



Federal Grants and Sponsored Research: New Assurances



Our Presenters



Dr. Eric T. Butler



Melissa M. Carleton

Agenda

- Evolution of Grant Assurances, 2024-2026
- Examples of Assurance Language
- Grant Termination Litigation, 2025-2026
- False Claims Act
- Takeaways

Grant Assurances - 2024

- Program Participation Agreement language, effective July 1, 2024 (and still in place) (excerpted)
 - The Institution agrees to comply with:
 - Title VI
 - Title IX
 - FERPA
 - Section 504
 - Age Discrimination Act
 - Etc.

Evolution of Grant Assurances, 2024-2026

■ Spring 2025

- Agencies begin removing Executive Orders that have been disclaimed by the current administration and including Executive Orders that have been issued by the current administration
- Example: FAA – Airport Improvement Program Grant Assurances:
 - The Sponsor will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant. ...
 - The applicable provisions to this agreement include, but are not limited to, the following: [Section 504, Title VI, ADA, Title IX, EO 14151 [DEI], EO 14168 [gender ideology], EO 14173 [merit-based opportunity, etc.]
- Query: What does it mean to comply with these EOs, and whose opinion matters on this point?

July 29, 2025 DOJ Memo

- Available at www.justice.gov/ag/media/1409486/dl
- Unlawful practices include:
 - Granting preferential treatment based on protected characteristics
 - Use of proxies for protected characteristics
 - Segregation based on protected characteristics
 - Training programs that promote discrimination or hostile environments

DOJ thoughts on Granting Preferential Treatment

- Unlawful:
 - Race-Based Scholarships or Programs
 - No race-exclusive programs or spots set aside for individuals of a particular race
 - Preferential Hiring or Promotion Practices
 - No priority for "underrepresented groups" by race
 - Access to Facilities or Resources Based on Race or Ethnicity
 - Examples: safe spaces, lounges

DOJ thoughts on Use of Proxies

- Unlawful:
 - "Cultural Competence" requirements
 - Geographic or institutional targeting
 - "Overcoming Obstacles" narratives
 - "Diversity Statements"
- Takeaways:
 - Open programs, opportunities, and spaces to all comers

DOJ thoughts on Segregation Based on Protected Characteristics

- Unlawful:
 - Compelled segregation except: athletics/intimate spaces for women
 - Other segregation:
 - Training sessions for individuals of particular protected characteristics – even if done to promote inclusion or address historical inequities
 - Race-based training sessions
 - Segregation in facilities or resources
 - Implicit segregation through program eligibility
 - Race-based "diverse slate" policies in hiring
 - Sex-based selection for contracts
 - Race- or sex-based program participation

DOJ thoughts on Unlawful DEI Training Programs

- Defined as programs that through their content, structure, or implementation, stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment.
- Unlawful:
 - Trainings that promote discrimination based on protected characteristics

DOJ's Best Practices (from July 29, 2025 Memo)

- Ensure inclusive access
- Focus on skills and qualifications
- Prohibit demographic-driven criteria
- Document legitimate rationales
- Scrutinize neutral criteria for proxy effects** (but no disparate impact analysis?)
- Eliminate diversity quotas
- Avoid exclusionary training programs
- Include nondiscrimination clauses in contracts to third parties and monitor compliance
- Establish clear anti-retaliation procedures and create safe reporting mechanisms

Mid-2025 - Separate Required Statements

- Provided by agencies to grant holders
- Agencies were asking grantees to provide separate confirmations beyond what was in the original assurance
- Example #1:

As [NAME OF ACADEMIC INSTITUTION] continues our partnership with the Department of Veterans Affairs, this statement confirms that [NAME OF ACADEMIC INSTITUTION] is compliant with current Executive Orders regarding DEI, Anti-Semitism, and Anti-Christianity and prohibits any programs or policies that violate federal anti-discrimination laws or regulations. The institution takes care to ensure compliance with such laws and regulations in the execution of university functions as an educational institution and employer. We are grateful for the long-standing collaboration with VA as an academic partner in both education and research for the benefit of Veterans and our nation.

Mid-2025 - Separate Required Statements (Example #2)

This letter serves to certify that [grantee] will not use grant funds for the following out-of-scope activities [excerpted and paraphrased here]:

- Inculcating or promoting gender ideology as defined in EO 14168
- Promoting or facilitating discriminatory programs or ideology, including illegal DEI and "diversity, equity, inclusion, and accessibility" programs that do not advance the policy of equal dignity and respect, as describe in EO 14173
- Any activity or program that unlawfully violates an Executive Order

Subgrantee Assurances

- May go beyond what is included in their grant assurance
- Please read these in full to understand what you are committing to!

Grant Termination Litigation, 2025-2026 (1 of 7)

- **Columbia University:**
 - Initial cancelation of **\$400 million+** in federal grants by **HHS** in March 2025 over purported violations of **Title VI for antisemitism**.
 - Columbia receives \$1.3 billion a year in total federal funding.
 - Resolution in July 2025 involving \$220 million+ payments to settle complaint and restore grants.
- **University of Maine System**
 - Initial cancelation of **\$50 million** in grants from the **USDA and NOAA** in February 2025 over purported violations of **Title IX** for policies on athletic participation.
 - Federal court granted TRO in April 2025.
 - Government settles with Maine to restore funding, agreeing to follow appropriate process.

Grant Termination Litigation, 2025-2026 (2 of 7)

- **University of California System; UCLA**

- Government froze **\$500 million+** in funds from **NIH, NSF, Defense, and Labor** over purported violations of **Title VI** for antisemitism re student protests.
- Class actions by faculty members.
- Multiple TROs throughout fall 2025 ordering the government to restore funding.
- Controversy is ongoing.

- **Harvard University**

- Government sought to freeze **\$2 billion+** in federal research funding, largely targeting **HHS**.
- Federal district court ruled in favor of Harvard in September.
- Government originally demanded \$200 million settlement amount, similar to Columbia.
- After reportedly dropping the payment as condition of settlement, the government announced the next day that it was demanding **\$1 billion+**.

Grant Termination Litigation, 2025-2026 (3 of 7)

- President & Fellows of Harvard Coll. v. United States Dep't of Health & Hum. Servs.
 - The ruling, issued in September 2025, granted a permanent injunction against similar funding restrictions. The court held that the government cannot condition funding on the censorship of disfavored views.
 - Judge Allison D. Burroughs ruled that the government used allegations of misconduct as a **"smokescreen" for an "ideologically-motivated assault"** on the university.

Grant Termination Litigation, 2025-2026 (4 of 7)

Council for Opportunity in Education

- The Council for Opportunity in Education (COE) initiated litigation in September 2025 challenging the Department of Education's (ED) refusal to award/continue over 100 grants.
- A January 2026 ruling granted a preliminary injunction, requiring the ED to reconsider these cancellations.

Grant Termination Litigation, 2025-2026 (5 of 7)

- Administration tried to implement **15% cap** on indirect research cost across multiple federal agencies, including **NIH, DOE, NSF, and the Department of Defense**.
- Universities and higher-education associations filed lawsuits, arguing the caps would significantly harm U.S. research capacity and competitiveness.
- Federal courts blocked all four agencies' caps based on contract and APA, ruling the policies were unlawful, arbitrary, or improperly retroactive.
- Controversy is ongoing.

Grant Termination Litigation, 2025-2026 (6 of 7)

National Ass'n of Diversity Officers in Higher Education, et al. (4th Cir., Feb. 9, 2026).

- Lawsuit challenging Executive Orders which (1) ended DEI programs—and contracts that facilitate them—in the federal government, and (2) requiring all grant recipients to confirm compliance with antidiscrimination laws. Orders contain distinct "certification" and "enforcement" provisions.
- Resulted in cancelation of travel, conferences for plaintiffs using federal funds.
- Plaintiffs claim that the orders violate First Amendment expression and Fifth Amendment due process based on vagueness.

Grant Termination Litigation, 2025-2026 (7 of 7)

National Ass'n of Diversity Officers in Higher Education, et al. (4th Cir., Feb. 9, 2026).

- Fifth Amendment claim: Executive Orders at issue are not any more vague than others (such as government initiatives pursuing "excellence.").
 - President also has discretion to determine funding for policy priorities, within bounds of Congressional appropriation.
- First Amendment claim: Certification only verifies compliance with civil rights laws; 1A does not allow violation of them.
 - Ripeness issue for the purpose of determining the EO to facially invalid.

Concurring opinions by Chief Judge Diaz, Judge Rushing

False Claims Act

- DOJ Press Release in January 2026
 - "False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025"
 - Largest total in history.
 - 1,297 qui tam lawsuits, the highest number in a single year, and the government opened 401 investigations
 - \$5.7 billion involved the healthcare industry
 - Additional emphasis on military contracts, Covid-19 funds.
- Rulings by courts to date on research funding offer insight on how FCA claim on the same legal theories might play out.

Takeaways

- Administration is using federal grants as one tool for advancing policy priorities.
- Enforcement approach is not averse to legal risk for the government; acting first, then responding to legal challenges.
- Courts are active and responsive to challenges to government decisions to withhold funding.
 - Contract, administrative procedure, and First Amendment issues.
- False Claim Act actions are a priority for the administration, but yet to impact many higher ed grants compared to other industries.

Free Upcoming Webinars

- [Federal Update - Higher Ed Webinar](#)
 - February 13th 12:00 – 1:00 PM ET
- [Informal Resolution \(Free Title IX In Focus Webinar Series\)](#)
 - February 26th 1:00 – 2:00 PM ET
- [Athletics Hot Topics \(Higher Education Free Webinar Series\)](#)
 - March 6th 12:00 – 1:00 PM ET
- [Transferrable Skills for Title IX and Title VI Investigators \(Free Title IX In Focus Webinar Series\)](#)
 - March 26th 1:00 – 2:00 PM ET



Scan here for additional upcoming events!



To stay up-to-date on recent happenings and new trainings, sign up to receive our Higher Education Insights Emails!

Thank You

