**§ 0.175 Judicial and administrative proceedings.**

* * * * *

(b) The Assistant Attorneys General or any Deputy Assistant Attorney General of the Antitrust Division, the Civil Division, the Civil Rights Division, and the Environment and Natural Resources Division are authorized to exercise the power and authority vested in the Attorney General by 18 U.S.C. 6003 to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before or ancillary to a court or grand jury of the United States when the subject matter of the case or proceeding is within the cognizance of their respective Divisions: Provided, however, that no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

* * * * *

Dated: December 5, 2025.

**Pamela Bondi,**

*Attorney General.*

[FR Doc. 2025–22449 Filed 12–9–25; 8:45 am]

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## DEPARTMENT OF JUSTICE

## 28 CFR Part 42

**[CRT Docket No. 146; AG Order No. 6509–2025]**

**RIN 1190–AA83**

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

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** By this rule, the Department of Justice amends its regulations implementing Title VI of the Civil Rights Act of 1964 (''Title VI'') to eliminate disparate-impact liability. These amendments align the conduct prohibited by the Department's regulations with Title VI's original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest. In addition, these revisions implement changes directed in Executive Order 14281.

**DATES:** The rule is effective on December 10, 2025.

**FOR FURTHER INFORMATION CONTACT:** R. Jonas Geissler, Deputy Assistant Attorney General, Civil Rights Division, at 202–353–8866.

**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 its regulations to the language that 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 the Department'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 that prohibit conduct having a disparate impact, which are in considerable tension with both the statute and the Constitution and do not sufficiently serve the public interest. First, this rule rescinds the full text of 28 CFR 42.104(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 28 CFR 42.104(b)(3). Third, this rule rescinds the full text of 28 CFR 42.104(b)(6). Fourth, this rule rescinds the full text of 28 CFR 42.104(c)(2), which addresses employment practices subject to Federal financial assistance.

The rule's revisions also conform to Executive Order 14281, *Restoring Equality of Opportunity and Meritocracy,* 90 FR 17537 (Apr. 23, 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 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. Section 3 of the Order specifically revoked the Presidential approvals of certain Justice Department Title VI regulations that address disparate-impact liability promulgated under 42 U.S.C. 2000d–1. *Id.* Though the Department would take this action independent of Executive Order 14281, the Order supports this action.

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

## II. Discussion

### *A. Statutory History of Title VI*

Title VI of the Civil Rights Act of 1964, as amended, provides: ''No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' 42 U.S.C. 2000d. Title VI also directs Federal departments and agencies that extend Federal financial assistance to ''effectuate the provisions of'' Title VI ''by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1. The section of the Title VI statute that sets forth the prohibited conduct, 42 U.S.C. 2000d, prohibits specifically intentional discrimination and makes no reference to unintentional disparate effects or impact. *See Alexander* v. *Sandoval,* 532 U.S. 275, 280 (2001) (''[I]t is . . . beyond dispute—and no party disagrees—that [Title VI] prohibits only intentional discrimination.''). The statute does not explicitly provide any Federal department or agency with authority to prohibit unintentional disparate impact. And despite ample opportunities, Congress has enacted no subsequent amendments to Title VI to impose disparate-impact liability.

### *B. Regulatory History of Title VI*

Pursuant to Executive Order 12250, ''[t]he Attorney General shall coordinate the implementation and enforcement by Executive agencies of . . . Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).'' 45 FR 72995, 72995 (Nov. 2, 1980). Accordingly, the Department of Justice acts as 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. The Order directs the Department, among other things, to ''develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.'' *Id.* Further, as part of this responsibility, the Order provides that other agencies' Federal regulations implementing Title VI are also subject to the Attorney General's approval. *Id.* at 72996.

The Department's Title VI implementing regulations are codified at

28 CFR 42.101, 42.112. The initial set of model regulations for Title VI were issued by the then-Department of Health, Education, and Welfare on December 4, 1964, which included only one reference to the ''effect of'' language in the ''discrimination prohibited'' provision of the rule. *See* 29 FR 16298, 16299 (Dec. 4, 1964) (provision found at 45 CFR 80.3(b)(2)). The Department adopted these model regulations in 1966, which likewise contained a single instance of the ''or effect'' language at 28 CFR 42.104(b)(2). 31 FR 10265, 10266 (July 29, 1966). In 1973, the Department substantively amended its regulatory description of prohibited discrimination. *See* 38 FR 17955 (July 5, 1973). These substantive changes include, among other things, the addition of 28 CFR 42.104(b)(3) (which added the ''or effect'' language to an additional provision), 28 CFR 42.104(b)(6) (which introduced the ''affirmative action'' language to the regulations), and 28 CFR 42.104(c)(2) (which extends the rule to Federal financial assistance whose primary objective is not to provide employment). *Id.* at 17955. In 2003, the Department added language regarding ''program or activity'' to reflect the amendment of Title VI by the Civil Rights Restoration Act of 1987. *See* 68 FR 51334, 51364 (Aug. 26, 2003); Public Law 100–259, sec. 6, 102 Stat. 28, 31 (1988). Thus, beyond the required updating of the phrase ''program or activity'' pursuant to the Civil Rights Restoration Act, the Department has not substantively updated its Title VI regulations since 1973—over 50 years ago.

The Department's implementing regulation describing the scope of prohibited discriminatory conduct, 28 CFR 42.104, currently includes prohibitions on conduct that has an unintentional disparate impact, discussed more fully below.

*C. Relevant Supreme Court Decisions*

The Supreme Court has found 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, five years after the Department last substantively amended its Title VI regulations, the Supreme Court found that Congress intended Title VI to prohibit ''only those racial classifications that would violate the Equal Protection Clause'' if committed by a government actor. *Regents of the Univ. of Cal.* v. *Bakke,* 438 U.S. 265, 287 (1978) (Powell, J., announcing the judgment of the Court); *id.* at 325, 328, 352–53 (Brennan, White, Marshall, and Blackmun, JJ., concurring in part and dissenting in part); *see also Students for Fair Admissions, Inc.* v. *President & Fellows of Harvard Coll.,* 600 U.S. 181, 198 n.2 (2023) (''*SFFA*''). Shortly before *Bakke*'s Title VI holding, the Supreme Court held that the Equal Protection Clause 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, 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 the 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 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 Department's disparate-impact regulations were valid, the Court explained that the regulations are in ''considerable tension'' with the Supreme Court's Title VI precedents. 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.'').

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 Executive Order 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.*

That 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.

Section 3 of the Order also specifically revoked prior Presidential approvals of the disparate-impact regulations promulgated under Title VI, including the presidential approval of July 25, 1966, of 28 CFR 42.104(b)(2) and the presidential approval of July 5, 1973, of 28 CFR 42.104(b)(3), (b)(6)(ii) and (c)(2). *Id.* Section 5 of the Order directed the Attorney General to ''initiate appropriate action to repeal or

amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.'' *Id.* Accordingly, this rule revises the Department's currently existing Title VI regulations to effectuate the Order's policy and purpose.

In any event, the Department would have independently initiated steps toward making these changes regardless of Executive Order 14281. Even if Executive Order 14281 did not exist, in other words, the Department would have taken steps to adopt the policy to eliminate the use of disparate-impact liability under Title VI. The Order states, and the Department firmly agrees, that 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.* But imposing disparate-impact liability endangers these policy objectives. Disparate-impact liability also raises serious constitutional concerns, is in considerable tension with the original public meaning of Title VI, creates confusion, increases the costs of compliance, and does not serve the public interest. After considering the relevant issues and factors and weighing the relevant considerations, the Department concludes that these reasons together support eliminating disparate-impact liability from the Department's Title VI regulations. In any event, the Department concludes that each reason is a separate and independent basis for eliminating disparate-impact liability from the Department's Title VI regulations.

*E. Need for Rulemaking*

The Department's regulation at 28 CFR 42.104, entitled ''Discrimination prohibited,'' contains several provisions that prohibit conduct or activities causing unintentional disparate impact, without a statutory or constitutional basis for doing so, and in some instances, may encourage or even require unlawful discrimination labeled as ''affirmative action.'' Section 42.104(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.'' 28 CFR 42.104(b)(2). Beyond that general prohibition, section 42.104(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.* 42.104(b)(3). Section 42.104(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 the funding recipient must narrowly tailor such use nor that this use must serve a compelling governmental interest, as is required to satisfy strict scrutiny. *Id.* 42.104(b)(6). Finally, section 42.104(c) addresses prohibited discriminatory employment practices and extends beyond intentional discrimination to prohibiting conduct that ''tends'' to have a discriminatory effect. *Id.* 42.104(c)(2).

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

1. Serious Legal Concerns

There are serious statutory concerns as to whether the Title VI statute 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 Department's ''disparate-impact regulations.'' *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 private enforceability, subsequent cases such as *Loper Bright* have made clear that the Department cannot extend Title VI beyond its original public 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 Department would have concluded that the best reading of Title VI is that it prohibits only intentional discrimination.

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

There are also serious concerns about whether the Department'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 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 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, 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 Department 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 ''affirmative action'' provision authorizes and sometimes requires the intentional use of race without requiring that this intentional use be narrowly tailored to serve a recognized compelling interest. Instead, it encourages intentional racial balancing ''to overcome the effects of'' unintended racial disparities. 28 CFR 42.104(b)(6). Thus, for substantially the same reasons as above, the ''affirmative action'' provision raises serious constitutional concerns.

As summarized above, there are serious statutory and constitutional concerns with the Department's disparate-impact regulations. But even if the regulations were legal, the Department 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 Department 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 Department also has serious policy concerns with the Title VI regulations' imposition of disparate-impact liability. While the Department expresses its policy concerns with disparate-impact liability independent of Executive Order 14281, that Order sets forth many valid policy concerns with disparate-impact liability. As noted in section 1 of the Order,

> On 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 the underlying Title VI statute 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'' utilized by Harvard and University of North Carolina were ''themselves imprecise in many ways'' and ''the use of these opaque racial categories undermine[d], instead of promote[d], [their] goals''). This confusion undermines the law's ability to teach principles of nondiscrimination and is evident in, among other things, many of the grant proposals that the Department awarded funds to in past years. Many of the grant proposals explicitly targeted certain racial groups. *See, e.g., OVC FY 2022 Bridging Inequities—Legal Services and Victims' Rights Enforcement for Underserved Communities* at 5, Off. of Just. Progs. (Apr. 25, 2022), *https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/o-ovc-2022-171291.pdf* (the Department awarding $5 million FY 2022 to expand access to legal assistance for victims of crime in communities comprised of ''Black people, Hispanic and Latino/a/e people, Native American and other Indigenous peoples of North America (including Alaska Natives, Eskimos, and Aleuts), Asian Americans, Native Hawaiians, and Pacific Islanders''). The Department believes that these policy concerns independently justify repealing certain parts of its regulation to cure this confusion, remove the incentive for covered entities to engage in racial balancing, and maintain clarity and public confidence in the nation's civil rights laws.

The Department has considered the view that looking at disparate effects can sometimes be useful in uncovering or deterring subtle intentional discrimination or intentional indifference to unnecessary and arbitrary barriers. But that view's alleged benefits are outweighed by the other issues and factors the Department has considered. 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, under the Department's Title VI regulations, which the current changes do not alter, ''recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.'' 28 CFR 42.106(b). 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, liability for *intentional* discrimination materially differs from using it to impose liability for an unintentional disparate impact.

The Department 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 in education or housing. But any version of imposing liability for unintentional discrimination is inconsistent with Title VI's original public meaning. Regardless, even a modified version of disparate-impact liability would not eliminate the Department's serious legal and policy concerns. The Department determines that any benefits from a regulation adopting alternative versions of disparate-impact liability are outweighed by the Department's legal and policy 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 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 on the disparate-impact regulations. The *Sandoval* decision in 2001, however, cast serious doubt on the continuing viability of the regulations more than 20 years ago. At least since *Sandoval,* the Department's enforcement of its Title VI disparate-impact regulations has been minimal and sporadic. And Executive Order 14281 also directed all agencies to ''deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,'' including specifically the Department's Title VI disparate-impact regulations. 90 FR at 17538. The Department accordingly believes that any reliance interests should be minimal and do not outweigh the Department's legal and other policy concerns. Further, each of the Department's concerns, whether considered cumulatively or separately, outweighs any reliance interests.

The Department 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 Department 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 Department finds that, regardless of the legality of the Department'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 Amendments

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 among private plaintiffs and Federal departments and agencies, and provide much needed clarity to the courts and Federal funding recipients and beneficiaries.

For the reasons summarized above, the Department amends the following provisions in its Title VI implementing regulation that explain the particular types of discrimination prohibited, located at 28 CFR 42.104.

### *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 |
|---|---|---|
| 42.104(b)(2) | Full text of paragraph: ''(2) A recipient . . . or national origin.'' | ''[Removed]''. |
| 42.104(b)(3) | ''or effect'' from both places. | |
| 42.104(b)(6) | Full text of paragraph (6), subparts (i) and (ii). | |
| 42.104(c)(1) | ''(1)'' from ''(c) Employment practice. (1) Whenever a primary objective of the . . . .''. | |
| 42.104(c)(2) | Full text of paragraph: ''(2) In regard to . . . of beneficiaries.''. | |

### *B. Section-by-Section Analysis*

Section 42.104(b)(2)

Section 42.104(b)(2) is the current regulation's general prohibition of conduct with unintentional disparate impact. It expands prohibited conduct from purposeful discrimination to imposed liability on Federal funding recipients who ''utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination.'' Because section 42.104(b)(2)'s only purpose is to extend the scope of Title VI to reach unintentional disparate-impact discrimination, this rule deletes this paragraph in its entirety. It thus amends the Department's Title VI implementing regulations to conform to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document. 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 42.104(b)(3)

Section 42.104(b)(3) addresses a Federal funding recipient's or applicant's selection of the site or location of facilities. It provides that a funding recipient may not make selections with the ''purpose or effect'' of discriminating, or ''with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of'' Title VI or the Department's implementing regulations. The paragraph's two references to ''effect'' extend its scope to unintentional disparate impacts. This rule deletes both ''or effect'' references to conform paragraph (b)(3) more closely to the scope of coverage Congress intended when it enacted Title VI and to address the legal and policy considerations and determinations described in this document.

Section 42.104(b)(6)

Section 42.104(b)(6) deals with ''affirmative action.'' Paragraph (b)(6)(ii) authorizes affirmative action even in the absence of a finding of prior discrimination in a program ''to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.'' This provision points not to intentional discrimination, but rather to the unintentional ''effects of conditions.'' It consequently encourages intentional racial classifications, racial preferences, and other race-based actions without specifying the

compelling governmental interest and narrow tailoring that the Equal Protection Clause demands. This section has long been unlawful under an Equal Protection Clause analysis.

Paragraph (b)(6)(i) requires that a recipient ''must take affirmative action to overcome the effects of prior discrimination'' if, in ''administering a program,'' the funding ''recipient has previously discriminated against persons on the ground of race, color, or national origin.'' This provision goes beyond the Equal Protection Clause, which permits in limited circumstances, 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, but rather just ''affirmative action to overcome the effects of prior discrimination.'' This provision accordingly promotes potentially illegal race, color, and national origin discrimination. Moreover, in some instances, it may even coerce recipients to consider and use race preferences when the recipient does not want to. This is contrary to the Department's goal of promoting and defending a culture of nondiscrimination and is destructive to the public's understanding of and faith in the nation's civil rights laws. This rule, therefore, removes paragraph (b)(6).

Section 42.104(c)

Section 42.104(c) addresses prohibited discriminatory employment practices. Paragraph (c)(1) prohibits intentionally discriminatory employment practices in a program when a primary objective of the Federal financial assistance that program receives is to provide employment. Paragraph (c)(2) extends the prohibition on discrimination to employment practices of the funding recipient even when the financial assistance ''does not have providing employment as a primary objective'' if discrimination in the non-funded ''employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance.'' This paragraph does not prohibit only intentional discrimination but rather extends the prohibition to conduct that ''tends'' to have a discriminatory effect.

Moreover, the Department notes that paragraph (c)(2)'s extension to employment practices where the Federal funding's primary objective is not to provide employment conflicts with the statutory limitation found in 42 U.S.C. 2000d–3. That section states that ''[n]othing contained in [Title VI] shall be construed to authorize action under [Title VI] by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.'' 42 U.S.C. 2000d–3; *see also Johnson* v. *Transp. Agency, Santa Clara Cnty.,* 480 U.S. 616, 627–28 n.6 (1987) (citing the statutory limitation and noting Congress's intent that Title VI not ''impinge'' on Title VII, which prohibits discriminatory employment practices). The rule deletes paragraph (c)(2) to amend the regulation so that it more closely adheres to the scope of conduct Congress prohibited with Title VI and to address the legal and policy considerations and determinations described in this document. This rule makes no change to the current text of paragraph (c)(1) except for a technical edit to reflect the removal of paragraph (c)(2).

## IV. Severability

The Department's position is that each of the amendments serve 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 independent to, and regardless of, the invalidity of a separate amendment.

## V. Regulatory Certifications

*Administrative Procedure Act*

The Department issues this final rule without prior public notice and comment or a delayed effective date pursuant to 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).

Title VI concerns non-discrimination conditions on the receipt of Federal financial assistance, and more particularly 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.'' 28 CFR 42.102(c); *see also* 28 CFR 42.105 (requiring funding recipient sign contractual assurance of compliance with Title VI); *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)). *Cf. Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance,* 82 FR 46655, 46655 (Oct. 6, 2017) (invoking the section 553(a)(2) exception to amend Title IX regulations to ''promote consistency in the enforcement of Title IX for [the Department of Agriculture] financial assistance recipients''); *Preserving Community and Neighborhood Choice,* 85 FR 47899 (Aug. 7, 2020) (invoking the 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 the 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 the exception to suspend Department of Justice guidelines regarding prohibiting disability discrimination in transportation programs and activities receiving Federal financial assistance).

Indeed, invoking 5 U.S.C. 553(a)(2) is consistent with the U.S. Office for Management and Budget's (OMB) definition for Federal financial assistance 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. Thus, the Department issues this final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

*Executive Orders 12866 and 13563 (Regulatory Review)*

The Department has determined that this rulemaking is a ''significant regulatory action'' under section 3(f) of

Executive Order 12866, 58 FR 51735, 51738 (Sep. 30, 1993), but it is not an ''economically significant'' action. Accordingly, this rule has been submitted to the Office of Management and Budget (''OMB'') for review.

This regulation has been drafted and reviewed in accordance with Executive Order 12866 section 1(b), *id.* at 51735, and in accordance with Executive Order 13563 section 1(b), 76 FR 3821, 3821 (Jan. 18, 2011), which supplements and reaffirms the principles of Executive Order 12866. These Executive Orders direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. 58 FR at 51735; 76 FR at 3821. Executive Order 13563 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. *Id.*

As explained in the preamble, the regulatory modifications this rule makes are necessary to conform Department regulations to Executive Order 14281, address serious concerns regarding the Department's Title VI regulation that the Supreme Court raised in *Sandoval,* harmonize the implementing regulation's scope with the scope of conduct that Congress intended Title VI to prohibit, promote consistency in enforcement among private plaintiffs and Federal departments and agencies, and provide much needed clarity to courts and Federal funding recipients and beneficiaries regarding the scope of the Department's Title VI regulations. Indeed, with respect to section 42.104(c) of the Department's Title VI-implementing regulations, the changes this rule makes are clearly necessary to bring the regulations into compliance with 42 U.S.C. 2000d–3. In short, this rule is necessary to conform the Department's regulation to existing statutory law, as interpreted by the Supreme Court.

Data limitations make the costs and benefits of the rule difficult to quantify. While not representing the monetary impact of the rule, more generally the Department of Justice issued approximately 21,600 separate awards totaling approximately $19.6 billion over the past four years. In FY2023 alone, the Department issued approximately 5,900 separate awards totaling $5.7 billion. The Department's Title VI related, active investigations and compliance reviews regarding these funds and their recipients totaled just over 100 for FY2020 through FY2024. The Department does not track which of its investigations and compliance reviews involve solely allegations of disparate-impact discrimination. For enforcement actions that relate to both intentional discrimination and conduct having an unintentional disparate impact, the Department does not track and cannot reliably quantify the costs attributable to the varying disparate-impact portions of enforcement actions. That the existence of a 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 the Department is difficult to quantify. The deregulatory action should decrease the Department's enforcement costs, however. It should also have the benefit, also difficult to quantify, of bringing the Department's conduct in line with the law. Similarly, the Department is unable to quantify how funding recipients will respond to the regulatory changes. But the deregulatory action should result in greater flexibility and lower compliance costs for recipients.

The Department recognizes that a funding recipient may receive Federal funds from sources other than, and in addition to, the Department. Because of the Department's unique role in the interpretation and enforcement of Title VI, as discussed above, the Department expects that this rule will cause other Federal departments and agencies to consider similarly revising their Title VI regulations. Regardless, the Department 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 another department or agency. The deregulatory action the Department takes here does not create any new obligations for funding recipients. On the contrary, by eliminating disparate-impact liability from the regulation, it 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.,* 28 CFR 42.105. 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 and regulation.

Based on the analysis of the practical qualitative costs and benefits noted above, the Department believes that this rule is consistent with the principles of Executive Orders 12866 and 13563, including the requirements that, to the extent permitted by law, the Department adopt a regulation only upon a reasoned determination that its benefits justify its costs and choose a regulatory approach that maximizes net benefits. *See* 58 FR at 51735; 76 FR at 3821.

*Executive Order 14192 (Unleashing Prosperity Through Deregulation)*

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

*Executive Order 14294 (Fighting Overcriminalization in Federal Regulations)*

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to ''explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to'' each element of those offenses. 90 FR 20363, 20363 (May 9, 2025). This rule does not impose a criminal regulatory penalty and is thus exempt from Executive Order 14294 requirements.

*Executive Order 13132 (Federalism)*

This rule will not have a substantial, direct effect on the relationship between the national government and the states, on distribution of power and responsibilities among various levels of government, or on states' policymaking discretion. States that choose to receive Federal financial assistance from the Department do so voluntarily and agree to comply with relevant statutory requirements as a condition of receiving such funding. This rule does not subject

states or any other funding recipients or beneficiaries to new obligations. This rule amends and clarifies existing regulations that are required by statute. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255, 43257–58 (Aug. 4, 1999), the Department has determined that these amendments do not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

*Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and (b)(2) of Executive Order 12988 to specify provisions in clear language. *See* 61 FR 4729, 4731–32 (Feb. 5, 1996). Pursuant to section 3(b)(1)(I) of the Executive Order, *id.* at 4731, nothing in this proposed or any previous rule (or in any administrative policy, directive, ruling, notice, guideline, guidance, or writing) directly relating to the Program that is the subject of this proposed rule is intended to create any legal or procedural rights enforceable against the United States.

*Regulatory Flexibility Act*

This rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 603, 604, 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, the Department, 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, in large part because these regulatory changes do not impose any new substantive obligations on Federal funding recipients. The rule amends and clarifies existing regulations that are required by Title VI. The rule merely brings the Department into compliance with the Equal Protection Clause and harmonizes the scope of its regulations to conform with the scope of Title VI, which does not prohibit unintentional disparate impact. All Federal funding recipients have been bound by the existing standards that will remain in place after this rule since their initial promulgation.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (''UMRA''), 2 U.S.C. 1501 *et seq.,* requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by state, local, or tribal governments, or the private sector. 2 U.S.C. 1532(a). The UMRA also, however, excludes from its coverage any proposed or final Federal regulation that ''establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.'' 2 U.S.C. 1503(2). Accordingly, this rulemaking is not subject to the provisions of the UMRA.

*Congressional Review Act*

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

*Paperwork Reduction Act of 1995*

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

**List of Subjects for 28 CFR Part 42**

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

Accordingly, for the reasons set forth above, and by the authority vested in me as the Attorney General by law, part 42 of title 28 of the Code of Federal Regulations is amended as follows:

## PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

### Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964

■ 1. The authority citation for subpart C of part 42 is revised to read as follows:

**Authority:** 42 U.S.C. 2000d, 2000d–1, 2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298; E.O. 14281, 90 FR 17537.

■ 2. In § 42.104:

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

■ b. Revise paragraph (b)(3);

■ c. Remove paragraph (b)(6); and

■ d. Revise paragraph (c).

The revisions read as follows:

**§ 42.104 Discrimination prohibited.**

* * * * *

(b) * * *

(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 subpart 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 subpart.

* * * * *

(c) *Employment practices.* Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or to provide work experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

Dated: December 5, 2025.

**Pamela Bondi,**

*Attorney General.*

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