and pests, Reporting and recordkeeping requirements.

Dated: July 27, 2026

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

For the reasons set forth in the preamble, 40 CFR chapter I is amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.681, in paragraph (a) amend table 1 to paragraph (a) by

■ a. Removing the entry for ''Almond'';

■ b. Revising the entry for ''Almond, hulls''; and

■ c. Adding in alphabetical order the entry ''Nut, tree, group 14–12''.

The revision and addition read as follows:

§ 180.681 Isofetamid; tolerances for residues.

* * * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
Almond, hulls	20
* * * * *	
Nut, tree, group 14–12	0.15
* * * * *	

* * * * *

[FR Doc. 2026–15761 Filed 8–3–26; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 611

RIN 3145–AA74

Nondiscrimination in Federally Assisted Programs of the National Science Foundation

AGENCY: U.S. National Science Foundation.

ACTION: Final rule.

SUMMARY: The U.S. National Science Foundation (NSF or Foundation) is revising its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI). NSF is taking this action to align the conduct prohibited by NSF's regulations with Title VI's text, avoid constitutional concerns, reduce compliance costs, serve the public interest, ensure consistency with the final rule recently issued by the Department of Justice (DOJ), and implement the direction outlined in Executive Order (E.O.) 14281.

DATES: The Rule is effective on August 4, 2026.

FOR FURTHER INFORMATION CONTACT: Scott Carr, Equal Opportunity Specialist, U.S. National Science Foundation, Randolph Building, 401 Dulany Street, Alexandria, VA, 22314, (703) 292–7020, *ACB@nsf.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

NSF is rescinding portions of its regulations promulgated pursuant to Title VI to more closely align its regulations with the language Congress enacted in Title VI prohibiting intentionally discriminatory conduct, *see* 42 U.S.C. 2000d. There are serious statutory and constitutional concerns with the legality of provisions in NSF's Title VI regulations that go beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. This rule accordingly rescinds those portions of the regulations, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest. First, this rule rescinds 45 CFR 611.3(b)(2), which currently prohibits the utilization of ''criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.'' Second, this rule removes the two uses of the phrase ''or effect'' from 45 CFR 611.3(b)(3). Third, this rule rescinds 45 CFR 611.3(b)(6). Fourth, this rule rescinds 45 CFR 611.3(c)(4), which addresses employment practices of Federal funding recipients. Fifth, this rule rescinds CFR 611.5(6) and (7), which provide illustrative examples of disparate-impact liability without a showing of intentional discrimination.

These changes also align NSF's Title VI regulations with changes made by DOJ in its 2025 Final Rule (2025 DOJ Final Rule). 90 FR 57141. Finally, NSF's rule conforms to E.O. 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 7537 (Apr. 28, 2025). The practical impact of this rule's deletions will be to clarify for NSF Federal funding recipients that NSF's Title VI regulations do not prohibit disparate impact and prohibit only intentional discrimination, and that NSF thus will not pursue Title VI disparate impact liability against its Federal funding recipients.

II. Discussion

A. Statutory Background

NSF is a Federal agency that supports science and engineering in all 50 States and in U.S. territories. Established by the National Science Foundation Act of 1950, Public Law 81–507, 64 Stat. 149 (codified at 42 U.S.C. 1861 *et seq.*), NSF promotes the progress of science; advances the national health, prosperity, and welfare; and secures the national defense. To support these missions, NSF funds basic research conducted at U.S. colleges and universities, in fields such as mathematics, computer science, engineering, and biotechnology, and Science, Technology, Engineering, and Mathematics (STEM) workforce development. NSF also funds research infrastructure, ranging from individual instruments to major research facilities and equipment (*e.g.,* computing facilities, U.S. Antarctic stations, and large telescopes). The funding is provided chiefly through grants.

Title VI, as amended, prohibits intentional discrimination on the ''ground of race, color, or national origin'' in all programs or activities that receive 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. The section of Title VI that sets forth the prohibited conduct, 42 U.S.C. 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 provide any Federal department or agency with authority to prohibit unintentional disparate impact. And despite ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

B. Regulatory History of 45 CFR Part 611

NSF's Title VI implementing regulations are codified at 45 CFR part 611. NSF issued these regulations in 1964 upon approval by President Lyndon B. Johnson. NSF's Title VI regulations were subsequently amended five times: in 1973, *see* 38 FR 17920 (July 5, 1973) (incorporating changes recommended by DOJ); in 1984, *see* 49 FR 37594 (Sept. 25, 1984) (making technical corrections); in 1986, *see* 51 FR 22938 (June 24, 1986) (simplifying internal NSF procedures for approving orders suspending, terminating, or refusing to grant federal financial assistance); in 1994, *see* 59 FR 37437 (July 22, 1994) (housekeeping amendments); and in 2003, *see* 68 FR 51334 (Aug. 26, 2003) (aligning with the Civil Rights Restoration Act of 1987, Pub. L. 100–259). NSF's implementing regulation describing the scope of conduct considered to be discriminatory and therefore prohibited, codified at 45 CFR 611.3, currently includes prohibitions addressing conduct giving rise to an unintentional disparate impact. NSF's regulations also include examples illustrating the application of these provisions to some of the programs funded by NSF, at 45 CFR 611.5.

C. Relevant Supreme Court Decisions

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 only 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) (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. 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 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 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 DOJ's disparate-impact regulations were valid, the Court explained that the regulations are in ''considerable tension'' with the Supreme Court's Title VI precedents. *Id.* at 282. Similarly, 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.''). The rationale of that holding applies with equal force to NSF's Title VI regulations, which mirror DOJ's Title VI regulations.

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.'' *SFFA,* 600 U.S. at 205 (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 '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.

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.

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.*

The 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.* As the Order explained, disparate-impact liability ''not only undermines our national values, but also runs contrary to equal protection under the law and, therefore, violates our Constitution.'' *Id.*

The Order relayed that because of disparate-impact liability's problems, ''[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'' them ''to the extent they contemplate disparate-impact liability.'' *Id.* at 17538. Accordingly, this rule revises the Foundation's Title VI regulations to effectuate the Order's policy and purpose under the leadership of the Attorney General.

In any event, the Foundation would have initiated steps toward making these changes regardless of E.O. 14281. The Order states, and the Foundation firmly agrees, a ''bedrock principle of the United States is that all citizens are treated equally under the law. 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 meritocracy and a colorblind society,'' not race-, color-, or national-origin-based favoritism. 90 FR at 17537. And 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 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 factors and weighing the relevant considerations, the Foundation concludes that these reasons, separately and together, support eliminating disparate-impact liability from the Foundation's Title VI regulations.

E. 2025 DOJ Final Rule

Pursuant to E.O. 12250, *Leadership and Coordination of Nondiscrimination Laws,* 45 FR 72995 (Nov. 4, 1980), DOJ is the lead Federal agency responsible for defining the nature and scope of Title VI's prohibition of discrimination on the basis of race, color, and national origin in programs or activities receiving Federal financial assistance. As part of this responsibility, E.O. 12250 requires the Attorney General to approve other agencies' regulations implementing Title VI. *See id.* at 72995–96.

On December 10, 2025, DOJ issued the 2025 DOJ Final Rule rescinding portions of its Title VI regulations to more closely align the regulations with Title VI's prohibition on intentionally discriminatory conduct. 90 FR 57141 (Dec. 10, 2025). DOJ articulated statutory and constitutional concerns with the legality of provisions in DOJ's Title VI regulations that went beyond intentional discrimination by prohibiting conduct that has an unintentional disparate impact. *See id.* The 2025 DOJ Final Rule rescinded those portions of the regulations because DOJ concluded they were in considerable tension with the statute and Constitution and did not sufficiently serve the public interest. *See id.*

NSF agrees with the reasoning expressed in DOJ's final rule and provides a similar rationale for this rulemaking.

F. Need for Rulemaking

The Foundation's regulations at 45 CFR part 611, entitled ''Nondiscrimination in Federally-Assisted Programs of the National Science Foundation—Effectuation of Title VI of the Civil Rights Act of 1964,'' contain several provisions that prohibit conduct or activities causing unintentional disparate impact, without a statutory or constitutional basis for doing so. And in some instances, the regulations may encourage or even require unlawful discrimination labeled as ''reasonable action.'' Section 611.3(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.'' 45 CFR 611.3(b)(2). Beyond that general prohibition, section 611.3(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. *Id.* 611.3(b)(3). Section 611.3(b)(6) concerns the use of ''reasonable 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 to serve a compelling governmental interest, as is required to satisfy strict scrutiny. *Id.* 611.3(b)(6). Section 611.3(c) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that ''tends'' to have a discriminatory effect. *Id.* 611.3(c)(4). Finally, 45 CFR 611.5(6) and (7) provide illustrative examples of disparate-impact liability without a showing of intentional discrimination. *Id.* 611.5(6)–(7).

There are serious statutory and constitutional concerns with the legality of the Foundation's Title VI disparate-impact regulations. The Foundation 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 may produce burdensome litigation and compliance costs for the Foundation's grantees.

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 the Foundation's ''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);[1] *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 the Foundation 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 even in the absence of Supreme Court precedent, the Foundation 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 range of conduct than the statute itself. This range 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 the Foundation's 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

[1] NSF's regulations, which are modeled off DOJ's regulations, and are approved by the Attorney General, would similarly be in tension with *Sandoval.*

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 the Foundation'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, such as conducting an impact analysis, and is coerced to proactively consider race, color, and national origin, and potentially use it 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.* This serious constitutional concern further confirms that the best reading of Title VI is that it prohibits only intentional discrimination and does not authorize the Foundation 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 violates the Equal Protection Clause unless it survives 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 ''reasonable action'' provision authorizes and sometimes requires the intentional use of race without requiring that this use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing ''to overcome the consequences of'' unintended racial disparities. 45 CFR 611.3(b)(6). Thus, for substantially the same reasons as above, the ''reasonable action'' provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Foundation's disparate-impact regulations. But even if the regulations were legal, the Foundation 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''). And even if the regulations did not raise serious constitutional concerns, the Foundation 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

The Foundation also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability. While the Foundation 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. As noted in section 1 of the Order, ''[o]n a practical level, 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.'' 90 FR at 17537. Moreover, the legal concerns identified above have caused uncertainty and confusion for Federal funding recipients as to whether and when they need to comply with the disparate-impact regulations and when they can or must consider race, color, and national origin. 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 leads 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 undermine public confidence 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'' at issue were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals''). Although many of the Foundation's grant proposals focus on minority groups to comply with statutory requirements, *see e.g.,* 42 U.S.C. 1862n–10 (minority-serving institutions undergraduate program); 42 U.S.C. 1862p–4 (undergraduate broadening participation program), some of them may have explicitly targeted certain racial groups without specific statutory authorization. For example, in 2025, NSF terminated awards to ensure alignment with agency priorities. A list of those awards, publicly available at *https://www.nsf.gov/updates-on-priorities#archived-information-41b,* identifies awards that targeted racial groups and inclusion and diversity in STEM education.[2] The Foundation believes that amending its regulations to avoid encouraging the use of imprecise and arbitrary racial categories will help maintain clarity and public confidence in the Nation's civil rights laws.

The Foundation has considered the view that looking at disparate effects can be useful in identifying and deterring subtle intentional discrimination or intentional

[2] This list can be found under the Frequently Asked Question, *Is there a publicly available list of the awards NSF has terminated?* The entries on this list notwithstanding, NSF has complied with the terms and conditions of all preliminary and permanent injunctions requiring award reinstatement.

indifference to unnecessary and arbitrary barriers. But any benefits are outweighed by the other issues and factors that the Foundation has considered, such as, for example, the need for NSF's regulations to be consistent with DOJ's regulations and other grant-making agencies' regulations. And in any event, the concern is mitigated by the fact that eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination. Indeed, NSF's regulations at section 611.6, which remain unchanged by this rulemaking, require that recipients of NSF grant funding keep complete and accurate compliance information available for inspection by the responsible Foundation official. 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, liability for intentional discrimination materially differs from using such disparity to impose liability for an unintentional disparate impact.

The Foundation has also considered the alternative of trying to adopt a modified version of disparate-impact liability, for example, by requiring covered entities to remedy unintentional discrimination for only certain types of cases involving areas with historical patterns of discrimination, such as education. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI's single, best meaning. Regardless, even a modified version of disparate-impact liability would not eliminate the Foundation's serious legal and policy concerns. The Foundation determines that any benefits from a regulation adopting alternative versions of disparate-impact liability are outweighed by those concerns. And 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 covered entities face. The Foundation 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 Foundation additionally has considered the potential reliance interests of funding recipients and others on the disparate-impact regulations. As noted in section IV.B of this preamble NSF estimates that since 2017, fewer than 30 percent of the total number of civil rights complaints received included alleged violations of Title VI, and of that number, NSF accepted and investigated only 1.3 percent.[3] Moreover, NSF has not identified any Title VI violations by NSF awardees since 2005 and presently has no ongoing disparate-impact complaints, investigations, or other enforcement activity. Based on this data, NSF believes there exists minimal evidence of meaningful reliance interests. In addition, the *Sandoval* decision cast serious doubt on the continuing viability of the regulations more than 25 years ago. E.O. 14281 also directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,'' which includes the Foundation's Title VI disparate-impact regulations. 90 FR at 17538. The Foundation accordingly believes that such minimal reliance interests would likely not outweigh the Foundation's legal and policy concerns. Further, each of the Foundation's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Foundation 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 the Foundation could continue to pursue disparate-impact liability. Repealing the disparate-impact regulations would eliminate this incongruent enforcement.

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

III. Regulatory Changes

For the reasons summarized above, NSF is revising its Title VI regulations at 45 CFR part 611 consistent with the 2025 DOJ Final Rule and the authorities described in the 2025 DOJ Final Rule. The practical impact of this rule's revisions will be to clarify for NSF federal funding recipients that NSF's Title VI regulations do not prohibit unintentional disparate impact and NSF thus will not pursue Title VI disparate-impact liability against its Federal funding recipients. A section-by-section analysis of the changes follows, consistent with the changes in the 2025 DOJ Final Rule.

A. Table Summarizing Amendments

The table below indicates the exact wording changes. For each section indicated in the left column, the text shown in the middle column is removed and the text shown in the right column is added:

Section	Remove	Add
611.3(b)(2)	Full text of paragraph: ''(2) A recipient . . . or national origin.''	''[Reserved]''.
611.3(b)(3)	Both instances of ''or effect''.	
611.3(b)(6)	Full text of paragraph: ''(6) This regulation . . . to accomplish the purposes of the Act.''.	
611.3(c)(4)	Full text of paragraph: ''(4) Where a primary objective of . . . beneficiaries.''.	
611.5	Full text of paragraphs (6) and (7)..	

B. Section-by-Section Analysis

Section 611.3(b)(2)

Section 611.3(b)(2) is the current regulation's general prohibition of unintentional disparate impact. This paragraph expands prohibited conduct from purposeful discrimination to Federal funding recipients who ''utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.'' Because this paragraph's only purpose is to extend the scope of the regulation

[3] Of the 75 formal complaints filed with NSF that included an alleged violation of Title VI, 1 (1.3 percent) was accepted for investigation, 46 (61.3 percent) were dismissed due to jurisdictional, procedural, or contextual issues, 26 (34.7 percent) were referred to another office, 1 (1.3 percent) was withdrawn by the complainant, and 1 (1.3 percent) is currently under review.

to conduct causing unintentional disparate impacts, this rule deletes the paragraph, consistent with Title VI and the 2025 DOJ Final Rule. The rule replaces paragraph (b)(2) with a placeholder to maintain the numbering accuracy of previous citations and other references to parts of this section.

Section 611.3(b)(3)

Section 611.3(b)(3) addresses a Federal funding recipient's or applicant's selection of sites or locations of facilities. The paragraph 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 NSF's implementing regulations. The paragraph's two references to ''effect'' extend its scope to unintentional disparate impacts. This rule deletes both instances of ''or effect'' to conform paragraph (b)(3) more closely to Title VI, the 2025 DOJ Final Rule, and the other authorities described herein.

Section 611.3(b)(6)

Section 611.3(b)(6) addresses a recipient's ''reasonable action'' with respect to race, color, and national origin. Paragraph (b)(6) authorizes affirmative action in programs even in the absence of a finding of prior discrimination in a program ''if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.'' This provision points not to intentional discrimination, but rather to the unintentional ''consequences of practices or impediments.'' The provision consequently authorizes intentional racial classifications, racial preferences, and other race-based actions without the compelling interest and narrow tailoring required by the Equal Protection Clause—practices that have long been unlawful under an Equal Protection Clause analysis.

Paragraph (b)(6) also requires a recipient ''to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act'' ''[w]here previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this regulation applies.'' 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 (Powell, J.). Moreover, even putting aside the mandatory language, this provision does not expressly require narrow tailoring to counter particular past discrimination. Accordingly, it promotes potentially illegal race, color, and national origin discrimination. This rule, therefore, removes paragraph (b)(6).

Section 611.3(c)(4)

Section 611.3(c) addresses prohibited discriminatory employment practices for Federal funding recipients. Paragraph (c)(4) extends the prohibition to employment practices of the recipient even ''[w]here a primary objective of the Federal financial assistance is not to provide employment'' if discrimination in the nonfunded ''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 does not prohibit only intentional discrimination but rather extends to conduct that ''tends'' to have a discriminatory effect on a program without the primary objective of providing employment. Moreover, paragraph (c)(4)'s extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with Congress's statutory limitation wherein ''[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.'' *See* 42 U.S.C. 2000d–3. Consistent with Title VI and the 2025 DOJ Final Rule, this removes paragraph (c)(4).

Section 611.5

Section 611.5 provides examples to illustrate the application of the Title VI regulatory provisions to some of the programs aided by NSF. To conform with the changes discussed above, NSF is removing the two examples, paragraphs (6) and (7), that illustrate disparate-impact enforcement.

IV. Regulatory Certifications

A. Administrative Procedure Act

NSF issues this final rule without prior public notice and comment or a delayed effective date pursuant to the exception in the Administrative Procedure Act (APA) 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 and NSF's implementing regulations concern nondiscrimination conditions on the receipt of Federal financial assistance. They apply to the receipt of Federal ''[g]rants and loans,'' ''property,'' ''personnel'' and ''[a]ny Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.'' 45 CFR 611.13(e); *see also* 45 CFR 611.4 (requiring funding recipients to provide assurance of compliance with Title VI in such form as specified by the ''responsible Foundation official.''). *Cf. Education Programs or Activities Receiving or Benefitting From Federal Financial Assistance,* 82 FR 46655 (Oct. 6, 2017) (invoking the 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 a 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 the exception to expand coverage of a Department of Transportation regulation regarding the 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 the exception to suspend DOJ guidelines prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Invoking this exception to notice and comment is consistent with the definition for Federal financial assistance provided by the U.S. Office of Management and Budget (OMB) in 2 CFR 200.1, which defines such assistance with the same categories as the APA's exception for rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' With potentially limited exceptions not applicable to the Foundation, all the forms of Federal financial assistance set forth under 2 CFR 200.1 that the Foundation administers would fall under the ''public property, loans, grants, benefits, or contracts'' exception. Finally, prompt alignment with the 2025 DOJ Final Rule is also necessary to ensure uniform administration of Title VI, and to avoid inconsistent enforcement and potential confusion by recipients of Federal funding assistance. Thus, NSF issues this final rule without prior public notice and comment or a delayed effective date.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866, 58 FR 51735 (Sep. 30, 1993), and 13563, 76 FR 3821 (Jan. 18, 2011), direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It also recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify. In a similar vein, E.O. 14192, 90 FR 9065 (Jan. 31, 2025), directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides 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 ten prior regulations.''

OMB has designated this rule a ''significant regulatory action'' under section 3(f) of E.O. 12866, although not economically significant under section 3(f)(1). Accordingly, this rule has been reviewed by OMB. It is also considered a deregulatory action under E.O. 14192.

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform NSF's Title VI regulations to Title VI, the 2025 DOJ Final Rule, and the other authorities described therein. The practical impact of this rule's deletions will be to clarify for NSF Federal funding recipients that NSF's Title VI regulations do not prohibit conduct giving rise to disparate impact and that NSF thus will not pursue Title VI disparate-impact liability against its funding recipients.

As with the 2025 DOJ Final Rule, data limitations make the costs and benefits of the rule difficult for NSF to quantify. This rule affects NSF funding recipients. Congress appropriated approximately $8.8 billion to NSF in fiscal year 2025 to support NSF's rigorous merit review system. In that same fiscal year, NSF received over 43,000 proposals, generating 8,377 competitive awards to 1,621 institutions in 50 states, the District of Columbia, and 3 territories. *See* FY 2025 Agency Financial Report (Dec. 18, 2025), *https://www.nsf.gov/reports/performance/agency-financial-report.*

NSF estimates that, since 2017, fewer than 30 percent of the total number of civil rights complaints it received included alleged violations of Title VI. Of that number, 64 percent were dismissed due to insufficient evidence or other disqualifying factors, 33 percent were referred to another Federal agency, 1.5 percent were withdrawn by the complainant, and 1.5 percent were accepted and investigated by NSF. Although Title VI requirements are considered during on-site as well as virtual compliance reviews, since NSF established its awardee compliance review program in 2005, NSF reviews have not identified any Title VI violations by NSF awardee organizations.

Presently, NSF has no disparate-impact complaints under consideration, no active disparate-impact investigations, and no associated disparate-impact compliance-review activity. For enforcement actions that relate to both intentional discrimination and unintentional disparate impact, NSF does not track and cannot reliably quantify the costs attributable to the varying disparate-impact portions of enforcement actions. That disparate impact is sometimes a factor that may be considered in determining whether discrimination was intentional further impedes monetizing costs and benefits. Therefore, the overall cost effect on NSF is difficult to quantify. However, this deregulatory action should decrease NSF's enforcement costs. And the benefit of this rule is to align NSF's regulations with Title VI and DOJ regulations.

Similarly, NSF is unable to quantify how funding recipients will respond to the regulatory changes. But the deregulatory action may result in greater flexibility and lower compliance costs for recipients. NSF recognizes that a funding recipient may receive Federal funds from sources other than, and in addition to, NSF. DOJ noted in its rule that DOJ expected its rule will cause other Federal departments and agencies to consider similarly revising their Title VI regulations. Like DOJ, NSF does not envision that this rule will appreciably increase administrative costs or compliance costs for funding recipients who must also adhere to the regulations of other departments or agencies. The deregulatory action that NSF takes here does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from NSF's regulation, NSF eliminates a source of regulatory confusion, narrows and makes more specific the conduct prohibited, and thus lessens 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.,* 45 CFR 611.4; 34 CFR 100.4. These contractual assurances already impose varying requirements that each Federal funding source deems necessary. Funding recipients will continue to be held to the most stringent contractual assurance standards. And in any event, NSF notes that it and other agencies are currently amending their regulations to align with the changes made in the DOJ Final Rule, so the Foundation 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, NSF believes that this rule is consistent with the principles of EOs 12866 and 13563, including the requirements that, to the extent permitted by law, NSF adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits. This action is also consistent with the directive of E.O. 14192 to reduce regulatory compliance costs.

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.'' 45 FR at 72995. DOJ has reviewed and approved this rule.

D. Regulatory Flexibility Act

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 was required ''to publish a general notice of proposed rulemaking'' prior to issuing the final rule. *See* 5 U.S.C. 604(a). This rule does not require a regulatory flexibility analysis because, for the reasons described above, no notice of proposed rulemaking is required under 5 U.S.C. 553. *See Or. Trollers Ass'n* v. *Gutierrez,* 452 F.3d 1104, 1123–24 (9th Cir. 2006) (noting that the RFA does not apply when an agency validly invokes an exception to the public comment requirements of 5 U.S.C. 553).

Further, even if a final regulatory flexibility analysis were required, NSF, in accordance with 5 U.S.C. 605(b), has reviewed these regulations and certifies that the rule's changes 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 NSF's funding recipients. The rule merely amends and clarifies existing regulations that are required by Title VI, bringing NSF into compliance with Title VI and changes made by the 2025 DOJ Final Rule. All Federal funding recipients have been previously bound by the standards that will remain in place following this rule.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number issued by OMB. This rule does not propose new, or revisions to existing, ''collection[s] of information'' as that term is defined under the PRA, and its implementing regulations.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 658(6), 1502(1). A ''Federal intergovernmental mandate,'' in turn, is a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(5). And the term ''Federal private sector mandate'' refers to a provision that would impose an enforceable duty upon the private sector (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

NSF has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. In addition, UMRA's requirements do not apply to any provision in a 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). Therefore, no actions are deemed necessary under UMRA.

G. Congressional Review Act

The Office of Information and Regulatory Affairs has found that this is not a ''major rule'' as defined by Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act. 5 U.S.C. 804(2). This 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 on the ability of United States-based companies to compete with foreign based companies in domestic and export markets. The rule merely narrows the scope of NSF's Title VI regulations to conform them to the scope of Title VI, the 2025 DOJ Final Rule, and the authorities described therein. Doing so does not impose any new obligations on any recipients of Federal funding.

H. Federalism

A rule has implications for federalism under E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 4, 1999), if it has substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. NSF has analyzed this rule under this order and determined it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

I. Civil Justice Reform

This rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988, *Civil Justice Reform,* 61 FR 4729 (Feb. 5, 1996) to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects for 45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Science Foundation amends 45 CFR part 611 as follows:

PART 611—NONDISCRIMINATION IN FEDERALLY–ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.

■ 1. The authority citation for part 611 continues to read as follows:

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); 42 U.S.C. 2000d–1.

■ 2. In section 611.3:

■ a. Remove and reserve paragraph (b)(2);

■ b. Revise paragraph (b)(3);

■ c. Remove paragraph (b)(6); and

■ d. Remove paragraph (c)(4).

The revisions read as follows:

§ 611.3 Discrimination prohibited.

* * * * *

(b) * * *

(2) [Reserved]

(3) 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 any program to which this regulation applies, on the grounds 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 regulation.

* * * * *

§ 611.5 [Amended]

■ 3. In § 611.5, remove paragraphs 6 and 7.

Brian Stone,

Senior Official Performing the Duties of the Director, U.S. National Science Foundation.

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