NATIONAL WOMEN'S LAW CENTER
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Submitted electronically

September 23, 2026

Zachary Rogers
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: Docket ID ED-2026-OPEPD-2542, RIN 1875-AA14, Education Department General Administrative Regulations

Dear Mr. Rogers:

The National Women's Law Center (NWLC) writes to oppose the proposed rule, "Education Department General Administrative Regulations"[1] (Proposed Rule). For over 50 years, NWLC has worked to combat sex discrimination and expand opportunities for girls and women in every facet of life, including in education. Founded in 1972—the same year Title IX was enacted—NWLC has participated as counsel or amicus in all major Title IX cases before the Supreme Court. NWLC is committed to eradicating all forms of sex discrimination in school, including sex discrimination faced by girls and women, LGBTQIA+ students, pregnant and parenting students, and girls and women of color and with disabilities.

The Proposed Rule is this administration's latest illegal attempt to weaponize federal grantmaking in the face of express congressional prohibitions. In May 2026, the Office of Management and Budget (OMB) and 41 other agencies, including the Department of Education (ED), proposed a similar joint rule that would inject this administration's political and policy preferences into federal grantmaking and provide the executive branch with sweeping power over $1.2 trillion of appropriated funds (Joint Proposed Rule).[2] The Joint Proposed Rule received nearly half a million comments, 95% of which expressed strong opposition, including because it would exceed the agencies' authority and conflict with existing statutory and constitutional law.[3] In response, Congress passed and President Trump signed an appropriations law prohibiting the Joint Proposed Rule or a "substantially similar rule" from being issued, finalized, or enforced through December 11, 2026.[4] Since this Proposed Rule was proposed on August 24, 2026 and contains many provisions substantially identical to the Joint Proposed Rule, ED has already violated federal law by issuing the Proposed Rule and would violate it again by finalizing or enforcing it without express congressional approval.

Just as NWLC opposed the Joint Proposed Rule,[5] we oppose this Proposed Rule, which would devastate federal education funding. First, this Proposed Rule would give ED overly broad and undue authority to terminate disfavored grants, including "for convenience." Second, it would impose unworkably vague restrictions on grantees, including prohibiting the use of lawful diversity, equity, and inclusion practices in admissions and employment under the guise of promoting "merit." Third, it would alter the selection criteria for competitive grants to give lower scores to applicants with inclusive policies. Fourth, it would require states and subgrantees to comply with illegal executive orders. The Proposed Rule would be

[1] Dep't of Educ., Educ. Dep't Gen. Admin. Reguls., 91 Fed. Reg. 54666 (proposed Aug. 24, 2026), https://www.federalregister.gov/d/2026-17239.
[2] Off. of Mgmt. & Budget *et al.*, Regul. for Fed. Fin. Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817.
[3] Anil Oza & J. Emory Parker, *Flood of comments on White House grantmaking overhaul is largely negative, analysis shows*, Roll Call (July 15, 2026), https://www.statnews.com/2026/07/15/trump-omb-grant-funding-proposal-comments-95-percent-opposed.
[4] Continuing Appropriations and Extensions Act of 2027, H.R. 6500, § 157 119th Cong. (2026) (enacted Sept. 2, 2026).
[5] Nat'l Women's L. Ctr. Comment, *Re: OMB-2026-0034 Regul. for Fed. Fin. Assistance* (July 13, 2026), https://nwlc.org/wp-content/uploads/2026/07/NWLC-Comment-on-Federal-Financial-Assistance-NPRM.pdf.

devastating for educational institutions and other ED grantees that are inclusive of diverse communities and perspectives. For all of these reasons, we urge ED to immediately withdraw this Proposed Rule.

I. The Proposed Rule Would Give ED Overly Broad and Undue Authority to Terminate Disfavored Grants.

A. Section 75.901 would allow ED to terminate any grant "for convenience."

NWLC opposes Sections 75.901(a)(2) and 75.901(b)(7) of the Proposed Rule, which would give the Secretary of ED maximal discretion to terminate grants at any time "for convenience," regardless of the grantee's performance or compliance with grant conditions.[6] This provision could be easily weaponized against any grantee that engages in activities disfavored by this administration, or any future administration, placing all federal education grants at the mercy of ideological whims, while enabling the Secretary to merely cite "convenience" as the basis of termination. Because this provision is "substantially similar" to the Joint Proposed Rule, which would allow ED and other agencies to terminate a discretionary grant at any time if it is "in the interest" of the agency,[7] the mere fact of its proposal is already a violation of federal appropriations law.[8] In fact, this provision, which applies to both formula and discretionary grants, would go even further than the Joint Proposed Rule, which would apply only to discretionary grants.[9]

These concerns are neither abstract nor hypothetical. For example, in 2025, this administration abruptly withheld $6.8 billion in grants *one day* before the funds were legally required to be allocated, sending thousands of school districts scrambling to cover the shortfall.[10] When it reversed course a month later, the administration attributed the delay to a review to ensure that all grant programs aligned with its policies and priorities, citing concerns that "many of these grant programs have been grossly misused to subsidize a radical leftwing agenda."[11] Earlier this year, this administration withheld more than $2 billion in grants from 35 education programs that Congress approved for allocation in February 2026, with some of the funds finally released in August 2026 and hundreds of millions of dollars still withheld as of this writing.[12] In another large-scale incident in May 2026, which reporters described as "a White House pressure campaign" against its political targets, the administration withheld over 40 grants from Harvard, Yale, Princeton, and Duke—some for several months—while offering no explanation for the pause.[13] Finalizing this termination-for-convenience clause would only codify and accelerate the administration's ongoing practice of weaponizing funding to punish disfavored groups and, consequently, inflicting untold levels of chaos upon education programs that serve our nation's 70 million students.

Moreover, these provisions would codify this administration's ongoing, illegal practice of bypassing the administrative enforcement process set out by Congress for terminating federal funds from recipients that discriminate on the basis of race, color, national origin, sex, or disability. Under Title VI, Title IX, and Section 504, a federal agency cannot terminate funding from a discriminatory recipient until after it gives notice, makes an express finding on the record, offers an opportunity for hearing, establishes its failure to secure compliance by voluntary means, files a written report to Congress, and waits a minimum of thirty days.[14] And even when funding is terminated, Congress requires that it be limited to the particular program (or part of the program) that engaged in the discrimination[15] to ensure against the "punitive" use

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[6] 91 Fed. Reg. at 54681 (proposed 34 C.F.R. § 75.901(b)(7)).
[7] Joint Proposed Rule, 91 Fed. Reg. at 32258 (proposed 2 C.F.R. §§ 200.340(a)(2), (b)(2)).
[8] *See supra* notes 2-4 and accompanying text.
[9] 91 Fed. Reg. at 32260 (proposed 2 C.F.R. § 200.342).
[10] Mark Lieberman, *Trump Tells States He's Holding Back $6.8 Billion for Schools*, Education Week (June 30, 2025), https://www.edweek.org/policy-politics/trump-tells-states-hes-holding-back-6-8-billion-for-schools/2025/06.
[11] Kara Arundel, *Unfrozen: White House Releases Remaining $5B for K-12 Programs*, K12 Dive (July 25, 2025), https://www.k12dive.com/news/trump-administration-release-5-billion-for-k-12-English-learners-academicsupports/754130.
[12] Mark Lieberman, *White House Blocks $2 Billion for Education: See All the Affected Programs*, Education Week (May 21, 2026; updated Sept. 1, 2026), https://www.edweek.org/policy-politics/white-house-blocks-2-billion-for-education-see-all-the-affected-programs/2026/05.
[13] Adam Sella *et al.*, *Research Funding Slows Again for Universities Targeted by White House*, N.Y. Times (May 29, 2026), https://www.nytimes.com/2026/05/29/us/politics/trump-university-research-funding.html.
[14] 42 U.S. Code § 2000d-1; 20 U.S. Code § 1682; 29 U.S. Code § 794a(a)(2). *See also* 34 C.F.R. §§ 100.6-100.11, 104.61, 106.81.
[15] 42 U.S. Code § 2000d-1; 20 U.S. Code § 1682; 29 U.S. Code § 794a(a)(2). *See also* 34 C.F.R. §§ 100.8(c), 104.61, 106.81.

of this enforcement mechanism.[16] But this termination-for-convenience provision would enable ED to circumvent required enforcement procedures that seek to prevent the very type of punitive use of agency enforcement that this administration has engaged in over and over again. Once more, this is not a hypothetical. Already, this administration has faced several lawsuits challenging the decisions of federal agencies, including ED, to suspend funding to universities and school systems for alleged Title VI and Title IX violations without following the congressionally mandated procedures—instead citing their authority to terminate contracts "for convenience" and to terminate grants that "no longer effectuate[]… agency priorities."[17] In the earliest case to reach a court decision, a federal district court held that this administration's freeze of Maine's federal funds due to the state's transgender-inclusive policies likely violated administrative enforcement procedures under the Title IX statute and regulations.[18] Not only did the federal agency fail to provide notice, an opportunity for hearing, or a written report to Congress before freezing funds, but it also terminated funding to programs where no discrimination was even alleged.[19]

Although ED claims that this grant provision would be consistent with longstanding "termination for convenience" regulations governing federal contracts,[20] federal grants and federal contracts are fundamentally different instruments that serve distinct statutory purposes and, accordingly, have long been subject to different requirements. As Congress set forth in the Federal Grant and Cooperative Agreement Act of 1977, grants are used to "carry out a public purpose," and "substantial involvement is not expected between the executive agency and the … recipient when carrying out the activity."[21] In contrast, procurement contracts (commonly known as "contracts") provide "services for the direct benefit or use of the United States Government" where "the agency decides in a specific instance that the use of a procurement contract is appropriate."[22] As this administration's own tutorial on "Grants vs. Contracts" recognizes, grants are "very flexible, allowing considerable latitude" to the grantee, whereas "contracts are more demanding," and the "scope of work is fairly inflexible."[23] In fact, this administration currently recognizes 43 differences between grants and contracts, including that a grant "[r]ecipient may terminate at any time" whereas "[c]ontractors do not have the right to terminate a contract", and that the grant "[a]pplicant defines the scope of work" in a grant whereas the "[g]overnment describes the scope of work" in a contract.[24] Thus, while it may be workable for a federal agency to have the ability to terminate a procurement contract for convenience, the same considerations simply do not apply to federal grants.

ED also offers two Supreme Court decisions to support this proposed change.[25] But while these decisions stayed district court decisions that had enjoined or vacated the federal government's termination of grant funds, neither decision recognized a federal agency's right to terminate a grant merely for convenience.

Section 75.901(b)(7) should be withdrawn.

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[16] 110 Cong. Rec. 7,059 (1964) (statement of Sen. Pastore) ("Title VI is not a device to terminate all Federal aid to a State . . . because there has been discrimination in one specific program. . . . It is not the intention . . . to enact punitive statutes.").
[17] Abigail A. Graber, Cong. Res. Serv., *Enforcing the Antidiscrimination Mandates of Title VI and Title IX: Executive Agency Options and Procedures* 5 (May 27, 2025), https://www.congress.gov/crs_external_products/LSB/PDF/LSB11316/LSB11316.3.pdf.
[18] *Id.* at 6.
[19] *Maine v. United States Dep't of Agriculture*, 778 F. Supp. 3d 200, 229-30 (D. Me., 2025).
[20] 91 Fed. Reg. at 54669.
[21] 31 U.S. Code §§ 6304(1)-(2).
[22] 31 U.S. Code §§ 6303(1)-(2).
[23] Small Busi Admin., Small Busi. Innovation Res., *Course 1, Tutorial 6: Contracts vs. Grants* 1-2 (last updated Dec. 2020), https://www.sbir.gov/sites/all/modules/custom/sbir_tutorials/dawnbreaker/img/documents/Course1-Tutorial6.pdf.
[24] Dep't of Energy, Off. of Sci., *Grants/Contracts Differences* (last visited Sept. 22, 2026), https://science.osti.gov/grants/About/Grants-Contracts-Differences.
[25] 91 Fed. Reg. at 54669 n.2 (citing *Dep't of Educ.* v. *Cal.,* 604 U.S. _ (2025); *Nat'l Insts. of Health* v. *Am. Pub. Health Ass'n,* 606 U.S. _ (2025).).

B. Section 75.253 would make it easier for ED to reduce, delay, or terminate multiyear grants for reasons other than grantee performance.

NWLC opposes Section 75.253 of the Proposed Rule regarding multiyear grants because:

- Section 75.253(b) would allow the Secretary to consider "any relevant information" when deciding whether to make a continuation award.[26] This proposed provision is far broader than the current provision, which allows the Secretary to consider only "any relevant information *regarding grantee performance*."[27] The proposed change would thus transform any aspect of any program or activity of a multiyear grantee into a potential basis for termination, regardless of its nexus to the grant at issue.

- Section 75.253(c) would no longer require the Secretary to prioritize continuation awards over new grants when allocating a new year's available funds.[28] This would deprive multiyear grantees of stability and predictability and allow new grant applicants that align with this administration's (or a future administration's) political agenda to secure funding at the expense of existing grantees' ongoing, already-approved projects.

- Section 75.253(e)(5) would allow the Secretary to issue a partial award, pay in installments, or delay the release of funds when making a continuation award—without requiring any reason for doing so, and even when an award has already been approved.[29] Like the termination-for-convenience clause, this provision would enable the Secretary to make arbitrary decisions without needing to articulate any logical or legitimate justification.

ED is flatly wrong in claiming that these proposed changes would "improv[e] the clarity and transparency of regulations" and "are unlikely to generate quantifiable costs."[30] Taken together, these proposed changes would enable this administration to more easily reduce, delay, or terminate multiyear grants based on its ideological preferences rather than legitimate concerns about a grantee's performance or compliance. And under any new administration, multiyear grantees could continue to face a constant threat of unexpected termination at any time due to unknowable changes in political and policy preferences between administrations—even if they are meeting or exceeding project goals and in compliance with all grant conditions. Multiyear grantees would be forced to abandon half-finished projects and half-constructed facilities after hiring staff and making long-term commitments to students and other beneficiaries. The result would be a federal grantmaking system that is wildly inefficient, chaotic, and wasteful of taxpayer funds. The harms of these proposed changes are compounded by existing education regulations barring multiyear grantees whose continuation awards have been reduced or terminated from reconsideration hearings or appeals.[31] Far from improving clarity and transparency, Section 75.253 would inject costly confusion, uncertainty, and opacity into ED's grantmaking process.

The proposed changes to Section 75.253 should be withdrawn.

II. The Proposed Rule Would Impose Unworkably Vague Prohibitions on All Grantees Regarding Admissions and Employment.

A. Sections 75.500(f)(1) and 76.500(f)(1) would prohibit grantees from using lawful diversity, equity, and inclusion practices in admissions and employment.

NWLC opposes Sections 75.500(f)(1) and 76.500(f)(1) of the Proposed Rule, which would require all ED grantees to ensure that grant-funded "hiring, admissions, promotions, and compensation practices" are based on "merit" and "qualification" or "high standards", "without regard to race, color, religion, sex,

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[26] 91 Fed. Reg. at 54680 (proposed 34 C.F.R. § 75.253(b)).
[27] 34 C.F.R. § 75.253(b).
[28] 91 Fed. Reg. at 54680 (proposed 34 C.F.R. § 75.253(c)).
[29] 91 Fed. Reg. at 54680 (proposed 34 C.F.R. § 75.253(e)(5)).
[30] 91 Fed. Reg. at 54673.
[31] 34 C.F.R. §§ 75.253(e)(4), 75.253(i).

national origin, or proxies thereof."[32] The words "merit," "qualification," "high standards," and "proxies" are not defined.

While NWLC strongly supports robust nondiscrimination protections, these proposed provisions are unworkably vague and susceptible to ideologically driven enforcement inconsistent with Supreme Court precedent. As an initial matter, to the extent these provisions simply intend to restate grantees' obligations under federal civil rights laws, they are not necessary because existing regulations already prohibit ED grantees from discriminating on the basis of race, color, national origin, or sex (as well as disability or age).[33] More concerningly, these provisions would likely be used to coerce compliance with this administration's gross misinterpretation of federal nondiscrimination laws. For example, in July 2025, this administration issued a memorandum denouncing "diversity statements" and "[f]acially neutral criteria (e.g., "cultural competence," "lived experience," geographic targeting)" as illegal "proxies" for protected characteristics.[34] In August 2026, this administration accused a university of using first-generation status and Pell Grant eligibility as illegal "proxies" for race.[35]

Federal courts have repeatedly rejected these misinterpretations.[36] As one court explained when preliminarily enjoining this administration's July 2025 memorandum, its assertions were "inconsistent with Supreme Court precedent that has 'consistently declined to find constitutionally suspect' the adoption of race-neutral criteria 'out of a desire ... to improve racial diversity and inclusion'—even where the decision-maker was 'well aware' the race-neutral criteria 'correlated with race.'"[37] Similarly, the Supreme Court has expressly declined to prohibit the use of diversity statements, noting that "nothing … should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."[38] Thus, the administration's legally unsound memorandum left grantees "at the mercy of [its] interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts."[39]

This administration's relentless distortion of civil rights laws was the subject of a whistleblower complaint released in August 2026.[40] According to the complaint, administration officials used unsubstantiated allegations of campus antisemitism as a pretext to cut federal grants at Brown, Columbia, and Harvard Universities.[41] Despite investigators' warnings that they did not have the evidence to conclude the schools had violated the law, senior political appointees pressed forward with "a predetermined, outcome-driven approach to enforcement rather than a fact-based investigative process."[42] Nonetheless, the immense financial pressure created by funding cuts forced Brown and Columbia into settlements with the administration.[43]

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[32] 91 Fed. Reg. at 54681 (proposed 34 C.F.R. § 75.500(f)(1)), 54682 (proposed 34 C.F.R. § 76.500(f)(1)).

[33] 34 C.F.R. §§ 75.500(a)(1), 76.500(a)(1).

[34] Dep't of Justice, Off. of Att'y Gen., *Memorandum for All Federal Agencies, Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* 2, 5 (July 29, 2025) https://www.justice.gov/ag/media/1409486/dl (emphasis added)

[35] Brianna Atkinson, *As Duke reviews federal discrimination claims, some worry the university might overcomply*, WUNC News (Aug. 7, 2026), https://www.wunc.org/education/2026-08-07/duke-doj-discrimination-claims.

[36] *See, e.g., AFT v. Dep't of Educ.*, 796 F. Supp. 3d 66, 107 (D. Md. 2025) ("[T]he administration is entitled to its own views . . . . But it is not entitled to misrepresent the law's boundaries . . . . It cannot blur the lines between its viewpoint and existing law."); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1249 (W.D. Wash. 2025), *aff'd*, *Cnty. of King v. Turner*, 2026 WL 2489361, (9th Cir. 2026).

[37] *Id.* at 1249 (citing *Coal. for TJ v. Fairfax Cnty. Sch. Bd*., 68 F.4th 864, 885–86 (4th Cir. 2023) (cleaned up) (citing, *inter alia*, *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 545 (2015))).

[38] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214-15 (2023). *See also United States v. Skrmetti*, 605 U.S. 495 (2025) (Thomas, J., concurring) (suggesting strict scrutiny does not apply to "a university's decision to credit 'an applicant's discussion of how race affected his or her life' " simply because it is "inextricably bound up with" the applicant's race) (cleaned up).

[39] *Martin Luther King, Jr. Cnty.*, 798 F. Supp. 3d at 1249.

[40] Mark Arsenault & Alan Blinder, *Trump Officials Ignored Their Own University Investigators, Lawyer Says*, N.Y. Times (Aug. 18, 2026), https://www.nytimes.com/2026/08/18/us/trump-administration-university-investigations-whistleblower.html.

[41] *Id.*

[42] *Id.*

[43] *Id.*

Against this backdrop and in light of administration officials' repeated public use of words like "merit" to suggest a preference for white men,[44] any grantee could reasonably conclude that these provisions' purported commitments to "merit," "qualification," and "high standards" are nothing more than racist and sexist dog whistles aimed at excluding people of color and women from ED-funded programs and activities. Similarly, it would be reasonable to conclude that any race- or gender-conscious (or race- or gender-neutral) policy in admissions or employment—even if expressly permitted by the Supreme Court—would be treated by this administration as a basis for termination of grant funding. Grantees with far fewer resources than Ivy League universities, like Brown and Columbia, would be even more vulnerable to abusive grantmaking under these provisions. And many grantees are already under threat of funding termination. Since January 2025, ED has opened over 200 investigations into school districts, institutions of higher education, state education departments, and other education entities for implementing policies supportive of Black, brown, and transgender students.[45]

The exceptions in Sections 75.500(f)(1) and 76.500(f)(1) ring hollow. According to the Proposed Rule, a grantee could still consider race, color, religion, sex, or national origin in its admissions and employment practices where "an appropriate exception applies," such as when the grantee is "a religious organization or an organization engaged in remedial action."[46] But these exceptions do not cure these provisions of their coercive nature. First, the "religious organization" exception is too broad and could allow a grantee to invoke religion in order to exclude people of color, immigrants, women and girls, LGBTQIA+ people, pregnant and parenting people, and other marginalized communities from admissions and employment. Second, while the "remedial action" exception is lawful on its face, this administration has repeatedly signaled open hostility to remedial action (also known as "affirmative action") and, since taking office, has methodically eliminated policies regarding remedial action across the federal agencies, including at ED.[47] For example, on July 23, 2026, ED rescinded guidelines under Title VI, Title IX, and Section 504 that had: (i) *allowed* states and their subgrantees to take affirmative or remedial action in their career and technical education (CTE) programs to overcome the effects of their own past discrimination on the basis of race, color, national origin, sex, or disability; and (ii) *required* such action to overcome past discrimination in the recruitment, hiring, and assignment of CTE faculty.[48] A day later, ED rescinded Title VI regulations that had: (i) *allowed* grantees to take affirmative action on the basis of race, color, and national origin in the absence of prior discrimination; and (ii) *required* them to do so to overcome the effects of their own prior discrimination.[49] Given ED's track record, grantees cannot reasonably expect to invoke the "remedial action" exception to defend their race- and gender-conscious (or race- and gender-neutral) policies against a threat of grant termination.

Finally, these provisions are "substantially similar" to the Joint Proposed Rule, which would prohibit grantees from using "[d]iversity, equity, and inclusion" policies, including "racial preferences" or "intentional proxies for race," in their employment and participant selection practices.[50] Thus, the fact of their proposal alone violates federal appropriations law.[51]

The proposed changes to Sections 75.500(f)(1) and 76.500(f)(1) should be withdrawn.

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[44] Erica L. Green, *For Trump, Civil Rights Protections Should Help White Men*, N.Y. Times (May 25, 2025), https://www.nytimes.com/2025/05/25/us/politics/trump-race-civil-right-white-men.html.

[45] Matthew Stone & Brooke Schultz, *See Which Schools Trump's Education Department Is Investigating and Why*, EducationWeek (last updated Aug. 18, 2026), https://www.edweek.org/policy-politics/see-which-schools-trumps-education-department-is-investigating-and-why/2025/03.

[46] 91 Fed. Reg. at 54681 (proposed 34 C.F.R. § 75.500(f)(1)), 54682 (proposed 34 C.F.R. § 76.500(f)(1)).

[47] *See*, *e.g.*, *OFCCP Publishes Final Rule Rescinding Affirmative Action Regulations Pursuant To Executive Order 11246*, JDSupra (Aug. 31, 2026), https://www.jdsupra.com/legalnews/ofccp-publishes-final-rule-rescinding-4945112; Equal Employment Opportunity Comm'n, *EEOC Votes to Rescind Affirmative Action Interpretive Guidelines and Related Compliance Manual* (June 30, 2026), https://www.eeoc.gov/newsroom/eeoc-votes-rescind-affirmative-action-interpretive-guidelines-and-related-compliance。

[48] Dep't of Educ., Rescinding Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, & Handicap in Vocational Educ. Programs, 91 Fed. Reg. 46285 (July 23, 2026), https://www.federalregister.gov/d/2026-14892. *See also* Dep't of Health, Educ. & Welfare, Off. of Civ. Rts., Guidelines for Vocational Educ. Programs (Mar. 27, 1979), https://www.ed.gov/adult-programs/adult-education-laws-and-policy/guidelines-vocational-education-programs.

[49] Dept' of Educ., Rescinding Portions of Dep't of Educ. Title VI Reguls. To Align With Statutory Text & Conform to Exec. Order 14281, 91 Fed. Reg. 46733, 46736 (July 24, 2026), https://www.federalregister.gov/d/2026-15019 [hereinafter Disparate Impact & Affirmative Action Rule].

[50] Joint Proposed Rule, 91 Fed. Reg. at 32249 (proposed 2 C.F.R. § 200.205(b)(2)(i)), 32253 (proposed 2 C.F.R. § 200.300(b)(1)).

[51] *See supra* notes 2-4 and accompanying text.

B. Sections 75.500(f)(2) and 76.500(f)(2) would bind grantees to an undefined legal standard regarding "political views."

NWLC opposes Sections 75.500(f)(1) and 76.500(f)(1) of the Proposed Rule, which would require all ED grantees to ensure that their "employment practices do not compel statements of belief in support or opposition to any political views as a condition of employment, admission, or project participation, unless an appropriate exception applies."[52] The provision is unworkably vague, as ED does not define what constitutes a "political view" or give any information about what types of exceptions it considers "appropriate." Without clear notice as to what ordinary, good-faith employment practices may fall under the scope of these provisions, grantees would have all federal education funding held hostage to an unknowable legal standard.

The proposed changes to Sections 75.500(f)(2) and 76.500(f)(2) should be withdrawn.

III. The Proposed Rule Would Give Lower Scores to Discretionary Grant Applicants with Inclusive Policies.

NWLC opposes Section 75.210 of the Proposed Rule, which would remove existing selection criteria that give higher scores to discretionary grant applicants with inclusive policies and add factors that give such applicants lower scores instead.

First, Section 75.210 would amend a total of 14 grant selection criteria that currently refer to an "underserved population" to instead refer to a "target population."[53] Thus grant applicants that focus on underserved populations would be deprived of 14 opportunities to earn a higher score than their competitors under the new grant selection criteria.[54] But underserved populations exist due to many forms of discrimination, many of which are not overt or explicit. This is why Congress has repeatedly passed, and the Supreme Court has repeatedly upheld, laws prohibiting facially neutral policies or practices that create an unjustified and disproportionate effect on certain populations (*i.e.*, a disparate impact).[55] Yet this proposed change would essentially refuse to recognize that underserved communities exist, building on this administration's campaign to rescind disparate impact liability across at least eight federal agencies,[56] including ED.[57] Under this proposed change, grant projects seeking to serve underserved students would be less likely to be funded, and already-underserved students and other project participants would be further neglected and abandoned, exacerbating inequities in education programs and activities.

Second, sections 75.210(d)(2) and 75.210(e)(2) would no longer require the Secretary to consider whether grant applicants will ensure "equitable access" for project participants and personnel who have experienced barriers "based on one or more of the following: economic disadvantage; gender; race; ethnicity; color; national origin; disability; age; language; migration; living in a rural location; experiencing homelessness or housing insecurity; involvement with the justice system; pregnancy, parenting, or caregiver status; and sexual orientation."[58] ED glosses over these substantive deletions in a single sentence, characterizing them as mere reorganization edits to "consolidate" and "align the introduction of these criteria with the other selection criteria in § 75.210."[59] However, the General Education Provisions Act (GEPA) still requires grant applicants to "develop and describe" in their applications what strategies they will deploy to "ensure equitable access" and "address the special needs of students, teachers, and

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[52] 91 Fed. Reg. at 54681 (proposed 34 C.F.R. § 75.500(f)(2)), 54682 (proposed 34 C.F.R. § 76.500(f)(2)).
[53] 91 Fed. Reg. at 54668.
[54] While Section 75.210 would not delete existing references to "clos[ing] gaps" and serving those "with the greatest needs," the 14 deletions will undeniably deprioritize grant projects that serve marginalized communities. 91 Fed. Reg. at 54675 (proposed 34 C.F.R. § 75.210(a)(2)(iii)), 54677 (proposed 34 C.F.R. § 75.210(d)(2)(xii)).
[55] *E.g.*, *Tex. Dep't of Housing & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 539 (2015); *Alexander v. Choate*, 469 U.S. 287 (1985); *Griggs v. Duke Power Co.,* 401 U.S. 424, 429 (1971).
[56] *Several Federal Agencies Eliminated Their Disparate Impact Regulations*, Harv. L. Sch., Env't & Energy L. Program (June 17, 2026), https://eelp.law.harvard.edu/tracker/rollback-executive-order-directed-agencies-to-eliminate-use-and-enforcement-of-disparate-impact-standard.
[57] Disparate Impact & Affirmative Action Rule, *supra* note 49.
[58] 91 Fed. Reg. at 54677 (proposed 34 C.F.R. §§ 75.210(d)(2), 75.210(e)(2)).
[59] 91 Fed. Reg. at 54668.

other program beneficiaries in order to overcome barriers," including but not limited to "barriers based on gender, race, color, national origin, disability, and age."[60] Congress did not create these statutory requirements to increase paperwork for paperwork's sake; it clearly intended for the ED to evaluate these factors during the grant selection process. In fact, when it established ED through the Department of Education Organization Act (DEOA) in 1980, Congress found "a continuing need to ensure *equal access* for all Americans to educational opportunities," including based on "race, creed, color, national origin, or sex"; and declared ED's purpose included "ensuring *access to equal educational opportunity* for every individual."[61] Yet these proposed deletions would create an incentive for grant applicants to violate both Congress's express command in GEPA and Congress's clear intent in DEOA. The consequences would, once again, fall on our nation's most vulnerable and disadvantaged students and teachers.

Third, sections 75.210(c)(2)(xxi) and 75.210(e)(2)(vi) would require the Secretary to consider whether grant applicants' grant-funded "admissions, promotion, or participant selection decisions" and "hiring, promotion, and compensation decisions" are based "solely" on "merit" and "high standards" and "without consideration of race, color, religion, sex, national origin, or any proxies for these characteristics, except where a "legally permissible exception" applies and is expressly identified and justified in the application."[62] As discussed above, these provisions would likely coerce and deter grantees from using lawful diversity, equity, and inclusion (DEI) practices in admissions, employment, and project participation, given this administration's track record of blatantly misinterpreting and weaponizing federal nondiscrimination laws.[63] While Section 75.210(e)(2)(vi) would expressly enumerate "a religious organization or an entity undertaking lawful remedial measures" as examples of "legally permissible exceptions,"[64] these examples inspire little confidence. Given this administration's open hostility to remedial or affirmative action, including its rescission of multiple affirmative action regulations,[65] it is unlikely to acknowledge any "legally permissible exception" to these provisions—except perhaps to allow religious grantees to openly discriminate against people of color, immigrants, women and girls, LGBTQIA+ people, pregnant and parenting people, and other marginalized communities in their admissions, employment, and participant selection practices. It is still more concerning that Section 75.210(c)(2)(xxi) does not even mention remedial action as an example of a "legally permissible exception." Furthermore, these provisions violate federal appropriations law[66] because they are "substantially similar" to the Joint Proposed Rule, which would prohibit grantees from using "[d]iversity, equity, and inclusion" policies, including "racial preferences" or "intentional proxies for race," in their employment and participant selection practices.[67]

Finally, the Proposed Rule would eliminate a number of other criteria that ensure grant projects incorporate diverse perspectives and are beneficial to participants. For example:

- The Secretary would no longer be required to consider whether key project personnel "represent or have lived experiences of" the target population;[68] or whether a proposed education project has broad support from "teachers' unions."[69] ED does not even mention these proposed deletions, much less offer a justification for them.

- The Secretary would no longer be required to consider whether a project team "maximizes diverse perspectives, for example by reflecting the lived experiences of project participants, or relevant experience working with the target population."[70] ED claims this deletion would "focus" the criteria on "the qualifications of the personnel,"[71] but does not explain why sharing

[60] 20 U.S. Code § 1228a(b).
[61] 20 U.S. Code §§ 3401(2), 3402(1).
[62] 91 Fed. Reg. at 54677 (proposed 34 C.F.R. § 75.210(c)(2)(xxi)), 54678 (proposed 34 C.F.R. § 75.210(e)(2)(vi)).
[63] *See* Part II.A, *supra.*
[64] 91 Fed. Reg. at 54678.
[65] *See supra* notes 47-49 and accompanying text.
[66] *See supra* notes 2-4 and accompanying text.
[67] Joint Proposed Rule, 91 Fed. Reg. at 32249 (proposed 2 C.F.R. § 200.205(b)(2)(i)), 32253 (proposed 2 C.F.R. § 200.300(b)(1)).
[68] *Compare* 91 Fed. Reg. at 54677 (proposed 34 C.F.R. § 75.210(e)(2)(ii)) *with* 34 C.F.R. § 75.210(e)(3)(ii).
[69] *Compare* 91 Fed. Reg. at 54677 (proposed 34 C.F.R. § 75.210(c)(2)(xxii)) *with* 34 C.F.R. § 75.210(c)(2)(xxii).
[70] *Compare* 91 Fed. Reg. at 54677 (proposed 34 C.F.R. § 75.210(e)(2)(iv)) *with* 34 C.F.R. § 75.210(e)(3)(iv).
[71] 91 Fed. Reg. at 54668.

participants' lived experiences and having relevant experience working with their communities are not considered personnel qualifications.

- The Secretary would no longer be required to consider whether a project's design and implementation will include "a diversity of" perspectives, including that of "civil rights organizations."[72] ED claims this deletion would "emphasize a focus on the family and community"[73] but does not explain why civil rights organizations are not considered a part of the community. (In contrast, ED does not propose deleting "the business community" from this provision, although it offers no explanation for why businesses are more integral to communities and education grant projects than civil rights organizations.)

- The Secretary would no longer be required to consider whether a proposed project increases its beneficiaries' "social, emotional, and educational development."[74] ED claims this deletion would "focus the priority on academic standards for students."[75] However, experts around the world, including those convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO), strongly agree that social and emotional learning (SEL) "should be mainstreamed" because it not only enhances academic success and mental well-being but also reduces dropout rates, anxiety and depression, bullying and harassment, and unsafe alcohol and drug use.[76]

- The Secretary would no longer be required to consider a project's level of scope or effectiveness in "groups with different characteristics (such as socioeconomic status, race, ethnicity, gender, disability, language, and migrant status)."[77] ED claims these deletions would "streamline the definitions" because the examples are not "necessary" in defining a project's national or regional scale.[78] It does not explain how a project could be considered truly national or regional in scale if it fails to serve an entire community of people in our nation or in a region, such as people of color, immigrants, women and girls, LGBTQIA+ people, disabled people, English Learners, or migrants. Nor does ED explain why it considers these communities to be less important than "rural or urban areas," which it does not propose deleting from these provisions.

Our nation's most vulnerable children would bear the consequences of these changes. For example:

- Full Service Community School discretionary grants fund over 8,000 community schools providing wraparound services for children and families in high-poverty areas, producing outstanding academic outcomes that amount to a $15 return on investment for every $1 spent.[79] But under Section 75.210, the Secretary would no longer prioritize grant applicants that target "underserved" students from low-income families, ensure "equitable access" to students who have experienced barriers based on "economic disadvantage," or ensure their projects' effectiveness in groups with different "socioeconomic status[es]."

- Discretionary grants under Training and Advisory Services and the Magnet Schools Assistance Program support schools with race and sex desegregation.[80] This is critical work given that 132 school districts currently remain under federal racial desegregation orders from the 1960s.[81] Racial segregation has in fact worsened in the past four decades, with only 16% of Black

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[72] *Compare* 91 Fed. Reg. at 54678 (proposed 34 C.F.R. § 75.210(g)(2)(v)) *with* 34 C.F.R. § 75.210(g)(2)(v).
[73] 91 Fed. Reg. at 54668.
[74] *Compare* 91 Fed. Reg. at 54677 (proposed 34 C.F.R. § 75.210(c)(2)(xvii)) *with* 34 C.F.R. § 75.210(c)(2)(xvii).
[75] 91 Fed. Reg. at 54668.
[76] *What you need to know about social and emotional learning*, U. Nations Educ., Sci., & Cultural Org. (Dec. 23, 2024; last updated Nov. 24, 2025), https://www.unesco.org/en/articles/what-you-need-know-about-social-and-emotional-learning.
[77] *Compare* 91 Fed. Reg. at 54683 (proposed 34 C.F.R. § 77.1 (defining "national level" and "regional level")) *with* 34 C.F.R. § 77.1 (defining "national level" and "regional level").
[78] 91 Fed. Reg. at 54670.
[79] Coalition for Cmty. Schs., *The Power of Community Schools* 1 (2025), https://www.communityschools.org/wp-content/uploads/sites/2/2025/06/CS-Advocacy-Brief-FY25-.pdf.
[80] 42 U.S. Code § 2000c-4 (Training and Advisory Services); 20 U.S. Code § 7231b (Magnet Schools Assistance Program).
[81] Naaz Modan, *Trump Administration Moves to Slash Education Civil Rights Efforts*, K-12 DIVE (May 29, 2025), https://www.k12dive.com/news/trump-administration-mcmahon-equity-assistance-centers-naacp-desegregation/749203.

Southern students attending majority-white schools in 2021 compared to 43% in the 1980s, during the height of school integration.[82] Furthermore, sex segregation in schools, often relying on regressive sex stereotypes about boys' and girls' innate abilities, has resurged in recent years: 4,242 public K-12 schools reported having at least one sex-segregated academic class in the 2021–22 school year—compared to 857 schools in 2013–14.[83] This is despite the requirement that schools administering single-sex classes or activities "do not rely on overly broad generalizations about the different talents, capacities, or preferences of either sex."[84] But under Section 75.210, the Secretary would no longer prioritize grant applicants that ensure "equitable access" for project participants based on race or gender and would actively deprioritize applicants that make race- or gender-conscious admissions decisions unless it considered desegregation to be a "legally permissible exception." The outlook is unfavorable, given ED's recent proposal to end the Training and Advisory Services grant program altogether.[85]

Students attending—or aspiring to attend—institutions of higher education would suffer as well, especially given that nearly all of ED's higher education grants that are governed by the Proposed Rule[86] are discretionary grants. Section 75.210 would appear to prohibit higher education grantees from using federal funds to improve education equity for underrepresented student populations—even where those grants were explicitly created by Congress to do so. For example:

- The TRIO programs support over 800,000 students from disadvantaged backgrounds in K-12 schools and higher education through the academic pipeline from middle school to post-baccalaureate programs, providing $1.2 billion in discretionary grants in FY 2026[87] to more than 3,100 projects in all 50 states.[88] By statute, TRIO funds may be used to target students who are "traditionally underrepresented in postsecondary education," including those who are "limited English proficient" and "individuals with disabilities,"[89] and some TRIO funds *must* be used to target these "underrepresented" students, as well as Alaska Natives, Native Hawaiians, and Native American Pacific Islanders.[90] Yet Section 75.210 would likely prohibit such targeting, even where a statutory requirement should qualify as a "legally permissible exception." This is not mere speculation: in 2025, this administration terminated 120 TRIO grants, all of which referenced DEI initiatives, such as aiming to enroll roughly equal numbers of girls and boys in their programs.[91]

- GEAR UP grants help over 528,000 students in 3,000 low-income secondary schools[92] prepare for college, providing $388 million in FY 2026 for programs and scholarships.[93] Congress expressly allows GEAR UP funds to be used to target students who are "limited English proficient" and "students with disabilities."[94] Again, Section 75.210 would prohibit such targeting.

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[82] Gary Orfield & Ryan Pfleger, *The Unfinished Battle for Integration in a Multiracial American—from* Brown *to Now* 5 (Apr. 2024), https://civilrightsproject.ucla.edu/wp-content/uploads/2024/04/National-Segregation-041624-CORRECTED-for-1.pdf.
[83] Off. for Civ. Rts., Dep't of Educ., *Data File Downloads*, 2021–22 and 2013–14, https://ocrdata.ed.gov/data (last visited Sept. 22, 2026).
[84] 34 C.F.R. § 106.34(b)(i).
[85] Rescinding the Equity Assistance Ctr. Program Reguls., 91 Fed. Reg. 38,354 (proposed June 25, 2026) (to be codified at 34 C.F.R. pt. 270).
[86] The Proposed Rule would apply only to formula grants and discretionary grants, not grants provided to individuals (such as Pell grants). 34 C.F.R. §§ 75.1, 76.1.
[87] Dep'ts of Labor, Health & Human Servs., Educ., & Related Agencies, *Appropriations Act, 2026: Joint Explanatory Statement* 206, https://www.appropriations.senate.gov/download/fy26-lhhs-jes [hereinafter JES]
[88] Grantinsights, *TRIO Programs Guide: Funding, Eligibility & How to Apply* (last updated Apr. 2026), https://grantsights.com/blog/trio-programs-guide.
[89] 20 U.S. Code §§ 1070a-12(c)(7), 1070a-13(d)(7), 1070a-16(b)(11)
[90] 20 U.S. Code §§ 1070a-14(a)(3), 1070a-15(d)(2), 1070a-17(b)(5).
[91] Johanna Alonso, *Trump's DEI Crackdown Closes 120 TRIO Programs*, Inside Higher Ed (Oct. 27, 2025), https://www.insidehighered.com/news/admissions/traditional-age/2025/10/27/trumps-dei-crackdown-closes-120-trio-programs.
[92] Nat'l Council for Cmty. & Educ. Partnerships, *About GEAR UP*, https://www.edpartnerships.org/about-gear-up (last visited Sept. 22, 2026).
[93] JES, *supra* note 87, at 206.
[94] 20 U.S. Code §§ 1070a-24(b)(10)(k), 1070a-24(c)(6)(B)(ii).

Concerningly, this administration terminated $120 million of GEAR UP grants at 220 schools in 2025 simply because they implemented DEI initiatives.[95]

- CCAMPIS grants serve more than 4,000 student parents (out of a total of 4 million undergraduate student parents), providing $75 million in FY 2026 for campus-based child care services.[96] This program is already severely underfunded but is life-changing, as mothers who return to college can increase their annual earnings by more than $2,700, and their children are 38% more likely to graduate from college.[97] CCAMPIS grants *must* target "low-income" parents,[98] but such targeting would be prohibited by Section 75.210.

- Historically, seven million Black, brown, and Indigenous students have benefitted annually from $1 billion in discretionary grants for Hispanic-Serving Institutions (HSIs), Asian American and Native American Pacific Islander-Serving Institutions (AANAPISIs), Historically Black Colleges and Universities (HBCUs), Alaska Native and Native Hawaiian Serving Institutions (ANNHIs), Native American-Serving Nontribal Institutions (NASNTIs), and Tribal Colleges and Universities (TCUs),[99] as well as programs that "increase the participation of *underrepresented ethnic minorities*, particularly *minority women*, in scientific and technological careers."[100] These include 5.6 million students at 615 HSIs (66% of whom are Hispanic),[101] 1 million students at 55 AANAPISIs (nearly 20% of whom are Asian American, Native Hawaiian, or Pacific Islander),[102] 300,000 students at 101 HBCUs (73% of whom are Black),[103] 30,000 students at 35 TCUs (including Indigenous students from 250 recognized tribes),[104] and 15,000 Indigenous students at 39 NASNTIs.[105] But in 2025, this administration terminated $350 million of discretionary grants under many of these programs, claiming they were "racially discriminatory."[106] Section 75.210 would provide a further basis for the Secretary to reject applicants for these grants.

The proposed changes to Section 75.210 should be withdrawn.

IV. The Proposed Rule Would Require States and Their Subgrantees to Comply with Illegal Executive Orders.

NWLC opposes Section 76.700 of the Proposed Rule, which would require all states and subrecipients of state-administered federal formula grants to comply with the president's executive orders.[107]

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[95] Conor Morris, *Trump administration pulls college mentorship grants from more than 200 schools over DEI*, Ideastream Public Media (Sept. 23, 2025), https://www.ideastream.org/education/2025-09-23/trump-administration-pulls-college-mentorship-grants-from-more-than-200-schools-over-dei.

[96] Jonathan Elkin, *Background: Child Care Access Means Parents in School (CCAMPIS) Helping Community College Student-Parents, Kids, and Our Economy* 2 (Nov. 2025), https://acct.org/sites/default/files/documents/2025-11/ACCT%20-%20CCAMPIS%20Backgrounder.pdf.

[97] *Id.* at 1.

[98] 20 U.S. Code § 1070e(a).

[99] JES, *supra* note 87, at 205–06.

[100] 20 U.S. Code § 1067a(b) (emphasis added).

[101] Hispanic Ass'n of Colls. & Univs., *Hispanic-Serving Institutions Quick Facts* 1 (Apr. 25, 2025), https://hacu.net/wp-content/uploads/2025/04/2025HSI_QuickFactsSheet-1.pdf.

[102] Asian Pacific Ams. in Higher Educ., *Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI)*, https://apahenational.org/resources/aanapisi (last visited Sept. 22, 2026).

[103] Postsecondary Nat'l Pol'y Inst., *Historically Black Colleges and Universities (HBCUs)* 1 (Feb. 2025), https://pnpi.org/wp-content/uploads/2025/02/HBCU_FactSheet_Feb25.pdf.

[104] Nat'l Academies of Scis., Eng'g, & Medicine, *Minority Serving Institutions: America's Underutilized Resource for Strengthening the STEM Workforce* 46 (2019), https://www.nationalacademies.org/read/25257/chapter/5#46.

[105] Colleen Falkenstern & Angie Rochat, *An Analysis of Title III Funding in Support of Native American-Serving Nontribal Institutions' Strengthening of American Indian/Alaska Native Postsecondary Attainment* 2 (May 2021), https://files.eric.ed.gov/fulltext/ED614434.pdf.

[106] Dep't of Educ., *U.S. Department of Education Ends Funding to Racially Discriminatory Discretionary Grant Programs at Minority-Serving Institutions* (Sep. 10, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-ends-funding-racially-discriminatory-discretionary-grant-programs-minority-serving-institutions.

[107] 91 Fed. Reg. at 54682 (proposed 34 C.F.R. § 76.700).

First, this provision would violate the constitutional separation of powers, creating confusion and uncertainty for grantees. Executive orders are not law, as only Congress can pass federal laws.[108] While the Constitution authorizes the president to execute laws[109]—including by issuing, revising, or revoking executive orders—federal courts have repeatedly held that executive orders can violate federal laws and can exceed the president's constitutional authority. For example, during the current administration alone, federal courts have temporarily or permanently blocked executive actions in nearly 300 cases, and litigation remains pending in over 400 other cases.[110]

Many of these cases enjoin executive orders with provisions addressing federal grants that are similar to the provisions of this Proposed Rule. Several of the cases specifically prohibit federal agencies from requiring grantees to comply with executive orders. For example:

- In April 2025, a federal agency was preliminarily enjoined from enforcing against any grantees[111] a provision of Executive Order 14173 that ordered all federal agencies to require grantees to certify that they do not operate any DEI programs ("certification provision").[112] NWLC serves as co-counsel in this case.
- In June 2025, eight federal agencies were preliminarily enjoined from enforcing against plaintiffs[113] a provision of Executive Order 14151 that ordered all federal agencies to terminate all "equity-related" grants.[114] As the court in that case explained, the provision was "entirely untethered to any 'legitimate objective[ ]'", particularly in the case of "grants that explicitly call for the consideration of equity."[115]
- In June 2025, a federal agency was preliminarily enjoined from requiring the plaintiff to comply with President Trump's executive orders or to certify that it does not operate any DEI programs.[116]
- In September 2025, three federal agencies were preliminarily enjoined from enforcing against the plaintiff Executive Order 14332,[117] which, *inter alia*, ordered federal agencies to: allow termination of grants for convenience; and to prevent discretionary grants from using "racial preferences," including "intentional proxies for race" in employment or participant selection.[118]
- In March 2026, a federal agency was preliminarily enjoined from enforcing against all grantees the certification provision of Executive Order 14173.[119]
- In March 2026, a federal appellate court affirmed a preliminary injunction barring 24 agencies, including ED, from temporarily pausing all grants implicated by a list of executive orders, including Executive Order 14151, which ordered the termination of all "equity-related" grants.[120]
- In June 2026, seven federal agencies were preliminarily enjoined from enforcing against plaintiffs the certification provision of Executive Order 14173.[121]
- In August 2026, a federal district court vacated two federal agencies' grant conditions requiring grantees to comply with all executive orders and to certify that they do not operate any DEI programs.[122] NWLC serves as co-counsel in this case.
- In September 2026, a federal district court vacated an internal ED directive mandating the termination of any grant program that promotes DEI.[123]
- In September 2026, a federal district court held that OMB and ED failed to identify "clear congressional authorization" when it conditioned apportionment of congressionally appropriated

[108] U.S. Const. art. I, § 1.
[109] U.S. Const. art. II, § 3.
[110] *Litigation Tracker: Legal Challenges to Trump Administration Actions*, Just Security (last updated Sept. 14, 2026), https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration.
[111] *Chicago Women in Trades v. Trump*, 778 F.Supp.3d 959, 978 (N.D. Ill. 2025).
[112] Exec. Order No. 14173, § 3(b)(iv)(B), 90 Fed. Reg. 8633, 8634 (Jan. 21, 2025), https://www.federalregister.gov/d/2025-02097.
[113] *San Francisco A.I.D.S. Found. v. Trump*, 786 F. Supp. 3d 1184, 1218 (N.D. Cal. 2025).
[114] Exec. Order No. 14151, § 2(b)(i), 90 Fed. Reg. 8339 (Jan. 20, 2025), https://www.federalregister.gov/d/2025-01953.
[115] *San Francisco A.I.D.S. Found.*, 786 F. Supp. 3d at 1218-19.
[116] *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F.Supp.3d 716, 755 (N.D. Cal. 2025).
[117] *City of Fresno v. Turner*, 2025 WL 2721390, at *20 (N.D. Cal. 2025).
[118] Exec. Order No. 14332, §§ 4(b)(ii)(A), 5(a), 90 Fed. Reg. 38929, 38931-32 (Aug. 7, 2025), https://www.federalregister.gov/d/2025-15344.
[119] *Freedom Network v. Trump*, 830 F.Supp.3d 681, 716 (N.D. Ill., 2026).
[120] *New York v. Trump*, 171 F.4th 1, 30 (1st Cir, 2026).
[121] *City of Seattle v. Trump*, 2026 WL 1862024, at *12 (W.D. Wash. 2026).
[122] *R.I. Coalition Against Domestic Violence v. Kennedy*, 2026 WL 2364298, at *1 (D.R.I. 2026).
[123] *Calif. v. U.S. Dep't of Educ.*, 2026 WL 2754968, at *1 (D. Mass. 2026).

funds on compliance with two executive orders, rejecting such "sweeping power … to advance the Executive Branch's policy objectives."[124]

Thus, by requiring states and their subgrantees to comply with executive orders—particularly this administration's executive orders— Section 76.700 would likely force them to make an untenable choice between complying with an illegal executive action or risking loss of their ED funding.

Moreover, this provision is vague and legally incoherent—again exceeding the president's constitutional authority—and would create a chilling effect on grantees. As the House of Representatives Government Operations Committee explained in a 1957 report, executive orders are generally directed toward—and therefore only binding on—the executive branch because "the President has no power or authority over individual citizens and their rights except where he is granted such power and authority by a provision in the Constitution or by statute."[125] Accordingly, President Trump's executive orders have directed only executive branch officials to take actions, such as facilitating the closure of ED, rescinding transgender-inclusive guidance documents, and terminating recognition of accreditors that require educational institutions to maintain inclusive policies.[126] Nonetheless, regardless of unconstitutionality, vagueness, or legal incoherence, this provision's requirement for states and their subgrantees to comply with executive orders would still chill them from carrying out certain activities or from publicly expressing positions contrary to the administration's political positions. For instance, states and schools would likely feel coerced to refrain from publicly opposing the dismantling of ED, to adopt policies that discriminate against transgender students, and to rescind longstanding policies that are inclusive of Black and brown students, women and girls, LGBTQIA+ students, and disabled students. Already, mounting political pressure under this administration has pushed at least 451 universities in 49 states and territories to change or remove inclusive policies, trainings, and statements; restructure or close their equity offices; cancel affinity ceremonies; and more.[127]

While ED claims that this proposed change in Section 76.700 (which governs states and their subgrantees) is necessary to align it with Section 75.700 (which governs direct federal grantees),[128] it appears to have mistakenly added that provision to Section 75.700 in the first place. In January 2024, when ED proposed adding the executive order requirement to Section 75.700, its stated reason was "to align § 75.700 to § 75.708" (which governs federal subgrantees).[129] However, when ED finalized that rule in August 2024, it added the executive order requirement to Section 75.700 while simultaneously removing the same requirement from Section 75.708, thereby creating a new discrepancy between the regulations.[130] The best way for ED to resolve these discrepancies and attain its stated goal of aligning Sections 75.700, 75.708, and 76.700 is to ensure that none of these provisions requires grantees to comply with executive orders.

The proposed changes to Section 76.700 should be withdrawn. Similarly, the words "Executive orders," should be struck from § 75.700.

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[124] *Nat'l Ctr. for Learning Disabilities v. Off. of Mgmt. & Budget*, 2026 WL 2754447, at *14 (D. Mass. 2026).
[125] Cong. Res. Serv., *Executive Orders: An Introduction* 20 (Mar. 29, 2021), https://www.congress.gov/crs_external_products/R/PDF/R46738/R46738.6.pdf (citing H. Comm. on Gov't Operations, 85th Cong., *Executive Orders and Proclamations: A Study of a Use of Presidential Powers* 1 (Comm. Print 1957)).
[126] Exec. Order No. 14279, 90 Fed. Reg. 17529 (Apr. 28, 2025), https://www.federalregister.gov/d/2025-07376; Exec. Order No. 14242, 90 Fed. Reg. 13679 (Mar. 20, 2025), https://www.federalregister.gov/d/2025-05213; Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 30, 2025), https://www.federalregister.gov/d/2025-02090.
[127] Sonel Cutler *et al.*, *Tracking Higher Ed's Dismantling of DEI*, Chronicle of Higher Educ. (last visited Sept. 22, 2026), https://www.chronicle.com/article/tracking-higher-eds-dismantling-of-dei.
[128] 91 Fed. Reg. at 54670.
[129] Dep't of Educ., Educ. Dep't Gen. Admin. Reguls. & Related Regul. Provisions, 89 Fed. Reg. 1982, 1993 (proposed Jan. 11, 2024), https://www.federalregister.gov/d/2023-27682.
[130] Dep't of Educ., Educ. Dep't Gen. Admin. Reguls. & Related Regul. Provisions, 89 Fed. Reg. 70300, 70334 (Aug. 29, 2024), https://www.federalregister.gov/d//2024-17239.

V. The Proposed Rule Would Be Devastating for Educational Institutions and Other ED Grantees That Are Inclusive of Diverse Communities and Perspectives.

It would be exceedingly difficult for schools and other educational grantees to find alternative sources of funding should their federal grants be reduced, delayed, denied, or terminated under this Proposed Rule. Federal agencies, including ED, provide a total of about $121 billion each year to public K-12 schools—$1 of every $9 of their total funds, or 11.7%.[131] But the federal percentage of total funds varies widely across states and school districts and can be much higher than 12.9%. For instance, states with the highest percentage of federal public K-12 funding include Mississippi (22.8%), Alaska (21.1%), Louisiana (20.0%), South Dakota (19.6%), and New Mexico (19.6%).[132] The school districts with the highest percentage of federal funds include Houston Independent School District, Texas (26.2%), Dallas Independent School District, Texas (23.8%), Duval County School District, Florida (20.9%), Dade County School District, Florida (19.5%), and Los Angeles Unified School District, California (18.8%).[133]

States, school districts, universities, and other ED grantees that implement inclusive policies and programs would be forced to make an impossible choice under the Proposed Rule: (1) maintain those policies and risk depriving their most vulnerable students of essential educational services funded by ED grants; (2) make up the ED funding shortfall by siphoning state and local funds away from other public goods and services—whose beneficiaries are often the same exact groups of children; or (3) end all inclusive policies and programs to minimize the risk of losing ED grants. No matter what they choose, children and young people with the fewest advantages and opportunities would suffer the most.

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For all of the above reasons, NWLC urges ED to withdraw this Proposed Rule. For questions, please contact Elizabeth Tang (etang@nwlc.org).

Thank you,
National Women's Law Center

[131] USA Facts, *What Percentage of Public School Funding in the US Comes from the Federal Government?*, https://usafacts.org/answers/what-percentage-of-public-school-funding-comes-from-the-federal-government/country/united-states (updated Sept. 3, 2026).
[132] *Id.*
[133] *Id.*