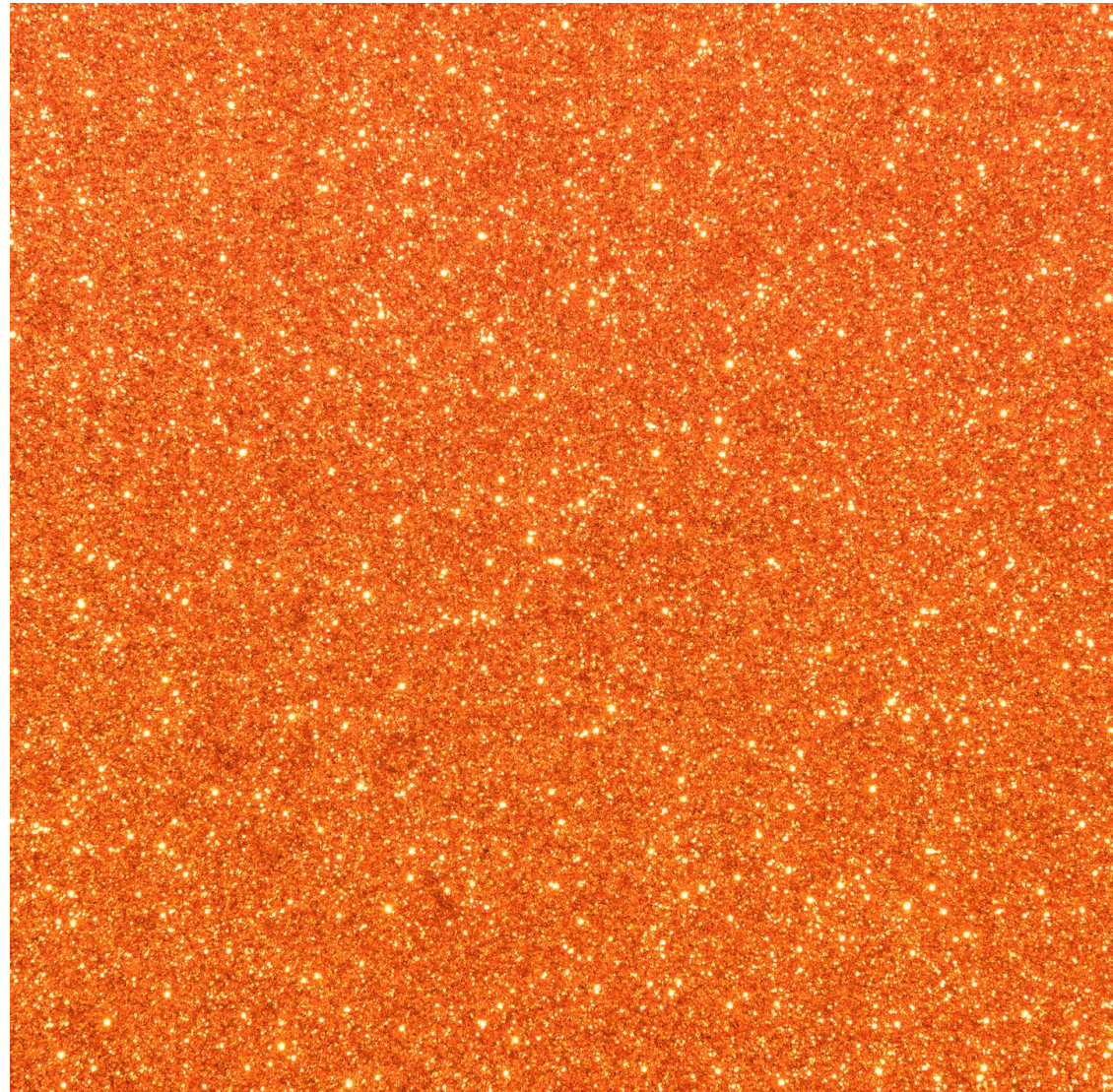
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- Key features:
  - 5-year tuition freeze
  - Cap enrollment of international students
  - Commit to a strict definition of "gender"
  - Governance structure should prohibit conduct that would "punish, belittle, and even spark violence against conservative ideas."
- The letter says that the institutions who sign the compact would receive "multiple positive benefits," including priority access to federal funds and looser restraints on overhead costs
  - Would also signify to the government that institutions are complying with civil rights laws (mitigating risk of investigation and/or funding freezes)

## Pockets of Joy

What's new on the BG team since we last spoke?

- Rebecca Joseph got married
- Liam McMillian and his wife had a baby
- Joel Nielsen was admitted into his college athletics hall of fame (Minnesota State)



# Upcoming Higher Ed Webinars

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- 10/15/2025 - FREE: Campus Compliance: Employment Law
- 10/30/2025 - FREE: Weighing the Evidence in Sexual Violence Cases
- 11/20/2025 - FREE: Title IX Litigation Update
- 12/12/2025- FREE: Clery Hot Topics

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