

Congress of the United States
Washington, DC 20515

August 13, 2020

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. 20202

Dear Secretary DeVos:

As Chairs of House Subcommittees with legislative and oversight responsibilities for civil rights in programs administered by the Department of Education, we strongly urge the Department not to finalize its harmful “Uniform Administrative Requirements” rule.

This proposed rule would undermine core religious liberty protections for beneficiaries and employees in Department-funded social service programs and would expand religious discrimination against students in higher education. Fundamentally, this proposed rule would contradict our federal civil rights tradition to prohibit discrimination in federally funded programs, foster discrimination against students, and jeopardize the availability of social services to some of our most vulnerable individuals.

The proposed rule would allow faith-based organizations operating Department programs to engage in pervasive taxpayer-funded religious discrimination against employees. Faith-based organizations and religious employers claiming to have “sincerely held religious beliefs” would be able to discriminate against anyone who does not follow the employers’ beliefs and practices.¹

In June, we celebrated the 79th anniversary of Executive Order (EO) 8802, a landmark advancement of civil rights protections prohibiting discrimination in defense contracts.² The lasting legacy of EO 8802 was to establish equal opportunity in federally funded endeavors and pave the way for the Civil Rights Act and other efforts by Congress to prohibit discrimination in federal programs.

¹ Department of Education, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State Administered Formula Grant Programs, Developing Hispanic Serving Institutions Program, and Strengthening Institutions Program*, 85 Fed. Reg. 3190 (Jan. 17, 2020).

² Office of Federal Contract Compliance Programs, *History of Executive Order 11246* (online at www.dol.gov/agencies/ofccp/about/executive-order-11246-history) (accessed Oct. 7, 2019).

The proposed rule would turn this principle on its head to expressly allow employers to broadly discriminate against employees in Department-funded programs. At a time when the United States continues to grapple with the coronavirus pandemic, this rule would unconscionably reduce access to vital services for some of our nation's most vulnerable individuals. The proposed rule would strip religious liberty protections for beneficiaries, some of whom may be minors. For example, beneficiaries would no longer have the right to an alternative provider and notice of their right not to be discriminated against in Department-funded programs.³ Even worse, the rule would allow, in some circumstances, discrimination against individuals in how they are served in those programs, since the rule would exclude programs funded with indirect aid from the nondiscrimination requirements in the current regulations.⁴ Undermining protections for vulnerable individuals is unacceptable at any time, but is particularly egregious during a global pandemic that has reached crisis proportions.

In addition, the proposed rule would add new appendices to current regulations that would create additional exemptions for faith-based organizations and as a result, prioritize the rights of faith-based organizations in Department programs over the rights of individuals served by those programs.⁵ Congress created those programs to serve specified populations of individuals to achieve identified policy objectives. The proposed rule would undermine these individuals' access to programs, subvert Congressional intent, and undercut the purpose of the programs.

The proposed rule would make a number of other troubling policy changes in the higher education sector that would embolden religious discrimination against students. Specifically, the Department would expand the types of institutions that may qualify for the religious exemption under Title IX, the federal law that prohibits sex discrimination in federally-funded education programs, to include institutions that only have a tenuous relationship to religion.⁶ As a result, institutions with little religious affiliation may be able to claim the religious exemption under Title IX and discriminate on the basis of sex against their students.

To add insult to injury, a separate, recently finalized rule eliminated the notice requirement under Title IX. Religious schools that claim that sex discrimination protections conflict with their religious tenets no longer have to provide advance notice about which part of Title IX they claim to be exempt from.⁷ Further, a school can withhold that information up until a discrimination claim is filed against it. As a result, students will not have critical information about whether a school that they intend to attend will discriminate against them and if they could face

³ Department of Education, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State Administered Formula Grant Programs, Developing Hispanic Serving Institutions Program, and Strengthening Institutions Program*, 85 Fed. Reg. 3190 (Jan. 17, 2020).

⁴ *Id.*; 34 C.F.R. §§ 75.52 & 76.52.

⁵ Department of Education, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State Administered Formula Grant Programs, Developing Hispanic Serving Institutions Program, and Strengthening Institutions Program*, 85 Fed. Reg. 3190 (Jan. 17, 2020).

⁶ *Id.*

⁷ Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020).

disciplinary action, which may include expulsion, for being LGBTQIA+, using birth control, or becoming pregnant outside of marriage.

Together, these two rules expand the number of schools that will be able to engage in discrimination while depriving students of the foreknowledge of whether they are attending such a school. As a consequence, students will bear both the financial and emotional hardship of these policies as they may have to transfer schools and lose out on college credit to escape discrimination.

Finally, the Department proposes to exempt religious student groups at institutions of higher education from nondiscrimination requirements that all other student groups must follow.⁸ As a result, the proposed rule would give preferential treatment to religious student groups over secular student groups. This would allow them to violate nondiscrimination rules and still be entitled to student fee funding and official recognition from their institutions. Because student fees are collected from all students, the proposed rule would have the effect of requiring students to fund their own discrimination.

The proposed rule would embolden religious discrimination against employees and beneficiaries in Department-funded programs while also increasing discrimination against students in higher education. Accordingly, we strongly urge you to cease finalization of this proposed rule immediately.

Sincerely,



Suzanne Bonamici
Chair
Subcommittee on Civil Rights and Human
Services
Committee on Education and Labor



Jamie Raskin
Chairman
Subcommittee on Civil Rights and
Civil Liberties
Committee on Oversight and Reform

Enclosure

cc: The Honorable Ben Cline, Ranking Member
Subcommittee on Civil Rights and Human Services,
Committee on Education and Labor

The Honorable Chip Roy, Ranking Member

⁸ Department of Education, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Direct Grant Programs, State Administered Formula Grant Programs, Developing Hispanic Serving Institutions Program, and Strengthening Institutions Program*, 85 Fed. Reg. 3190 (Jan. 17, 2020).

Subcommittee on Civil Rights and Civil Liberties
Committee on Oversight and Reform