

The Department believed clarifying the circumstances in which the Secretary may use the existing and longstanding waiver authority under sections 432(a)(6) and 468(2) of the HEA would better inform the public about how the Secretary may exercise this waiver authority in a consistent and equitable manner. Current regulations do not describe how the Secretary uses this waiver authority. We also believed that providing such specificity would allow the Department to highlight circumstances where we are particularly concerned about borrowers' inability to successfully repay their debts in full and where the Department anticipated that the costs of collection would exceed the expected benefits.

However, upon further consideration of the operational challenges in implementing the proposals in the NPRM, the Secretary withdraws the NPRM and terminates the rulemaking proceeding.

In making this decision, we reconsidered the Department's ability to implement the proposed rules if they were finalized in a form identical or largely similar to what was included in the NPRM. With the time remaining in this Administration, the Department is focused on several priorities including court-ordered settlements and helping borrowers manage the final elements of the return to repayment following the Fall 2024 end of the 12-month on-ramp period designed to assist borrowers who were unable to make their payments or who needed more time to access information to determine the right repayment plan for their circumstances. With the end of the on-ramp period, some borrowers may start becoming delinquent and start down the path to default. Given that many newer borrowers are at risk of default, and the Department expects that many of these newer borrowers would not have been otherwise eligible for immediate relief under the proposed rules in the NPRM, along with the uncertainty around the implementation of the NPRM proposals, the Department at this time intends to commit its limited operational resources to helping at-risk borrowers return to repayment successfully. For all of these independently sufficient reasons, the Department is withdrawing this NPRM.

Importantly, the Department is not withdrawing this NPRM and terminating this rulemaking proceeding based upon a changed view of the Secretary's authority under section

432(a) and 468(2) of the HEA, or based upon any preliminary determination about the limitations of such authority. *See Missouri v. Biden*, No. 24-cv-1316, ECF No. 57 (granting preliminary injunction in challenge focused on separate April 2024 NPRM relying on waiver authority). Rather, the Department continues to believe that the NPRM is authorized by the Secretary's longstanding and existing authority under the HEA, as explained in the NPRM. *See, e.g.*, 89 FR 87133-34.

We do not intend for a final rule to be issued on this NPRM. Were the Department to issue a regulation in this area in the future, it would be bound by the requirements of section 492(a) and (b) of the HEA, 20 U.S.C. 1098a(a) and (b).

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Miguel Cardona,
Secretary of Education.

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DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 76

[Docket ID ED-2022-OPE-0157]

RIN 1840-AD72

Direct Grant Programs, State-Administered Formula Grant Programs; Withdrawal

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Department of Education (Department) is withdrawing a notice of proposed rulemaking to rescind regulations related to religious student organizations at certain public institutions of higher education (IHEs). The proposed regulations would have applied to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the Department.

DATES: The notice of proposed rulemaking published in the **Federal Register** at 88 FR 10857 on February 22, 2023, is withdrawn as of December 20, 2024.

FOR FURTHER INFORMATION CONTACT: Scott Prince, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 5th floor, Washington, DC 20202. Telephone: (202) 453-5568. Email: NegRegNPRMHelp@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2020, the Department promulgated a final rule that addressed freedom of speech and the free exercise of religion at institutions of higher education participating in certain programs administered by the Department. *See* 85 FR 59916.¹ On August 19, 2021, the Department announced our intent to conduct a review of these regulations while keeping in mind the importance of several key elements, including First Amendment protections, nondiscrimination requirements, and the promotion of inclusive learning environments for all students.² As part

¹ The Department also published a document with two technical corrections on November 6, 2020, *see* 85 FR 70975.

² Cooper, Michelle Asha. "Update on the Free Inquiry Rule," Department of Education Homeroom

NPRM applied distinct and different eligibility criteria and addressed different challenges with student loan repayment faced by borrowers. *See, e.g.*, 89 FR at 87131 n. 2.

of the review, the Department conducted outreach and held meetings with: (1) higher education and institutional stakeholders, including organizations representing public institutions; (2) faith-based organizations, including organizations representing religious IHEs; and (3) organizations that advocate for civil rights and civil liberties. On February 22, 2023, the Department published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to rescind portions of the rule that became effective on November 23, 2020. See 88 FR 10857. Specifically, the Department proposed to rescind 34 CFR 75.500(d) and 76.500(d), which prescribe a role for the Department in enforcing grant conditions related to religious student organizations at certain public institutions of higher education (IHEs). These regulations apply to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the Department.

The Department accepted public comments on the NPRM from February 22, 2023, through March 24, 2023. In response to that NPRM the Department received approximately 58,000 public comments.

Withdrawal of the Notice of Proposed Rulemaking and Termination of the Rulemaking Proceeding

The Department issued the NPRM to amend 34 CFR parts 75 and 76 and provided its reasons for proposing to rescind the 2020 final regulations in that document. However, upon further consideration, the Department is withdrawing the NPRM and terminating the rulemaking proceeding.

During the public comment period, the Department received approximately 58,000 comments. Several hundred of the comments calling for withdrawal were from individuals and organizations who argued that rescinding the current rule is not necessary because it is not complex or burdensome. Additionally, many comments in support of the current regulations pointed to ongoing issues faced by religious student groups as evidence of the need to keep these regulations. Numerous commenters in favor of rescinding these provisions asserted that the current regulations are not necessary to protect these constitutional freedoms and expressed concern that the regulations could be read to require institutions to afford preferential treatment to religious student groups.

We appreciate the feedback that the Department received in response to the NPRM. In light of the concerns raised by commenters both in support of and in opposition to the proposed rescissions, the forthcoming change in administration, and the significant resources needed to review and consider all relevant matters presented in the public comments, the Department for each of these independent reasons does not believe that finalizing the proposed rescissions is an efficient use of Department resources at this time. Therefore, the Secretary exercises his discretion to withdraw the NPRM and terminate this rulemaking. We do not intend for a final rule to be issued on this NPRM. Any future rulemaking the Department may undertake on this topic would similarly be subject to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*³

Importantly, this withdrawal does not change or alter the Department's role with respect to the other material grant conditions added by the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c). The Department will determine if an IHE has violated the grant conditions in those provisions only if a State or Federal court issues a final, non-default judgment against a public IHE for violating the First Amendment or against a private IHE for violating stated institutional policies. Absent such a judgment, the Department presumes public IHEs to be in compliance with the First Amendment where the alleged violations concern matters other than denial of equal treatment to religious student organizations because of the organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs. Under the 2020 final regulations at §§ 75.500(b) and (c) and 76.500(b) and (c), the Department's role is not to investigate alleged violations of these grant conditions and is limited to deciding whether and to what extent to impose additional penalties where a State or Federal court has rendered a relevant final, non-default judgment.

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³ The Department notes that the 2020 final regulations do not impose conditions on participation in the programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). See 85 FR 59942. Any future rulemaking that would seek to impose conditions on participation in title IV programs would be subject to the negotiated rulemaking requirement in section 492 of the HEA, 20 U.S.C. 1098a.

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Miguel Cardona,

Secretary of Education.

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DEPARTMENT OF EDUCATION

34 CFR Part 106

[Docket ID ED–2022–OCR–0143]

RIN 1870–AA19

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams; Withdrawal

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The U.S. Department of Education (Department) is withdrawing the notice of proposed rulemaking entitled “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams” published in the **Federal Register** on April 13, 2023. The proposed rule would have amended the regulations implementing Title IX of the Education Amendments of 1972 (Title IX).