costs, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision. The only entities that are affected by the waiver and extension of the project period are the 36 ALN 84.101A grantees.

Paperwork Reduction Act of 1995

The final waiver and extension of the project period with funding do not contain any information collection requirements.

Intergovernmental Review

This action is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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Authority: 20 U.S.C. 1221e–3 and 3474.

Casey Sacks,

Acting Assistant Secretary for the Office of Career, Technical, and Adult Education.

[FR Doc. 2026–15009 Filed 7–23–26; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Part 100

RIN1870–AA20

Rescinding Portions of the Department of Education Title VI Regulations To Align With the Statutory Text and Conform to Executive Order 14281

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary of Education amends the regulations implementing Title VI of the Civil Rights Act of 1964 (''Title VI'') to eliminate disparate-impact liability. These amendments bring the U.S. Department of Education's (Department's) regulations in line with Title VI's original public meaning, avoid constitutional concerns, implement changes that are consistent with Executive Order 14281, ''Restoring Equality of Opportunity and Meritocracy,'' reflect the Department's independent policy determinations, reduce confusion and uncertainty, lower compliance costs for recipients of Federal financial assistance, and serve the public interest. After reviewing the relevant issues, weighing the various factors, and analyzing the pertinent considerations, the Department concludes that these reasons, separately and cumulatively, support eliminating disparate-impact liability from the Department's Title VI regulations.

DATES: This final rule is effective on July 24, 2026.

FOR FURTHER INFORMATION CONTACT: Maria Litsakis, Acting Director, Program Legal Group, Office for Civil Rights, 400 Maryland Ave. SW, 5th Floor, Washington, DC 20202. Telephone: 800–421–3481. Email: *Maria.Litsakis@ed.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department is rescinding portions of its regulations promulgated pursuant to Title VI, 42 U.S.C. 2000d–1, to more closely align the regulations with Title VI's prohibition on intentionally discriminatory conduct. There are serious statutory and constitutional concerns with the legality of the provisions of the Department's Title VI regulations that go beyond prohibiting intentional discrimination to additionally prohibit conduct giving rise to unintentional disparate impacts. This rule accordingly rescinds those portions of the regulations that impose disparate-impact liability, which are in considerable tension with the statute and the Constitution, cause confusion and uncertainty, increase compliance costs for recipients of Federal financial assistance, and do not serve the public interest.

The rule's revisions are also consistent with Executive Order (E.O.) 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 17537 (Apr. 28, 2025). That Order stated that ''[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.'' *Id.* at 17537. The E.O. directed the Attorney General to, among other things, review Title VI regulations and ''initiate appropriate action to repeal or amend'' these regulations ''to the extent they contemplate disparate-impact liability.'' *Id.* at 17538. Section 5 of the E.O. specifically directs, through the Attorney General's leadership and coordination authority, the repeal or amendment of Title VI regulations ''for all agencies to the extent they contemplate disparate-impact liability,'' and in a manner consistent with applicable law. *Id.* Though the Department would take this action independently of E.O. 14281, that Order supports this action.

The modifications in this rule will clarify for recipients of Federal financial assistance from the Department that the Department's Title VI regulations prohibit intentional discrimination and do not prohibit conduct or activities that have an unintentional disparate impact, and that accordingly, the Department will not pursue Title VI disparate-impact liability against its Federal funding recipients. This rule also removes from the Department's regulations various provisions that have no statutory justification.

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, including the Department of Education, to ''effectuate the provisions of'' Title VI ''by issuing rules, regulations, or orders of general applicability.'' *Id.* at 2000d–1. The section of Title VI that sets forth the prohibited conduct, 42 U.S.C. 2000d, 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.'').[1] The statute does not explicitly provide any Federal department or agency with authority to prohibit unintentional disparate impact. And despite ample opportunity, Congress has not amended Title VI to impose disparate-impact liability.

B. Regulatory History of Title VI

The initial set of model regulations for Title VI was issued by the then-Department of Health, Education, and Welfare (HEW) on December 4, 1964; those regulations included one reference to the ''effect of'' certain conduct in the ''discrimination prohibited'' provision of the rule. *See* 29 FR 16298, 16299 (Dec. 4, 1964) (currently located at 34 CFR 100.3(b)(2)). In 1973, HEW published approximately 18 revisions to its Title VI regulations. *See* 38 FR 17978 (July 5, 1973). All but three also applied uniformly to all agencies that provide Federal financial assistance to recipients. *Id.* These 1973 revisions included the addition of both a requirement for ''affirmative action'' to overcome the effects of past discrimination and a statement of permission for entities to take ''affirmative action to overcome the effects of conditions which resulted in limited program participation by persons of a particular race, color, or national origin,'' 38 FR at 17978 (currently located at 34 CFR 100.3(b)(6)(i) and (ii)); clarification of nondiscrimination requirements with respect to the selection of sites and locations for facilities which affect the provision of federally assisted benefits, *id.* (currently located at 34 CFR 100.3(b)(3)); and the addition of a subparagraph to ''state the rule concerning discriminatory employment practices which result in excluding individuals from participation in, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this regulation applies,'' *id.* (currently located at 34 CFR 100.3(c)(3)).

In 1980, after passage of the Department of Education Organization Act, the new Department of Education issued a final rule establishing the Department's regulations, including its civil rights regulations and their disparate-impact provisions, by transferring regulations from HEW, the Department's predecessor agency. The regulations were transferred from 45 CFR part 80 to 34 CFR part 100. The Department last updated its Title VI regulations in 2000 to clarify the definitions of ''program'' and ''program or activity'' and to conform the meaning of these terms to the Civil Rights Restoration Act of 1987. 65 FR 68050, 68053 (Nov. 13, 2000). This update occurred prior to the Supreme Court's 2001 decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), which reaffirmed that Title VI's implied private right of action reaches intentional discrimination and not conduct causing disparate impacts. The Department's implementing regulation at 34 CFR part 100 currently prohibits conduct that would have an unintentional disparate impact.

C. Relevant Supreme Court Precedent

The Supreme Court has concluded that Title VI, 42 U.S.C. 2000d, does not prohibit facially neutral policies that result in disparate outcomes when there is no discriminatory intent. Rather, it prohibits intentional discrimination. In 1978, the Supreme Court concluded 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) (opinion of 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). Shortly before *Bakke*'s Title VI holding, the Supreme Court held that the Equal Protection Clause requires proof of 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, prohibits intentional discrimination.

In 2001, the Supreme Court, in *Alexander* v. *Sandoval,* reaffirmed that settled understanding of Title VI. *See* 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 the Justice Department's ''disparate-impact regulations.'' *Id.* at 285–87. Though the Supreme Court had previously found a private cause of action to enforce Title VI's bar on intentional discrimination, *id.* at 279–80, that conclusion did not extend to enforcing the Justice Department'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 is equally ''clear that the private right of action to enforce [Title VI] does not include a private right to enforce these regulations.'' *Id.* While the Supreme Court in *Sandoval* ''assume[d],'' without deciding, that the Justice Department'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 Court made clear that the regulations do 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.'').

In 2023, the Court emphasized that ''the equal protection clause requires equality of treatment before the law for all persons without regard to race or color.'' *Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 205 (2023) (''*SFFA*'') (cleaned up). In reviewing the admissions policies of certain higher education institutions, the Court explained that the Constitution requires ''eliminating all'' racial discrimination. *Id.* at 206. To that end, it held that ''[a]ny exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as 'strict scrutiny,' '' which requires that racial classifications '' 'further compelling government interests' '' and be '' 'narrowly tailored'—meaning

[1] Aside from removing provisions that impose disparate-impact liability, or permit or require unlawful affirmative action, this rule does not alter or limit the Department's policies regarding recipients' obligations to take reasonable steps to eliminate a hostile educational environment, remedy the effects of such an environment, and prevent the underlying harassment from recurring. *See* Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 FR 11448 (Mar. 10, 1994). The Department deems failure to properly respond to a hostile environment a form of intentional discrimination. It will continue to hold recipients responsible for their failure to respond to conduct that limits or denies a person's ability to participate in or benefit from a school's program or activity. *See id.*

'necessary'—to achieve [such] interest[s].'' *Id.* at 206–07. Moreover, the Court explained that its ''precedents have identified only two compelling interests that permit resort to race-based government action,'' only one of which is relevant in general government administration: ''remediating specific, identified instances of past discrimination that violated the Constitution or a statute.'' *Id.* at 207.

In 2024, the Court overruled *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), in part because ''statutes . . . have a single, best meaning'' that is '' 'fixed at the time of enactment.' '' *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 400, 409–12 (2024) (quoting *Wis. Cent. Ltd.* v. *United States,* 585 U.S. 274, 284 (2018)). Accordingly, 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. And while a different statutory provision in Title VI ''authorize[s] and direct[s]'' the Department ''to effectuate the provisions of section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance,'' 42 U.S.C. 2000d–1, that provision too has a ''single, best meaning'' that is '' 'fixed at the time of enactment.' '' *Loper Bright,* 603 U.S. at 400. Because section 2000d was enacted to prohibit intentional discrimination, the best meaning of the effectuation provision excludes the prohibition of conduct undertaken without any discriminatory intent whatsoever.

Finally, in 2026, the Supreme Court reiterated ''the general rule that the Constitution almost never permits the Federal Government or a State to discriminate on the basis of race.'' *Louisiana* v. *Callais,* 146 S. Ct. 1131, 1152 (2026). Again, it stated that ''[s]uch discrimination triggers strict scrutiny, and [the Supreme Court's] precedents have identified 'only two compelling interests' that can satisfy that standard.'' *Id.*

Callais also reaffirmed that a law that prohibits intentional discrimination is not ''enforce[d]'' via the prohibition of ''mere disparate-impact'' because the government ''cannot 'enforce a constitutional right by changing what the right is.' '' *Id.* at 1155 (quoting *City of Boerne* v. *Flores,* 521 U.S. 507, 519 (1997)).

D. 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. The Order 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.*

This Order also explained that disparate-impact liability ''endangers this foundational principle.'' *Id.* Disparate-impact liability, the Order reasoned, ''all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability.'' *Id.* Disparate-impact liability, the Order explained, ''not only undermines our national values but also runs contrary to equal protection under the law and, therefore, violates our Constitution.'' *Id.*

Accordingly, the Order relayed that ''[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.'' *Id.* The Order directed the Attorney General to, among other things, review Title VI regulations and ''initiate appropriate action to repeal or amend'' these regulations ''to the extent they contemplate disparate-impact liability.'' *Id.* at 17538. The Order also 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.* All of these actions were to be undertaken consistent with applicable law. *Id.*

The Justice Department recently revised its Title VI regulations, removing disparate-impact liability from their scope. *See Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281,* 90 FR 57141 (Dec. 10, 2025). Following the Justice Department's leadership and coordination process, *see* Executive Order 12250, *Leadership and Coordination of Nondiscrimination Laws,* 45 FR 72995 (Nov. 4, 1980), this rule revises Department regulations that effectuate E.O. 14281's policy and purpose.

In any event, the Department would have independently initiated steps toward making these changes, regardless of E.O. 14281. Even if E.O. 14281 did not exist, the Department would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Department agrees with E.O. 14281 that equal treatment under the law for all citizens is a bedrock principle of the United States. This principle guarantees equality of opportunity, not equal outcomes. It promises that people are treated as individuals, not components of a particular race or group. It encourages a colorblind society, not race-, color-, or national-origin-based favoritism. And adherence to this principle, including in the issuance of grants, is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.

But disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the single, best meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. After considering the relevant issues and weighing the relevant considerations, the Department concludes that these reasons, both separately and collectively, support eliminating disparate-impact liability from the Department's Title VI regulations.

E. Need for Rulemaking

The Department's regulation at 34 CFR 100.3, entitled ''Discrimination prohibited,'' as well as its ''illustrative application'' of the regulations at 34 CFR 100.5, contain several provisions that prohibit conduct or activities causing unintentional disparate impact, without a statutory or constitutional basis for doing so. In some instances, these regulations encourage or even require unlawful discrimination labeled as ''affirmative action.''

Section 100.3(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.'' 34 CFR 100.3(b)(2). Beyond that general prohibition, section 100.3(b)(3) 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. 34 CFR 100.3(b)(3). Section 100.3(b)(6) 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 such use must be narrowly tailored to serve a compelling governmental interest, as is required to satisfy strict scrutiny. 34 CFR 100.3(b)(6).

Section 100.3(c)(2) references the since-rescinded E.O. 11246, which mandated affirmative action and has been superseded by E.O. 14173. 34 CFR 100.3(c)(2). Section 100.3(c)(3) addresses prohibited discriminatory employment practices where a primary objective of the Federal financial assistance is not to provide employment and extends beyond intentional discrimination to prohibiting conduct that ''tends'' to have a discriminatory effect. 34 CFR 100.3(c)(3). Moreover, paragraph (c)(3) extends the Department's enforcement jurisdiction beyond the limitation placed on it by 42 U.S.C. 2000d–3, which forecloses any ''action'' 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.

In illustrating the application of the affirmative action provisions of the Department's regulation at 34 CFR 100.3(b)(6), sections 100.5(g), (h), and (i) provide examples of disparate-impact liability or affirmative action; the Department believes these illustrations may cause confusion and promote illegal race discrimination.

The disparate-impact provisions are improperly general and vast in scope, rather than limited to particular, clearly defined circumstances, as required by Supreme Court precedent. *See Callais,* 146 S. Ct. at 1152–53; *SFFA,* 600 U.S. at 207 (internal citations omitted) (''[O]ur precedents have identified only two compelling interests that permit resort to race-based government action. One of them is remediating specific, identified instances of past discrimination that violated the Constitution or a statute. The second is avoiding imminent and serious risk to human safety in prisons, such as a race riot.''); *see also Callais,* 146 S. Ct. at 1152. Both 34 CFR 100.3(b)(3) (regarding the ''selection of facility sites or locations'') and 34 CFR 100.3(c) (regarding employment practices), for example, regulate broad areas of a recipient's activities and do not tailor their disparate-impact provisions. Section 100.3(b)(2) is even more sweeping, referring to all ''criteria or methods of administration.'' It is written in a way that could be construed as providing the Department with far broader discretion than Congress delegated to the agency. Prudential reasons also favor amending the regulations, given that they create confusion and uncertainty, undermine public confidence in the nation's civil rights laws and the rule of law, and 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. The Supreme Court has made clear that Title VI prohibits intentional discrimination and ''permits'' facially neutral policies that result in disparate outcomes when there is no discriminatory intent. *Sandoval,* 532 U.S. at 280–81, 286 n.6. That is the ''single, best meaning'' of Title VI. *See Loper Bright,* 603 U.S. at 400. As summarized above, the Supreme Court's *Sandoval* decision calls the legality of the Department's disparate-impact regulations into doubt. *Sandoval,* 532 U.S. at 281–82, 284–85 (noting that the Department'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 enforceability in private suits for damages, rather than in the course of Federal enforcement, subsequent cases, such as *Loper Bright,* have made clear that the Department cannot extend Title VI beyond its single, best meaning. *See* 603 U.S. at 412–13 (holding that ''courts must . . . ensur[e] that [an] agency acts within'' its statutory authority). And while a different provision in Title VI ''authorize[s] and direct[s]'' the Department ''to effectuate the provisions of section 2000d of this title . . . by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance,'' 42 U.S.C. 2000d–1, the Department has determined that regulations that run contrary to the intent of Title VI simply do not ''effectuate'' Title VI. Title VI prohibits intentional discrimination, whereas the disparate-impact regulations prohibit acts taken without any discriminatory intent whatsoever. The word ''effectuate'' cannot be interpreted to authorize regulations that exceed their statutory and Constitutional authority. *Cf. Callais,* 146 S. Ct. at 1155 (''to lie within Congress's authority, § 2 of the Voting Rights Act must 'effectuate by appropriate measures the constitutional prohibition' in § 1 of the Fifteenth Amendment,'' which the statute's disparate-impact provisions exceeded). In any event, even if the statute's effectuation provision in 42 U.S.C. 2000d–1 could be interpreted (on its own) so broadly as to authorize basically any regulation, the Department has decided, as a matter of policy, to ''effectuate'' Title VI in a manner consistent with Congress's policy determinations, as reflected in 42 U.S.C. 2000d.

There are also serious concerns about whether the Department's Title VI regulations pass muster under the Constitution's equal-protection guarantees—concerns that further confirm the best reading of Title VI is that it prohibits intentional discrimination and does not authorize the Department to impose disparate-impact liability. *See Edward J. DeBartolo Corp.* v. *Fla. Gulf Coast Bldg. & Const. 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))). As the Supreme Court has held, ''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.'' *SFFA,* 600 U.S. at 206 (internal quotation marks omitted) (quoting *Yick Wo* v. *Hopkins,* 118 U.S. 356, 369 (1886), and *Bakke,* 438 U.S. at 289–90 (opinion of Powell, J.)). Despite the promises of the Constitution's equal-protection guarantees, a funding recipient's risk of disparate-impact liability under the Department's 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 must incur investigatory costs, including, but not limited to, conducting an impact analysis. They may also be coerced to proactively consider race, color, and national origin and potentially use those classifications to prevent unintended disparate outcomes. In sum, disparate-impact liability improperly encourages and, in some cases, requires recipients of Federal financial assistance from the Department to engage in the intentional use of race and racial balancing to eliminate disparate outcomes to defend against complaints of purported ''discrimination.''

This use of race, color, or national origin violates the Constitution's equal-protection guarantees unless it survives the ''daunting'' strict-scrutiny standard. *SFFA,* 600 U.S. at 206 (describing a ''daunting two-step examination''); *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.' ''). 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'' provisions authorize and sometimes require the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, those provisions encourage intentional racial balancing. For substantially the same reasons stated above, the ''affirmative action'' provisions raise serious constitutional concerns.

As summarized above, there are serious concerns with the legality of the Department's Title VI disparate-impact regulations. But even if the regulations were legal, the Department finds that eliminating the constitutional concerns addressed above independently justifies 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''). And as discussed below, even if the regulations are legal and do not raise serious constitutional concerns, the Department finds that eliminating the costs and confusion caused by the mismatch between the statute and the disparate-impact regulations independently justifies the repeal of the regulations.

2. Serious Policy Concerns

The Department also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability, many of which are set forth in E.O. 14281. Again, the Department agrees that a ''bedrock principle of the United States is that all citizens are treated equally under the law.'' 90 FR at 17537. ''This principle guarantees equality of opportunity, not equal outcomes.'' *Id.* ''It promises that people are treated as individuals, not components of a particular race or group.'' *Id.* And adherence to this principle, including in the issuance of Federal funding, ''is essential to creating opportunity, encouraging achievement, and sustaining the American Dream.'' *Id.* Additionally, as noted in section 1 of the Order:

> On a practical level, [the risk of] disparate-impact liability has hindered businesses from making hiring and other employment decisions based on merit and skill, their needs, or the needs of their customers because of the specter that such a process might lead to disparate outcomes, and thus disparate-impact lawsuits. This has made it difficult, and in some cases impossible, for employers to use bona fide job-oriented evaluations when recruiting, which prevents job seekers from being paired with jobs to which their skills are most suited—in other words, it deprives them of opportunities for success.

Id. These problems are magnified by the uncertainty that recipients of Federal financial assistance face in determining what the law actually requires of them.[2] As explained above, *Sandoval* casts 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. The natural effect of the conflicting signals given by regulations and precedent is uncertainty and confusion over how recipients comply with disparate-impact regulations and whether or when they can or must consider race, color, and national origin.

Additionally, in practice, and as explained above, the disparate-impact regulations lead recipients to engage in racial balancing, even as the underlying statute forbids intentional racial discrimination. This tension tends to create confusion and 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''). The inherent ambiguity in such distinctions undermines principles of nondiscrimination and is evident in, among other things, many of the grant programs sponsored by the Department in past years that targeted certain racial groups through indirect benefits to higher education institutions while relying on these racial categories. Such programs include those authorized under Title III of the Higher Education Act benefiting Hispanic-serving institutions, which must have ''an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic,'' 20 U.S.C. 1101a(a)(5); and Predominantly Black institutions, which, unlike Historically Black Colleges and Universities that are not defined by any specific racial enrollment criteria, must have ''an enrollment of undergraduate students . . . that is at least 40 percent Black American students,'' *id.* at 1067q(c)(9)(C).

The Department believes that these policy concerns independently justify repealing certain parts of its regulation to cure this confusion, remove the incentive for recipients to engage in racial balancing, and maintain clarity and public confidence in the nation's civil rights laws.

The Department has considered the view that an approach based on disparate-impact liability can occasionally uncover evidence of intentional discrimination. The Department agrees with the general proposition that disparate effects can provide useful evidence to help the Department determine whether a recipient has engaged in intentional discrimination. But the Department has found that the benefits of using disparate effects as the sole basis for finding a Title VI violation are outweighed by the other issues and factors the Department has considered. Eliminating disparate-impact liability does not preclude the *examination* of additional evidence, including the use of data, to prove intentional discrimination. Both the Department and private litigants rely on such data as a potential indicator of intentional discrimination. This use of statistical disparity to help establish, as an evidentiary matter, the discriminatory intent of a recipient materially differs from using it to impose liability for an unintentional disparate impact.

The Department also has considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring recipients to remedy unintentional discrimination for only certain types of cases, such as where there is a long-

[2] *See, e.g.,* Federal Commission on School Safety, Final Report of the Federal Commission on School Safety 67–72 (2018), *https://www.ed.gov/sites/ed/files/documents/school-safety/school-safety-reportpdf.pdf.*

established history of discrimination. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI's single, best meaning. The Department determines that any potential benefits from a regulation adopting an alternative version of disparate-impact liability would be outweighed by the Department's legal and policy concerns. Even if possible, developing such a rule would not solve the confusion or rule-of-law concerns expressed above, nor reduce the compliance and litigation costs that recipients face. The Department believes that the better course is to avoid the complexities, costs, and litigation associated with this alternative, even if eliminating disparate-impact liability ultimately would leave some problems unaddressed and others inadequately addressed.

The Department has additionally considered the potential reliance interests of funding recipients and others based on the disparate-impact regulations. The *Sandoval* decision, however, cast doubt on the continuing viability of the regulations more than 25 years ago. At least since *Sandoval,* the Department's enforcement of its Title VI disparate-impact regulations has been sporadic. And E.O. 14281 directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,'' including the Department's Title VI disparate-impact regulations. 90 FR at 17538. Additionally, the Department finds that the recipients of its funding have little or no reliance interest at stake because the amendments made in this final rule remove improper legal burdens from the regulations. As such, any reliance interests are minimal and do not outweigh the Department's legal and policy concerns. Further, each of the Department's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

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

III. Changes to 34 CFR Part 100

This rule's regulatory changes address the concerns regarding the statutory authority that the Supreme Court questioned in *Sandoval* and the other legal and policy concerns discussed above, harmonize the implementing regulations' scope with the conduct that Congress intended Title VI to prohibit, promote consistent enforcement, and provide much needed clarity for the courts and Federal funding recipients and beneficiaries. For the reasons summarized above, the Department makes amendments to 34 CFR 100.3, the section of the Department's Title VI regulations that enumerates prohibited types of discrimination, and 34 CFR 100.5, which includes ''illustrative application'' of the regulations.

The table below specifies the textual changes made in this final rule.

Section/paragraph	Remove	Add
34 CFR 100.3(b)(2)	Full text of paragraph: ''A recipient or national origin''	''[Reserved]'' . . .
34 CFR 100.3(b)(3)	''effect'' and ''or effect''	''purpose'' in place of first instance of ''effect''.
34 CFR 100.3(b)(6)	Full text of paragraphs (b)(6)(i) and (b)(6)(ii): ''(6)(i) In administering . . . particular race, color or national origin''.	
34 CFR 100.3(c)(2)	Full text of paragraph: ''The requirements applicable . . . order which supersedes it.''	''[Reserved]''
34 CFR 100.3(c)(3)	Full text of paragraph: ''(3) Where a primary objective of the Federal financial assistance is not to provide employment . . . and nondiscriminatory treatment of, beneficiaries.''	
34 CFR 100.5(g)	''Thus, a State, in selecting or approving projects . . . as respects individuals of a particular race, color or national origin.''	
34 CFR 100.5(h)	Full text of paragraph: ''(h) In some situations . . . are adequately served.''	
34 CFR 100.5(i)	Full text of paragraph: ''(i) Even though an applicant . . . more adequate service.''	

Explanation of Changes

34 CFR 100.3(b)(2)

Like the Justice Department's Title VI regulation at 28 CFR 42.104(b)(2), 34 CFR 100.3(b)(2) is the regulation's general prohibition of conduct giving rise to unintentional disparate impact. The paragraph extends prohibited conduct from intentional discrimination to ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination.'' This final rule removes this paragraph and thus amends the Department's regulation to hew more closely to congressional intent and the law's single, best meaning. It thus conforms the regulation to the scope of coverage Congress intended when it enacted Title VI and addresses the legal and policy considerations and determinations described in this final rule. The word ''Reserved'' is inserted in place of the removed paragraph to maintain the ordering of the remaining subsections for citation and reference purposes.

34 CFR 100.3(b)(3)

This subsection pertains to the selection of facility sites or locations. It uses the noun ''effect'' in two instances to extend unintentional disparate-impact liability to funding recipients' or applicants' decision-making in this area. This final rule replaces the first reference to ''effect'' with ''purpose'' and removes the second reference to ''or effect'' to proscribe only intentional discrimination, consistent with congressional intent and the text of Title VI, as well as to address the legal and policy considerations and determinations described in this final rule. As discussed below, subsection 34 CFR 100.5(g) illustrates application of the ''effect'' language in depicting a scenario involving construction of school libraries that suggests recipients would be subject to disparate-impact liability for any racially disparate ''effects'' that would result from either site selection, project approval, or both. This rule removes the example provided in subsection (g) from the illustrative application at 34 CFR 100.5.

34 CFR 100.3(b)(6)

This portion of the regulation references ''affirmative action.'' Paragraph (b)(6)(i) *requires* that a recipient ''take affirmative action to overcome the effects of prior discrimination'' if in ''administering a program'' the ''recipient has previously discriminated.'' This provision goes well beyond the Equal Protection Clause, which, in limited circumstances permits, but does not mandate, a government to take action to remedy the effects of its ''specific, identified instances of past discrimination that violated the Constitution or a statute.'' *SFFA,* 600 U.S. at 207; *see also Callais,* 146 S. Ct. at 1152; *Constitutionality of Race-Based Dep't of Educ. Programs,* 49 Op. O.L.C.__, slip op. at 6–8 (Dec. 2, 2025), *https://www.justice.gov/olc/media/1421576/dl* (discussing the need to show particular instances of past discrimination to establish a compelling interest as well as relevant factors for evaluating narrow tailoring). Moreover, even putting aside the mandatory language in paragraph (b)(6)(i), this provision does not require sufficiently narrow tailoring to address particular instances of past discrimination but rather broad ''affirmative action to overcome the effects of prior discrimination'' generally. This provision accordingly promotes potential illegal race discrimination because of a lack of tailoring. Moreover, it wrongly coerces recipients to consider and use race preferences when the recipient does not want to consider or use such preferences. This is contrary to the Department's goal of promoting and defending a culture of nondiscrimination, and destructive of the public's understanding of and faith in the nation's civil rights laws. After the repeal of this provision, recipients are still free to use race in the limited circumstances the Equal Protection Clause permits. The Department, however, will no longer mandate this use of race through its regulation.

34 CFR 100.3(b)(6)(ii) authorizes affirmative action even in the *absence* of specific instances of prior discrimination that violated the Constitution or a statute. The Department has determined that this authorization is inconsistent with decades of Supreme Court precedent and its strict-scrutiny framework for evaluating race-based policies, most recently described in *Callais,* 146 S. Ct. at 1146–47, 1152–53. *See also SFFA,* 600 U.S. at 207; *Parents Involved in Cmty. Sch.* v. *Seattle Sch. Dist. No. 1,* 551 U.S. 701, 720–21 (2007); *City of Richmond* v. *J.A. Croson Co.,* 488 U.S. 469, 498, 503 (1989); *Wygant* v. *Jackson Bd. of Educ.,* 476 U.S. 267, 275–76 (1986).

This rule removes section 100.3(b)(6) and thereby avoids authorizing and mandating race-based policies by recipients that would likely violate the Equal Protection Clause. As discussed below, subsection 34 CFR 100.5(h) references 34 CFR 100.3(b)(6) in mandating affirmative action or permitting it without satisfying the narrow tailoring requirement. This rule removes subsection (h) from the illustrative application at 34 CFR 100.5.

34 CFR 100.3(c)(2)

34 CFR 100.3(c) sets out the limited circumstances in which Title VI's prohibition on discrimination extends to employment. 34 CFR 100.3(c)(2) states that ''[t]he requirements applicable to construction employment under any [relevant] program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.'' Executive Order 11246 required affirmative action in government contracting, demanding that Federal contractors set goals and timetables to increase the representation of minorities among their employees based on mere statistical disparities in the workforce. This type of racial balancing triggers strict scrutiny and is presumptively unlawful under well-established Supreme Court precedent. Moreover, E.O. 14173 superseded E.O. 11246. This rule removes this outdated reference to the rescinded E.O.

To the extent that aspects of paragraph (c)(2) were helpful in that they clarified that the Department's regulations reached the conduct of Federal contractors and subcontractors, the Department notes that paragraph (c)(2) was redundant with paragraph (b)(1), which is unchanged by this final rule. Paragraph (b)(1) expressly clarifies that recipients may not violate Title VI ''directly or through contractual or other arrangements,'' 34 CFR 100.3(b)(1), which plainly means that contractors and subcontractors must comply with Title VI regulations. The Department thus finds that amending paragraph 100.3(c)(2) is unnecessary. The Department therefore removes paragraph 100.3(c)(2). Because this final rule removes all of paragraph 100.3(c), except for the portion designated as 100.3(c)(1), the word ''Reserved'' is inserted in place of paragraph 100.3(c)(2) to maintain the numbering of paragraph 100.3(c) for citation and reference purposes.

34 CFR 100.3(c)(3)

Paragraph 100.3(c)(3) extends the prohibition on discrimination to employment practices of the funding recipient even ''[w]here a primary objective of the Federal financial assistance is not to provide employment,'' in specified circumstances where the discrimination ''tends . . . to exclude individuals'' on the basis of race, color, or national origin. Attaching liability even where employment practices merely ''tend[ ]'' to cause harm simply disguises disparate-impact liability by using alternate language.

The Department further finds that simply modifying paragraph (c)(3) to remove the disparate-impact language would be inconsistent with the Supreme Court's direction under *Loper Bright* that courts must use the ''single, best meaning'' of a statute, which is ''fixed at the time of enactment.'' 603 U.S. at 400 (internal quotation marks omitted). It follows that Federal agencies, too, must look to the ''single, best meaning'' of a statute. *See id.* at 412–13 (holding that ''courts must . . . ensur[e] that [an] agency acts within'' ''its statutory authority''). Congress has directed:

> Nothing contained in [Title VI] shall be construed to authorize action . . . 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. Paragraph (c)(3) extends the Department's jurisdiction to certain employment matters where ''a primary objective of the Federal financial assistance is *not* to provide employment,'' 34 CFR 100.3(c)(3) (emphasis added), putting it in obvious tension with 42 U.S.C. 2000d–3. While the Department is aware that some courts reviewing paragraph (c)(3) before *Loper Bright* concluded that paragraph (c)(3) employs a permissible interpretation of section 2000d–3, *see, e.g., Ahern* v. *Bd. of Educ. of City of Chicago,* 133 F.3d 975, 977–78 (7th Cir. 1998) (Wood, J.), paragraph (c)(3) does not reflect the single, best meaning of section 2000d–3. The statute prohibits the Department's exercise of jurisdiction under the circumstances, with one clearly delineated exception. The Department's regulation creates an additional exception and does so in a manner that runs contrary to the intent of Congress. The Department finds that *Loper Bright* prohibits the expansion of jurisdiction created by paragraph (c)(3) because that provision contravenes the plain meaning of section 2000d–3. This final rule thus removes paragraph (c)(3).

34 CFR 100.5(g)

34 CFR 100.5 contains examples that ''illustrate the programs aided by Federal financial assistance of the Department.'' Subsection (g) asserts that recipients ''may not take action that is calculated to bring about indirectly what this regulation forbids it to accomplish directly.'' This statement clearly prohibits a form of intentional discrimination. However, the example provided immediately thereafter

suggests that recipients could be subject to disparate-impact liability for choices that ''have the effect of defeating or of substantially impairing accomplishments of the objectives of the Federal assistance as respects individuals of a particular race, color or national origin.'' This rule deletes the text after the first sentence.

34 CFR 100.5(h)

Subsection (h), by cross referencing 34 CFR 100.3(b)(6), illustrates situations that would require affirmative action or permit affirmative action without satisfying the narrow tailoring requirement discussed above in explaining this rule's revision of 34 CFR 100.3(b)(6). Because this rule removes paragraph (b)(6) and its unlawful reference to affirmative action, the rule likewise removes subsection (h) from this portion of the regulations. Given that this rule also removes subsection (i), discussed below, no placeholder is required after the removal of subsection (h).

34 CFR 100.5(i)

Like 34 CFR 100.5(h), subsection (i) attempts to illustrate the application of the Department's Title VI regulations to a specific situation. It describes circumstances in which an ''applicant or recipient has never used discriminatory policies'' but that would permit giving ''special consideration to race, color, or national origin to make the benefits of its program more widely available to such groups, not then being adequately served.'' This phrasing is not only unclear, it also suggests that affirmative action can be pursued in the absence of prior discrimination, in violation of Title VI. The Department finds that eliminating the confusion generated by this example, including its problematic promotion of potential illegal race discrimination, independently justifies its removal. Therefore, this rule removes this subsection.

IV. Severability

The Department's position is that each of the amendments in this rule serves a vital, related, but distinct purpose. The Department also confirms that each of the amendments is intended to operate independently of each other and that the potential invalidity of one amendment should not affect the other amendments. The Department would adopt any of the amendments independently and regardless of the invalidity of a separate amendment.

V. Regulatory Certifications

Exemption From Notice and Comment Under the Administrative Procedure Act

The Department issues this final rule without prior public notice and comment pursuant to the Administrative Procedure Act's exemption for rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2).

Title VI concerns nondiscrimination conditions for the receipt of Federal financial assistance, and, more particularly, for the receipt of various Federal ''grants and loans,'' ''donation[s],'' ''personnel,'' and any other ''Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance'' that is ''authorized to be extended to a recipient under a law administered by the Department.'' 34 CFR 100.2, 100.13(f); 34 CFR part 100 app. A. Recipients are required, as a condition on the approval of any request for Federal financial assistance and the subsequent extension of any Federal financial assistance, to provide the Department with an ''assurance'' of ''compliance with all requirements imposed by or pursuant to [Title VI].'' 34 CFR 100.4; *see Cummings* v. *Premier Rehab Keller, P.L.L.C.,* 596 U.S. 212, 217–18 (2022) (observing that Congress enacted Title VI ''[p]ursuant to its authority to 'fix the terms on which it shall disburse federal money''' (internal citation omitted)).

Section 553(a)(2) exempts from notice and comment rulemaking matters ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' The Department has carefully reviewed those broad categories of exempt matters together with the definition of Federal financial assistance at 34 CFR 100.13(f), the specific requirements of 34 CFR 100.2, 100.4, and the types of Federal financial assistance provided by the Department. Based on this review, the Department has concluded that all of the types of Federal financial assistance provided by the Department that are implicated in this final rule are within the categories of exempt activities listed in 5 U.S.C. 553(a)(2). This final rule is thus exempt from notice and comment rulemaking.

Similarly, the Department's reliance on 5 U.S.C. 553(a)(2) is consistent with the definition of Federal financial assistance provided by the Office of Management and Budget (OMB) under 2 CFR 200.1, which defines Federal financial assistance with the same categories as the Administrative Procedure Act's exception for rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' 5 U.S.C. 553(a)(2). With potentially limited exceptions not applicable to the Department, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Department administers would fall under the ''public property, loans, grants, benefits, or contracts'' exception.

Courts have found that rules related to these forms of financial assistance are exempt from notice-and-comment rulemaking. *See, e.g., Cal. Dep't of Educ.* v. *Bennett,* 849 F.2d 1227, 1236 (9th Cir. 1988) (holding that Education Department rule concerning the return of Federal funds used for improper purposes did not require notice-and-comment rulemaking procedures); *Nat'l Wildlife Fed'n* v. *Snow,* 561 F.2d 227, 229 (D.C. Cir. 1976) (holding that a Federal Highway Administration rule governing the issuance of Federal funding for highways was exempt from notice-and-comment procedures); *Texas* v. *Becerra,* 577 F. Supp. 3d 527, 547 (N.D. Tex. 2021) (''The APA specifically exempts matters relating to 'grants,' and Head Start is a federal grant program.'').

This rule relates to the public property, loans, grants, benefits and contracts that constitute Federal financial assistance because it eliminates disparate-impact liability as a condition imposed on the receipt of that assistance. The 'relating to' standard is a broad one, easily satisfied by this rule. *See Cummings,* 596 U.S. at 217–18 (observing that Congress enacted Title VI ''[p]ursuant to its authority to 'fix the terms on which it shall disburse federal money''' (citation omitted)). As one court explained, ''Section 553(a)(2) cuts a wide swath'' and ''a broad domain is preserved for its operation.'' *Humana of S.C., Inc.* v. *Califano,* 590 F.2d 1070, 1082 (D.C. Cir. 1978). ''[T]o the extent that any one of the enumerated categories is clearly and directly involved in the regulatory effort at issue, the Act's procedural compulsions are suspended.'' *Id.* (internal quotation marks omitted). The rule is therefore exempt under 5 U.S.C. 553(a)(2). *Cf. Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance,* 82 FR 46655 (Oct. 6, 2017) (invoking exception to amend Title IX regulations to ''promote consistency in the enforcement of Title IX for [Department of Agriculture] financial assistance recipients''); *Preserving Community and Neighborhood Choice,* 85 FR 47899 (Aug. 7, 2020) (invoking exception to repeal Housing and Urban Development rule regarding Federal grantees); *Participation by Minority Business Enterprise in Department of Transportation Programs,* 53 FR 18285 (May 23, 1988) (invoking exception to expand coverage of Department of Transportation regulation regarding Federal Aviation Administration's airport financial assistance program); *Nondiscrimination on the Basis of Handicap in Federally Assisted Programs: Suspension of Guidelines With Respect to Mass Transportation,* 46 FR 40687 (Aug. 11, 1981) (invoking exception to suspend Department of Justice guidelines regarding the prohibition of disability discrimination in transportation programs and activities receiving Federal financial assistance).

Thus, the Department issues this final rule without prior public notice and comment under 5 U.S.C. 553(a)(2). Further, because the exception in section 553(a)(2) applies to section 553 as a whole, the Department issues this action without the delayed effective date typically required by 5 U.S.C. 553(d)(1).

Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws

E.O. 12250 delegates to the Attorney General the President's function of approving rules, regulations, and orders of general applicability under section 602 of the Civil Rights Act of 1964. The Department of Justice has reviewed and approved this rule.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

E.O. 12866, 58 FR 51735 (Oct. 4, 1993), requires agencies to consider both the quantitative and qualitative costs and benefits of a rule and to adopt a regulation only if the rule justifies its costs. This rule has been drafted and reviewed in accordance with section 1(b) of E.O. 12866, as well as with E.O. 13563, 76 FR 3821 (Jan. 21, 2011), which supplements and explicitly affirms the principles of E.O. 12866. Section 2(c) of E.O. 13563 states that agencies may consider qualitative values that are either difficult or impossible to quantify, while section 3 directs agencies to harmonize their regulations to simplify their burden and to avoid inconsistent and overlapping requirements. As discussed in the preamble, this rule is necessary to align the regulations more closely with statutory authority and congressional intent, update them in light of Supreme Court decisions, increase clarity for recipients as to the scope of their liability, and harmonize the regulations with the Department of Justice's Title VI regulatory amendments adopted following the issuance of E.O. 14281 as well as with that Order's direction regarding agency Title VI regulations.

The overall costs incurred by the Department due to its disparate-impact regulations are difficult to quantify because the Department does not track the portion of its enforcement and technical assistance activities that relate specifically to disparate-impact.

The costs of disparate-impact requirements on recipients are also difficult to quantify, but it is clear that the requirements entail considerable legal and administrative costs, training and compliance costs, and now, in light of the changing legal landscape since the Supreme Court's decision in *SFFA,* 600 U.S. at 223, potential litigation risks and attendant compensatory damages and attorneys' fees awards. No less are the social costs attending the disparate-impact regime. Compliance with the disparate-impact regulations forces recipients to engage in impermissible race-conscious decision-making to avoid potential liability. The disparate-impact provisions perfectly ''illustrate[ ] the crucial importance of making a distinction between intentions and consequences,'' including ''the incentives they create, rather than the hopes that inspired them.'' Thomas Sowell, *Basic Economics: A Common Sense Guide to the Economy* 45 (4th ed. 2011).

Although the overall cost effect on the Department is difficult to quantify, this deregulatory action should decrease the Department's enforcement and technical assistance costs. Reducing the regulatory uncertainty that the disparate-impact provisions impose on recipients should reduce their compliance costs and litigation risks and increase the efficiency of their operations by ensuring they are not engaging in needlessly complex and unlawful race-conscious decision-making. The Department has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of E.O. 12866, but it is not an ''economically significant'' action. Accordingly, OMB has reviewed this rule.

Executive Order 14219, Ensuring Lawful Governance and Implementing the President's ''Department of Government Efficiency'' Deregulatory Initiative

E.O. 14219, 90 FR 10583 (Feb. 25, 2025), directs agencies to identify regulations that, among other things, are unconstitutional or are constitutionally suspect, based on unlawful delegations of legislative power, or that are based on anything but the best reading of the authorizing statute. As discussed above, the disparate-impact provisions are constitutionally suspect, if not outright unconstitutional, in that they proscribe conduct beyond what the Equal Protection Clause allows. They potentially require unlawful intentional discrimination and racial balancing. The text of Title VI controls, and the Department's disparate-impact provisions are not based on the best reading of the statute. This rule is issued in furtherance of E.O. 12419.

Executive Order 14192, Unleashing Prosperity Through Deregulation

Executive Order 14192, 90 FR 9065 (Feb. 6, 2025), establishes a regulatory budget process for agencies and requires them to offset new regulatory burdens or costs. This rule is expected to be a deregulatory action that will not increase the Department's total incremental costs; in fact, it is likely to decrease them. This rule would eliminate unnecessary regulation by revising the Department's current Title VI regulations, which extend prohibited conduct to include conduct giving rise to unintentional disparate impact and thus expand the scope of those regulations to a vastly broader range of conduct than the statute prohibits. Accordingly, the Department expects this rule to be a deregulatory action under E.O. 14192.

Executive Order 13132, Federalism

E.O. 13132, 64 FR 43255 (Aug. 10, 1999), 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 rule will not have a substantial direct effect on the relationship between the Federal government and the States, on distribution of power and responsibilities among various levels of government, or on States' policymaking discretion. State and local recipients of Federal funding voluntarily comply with Title VI as a condition of receiving the funding. This rule does not subject recipients to new obligations. As a result, and in accordance with section 6 of E.O. 13132, the Department has determined that these amendments to the Department's regulations do not have sufficient federalism implications to warrant preparation of a federalism summary impact statement as outlined in section 6(c)(2).

Executive Order 12988, Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of E.O. 12988, 61 FR 4729 (Feb. 7, 1996), to specify provisions in clear language. Pursuant to section 3(b)(1)(I) of the E.O., nothing in this final rule or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the programs that are the subject of this final rule is intended to create any legal or procedural rights enforceable against the United States.

Executive Order 14294, Overcriminalization of Federal Regulations

E.O. 14294, 90 FR 20363 (May 14, 2025), requires agencies promulgating regulations with 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. This rule does not impose a criminal regulatory penalty and is thus exempt from E.O. 14294's requirements.

Paperwork Reduction Act, 44 U.S.C. 3501–3520

Pursuant to the Paperwork Reduction Act, agencies must consider whether a rule will create additional burdens related to recordkeeping, paperwork, or information collection. This rule will not impose any additional burdens or requirements in these respects.

Regulatory Flexibility Act, 5 U.S.C. Chapter 6

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a final regulatory flexibility analysis that describes the effect of a rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking'' prior to issuing the final rule. *See* 5 U.S.C. 604(a). Because this rule is being issued without a prior notice of proposed rulemaking, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA. Further, even if the RFA were applicable here, the Department would find that this rule will not have a significant economic impact on a substantial number of small entities because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. This rule simply amends an existing regulation by eliminating improper burdens on recipients, clarifies its scope for the public, and brings it into accordance with the best reading of Title VI. All Federal funding recipients remain bound by the Title VI regulations that are already in place.

Unfunded Mandates Reform Act, 2 U.S.C. Chapter 25

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare assessments of any rule that would result in the annual expenditure of more than $100 million by State, local, or Tribal governments, or the private sector. 2 U.S.C. 1503(2) exempts from the Act's coverage a proposed or final rule such as this one that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' This rule is therefore not subject to the provisions of the Act.

Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2).

List of Subjects for 34 CFR Part 100

Administrative practice and procedure, Civil rights, Education, Equal employment opportunity, Grant programs, Race discrimination.

Linda E. McMahon,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends part 100 of title 34 of the Code of Federal Regulations as set forth below:

PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 100 is revised to read as follows:

Authority: 42 U.S.C. 2000d, 2000d–1, and 2000d–3, unless otherwise noted.

■ 2. In § 100.3:
■ a. Remove and reserve paragraph (b)(2);
■ b. Revise paragraph (b)(3);
■ c. Remove paragraph (b)(6);
■ d. Remove and reserve paragraph (c)(2); and
■ e. Remove paragraph (c)(3) and the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 100.3 Discrimination prohibited.

* * * * *

(b) * * *

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs 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 the Act or this part.

* * * * *

■ 3. In § 100.5:
■ a. Revise paragraph (g); and
■ b. Remove paragraphs (h) and (i) and the parenthetical authority citation at the end of the section.

The revision reads as follows:

§ 100.5 Illustrative application.

* * * * *

(g) A recipient may not take action that is calculated to bring about indirectly what this part forbids it to accomplish directly.

[FR Doc. 2026–15019 Filed 7–23–26; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2025–2169; FRL–13126–02–OCSPP]

RIN 2070–AB27

Significant New Use Rule on a Certain Chemical Substance; Multi-Walled Carbon Nanotubes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for a certain chemical substance that was the subject of a premanufacture notice (PMN) and is also subject to an Order issued by EPA pursuant to TSCA. The SNUR requires persons to notify EPA at least 90 days before commencing the manufacture (defined by statute to include import) or processing of this chemical substance for an activity that is designated as a significant new use in the SNUR. The required notification