

March 22, 2023

VIA COMMENT PORTAL

Ashley Clark
U.S. Department of Education
Office of Postsecondary Education
LBJ Building, 400 Maryland Avenue, SW
Washington, DC 20202-0001

Re: Comment on Direct Grant Programs, State-Administered Formula Grant Programs (RIN 1840-AD72), Respectfully Submitted by Interfaith Alliance Foundation

To Ms. Clark:

Interfaith Alliance Foundation provides the following comments in response to the Proposed Rule “Direct Grant Programs, State-Administered Formula Grant Programs,” published by the Department of Education (hereinafter “the Department” or “DoE”) in the Federal Register on February 22nd, 2023 at 88 Fed. Reg. 10857.

Interfaith Alliance Foundation (“IAF”) is a national policy and advocacy organization committed to advancing true religious freedom for all Americans. The only national interfaith organization dedicated to protecting the integrity of both religion and democracy, IAF’s membership is made up of individuals rather than institutions, in all 50 states and serving overseas in the U.S. military, and adhering to more than 75 faith traditions and belief systems.

While the notion of religious freedom has been used – and misused – by various groups over the course of our history, IAF’s work remains true to the foundational promise of the U.S. Constitution: that every American has the right to believe as we choose, with the secure knowledge that our government will not play favorites or favor religion over non-religion. IAF champions an inclusive vision of religious freedom, where all are free to embrace matters of personal conscience without fear of government intrusion or discrimination.

Interfaith Alliance Foundation welcomes the changes presented by the Proposed Rule. We commend the Department for rescinding regulations that dilute essential nondiscrimination policies and values. Public colleges and universities have a responsibility to ensure everyone feels safe and welcome.

I. Trump-Era Regulations Threaten Religious Freedom by Exempting Religious Student Groups from Nondiscrimination Policies

Public colleges and universities are entrusted with the wellbeing of students from diverse backgrounds and experiences. Many colleges and universities have nondiscrimination policies that prohibit student organizations recognized by the school from discriminating against students who wish to participate. These policies ensure that clubs don't reject students from membership or leadership positions on the basis of race, religion, sex, sexual orientation, gender identity, and other protected characteristics. But on September 23rd, 2020, the Department of Education under Secretary Betsy DeVos published a final rule that threatens to revoke federal funding from public colleges and universities that protect their students from experiencing discrimination.¹ *Finalized § 75.500(d)* and *Finalized § 76.500(d)* of the 2020 Rule elevate religious student organizations with special preference, allowing them to function outside the authority of nondiscrimination policies.

The 2020 Rule has caused confusion and uncertainty about what public colleges and universities must do to avoid risking ineligibility for covered Department grants. The Rule forces colleges to choose between protecting students and losing federal funding, or allowing discrimination against students in order to keep their funding. Under the 2020 Rule, public colleges and universities that have not altered or rescinded their nondiscrimination policies or exempted religious student groups from those policies are not just subject to enforcement actions but also are ineligible to apply for new grants. The Proposed Rule eliminates this serious threat to funding for universities.

Religious freedom and nondiscrimination are rooted in the same values: equality, justice, and the right to self-determination. Neither can be truly achieved at public colleges and universities if the aforementioned institutions are threatened with revoked funding for addressing discrimination. The Proposed Rule promotes clarity and restores the ability of these educational institutions to fully enforce nondiscrimination policies

II. Proposed Rule Promotes Equity and Fairness, Protects Students with Minority Faiths and Identities

Public colleges and universities often provide significant benefits to recognized student groups including: funding, meeting space, promotion in school media, advertising space, inclusion on student organization fairs, and use of school communication platforms. Students are usually

¹ U.S. Dept. of Education, Office for Civil Rights, Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and Strengthening Historically Black Graduate Institutions Program, 85 Fed. Reg. 59916 (Sep. 23, 2020), Docket No. ED-2019-OPE-0080, RIN 1840-AD45, <https://www.federalregister.gov/documents/2020/09/23/2020-20152/direct-grant-programs-state-administered-formula-grant-programs-non-discrimination-on-the-basis-of>; see also U.S. Dept. of Education, Notice of Reporting Process, 85 Fed. Reg. 75310 (Nov. 25, 2020), <https://www.federalregister.gov/documents/2020/11/25/2020-26108/notice-of-reporting-process>.

charged a mandatory activity fee in order to help fund student organizations and pay for these benefits.

The Proposed Rule ensures that no students will be forced to subsidize their own discrimination by paying a mandatory activity fee to fund clubs that would discriminate against them. It will restore the right to education free from discrimination for marginalized students, including those who are LGBTQ+, religious minorities, nonreligious students, and students of color, who were most likely to experience discrimination under the Trump rule.

The Proposed Rule also ensures that no groups or students receive preferential treatment based on their religious beliefs. Because student organizations at public colleges and universities constitute a public forum, these institutions may not discriminate based on viewpoint, and they also cannot favor some viewpoints by granting exemptions only to religious organizations.²

Publically-funded educational institutions have a responsibility to the wellbeing of their students, including their First Amendment right to religious freedom. *True* religious freedom cannot be realized when discrimination is left unchecked. The Proposed Rule would restore protections for marginalized students and ensure their experience is not only what they are legally entitled to, but is also an experience that allows them to thrive.

III. Conclusion

As a national organization committed to advancing true religious freedom for all Americans, Interfaith Alliance Foundation applauds the Department's rescinding of Trump-era regulations paving the way for student religious organizations at public colleges and universities to discriminate. The 2020 Rule flagrantly ignores nondiscrimination principles and removes protections for students with minority faiths and identities.

Students seeking higher education are often away from home for the first time. They are encountering new people, having new experiences, and discovering their own identity. Schools should nurture students throughout this process and ensure that community members of all beliefs, experiences, and identities can thrive. The Department should remain consistent with its commitment to religious freedom and nondiscrimination to protect these students and the institutions that teach and house them. Through the Proposed Rule and further guidance from stakeholders, the Biden administration can secure a meaningful educational experience for all students.

² *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).