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Legal Sidebar

Enforcing the Antidiscrimination Mandates of Title VI and Title IX: Executive Agency Options and Procedures

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A number of federal civil rights laws condition the receipt of federal funding on recipients' compliance with certain nondiscrimination obligations. Two well-known examples are Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin by recipients of federal funds, and Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in federally funded education programs. Both Title VI and Title IX allow federal agencies to terminate or refuse funding to recipients found to be out of compliance or to pursue compliance "by any other means authorized by law."

Historically, some federal agencies regularly invoked their powers to terminate funding. In the early years after the passage of the Civil Rights Act, for example, the federal government terminated funding under Title VI to hundreds of allegedly noncompliant school districts and initiated termination proceedings against hundreds more. In recent decades, the federal government has largely resolved Title VI and Title IX matters without terminating funding. While no comprehensive database of funding terminations under federal civil rights laws exists, in the past thirty years such terminations appear to have been rare.

Recently, the Trump Administration has attempted to terminate funding to a number of state and private institutions based on alleged violations of Title VI and/or Title IX. For example, on April 2, 2025, the U.S. Department of Agriculture (USDA) issued a letter informing Maine that it was "freezing" certain federal funding to Maine schools as a result of alleged Title IX violations. On April 14, 2025, the Joint Task Force to Combat Anti-Semitism (Task Force) announced a "freeze on $2.2 billion in multi-year grants and $60M in multi-year contract value to Harvard University." (The Task Force is a multiagency task force, coordinated through the Department of Justice (DOJ), that includes representatives from the Department of Education (ED), the Department of Health and Human Services (HHS), and potentially other agencies.) ED described the funding freeze as a Title VI enforcement action.

The executive branch has several options to enforce Title VI and Title IX. This Sidebar reviews the law governing executive agencies' Title VI and Title IX enforcement, including the process Congress set forth to allow agencies to restrict federal funds to allegedly noncompliant entities. This Sidebar does not address separate issues arising from private Title VI and Title IX lawsuits.

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Agency Enforcement of Title VI and Title IX

Title IX was modeled after Title VI, and the statutory provisions governing agency enforcement are substantively identical. Executive Order No. 12,250 vests DOJ with the responsibility to "coordinate" federal agencies' "implementation and enforcement" of Title VI and Title IX, including by approving agency-specific Title VI and Title IX regulations. Many agencies (including ED, USDA, and HHS) simply refer to their Title VI regulations for Title IX enforcement procedures. As a result, the enforcement provisions in Title VI and Title IX regulations are, for the most part, similar—if not identical—across agencies and between the two statutes.

Section 602 of Title VI (Section 602) and Section 902 of Title IX (Section 902) "direct[]" each federal agency to enforce Title VI and Title IX with regard to its own funding recipients, both by promulgating "rules, regulations, or orders of general applicability" and through taking action against alleged violators. Specifically, Congress has instructed that agencies may pursue compliance in two ways:

1. "by the termination of or refusal to grant or to continue assistance," or
2. "by any other means authorized by law."

Termination or Refusal of Federal Funds

The Supreme Court has described funding termination as "severe" and observed Congress's intent that it be a "last resort." To that end, before an agency halts or refuses funding for a Title VI or Title IX violation, Sections 602 and 902 require it to follow several steps. A number of federal appellate courts have indicated that these steps are mandatory:

- The agency must provide the recipient with notice of the alleged violation.
- It must seek voluntary compliance.
- If compliance cannot be achieved voluntarily, the agency must provide a hearing and make "an express finding on the record" of the recipient's failure to comply, a provision that triggers the Administrative Procedure Act's (APA's) requirements for formal adjudications. As another CRS product explains, formal adjudications use "trial-like procedures."
- The head of the agency must file "a full written report" with the "committees of the House and Senate having jurisdiction over the program or activity involved" and wait thirty days before the termination takes effect.

Agency regulations echo and expand upon the statutory requirements. Regulatory details include more specific directions for the content of the required notice, the conduct of the hearing, and the hearing officer's final decision or findings. Some agencies require the final decision to terminate or refuse funds to be made by the head of the agency, a position adopted in DOJ guidance.

Entities that have had their federal funds terminated or applications denied for Title VI or Title IX violations may appeal an agency's decision under APA standards.

In addition to these general rules, amendments to Title VI and the General Education Provisions Act (GEPA) restrict ED's power to defer action on funding applications from local educational agencies (LEAs) because of alleged noncompliance with federal antidiscrimination laws. Congress added these provisions to Title VI in 1966 to address concerns that the Commissioner of Education was evading Section 602's requirements by indefinitely "deferring" action on school districts' funding applications rather than pursuing a final decision to refuse funding through the proper procedures. The similar amendment to GEPA applies to funding deferrals under both Title VI and Title IX. These amendments place time limits on such ED deferrals and institute notice-and-hearing requirements similar to those

established by Sections 602 and 902. As a result, Title VI and Title IX do not allow indefinite deferrals on LEA funding applications.

Statutory provisions regarding deferrals apply only to ED's review of funding applications from LEAs. There are no corresponding instructions for deferrals by other agencies or on applications from other types of funding recipients. The GEPA conference report expressly declined to take a position on the subject. Case law on the executive branch's general authority to defer funding decisions based on Title VI or Title IX concerns appears sparse and inconclusive. DOJ guidance states that agencies may defer action on "initial" applications for federal funding or for applications for "noncontinuing assistance." Funding deferrals are generally not appropriate, DOJ says, when federal funding "is due and payable pursuant to a previously approved application." In other words, agencies may be able to avoid approving new funding to a recipient believed to be out of compliance, at least temporarily, without going through a formal hearing. Under DOJ's guidance, they are not to defer payments under approved grants.

The Title VI and Title IX funding termination and refusal provisions target specific programs rather than an entire organization. That is, under Sections 602 and 902, agencies may terminate or refuse funding only as to the "particular political entity, or part thereof, or other recipient" found to be in violation, and the decision must be "limited in its effect to the particular program, or part thereof" found to be noncompliant. Title VI's and Title IX's nondiscrimination mandates, however, are written more broadly. Section 601 of Title VI and Section 901 of Title IX prohibit discrimination in any federally funded "program or activity," or "education program or activity," respectively. In the Civil Rights Restoration Act of 1987 (CRRA), Congress clarified that in certain domains, including education, "program" means "all of the operations of" the funding recipient. Congress passed the CRRA in response to court decisions that had narrowed the application of the laws' nondiscrimination mandates to only the specific programs receiving federal funds. The CRRA establishes that if any part of a school district or educational institution receives federal funds, the entire district or institution must comply with Title VI and Title IX. As funding termination post-CRRA is rare, courts have had little occasion to consider how the program-specific language of the funding termination provisions in Sections 602 and 902 interact with the broad, recipient-wide definition of certain "programs" established by the CRRA.

The rules described above apply only to money considered to be "federal financial assistance" within the meaning of Title VI and Title IX. Not all forms of federal funding constitute "federal financial assistance." Procurement contracts, for example, ordinarily do not qualify. The process for terminating procurement contracts is explored in another CRS product.

"Other Means Authorized by Law"

Title VI and Title IX allow agencies to enforce compliance via funding termination "or by any other means authorized by law." The statutes are silent as to what these other means are. Whatever option an agency pursues, the laws require it to first "advise the appropriate person or persons of the failure to comply with the requirement" and "determine[] that compliance cannot be secured by voluntary means." Agency Title VI regulations usually give recipients ten days after the notice of noncompliance is mailed to come into compliance and forestall further action.

Regulations, agency guidance, and case law help to flesh out the "other means" potentially available for Title VI and Title IX enforcement. Usually such means involve a referral to DOJ for litigation. DOJ guidance provides:

> Possibilities of judicial enforcement include (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring

> nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance.

Agency Title VI regulations are similarly broad. A typical example provides:

> Such other means may include, but are not limited to,
>
> (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and
>
> (2) any applicable proceeding under State or local law.

As these rules indicate, one pathway to Title VI and Title IX enforcement is through an action for breach of contract. DOJ instructs federal agencies to require grant applications to include "assurance[s] of compliance" with civil rights law. These assurances constitute contractual terms, and generally, the United States may enforce its contracts in court on the same terms as any other party. Courts have long recognized DOJ's authority to bring suit to require a federal funding recipient to comply with contractual antidiscrimination terms and assurances.

Some courts have also ruled that DOJ has an implied right of action to seek compliance with Title VI and Title IX. Furthermore, other statutes expressly allow DOJ and, at times, other federal agencies to enforce federal prohibitions on racial or sex discrimination that may overlap with Title VI or Title IX. For example, Title IV of the Civil Rights Act authorizes DOJ to sue to desegregate public schools. As with a breach of contract case, the remedy in DOJ enforcement actions under statutory or implied rights of action can be an order requiring an entity to comply with the law.

What is less clear is whether the government can use litigation or "other means" to pursue funding termination or refusal or remedies that otherwise cause recipients to lose federal dollars. In breach of contract cases, for example, parties may sometimes seek to terminate or rescind the contract. Separate federal laws and regulations also set forth processes available for federal agencies to terminate or claw back grants. No matter what process is used, Title VI and Title IX establish that an agency must notify Congress and wait thirty days before terminating or refusing funding for failure to comply with Title VI or Title IX. However, the requirements to hold a formal hearing and to restrict funding only to the specific program in which discrimination occurs are attached only to Title VI's and Title IX's procedures for administrative funding termination or refusal. They are absent from the clause allowing agencies to secure compliance "by any other means authorized by law." Title VI and Title IX are also silent on the subject of clawbacks, nor do they speak to how agencies may proceed when alleging conduct that both violates Title VI or Title IX and supports the termination of funds under other authority.

Little case law addresses whether an agency can use litigation or "other means" to avoid Title VI's and Title IX's administrative processes to terminate or refuse funding or to claw back funds. Allowing agencies to bypass the administrative process appears inconsistent with what some Supreme Court Justices have described as Title VI's "carefully constructed administrative procedure to ensure that such withholding of funds is ordered only where appropriate." The Court has explained, "The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others." Moreover, at least one district court has held that Title VI does not allow agencies to recoup funds.

On the other hand, while the Supreme Court has often stated that a more specific statutory provision frequently controls over a general one, a different canon of statutory interpretation states that "repeals by implication are disfavored," and the Court presumes that "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute." Neither Title VI nor Title IX specify how the statutes interact with other authorities allowing the federal government to terminate certain grants, which may suggest that those authorities remain in place. In one of the leading

appellate cases establishing DOJ's authority to enforce contractual assurances of Title VI compliance, the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) held that at least some limitations on remedies available to the funding agency did not necessarily apply to DOJ's contract actions, although the court did not address whether DOJ could use a breach of contract suit to terminate federal funding. Additionally, Title VI and Title IX do not speak to efforts to recoup funds. In a fractured Title VI decision from the early 1980s, three Supreme Court Justices contemplated that agencies could pursue repayment for violations of civil rights commitments in federal grants.

Regardless of whether the statutes allow an agency to use "other means" to restrict or recover funds, agencies must follow their own regulations. As exemplified by USDA, ED, and HHS regulations, Title VI regulations ordinarily provide that "no order suspending, terminating, or refusing . . . Federal financial assistance shall become effective until" the agency has followed the process for refusing or terminating funding described above. These regulations appear to leave little room for agencies to use other administrative means—such as the general process available for terminating certain grants—to bypass Title VI's and Title IX's specific processes for restricting funding. The regulations would not, however, bind courts.

In addition to several cases recognizing the judicial power to order funding recipients to comply with Title VI or Title IX, at least one court has ordered funding termination in the event a recipient fails to comply with a court order for compliance. In *United States v. Baylor University Medical Center*, decided in 1984, the Fifth Circuit found that a Texas district court abused its discretion when it ordered HHS to suspend all Medicare and Medicaid payments to a hospital until the hospital came into compliance with Section 504 of the Rehabilitation Act (Section 504). (Section 504 prohibits disability discrimination in federally funded programs and shares the same enforcement mechanisms as Title VI.) The Fifth Circuit interpreted "the thirty-day waiting period provided by statute" (during which an agency would normally file a report with Congress) to be "indicative of Congressional intent that service providers be granted a grace period for compliance." It required the district court to allow the hospital thirty days to come into compliance. If the hospital refused, the circuit court ordered the immediate suspension of Medicaid and Medicare payments to the unit in which discrimination had occurred.

Recent Funding Terminations

Since the start of the Trump Administration, several lawsuits have challenged actions of federal agencies to suspend funding to universities and school systems alleged to be in violation of Title VI or Title IX without following the statutory funding termination procedures. These suits are mostly in their early stages. In the few briefs it has filed thus far, the Trump Administration has not defended its funding restrictions as Title VI or Title IX actions.

In *American Association of University Professors v. DOJ*, a challenge to the Administration's termination of funding to Columbia University, the Administration contends that it exercised its authority under the Federal Acquisition Regulation (FAR) to terminate contracts "for convenience" and its authority under the Office of Management and Budget's Uniform Guidance to terminate grants "if an award no longer effectuates the program goals or agency priorities." The substantive reasons behind the revocations appear to sound in the Administration's interpretation of Title VI: the Administration states that "the Government terminated the contracts for convenience in light of the University's insufficient response to antisemitism," that "supporting research at an institution that had demonstrated a lack of concern for the wellbeing of Jewish students was inconsistent with agency priorities," and that "ED . . . found the grants to be inconsistent with agency priorities to eliminate discrimination in education." The scope of the executive branch's authority to rely on the FAR or Uniform Guidance when its reasoning may support a Title VI or Title IX proceeding is untested. (As noted above, Title VI and Title IX may not apply to some terminated contracts, such as procurement contracts.)

In *Maine v. USDA*, the only case to result in a court opinion so far, Maine sued USDA for revoking funds for child nutrition programs in response to alleged sex discrimination in student athletics. The Maine district court found that USDA's letter announcing the funding "freeze" likely violated Section 902 and USDA's Title IX regulations, because USDA did not provide Maine notice and an opportunity for a hearing; USDA did not meet congressional notification requirements; and USDA terminated funding to programs in which no discrimination was alleged. USDA did not defend its decisionmaking on the merits; instead, it contested only the court's jurisdiction (i.e., the court's authority to hear the case). On May 2, 2025, the parties announced a settlement in which USDA agreed "to refrain from freezing, terminating, or otherwise interfering with" Maine's federal funding based on alleged Title IX violations without following the Title IX statutory and regulatory procedures.

Separately, on April 16, 2025, DOJ filed a lawsuit against the Maine Department of Education invoking an implied right of action under Title IX and alleging breach of contract due to Maine's policy allowing students to compete on single-sex sports teams consistent with their gender identity. The United States seeks both injunctive relief—that is, a court order requiring Maine to follow the United States' interpretation of Title IX—and an unspecified "damages award."

Considerations for Congress

Within constitutional limits, Congress may set the terms for how agencies can restrict federal funds to entities that violate federal law. On the one hand, funding restrictions can be an effective way to secure compliance with important federal policies. On the other hand, funding restrictions could harm groups those policies are meant to protect—for example, by limiting access to services like education or health care. Congress may consider how to balance these concerns if it seeks to change the process for restricting federal funding under civil rights laws.

Congress may also resolve ambiguities in the current statutory scheme for enforcing Title VI and Title IX. For example, the statutes do not address whether and when agencies may defer action on funding applications (other than by LEAs) or whether and how they can recoup funds for civil rights violations. In addition, they do not specify whether agencies may use independent authorities to terminate grants for conduct that also violates civil rights laws. There is also ambiguity in how the provisions allowing termination of funding only to specific programs interact with the CRRA. Courts may offer more guidance in lawsuits challenging funding revocations by the Trump Administration. Congress may also await the results of this litigation before determining whether legislative clarification is warranted.

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