through (f), (g)(1), (2)(i) through (iii) and (v), (3)(i) and (ii), and (5). For purposes of § 721.72(e), the concentration is set at 1.0%. For purposes of § 721.72(g)(1), this substance may cause: acute toxicity, skin irritation, serious eye damage, skin sensitization, genetic toxicity, and specific target organ toxicity. Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f), (k), and (t). It is a significant new use to import the substance other than in solution, unless in sealed containers weighing 5 kilograms or less. It is a significant new use to process the substance in any way that generates vapor, dust, mist, or aerosol in a non-enclosed process. It is a significant new use to manufacture the substance longer than 18 months.

(iv) *Disposal.* It is a significant new use to dispose of the substance, or waste streams containing the substance, other than by hazardous waste incineration in compliance with RCRA subtitle C.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (j) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1203

RIN 3045–AA95

Rescinding Portions of AmeriCorps Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) proposes to amend its regulations implementing Title VI of the Civil Rights Act of 1964 (''Title VI'') to eliminate disparate-impact liability. The proposed amendments would align the conduct prohibited by AmeriCorps' regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions would be consistent with Executive Order (E.O.) 14281 and conform to regulatory updates recently finalized by the U.S. Department of Justice (DOJ).

DATES: Written comments must be submitted by August 24, 2026.

ADDRESSES: Please send your comments electronically through the Federal government's one-stop rulemaking website at *www.regulations.gov.* If you are unable to access the *www.regulations.gov* for any reason, you may send your comments to *publiccomments@americorps.gov* or by mail to AmeriCorps (ATTN: Elizabeth Appel), 250 E Street SW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Acting General Counsel, (202) 606–3614, *eappel@americorps.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

AmeriCorps is proposing [1] to rescind portions of its regulations that were promulgated pursuant to Title VI, 42 U.S.C. 2000d *et seq.,* to more closely align its regulations to Title VI, which prohibits intentionally discriminatory conduct. There are serious statutory and constitutional concerns with the legality of AmeriCorps' Title VI regulations that go beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. This proposed rule accordingly would rescind those portions of the regulations that prohibit conduct having a disparate impact, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest.

Pursuant to E.O. 12250, *Leadership and Coordination of Nondiscrimination Laws,* the Attorney General ''shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions,'' including Title VI of the Civil Rights Act. 45 FR 72995, 72995 (Nov. 4, 1980). As part of this responsibility, the Order provides that other Federal agencies' regulations implementing Title VI are also subject to the Attorney General's approval. *Id.* at 72996. The DOJ's Title VI implementing regulations are codified at 28 CFR 42.101 through 42.112.

On April 23, 2025, the President issued E.O. 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 17537 (Apr. 28, 2025). The Order directed the Attorney General and DOJ to initiate review and repeal or amend Title VI regulations to eliminate the use of disparate-impact liability. *Id.* Section 5 of the Order directed the Attorney General to ''initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.'' *Id.*

On December 10, 2025, DOJ published a final rule to rescind portions of the implementing regulations at 28 CFR part 42 to more closely align the regulations to the language of Title VI of the Civil Rights Act prohibiting intentionally discriminatory conduct, rescinding portions of the regulations that prohibited conduct having an unintentional disparate impact, and revising the regulation to conform with E.O. 14281. *See* 90 FR 57141. AmeriCorps agrees with the rationale provided in DOJ's rule and independently issues its own rule to amend its Title VI regulations.

The practical impact of this proposed rule's modifications would be to make clear to AmeriCorps Federal-funding recipients that AmeriCorps' Title VI regulations prohibit only intentional discrimination and do not prohibit conduct or activities that have a disparate impact in the absence of intentional discrimination, and that AmeriCorps thus will not pursue Title VI disparate-impact liability against its Federal-funding recipients.

II. Discussion

A. Statutory History of Title VI

Title VI of the Civil Rights Act of 1964, as amended, provides: ''No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to ''effectuate the provisions of'' Title VI ''by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

[1] Although many other Federal agencies have amended their Title VI regulations without undergoing public notice and comment, AmeriCorps is seeking public comment to ensure compliance with the public law granting it appropriations, which states that AmeriCorps may ''make any significant changes to program requirements, service delivery or policy only through public notice and comment rulemaking.'' *See* Public Law 119–75, Div. B, Title IV, Sec. 401.

Section 2000d specifically prohibits intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander* v. *Sandoval,* 532 U.S. 275, 280 (2001) (''[I]t is . . . beyond dispute—and no party disagrees—that [Title VI] prohibits only intentional discrimination.''). The statute does not explicitly provide any Federal department or agency with authority to prohibit unintentional disparate impact, and Congress has not amended Title VI to impose disparate-impact liability.

AmeriCorps' Title VI implementing regulations are codified at 45 CFR part 1203 and currently include prohibitions on conduct that has an unintentional disparate impact, as discussed more fully below.

B. Relevant Supreme Court Decisions

The Supreme Court has held that Title VI does not prohibit facially neutral policies that result in disparate outcomes when there is no discriminatory intent. Rather, it prohibits only intentional discrimination. In 1978, the Supreme Court found that Congress intended Title VI to prohibit ''only those racial classifications that would violate the Equal Protection Clause'' if committed by a government actor. *Regents of the Univ. of Cal.* v. *Bakke,* 438 U.S. 265, 287 (1978) (Powell, J., announcing the judgment of the Court); *id.* at 325, 328, 352–53 (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part); *see also Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 198 n.2 (2023) (''*SFFA*''). Shortly before *Bakke'*s Title VI holding, the Supreme Court held that the Equal Protection Clause prohibits only intentional discrimination and that ''a law or other official act'' that has a ''racially disproportionate impact'' alone does not violate that Clause. *Washington* v. *Davis,* 426 U.S. 229, 239 (1976); *see also Vill. of Arlington Heights* v. *Metro. Hous. Dev. Corp.,* 429 U.S. 252, 265 (1977) (''Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.''). Taken together, these Supreme Court cases establish that Title VI's statutory prohibition, like the Equal Protection Clause, extends only to intentional discrimination.

In 2001, the Supreme Court, in *Alexander* v. *Sandoval,* reaffirmed that settled understanding. 532 U.S. at 280 (''[I]t is . . . beyond dispute . . . that [Title VI] prohibits only intentional discrimination.''). In *Sandoval,* the Supreme Court held that private plaintiffs lacked a private right of action to enforce DOJ's ''disparate-impact regulations,'' *id.* at 285–87, which AmeriCorps' regulations mirror. The Supreme Court had previously found a private cause of action to enforce Title VI's bar on intentional discrimination, *id.* at 279–80, but that conclusion did not extend to enforcing DOJ's ''disparate-impact regulations.'' *Id.* at 285. As the Supreme Court explained, it is ''clear'' that ''the disparate-impact regulations do not simply apply'' the statutory prohibition, as the regulations ''forbid conduct that [Title VI] permits,'' so it was equally ''clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations.'' *Id.* Although the Supreme Court in *Sandoval* ''assume[d],'' without deciding, that DOJ's disparate-impact regulations were valid, the Court explained that the regulations were in ''considerable tension'' with the Supreme Court's Title VI precedents. Similarly, the regulations did not ''authoritatively'' construe Title VI because the regulations ''forbid conduct''—namely, policies that unintentionally result in a disparate impact—that Title VI ''permits.'' *Id.* at 281–82, 284–85; *see also id.* at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.'').

Finally, in 2024, the Supreme Court overruled *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984). *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 409–12 (2024). In reaching that result, the Supreme Court made clear that ''statutes . . . have a single, best meaning'' that is '''fixed at the time of enactment.''' *Id.* at 400 (quoting *Wis. Cent. Ltd.* v. *United States,* 585 U.S. 274, 284 (2018)). Thus, Title VI's bar on discrimination can have only one meaning. And under Supreme Court precedent, the single, best meaning of Title VI is that it ''prohibits only intentional discrimination'' and ''permits'' facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval,* 532 U.S. at 280, 286 n.6.

C. Executive Order 14281

On April 23, 2025, the President issued E.O. 14281. This Order restated the ''bedrock principle'' of the United States that all citizens are treated equally under the law. 90 FR at 17537. It also explained that this principle guarantees equality of opportunity, not equal outcomes, and promises that people are treated as individuals, not components of a particular race or group. *Id.*

The Order went on to explain that disparate-impact liability endangers this foundational principle by encouraging individuals and businesses to consider race and engage in racial balancing, which is contrary to equal protection under the law and, therefore, violates the Constitution. *Id.* Section 5 of the Order directed the Attorney General to ''initiate appropriate action to repeal or amend the implementing regulations for Title VI . . . for all agencies to the extent they contemplate disparate-impact liability.'' *Id.* The Attorney General took that action by publishing a rule on December 10, 2025. 90 FR 57141.

This proposed rule would revise AmeriCorps' currently existing Title VI regulations consistent with applicable law and under the Order.

D. Conformity With Law

AmeriCorps' Title VI regulations were initially adopted in 1974. *See* 39 FR 27322 (July 26, 1974). The regulations have remained largely unchanged since that time, with the exception of a limited revision in 2003 to conform the regulations to the added statutory definition of ''program or activity'' or ''program.'' *See* 68 FR 51387 (Aug. 26, 2003). At that time, AmeriCorps and the other agencies updating their respective regulations acknowledged the Supreme Court's statements in *Sandoval* as calling into question the validity of Title VI disparate-impact regulations but noted that the issue was beyond the scope of the 2003 rulemaking. *Id.* at 51338.

AmeriCorps now proposes to align its regulations with the Supreme Court's statements in *Sandoval* by eliminating disparate-impact liability under Title VI for AmeriCorps' Federal funding recipients. E.O. 14281 states, and AmeriCorps firmly agrees, that equal treatment under the law for all citizens is a ''bedrock principle'' of the United States. 90 FR at 17537. Adherence to this principle, including in the issuance of grants, ''is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.'' *Id.* Imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest.

After considering the relevant issues and factors and weighing the relevant considerations, AmeriCorps concludes that these reasons collectively support eliminating disparate-impact liability from AmeriCorps' Title VI regulations. In any event, AmeriCorps concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from AmeriCorps' Title VI regulations.

E. Need for Rulemaking

AmeriCorps' regulation at 45 CFR 1203.4, entitled ''Discrimination prohibited,'' contains several provisions that go beyond the statutory text and constitutional requirements by prohibiting conduct or activities causing unintentional disparate impact and, in some instances, may encourage or even require unlawful discrimination through affirmative action. Section 1203.4(b)(2) is the current regulation's general disparate-impact prohibition, which states that a ''recipient . . . may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.'' 45 CFR 1203.4(b)(2). Beyond that general prohibition, section 1203.4(d) addresses a Federal funding recipient's selection of the site or location of facilities and includes two references to ''effect'' that extend the scope of prohibited conduct to include conduct with unintentional disparate impact. *Id.* 1203.4(d). Section 1203.4(b)(4) concerns the use of ''affirmative action'' and provides that funding recipients may (and sometimes must) use race, color, or national origin to overcome unintentional disparate ''effects,'' but does not expressly specify that the funding recipient must narrowly tailor such use of race nor that the use of race must serve a compelling governmental interest, as is required to satisfy strict scrutiny. *Id.* 1203.4(b)(4). Finally, section 1203.4(c) addresses prohibited discriminatory employment practices, which extend beyond intentional discrimination to include conduct that ''tends'' to have a discriminatory effect. *Id.* 1203.4(c)(3).

There are serious statutory and constitutional concerns with the legality of AmeriCorps' Title VI disparate-impact regulations. AmeriCorps also has serious policy concerns with its current disparate-impact regulations because they create confusion, undermine public confidence in the nation's civil rights laws and the rule of law, and have the potential to produce burdensome litigation and compliance costs.

1. Serious Legal Concerns

There are serious statutory concerns as to whether Title VI authorizes the disparate-impact provisions of the current regulations. As the Supreme Court has made clear, Title VI prohibits ''only intentional discrimination'' and ''permits'' facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval,* 532 U.S. at 280, 286 n.6. That is the ''single, best meaning'' of Title VI. *Loper Bright,* 603 U.S. at 400. As summarized above, *Sandoval* calls into serious doubt the legality of AmeriCorps' ''disparate-impact regulations.'' 532 U.S. at 281–82, 284–85 (noting that DOJ's regulations are in ''considerable tension'' with the Supreme Court's Title VI precedents); *see also id.* at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.''). Although *Sandoval* resolved only the question of private enforceability, subsequent cases such as *Loper Bright* have made clear that AmeriCorps cannot extend Title VI beyond its best meaning. *See* 603 U.S. at 412–13 (holding that ''courts must . . . ensur[e] that [an] agency acts within'' its statutory authority). Even in the absence of Supreme Court precedent, AmeriCorps would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

Title VI authorizes agencies to promulgate regulations ''to effectuate'' the statute's prohibition of intentional discrimination. 42 U.S.C. 2000d–1. The current regulations' extension of prohibited conduct to include conduct with an unintentional disparate impact reaches a vastly broader scope than the statute itself. This scope is too broad to be considered a simple prophylactic measure aimed at preventing intentional discrimination. *See Sandoval,* 532 U.S. at 286 n.6 (''[Title VI] permits the very behavior that the regulations forbid.''). Thus, the disparate-impact regulations do not ''effectuate'' Title VI. 42 U.S.C. 2000d–1.

There are also serious concerns about whether AmeriCorps' Title VI regulations pass constitutional muster under the Equal Protection Clause. As the Supreme Court recently held in *SFFA,* ''the Equal Protection Clause . . . applies without regard to any differences of race, of color, or of nationality—it is universal in its application,'' and the ''guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.'' 600 U.S. at 206 (internal quotation marks omitted) (first quoting *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886); and then quoting *Bakke,* 438 U.S. at 289–90 (Powell, J.)). Despite the promises of the Equal Protection Clause, a funding recipient's risk of disparate-impact liability under AmeriCorps' regulations is triggered by unintentional disparate outcomes, which the recipient may not even know about without investigation. To evaluate and avoid this risk, the funding recipient may incur investigatory costs, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use these considerations to change the unintended disparate outcomes.

In short, disparate-impact liability encourages and, in some cases, requires covered entities to engage in the intentional use of race and racial balancing to eliminate those disparate outcomes by treating certain racial groups differently from others—the exact conduct the Equal Protection Clause forbids. *See id.* The serious constitutional concerns raised by these contrary incentives further confirm that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize AmeriCorps to impose disparate-impact liability. *See Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Constr. Trades Council,* 485 U.S. 568, 575 (1988) (''[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress.'' (citing *NLRB* v. *Catholic Bishop of Chi.,* 440 U.S. 490, 499–501, 504 (1979))).

This use of race, color, or national origin—encouraged or required by AmeriCorps' regulations—violates the Equal Protection Clause unless it can survive review under the ''daunting'' strict-scrutiny standard. *SFFA,* 600 U.S. at 206; *see also Free Speech Coal., Inc.* v. *Paxton,* 145 S. Ct. 2291, 2310 (2025) (''Strict scrutiny—which requires a restriction to be the least restrictive means of achieving a compelling governmental interest—is 'the most demanding test known to constitutional law.''' (quoting *City of Boerne* v. *Flores,* 521 U.S. 507, 534 (1997))). The use of race, color, or national origin necessitated by the disparate-impact provisions runs into serious issues with the requirement of narrow tailoring to achieve a compelling interest. *SFFA,* 600 U.S. at 206–07.

Similarly, the ''affirmative action'' provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing ''to overcome the effects of'' unintended racial disparities. 45 CFR 1203.4(b)(4). Thus, for substantially the same reasons as above, the ''affirmative action'' provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with AmeriCorps' disparate-impact regulations. AmeriCorps finds that eliminating the potential constitutional concerns addressed above would independently justify the amendment of the regulations. *Cf. U.S. Tel. Ass'n* v. *FCC,* 188 F.3d 521, 528 (D.C. Cir. 1999) (concluding it was not ''arbitrary and capricious'' to adopt a certain policy in order to ''avoid[ ] raising a non-trivial constitutional question''). Even if the regulations did not raise serious constitutional concerns, AmeriCorps finds that eliminating the costs and confusion caused by the mismatch between the statute and the disparate-impact regulations would independently justify the repeal of the regulations.

2. Serious Policy Concerns

AmeriCorps also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability. While AmeriCorps expresses its policy concerns with disparate-impact liability independent of E.O. 14281, that Order sets forth many valid policy concerns with disparate-impact liability. The Order notes that disparate-impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill and pairing job seekers with jobs to which their skills are most suited because of the possibility that doing so might lead to disparate outcomes, and thus disparate-impact lawsuits. *See* 90 FR at 17537. Likewise, recipients of AmeriCorps grants may be concerned that selecting members or volunteers or pairing them with services to which their skills are most suited may lead to disparate outcomes. Moreover, the legal concerns identified above may cause uncertainty and confusion for AmeriCorps funding recipients as to whether and when they need to comply with the disparate-impact regulations. As explained above, *Sandoval* casts substantial doubt on the validity of the disparate-impact regulations that many Federal departments and agencies have promulgated pursuant to Title VI. 532 U.S. at 280–82.

Additionally in practice, and as explained above, disparate-impact liability may lead covered entities to engage in racial balancing even as Title VI forbids intentional racial discrimination. This tension tends to create confusion, undermine public confidence in the nation's civil rights laws and in the rule of law itself, as the law seems to both forbid and require the same conduct.

These problems are amplified by the arbitrary nature of the racial and ethnic categories typically used to measure disparate effects, which, by virtue of their arbitrariness, typically lack a meaningful connection to a compelling interest. *See, e.g., SFFA,* 600 U.S. at 216–17 (explaining that the ''[racial] categories'' used in the programs at issue were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals''). AmeriCorps believes that these policy concerns independently justify repealing certain parts of its regulations to cure this confusion, remove the incentive for covered entities to engage in racial balancing, and maintain clarity and public confidence in the nation's civil rights laws. AmeriCorps notes that *Sandoval* has also led to a divergence between Title VI enforcement by private plaintiffs and enforcement by Federal departments and agencies. After *Sandoval,* private plaintiffs can enforce only Title VI's statutory prohibition on intentional discrimination, while Federal agencies could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations would eliminate this incongruent enforcement.

Overall, after considering the relevant issues and weighing the relevant considerations, AmeriCorps finds that, regardless of the legality of AmeriCorps' disparate-impact regulations, the above summarized policy concerns, when viewed separately or cumulatively, independently justify the repeal of its disparate-impact regulations.

III. Description of Proposed Changes to Regulation

AmeriCorps agrees with the recent modifications to DOJ's regulations implementing Title VI, and AmeriCorps now proposes revisions to its Title VI regulations in order to make clear to recipients of AmeriCorps funding that those regulations do not prohibit conduct or activities that have an unintentional disparate impact and prohibit only intentional discrimination.

First, this proposed rule would rescind the full text of 45 CFR 1203.4(b)(2), which currently prohibits AmeriCorps funding recipients from using ''criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.'' Second, this proposed rule would rescind the full text of 45 CFR 1203.4(b)(4), which addresses affirmative action to overcome the effects of prior discrimination and conditions that resulted in limited participation of individuals of a particular race, color, or national origin. Third, this proposed rule would remove from 45 CFR 1203.4(c)(1) the phrase ''take affirmative action to insure'' and replace it with ''to ensure'' to provide clarity that a recipient should not consider and use race-based preferences. Fourth, this proposed rule would rescind the full text of 45 CFR 1203.4(c)(3) regarding programs where the primary objective of the Federal financial assistance is not to provide employment but where discrimination in the employment practices tend to exclude persons from participation in, deny the benefits of, or subject them to discrimination. Fifth, this proposed rule would remove the two uses of the phrase ''or effect'' from 45 CFR 1203.4(d).

A. Table Summarizing Proposed Amendments

The table below indicates the exact wording changes that would result from this proposed rule, if finalized. For each section indicated in the left column, the middle column describes the change being proposed:

Section	Proposed change
1203.4(b)(2)	Remove the full text of paragraph: ''(2) A recipient . . . or national origin.''
1203.4(b)(3)	Redesignate this section as Section 1203.4(b)(2).
1203.4(b)(4)	Remove the full text of paragraph (4), subparts (i) and (ii).
1203.4(c)(1)	Replace the words ''take affirmative action to insure'' with ''ensure''.
1203.4(c)(3)	Remove the full text of paragraph: ''(3) Where a primary . . . treatment of beneficiaries.''
1203.4(d)	Remove the words ''or effect'' from both places where those words appear.

B. Section-by-Section Analysis

Section 1203.4(b)(2)

Section 1203.4(b)(2) is the current regulation's general prohibition of conduct giving rise to unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination.'' Because section 1203.4(b)(2)'s only purpose is to extend the scope of Title VI to reach unintentional disparate-impact discrimination, this proposed rule would delete this paragraph in its entirety. It would thus amend AmeriCorps' regulation to conform with DOJ's updated Title VI implementing regulations to conform to the scope of Title VI and to address the legal and policy considerations described in this document. The proposed rule would redesignate existing paragraph (b)(3) as (b)(2).

Section 1203.4(b)(4)

Section 1203.4(b)(4) deals with ''affirmative action.'' Paragraph (b)(4)(i) requires that a recipient ''shall take affirmative action to overcome the effects of prior discrimination'' if, in ''administering a program,'' the funding ''recipient had previously discriminated against persons on the ground of race, color, or national origin.'' This provision goes beyond the Equal Protection Clause, which, in limited circumstances permits, but does not mandate, a government to take narrowly tailored action to remedy the effects of its identified past discrimination. *See, e.g., Bakke,* 438 U.S. at 307. Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring to counter particular instances of past discrimination but rather broad ''affirmative action to overcome the effects of prior discrimination.'' This provision accordingly promotes potentially illegal discrimination based on race, color, and national origin. Such discrimination is contrary to AmeriCorps' goal of promoting and defending a culture of nondiscrimination and is destructive to the public's understanding of and faith in the nation's civil rights laws.

Paragraph (b)(4)(ii) authorizes affirmative action even in the absence of a finding of prior discrimination in a program ''to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.'' This provision points not to intentional discrimination, but rather to the unintentional ''effects of conditions which resulted in limiting participation'' based on race. It consequently encourages intentional racial classifications, racial preferences, and other race-based actions without specifying the need for a compelling governmental interest and narrow tailoring that the Equal Protection Clause demands. This section is therefore unlawful under an Equal Protection Clause analysis.

Paragraph (b)(4) consisted entirely of subparagraphs (i) and (ii) without any introductory text. This proposed rule would, therefore, remove paragraph (b)(4) in its entirety.

Section 1203.4(c)(1)

Section 1203.4(c)(1) requires that a recipient ''must take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to race, color or national origin.'' While this use of ''affirmative action'' language may not raise the same legal concerns given its directive that applicants and employees be ''treated'' equally ''without regard to their race, color, or national origin,'' this proposed rule would remove the ''affirmative action'' language to avoid potential confusion. The rest of the paragraph would remain unaltered. In order to maintain clarity within the regulation and promote and defend a culture of nondiscrimination, this proposed rule would replace the phrase ''take affirmative action to insure'' from paragraph (c)(1) with ''ensure.''

Section 1203.4(c)(3)

Section 1203.4(c) addresses prohibited discriminatory employment practices. While paragraph (c)(1) prohibits intentional discriminatory employment practices when a primary objective of a recipient's Federal financial assistance is to provide employment, paragraph (c)(3) extends the prohibition on discrimination to funding recipients' employment practices even when the financial assistance ''does not have providing employment as a primary objective.'' This prohibition applies even if discrimination in the non-funded ''employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance.'' This paragraph prohibits not only intentional discrimination but also conduct that ''tends'' to have a discriminatory effect.

Moreover, paragraph (c)(3)'s extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d–3. That section states that ''[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.'' 42 U.S.C. 2000d–3; *see also Johnson* v. *Transp. Agency, Santa Clara Cnty.,* 480 U.S. 616, 627–28 n.6 (1987) (citing the statutory limitation and noting Congress's intent that Title VI not ''impinge'' on Title VII, which prohibits discriminatory employment practices). This proposed rule would delete paragraph (c)(3) so that the regulation would more closely adhere to the scope of conduct Congress prohibited under Title VI.

Section 1203.4(d)

Section 1203.4(d) addresses a Federal funding recipient's or applicant's selection of the site or location of facilities. It provides that a funding recipient may not make selections with the ''purpose or effect'' of discriminating, or ''with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of'' Title VI or AmeriCorps' implementing regulations. The paragraph's two references to ''effect'' extend its scope to unintentional disparate impacts. This proposed rule would delete both appearances of ''or effect'' to conform paragraph (d) more closely to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document.

IV. Regulatory Analyses

A. Executive Orders 12866 and 13563

AmeriCorps has determined that, although this rule is not ''economically significant'' under section 3(f)(1) of E.O. 12866, 58 FR 51735 (Oct. 4, 1993), it is nonetheless a ''significant regulatory action'' for purposes of that E.O. Accordingly, this proposed rule has been submitted to the Office of Management and Budget for review.

This proposed rule has been drafted and reviewed in accordance with section 1(b) of E.O. 12866 and section 1(b) of E.O. 13563, 76 FR 3821 (Jan. 21, 2011), which supplements and reaffirms the principles of E.O. 12866. These Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

As explained above, the regulatory modifications this proposed rule would make are necessary to conform AmeriCorps' Title VI regulations with those of DOJ and are necessary to bring the regulations into compliance with 42 U.S.C. 2000d–3. In short, this proposed rule is necessary to conform AmeriCorps' regulation to existing statutory law, as interpreted by the Supreme Court.

AmeriCorps has not identified any way in which this proposed rule will appreciably increase administrative costs or compliance costs for recipients of AmeriCorps funding. Data limitations make the costs and benefits of the rule difficult to quantify. For context, AmeriCorps awarded approximately 2,200 separate grants and projects, investing approximately $670 million in federal funding to support national service and volunteerism in Fiscal Year 2025.[2] Given that AmeriCorps has not enforced disparate-impact liability in any recent case, there are no administrative costs attributable to disparate-impact enforcement actions.

AmeriCorps recognizes that a funding recipient may receive Federal funds from sources other than, and in addition to, AmeriCorps. AmeriCorps does not envision that this proposed rule would appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of another department or agency. The deregulatory action AmeriCorps proposes here does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, the proposed rule would eliminate a source of regulatory confusion, narrow and make more specific what conduct is prohibited, and thus lessen the costs of compliance and potential liability. Moreover, recipients who receive funds for the same program or activity from more than one Federal entity already enter into separate contractual assurances with each funding entity, *see, e.g.,* 2 CFR 200.211(c). These contractual terms already impose varying requirements that each Federal funding source deems necessary. Funding recipients will continue to be held to the most stringent standard of contractual compliance. And in any event, AmeriCorps notes that other agencies are currently amending their regulations to align with the changes proposed in this rule, so AmeriCorps anticipates that there will be little, if any, disparity in Federal requirements regarding disparate-impact liability going forward.

Based on the analysis of the practical qualitative costs and benefits noted above, AmeriCorps believes this proposed rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, AmeriCorps adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits.

C. Executive Order 12250

Pursuant to E.O. 12250, DOJ has the responsibility to ''review . . . proposed rules . . . of the Executive agencies'' implementing nondiscrimination statutes such as Title VI ''in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' Additionally, E.O. 12250 delegated the President's responsibility to approve Title VI regulations to the Attorney General. *See* 42 U.S.C. 2000d–1. DOJ has reviewed and approved this proposed rule.

D. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192 requires an agency, unless prohibited by law, to identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation. 90 FR 9065 (Jan. 31, 2025). In furtherance of this requirement, section 3(c) of the E.O. requires that ''any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.'' *Id.* This proposed rule would eliminate unnecessary regulation by proposing to revise AmeriCorps' current Title VI regulations, which extend prohibited conduct to include unintentional disparate impacts and thus expand the scope of those regulations to a vastly broader range of conduct than the statute prohibits. Accordingly, AmeriCorps expects this proposed rule to be a deregulatory action under E.O. 14192.

E. Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)

E.O. 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to ''explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the *mens rea* standard applicable to'' each element of those offenses. 90 FR 20363 (May 14, 2025). This proposed rule does not impose a criminal regulatory penalty and is thus exempt from E.O. 14294 requirements.

F. Executive Order 13132 (Federalism)

E.O. 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the E.O.. This proposed rule would amend and clarify existing regulations that are required by statute; therefore, AmeriCorps has determined that the proposed amendments do not have sufficient federalism implications to warrant the preparation of a federalism impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this proposed rule: (a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Regulatory Flexibility Act

AmeriCorps, in accordance with 5 U.S.C. 605(b), has reviewed this proposed rule and certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities because these proposed regulatory changes would not impose any new substantive obligations on Federal funding recipients. This proposed rule would amend and clarify existing regulations under Title VI, bring AmeriCorps' regulations into compliance with the Equal Protection Clause, and harmonize the scope of those regulations with the scope of Title

[2] *See USASpending.gov*for time period FY 2025, Award Type ''All Grants'' and Awarding Agency ''Corporation for National and Community Service (CNCS)''.

VI, which does not prohibit conduct giving rise to disparate impact.

I. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 *et seq.* requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, or Tribal governments or the private sector. This proposed rule does not contain a Federal mandate that may result in such expenditures. Moreover, UMRA excludes from its coverage any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' 2 U.S.C. 1503(2). Accordingly, this proposed rulemaking is not subject to the provisions of UMRA.

J. Congressional Review Act

This proposed rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2). This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of companies based in the United States to compete with foreign-based companies in domestic and export markets. The proposed rule would merely narrow the scope of AmeriCorps' Title VI regulations to conform them to the scope of Title VI and the Equal Protection Clause. Doing so would not impose any new obligations on any recipients of AmeriCorps funding.

K. Paperwork Reduction Act

This proposed rule would not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 45 CFR Part 1203

Civil Rights, Reporting and record keeping requirements.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend 45 CFR part 1203 as follows:

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

■ 1. The authority for Part 1203 is revised to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; 42 U.S.C. 12651c(c); E.O. 14281, 90 FR 17537.

■ 2. In § 1203.4:
■ a. Remove paragraph (b)(2);
■ b. Redesignate paragraph (b)(3) as (b)(2);
■ c. Remove paragraph (b)(4);
■ d. Revise paragraph (c)(1);
■ e. Remove paragraph (c)(3); and
■ f. Revise paragraph (d).

The revisions read as follows:

§ 1203.4 Discrimination Prohibited.

* * * * *

(b) * * *

(2) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(c) (1) *Employment practices.* When a primary objective of the Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under the program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay, or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). A recipient shall ensure that applicants are employed, and employees are treated during employment, without regard to race, color, and national origin. The requirements applicable to construction employment under a program are those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(2) * * *

(d) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program to which this part applies, on the ground of race, color, or national origin; or with the purpose of defeating or substantially impairing the accomplishment of the objectives of title VI of this part.

Jennifer Bastress,

Interim Agency Head.

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