

freedom of speech, including academic freedom, and each discrete issue that may be presented under such policies. State and Federal courts are well equipped to make necessary factual and legal determinations with respect to stated institutional policies regarding freedom of speech, including academic freedom, that private institutions choose to adopt.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the Secretary certifies that these final regulations do not have a significant economic impact on a substantial number of small entities.

The final rule affects all institutions of higher education receiving grants from the Department. In FY 2018, 1,548 IHEs received such awards, totaling approximately \$3.3 billion. Approximately 130 of those IHEs qualify as small, receiving approximately \$183 million.²⁴³ As described in the *Discussion of Costs and Benefits* section of this notice, the Department estimates that these final regulations will impose one-time costs of approximately \$510 per institution that conducts a review of their policies. We do not believe this would represent a significant economic impact on small entities.

Paperwork Reduction Act of 1995

Under the final regulations, a public or private institution must submit to the Secretary a copy of certain final, non-default judgments by a State or Federal court. We believe such a submission will take no longer than 30 minutes per judgment. As discussed in the NPRM and in the Discussion of Costs, Benefits, and Transfers above, we do not estimate 10 or more parties will have such judgments to submit to the Department. Therefore, the Paperwork Reduction Act is not implicated.

Intergovernmental Review

The programs in parts 606, 607, 608, and 609 of title 34 of the Code of Federal Regulations may be affected by these regulations, and these programs, which include the Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, Strengthening Historically Black Colleges and Universities Program, and

the Strengthening Historically Black Graduate Institutions Program, are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects

34 CFR Part 75

Accounting, Copyright, Education, Grant programs—Education, Inventions and patents, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Private schools, Reporting and recordkeeping requirements, Virgin Islands.

34 CFR Part 106

Education, Sex discrimination, Civil rights, Sexual harassment

34 Part 606

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 607

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 608

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

34 Part 609

Colleges and universities, Grant programs—education, Reporting and recordkeeping requirements.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends parts 75, 76, 106, 606, 607, 608, and 609 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

■ 2. Section 75.500 is revised to read as follows:

§ 75.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) Each grantee shall comply with the following statutes and regulations:

²⁴³ For purposes of this analysis, the Department defines a small IHE as a two-year institution with 500 FTE or less or a four-year institution with an enrollment of 1,000 FTE or less.

TABLE 1 TO § 75.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR part 100.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	34 CFR part 106.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i>)	34 CFR part 110.

(b)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter “public institution”), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department’s grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each grantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department’s grant. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the

private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each grantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department’s grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A grantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 3. Section 75.684 is added to subpart E to read as follows:

§ 75.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 4. Section 75.700 is revised to read as follows:

§ 75.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A grantee shall comply with § 75.500, applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(Authority: 20 U.S.C. 1221e-3 and 3474)

■ 5. Section 75.741 is added to subpart F to read as follows:

§ 75.741 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e-3 and 3474)

PART 76—STATE-ADMINISTERED FORMULA GRANT PROGRAMS

■ 6. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3 and 3474, unless otherwise noted.

■ 7. Section 76.500 is revised to read as follows:

§ 76.500 Constitutional rights, freedom of inquiry, and Federal statutes and regulations on nondiscrimination.

(a) A State and a subgrantee shall comply with the following statutes and regulations:

TABLE 1 TO § 76.500(a)

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4).	34 CFR part 100.

TABLE 1 TO § 76.500(a)—Continued

Subject	Statute	Regulation
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR part 106.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	34 CFR part 104.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 <i>et seq.</i>)	34 CFR part 110.

(b)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is public and that is legally required to abide by the First Amendment to the U.S. Constitution (hereinafter “public institution”), must also comply with the First Amendment to the U.S. Constitution, including protections for freedom of speech, association, press, religion, assembly, petition, and academic freedom, as a material condition of the Department’s grant. The Department will determine that a public institution has not complied with the First Amendment only if there is a final, non-default judgment by a State or Federal court that the public institution or an employee of the public institution, acting in his or her official capacity, violated the First Amendment. A final judgment is a judgment that the public institution chooses not to appeal or that is not subject to further appeal. Absent such a final, non-default judgment, the Department will deem the public institution to be in compliance with the First Amendment.

(2) Each State or subgrantee that is a public institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(c)(1) Each State or subgrantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom. The Department will determine that a private institution has not complied with these stated institutional policies only if there is a final, non-default judgment by a State or Federal court to the effect that the private institution or an employee of the private institution, acting on behalf of the private institution, violated its stated institutional policy regarding freedom of speech or academic freedom, as a material condition of the Department’s grant. A final judgment is a judgment that the private institution chooses not to appeal or that is not subject to further appeal. Absent such a

final, non-default judgment, the Department will deem the private institution to be in compliance with its stated institutional policies.

(2) Each State or subgrantee that is a private institution also must submit to the Secretary a copy of the final, non-default judgment by that State or Federal court to conclude the lawsuit no later than 45 calendar days after such final, non-default judgment is entered.

(d) As a material condition of the Department’s grant, each State or subgrantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution, distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.

(e) A State or subgrantee that is a covered entity as defined in 34 CFR 108.3 shall comply with the nondiscrimination requirements of the Boy Scouts of America Equal Access Act, 20 U.S.C. 7905, 34 CFR part 108. (Authority: 20 U.S.C. 1221e–3, 3474)

■ 8. Section 76.684 is added to subpart F to read as follows:

§ 76.684 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 9. Section 76.700 is revised to read as follows:

§ 76.700 Compliance with the U.S. Constitution, statutes, regulations, stated institutional policies, and applications.

A State and a subgrantee shall comply with § 76.500, the State plan, applicable statutes, regulations, and approved

applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e–3, 3474)

■ 10. Section 76.784 is added to subpart I to read as follows:

§ 76.784 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

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

PART 106—NON DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 11. The authority citation for part 106 continues to read as follows:

Authority: 20 U.S.C. 1681 *et seq.*, unless otherwise noted.

■ 12. Section 106.12 is amended by adding paragraphs (c) and (d) to read as follows:

§ 106.12 Educational institutions controlled by religious organizations.

* * * * *

(c) *Eligibility.* Any of the following in paragraphs (c)(1) through (6) of this section shall be sufficient to establish that an educational institution is controlled by a religious organization, as contemplated under paragraph (a) of this section, and is therefore eligible to assert a religious exemption to the extent application of this part would not be consistent with its religious tenets:

(1) That the educational institution is a school or department of divinity.

(2) That the educational institution requires its faculty, students, or employees to be members of, or otherwise engage in religious practices of, or espouse a personal belief in, the religion of the organization by which it claims to be controlled.

(3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines

or practices of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.

(4) That the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.

(5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.

(6) Other evidence sufficient to establish that an educational institution is controlled by a religious organization, pursuant to 20 U.S.C. 1681(a)(3).

(d) *Severability*. If any provision of this section or its application to any person, act, or practice is held invalid, the remainder of this section or the application of its provisions to any person, act, or practice shall not be affected thereby.

PART 606—DEVELOPING HISPANIC—SERVING INSTITUTIONS PROGRAM

■ 13. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

■ 14. Section 606.10 is amended by revising paragraphs (c)(3) and (4) to read as follows:

§ 606.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *
(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a “school or department of divinity” means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

§§ 606.11 through 606.13 [Redesignated as §§ 606.12 through 606.14]

■ 15. Sections 606.11 through 606.13 are redesignated as §§ 606.12 through 606.14.

■ 16. New § 606.11 is added to read as follows:

§ 606.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1101 *et seq.*)

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

■ 17. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059g, 1067q, 1068–1068h unless otherwise noted.

■ 18. Section 607.10 is amended by revising paragraphs (c)(3) and (4) to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(c) * * *
(3) Activities or services that constitute religious instruction, religious worship, or proselytization.

(4) Activities provided by a school or department of divinity. For the purpose of this provision, a “school or department of divinity” means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

§§ 607.11 through 607.13 [Redesignated as §§ 607.12 through 607.14]

■ 19. Redesignate §§ 607.11 through 607.13 as §§ 607.12 through 607.14.

■ 20. New § 607.11 is added to read as follows:

§ 607.11 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1057 *et seq.*)

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

■ 21. The authority citation for part 608 is revised as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 22. Section 608.10 is amended by revising paragraphs (b)(5) and (6) to read as follows:

§ 608.10 What activities may be carried out under a grant?

* * * * *

(b) * * *
(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a “school or department of divinity” means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

■ 23. Section 608.12 is added to subpart B to read as follows:

§ 608.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

PART 609—STRENGTHENING HISTORICALLY BLACK GRADUATE INSTITUTIONS PROGRAM

■ 24. The authority citation for part 609 is revised to read as follows:

Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h, unless otherwise noted.

■ 25. Section 609.10 is amended by revising paragraphs (b)(5) and (6) to read as follows:

§ 609.10 What activities may be carried out under a grant?

* * * * *

(b) * * *
(5) Activities or services that constitute religious instruction, religious worship, or proselytization.

(6) Activities provided by a school or department of divinity. For the purpose of this provision, a “school or department of divinity” means an institution, or a department of an institution, whose program is solely to prepare students to become ministers of religion or to enter into some other religious vocation.

* * * * *

■ 26. Section 609.12 is added to subpart B to read as follows:

§ 609.12 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its

provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1060 through 1063c, and 1068 through 1068h)

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