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FROM: Sarah Parshall Perry, Vice President, Defending Education

TO: U.S. Department of Education

RE: Public Comment in Support of Proposed Rule, "Education Department General Administrative Regulations"; Docket No. ED-2026-OPEPD-2542 | RIN 1875-AA14 (Published August 24, 2026)

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INTRODUCTION

Defending Education (DE) is a national grassroots organization dedicated to securing a high-quality, value-neutral education for every American student. Our organization consists of parents, students, and educators in K-12 and higher education programs across the country. Many of our members are served by—or are themselves employed by—State educational agencies, local educational agencies, institutions of higher education, and nonprofit organizations that apply for and administer discretionary and formula grants awarded by the U.S. Department of Education ("Department"). Because the Education Department General Administrative Regulations ("EDGAR") govern how virtually every Federal education dollar is awarded, monitored, or terminated, our members have a direct and substantial interest in the Department's proposed rule ("proposed rule" or "NPRM").[1]

DE fully supports the proposed rule. The NPRM streamlines and clarifies an often complicated process while addressing long-ignored housekeeping measures that ensure EDGAR's readability. Among others, it reconciles EDGAR with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards as revised by the Office of Management and Budget ("OMB") in April 2024;[2] it consolidates provisions that were previously found elsewhere across Parts 75 and 76; it moves the Department's notice practices onto the same footing already occupied by other Federal agencies; and it states plainly the use of discretion that the Department has always possessed but has not always articulated. Each of these provisions is valuable on its own, but together, they make EDGAR materially easier for a grantee to read and follow, something all administrative regulations ought to be.

Below, we address five features of the proposed rule that we believe warrant the Department's continued commitment through the final rule stage, and close with recommendations intended to make the final rule more durable and administrable for this and future Administrations.

The Proposed Rule Restores Internal Consistency Across EDGAR.

EDGAR's many regulations establish the framework for federal education grants awarded by the Department of Education, including those awarded to local education agencies (LEAs), charter schools,

[1] Education Department General Administrative Regulations, 91 Fed. Reg. 54,666 (proposed Aug. 24, 2026) (to be codified at 2 C.F.R. pts. 3474, 3485 and 34 C.F.R. pts. 75, 76, 77, 79).
[2] Guidance for Federal Financial Assistance, 89 Fed. Reg. 30,046 (Apr. 22, 2024).

and state-administered programs. Part 75 governs direct grant programs; Part 76 governs State-administered formula programs; Part 77 supplies the definitions on which both depend; and Part 79 implements intergovernmental review. Each of these parts operates alongside the OMB Uniform Guidance, which the Department adopted and supplemented at 2 C.F.R. pt. 3474. A grantee that administers both a discretionary award and a formula subgrant—which describes a great many of the institutions our members' children attend, as well as the agencies that serve them—must read all these authorities together. When materially identical obligations are worded differently in Part 75 and Part 76, or when terms are undefined, the practical consequence is that similarly situated recipients receive different answers to the same question.

The proposed rule addresses that problem directly by consolidating, standardizing, and cleaning up language across EDGAR. For example:

(1) Currently, EDGAR contains multiple severability provisions. Severability is addressed in three discrete places in Part 75 and three more in Part 76. Each provision is tied to a particular subject, inviting the inference that the remainder of each part is *not* severable.[3] Sections 75.4 and 76.3 of the proposed rule eliminate that inference by stating a uniform severability rule that applies to the entirety of both Part 75 and Part 76. The proposed rule then removes existing severability language in §§ 75.63, 75.684, 75.741, 76.53, 76.684, and 76.784 to eliminate the surplusage that the previous EDGAR provisions created. The resulting rule is both shorter and clearer.

(2) The proposed rule adds identical language in both § 75.500(f) and § 76.500(f) requiring grantees to ensure that "hiring, admissions, promotions, and compensation practices" are based on merit. The proposal ensures uniformity for both direct-grant recipients and recipients of State-administered grants by stating merit expectations identically in both parts.

(3) In its current form, 34 C.F.R. § 75.51 lists information that an applicant "may" provide to prove its nonprofit status. In practice, though, the Department has treated such showings as mandatory because it is difficult to confirm nonprofit status otherwise. The proposed rule fixes the problem by switching "may" to "must."

(4) The proposed rule updates 34 C.F.R. § 75.118 by correcting stale cross-references to sections in 2 C.F.R. Part 200 that have since been amended.

These kinds of regulatory corrections rarely generate public comment, and that is precisely why they are worth commending. Courts presume that a term used in one place in a regulatory scheme carries the same meaning elsewhere in that scheme.[4] When EDGAR's text defeats that presumption, whether through orphaned cross-references or undefined terms, the burden falls on grantees to ascertain meaning, forcing them to hire counsel to guide them or simply guess. The proposed rule reduces that burden, and we urge the Department to retain each change in the final rule.

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[3] *Cf. Gavett v. Alexander*, 477 F. Supp. 1035, 1050 n.38 (D.D.C. 1979) ("If the statute contains a severability clause, there is a presumption of severability; if, as here, there is no such clause, it is presumed that the statute is not severable.").

[4] *See Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007) (describing "the presumption that a given term is used to mean the same thing throughout a statute"); cf. *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 320 (2014).

The Proposed Rule Brings the Department's Publication of Notices and Priorities into Line with Efficient, Governmentwide Practice.

The proposed amendments to 34 C.F.R. §§ 75.100, 75.104, 75.105, 75.222, 75.224, 79.3, 79.6, and 79.8 share the same premise: the *Federal Register* is no longer the place where applicants actually look for Federal grant opportunities, and requiring the Department to nevertheless publish grant notices in the Register imposes cost and delay without any corresponding benefit.

The Uniform Guidance already prescribes how Federal agencies must announce competitive funding opportunities. Section 200.204 instructs an agency to announce openly competed opportunities, to post summary information, and to make the full text available to applicants ordinarily for at least 60 calendar days (and in no event fewer than 30 absent exigent circumstances).[5] That is the operative notice regime for Federal grantmaking, and nearly every other Federal grantmaking agency operates under it. EDGAR's separate *Federal Register* requirement is an artifact whose time has come.

The costs of that separate notice requirement are real and, as the Department recognizes, quantifiable: the NPRM notes Federal Register publication fees of about $453 per page.[6] Those are education dollars being spent on typesetting rather than on students. But grant applicants bear an even higher cost. As the Department observes, eliminating the duplicate requirement means "applicants would no longer need to monitor multiple sources for grant information. Instead, they can rely on *Grants.gov*."[7] A small rural district or a community-based nonprofit, the sort of applicant least able to staff a compliance office, is the most likely to miss a competition because it was watching one authoritative source rather than two. In that practical sense, consolidating notice is a welcome pro-access measure, consistent with Executive Order 14242's direction that the Department return authority over education to States and localities by making its processes workable for them.[8]

Congress has long urged agencies in this direction. The Federal Financial Assistance Management Improvement Act of 1999 charged agencies with streamlining and simplifying the application and reporting procedures for Federal financial assistance and with developing a common electronic portal for that purpose.[9] *Grants.gov* is the next-generation manifestation of that mandate. Executive Orders 12866 and 13563 likewise instruct agencies to select the least burdensome regulatory approach that achieves the regulatory objective and to periodically review existing rules to identify those that are outmoded or unnecessarily burdensome.[10] Executive Order 14192 reinforces that instruction.[11] A publication requirement that duplicates a governmentwide portal, costs money, and splits applicant attention is one perfectly suited to removal.

However, with the elimination of the Federal Register publication requirement, DE recommends that the Department maintain 2 C.F.R. § 200.204(b)'s 60/30-day floor for publication as a binding EDGAR

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[5] 2 C.F.R. § 200.204(a)–(e); *see also id.* § 200.203 (public notice of Federal financial assistance programs); *id.* app. I (contents of a full notice of funding opportunity).
[6] Proposed Rule, *supra* n.1 (discussing publication costs and reliance on Grants.gov).
[7] *Id.*
[8] Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025).
[9] Federal Financial Assistance Management Improvement Act of 1999, Pub. L. No. 106-107, §§ 2, 5, 113 Stat. 1486, 1486–88.
[10] Exec. Order No. 12,866, § 1(b)(11), 58 Fed. Reg. 51,735, 51,736 (Sept. 30, 1993); Exec. Order No. 13,563, §§ 1(b), 6, 76 Fed. Reg. 3821, 3821–22 (Jan. 18, 2011).
[11] Exec. Order No. 14,192, 90 Fed. Reg. 9065 (Jan. 31, 2025).

requirement to ensure stakeholders have every chance to review and access federal grant-making opportunities.

Finally, the amendment to 34 C.F.R. § 75.222 directing unsolicited applications to *grants@ed.gov* rather than to a physical mailing address simply conforms the regulation to a practice the Department adopted years ago.

The Proposed Rule Clarifies Procedural Approaches, Including the Making of Continuation Awards Under § 75.253.

Section 75.253 has long been among the least understood provisions in EDGAR. It governs whether, when, and in what amount the Secretary continues funding a multi-year project after the first budget period. That is a determination of enormous practical consequence to grantees, and one on which the current text is ambiguous.

The proposed rule, per the Department, revises § 75.253 "to clarify the Secretary's authority to make award decisions, and to clarify the existing practices and agency interpretation that allow the Secretary to rely on additional information in continuation award determinations under § 75.253," and states plainly that the Department's "current practices will be codified in § 75.253."[12] The revisions remove subsection (c)'s priority for continuation awards over new grants, confirm that the Secretary may consider "all pieces of relevant available information to inform a continuation determination, including information from the grant application and previous grantee activity," and address the timing and funding of continuation awards.[13] The NPRM also retains and relocates the existing provision that indicates § 455 of the General Education Provisions Act ("GEPA") does not govern a decision to reduce a continuation award or to decline to make one.[14]

Codifying that understanding is the right course for two reasons. First, it is accurate. A continuation award is a discretionary obligation of funds for a *new* budget period, not a vested entitlement arising from the initial award.[15] Proposed § 75.230(b) says as much: "Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation or other award with respect to any approved application or portion of an approved application."[16] Second, and perhaps more consequential for grantees, the revised regulation provides adequate notice that continuation awards are discretionary and not guaranteed. A grantee that budgets, hires, and makes commitments assuming continuation is automatic has been poorly served by an ambiguous regulation. The proposed revision's clear text, by contrast, enables realistic planning and a clear understanding of statutory obligations and rights.

The NPRM's revisions to § 75.901 are of the same ilk. There, the Department has proposed stating its authority to terminate a discretionary award for convenience, together with clarifying language on termination for noncompliance, by mutual agreement, upon recipient notification, and pursuant to award terms and conditions. As the Department rightly notes, this parallels the existing authority at 2 C.F.R. § 200.340(a)(4), under which a Federal award may be terminated "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program

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[12] Proposed Rule, *supra* n.1 (discussing proposed 34 C.F.R. § 75.253).
[13] *Id.*
[14] *Id.*; *see* 20 U.S.C. §§ 1234(d) (GEPA § 455, withholding).
[15] *See Atkins v. Parker*, 472 U.S. 115, 129-30 (1985).
[16] Proposed Rule, *supra* n.1 (proposed 34 C.F.R. § 75.230(b)).

goals or agency priorities."[17] It also parallels agencies' settled authority to terminate contracts for convenience under the Federal Acquisition Regulation.[18] And it comports with the Supreme Court's recognition that, because Federal grant agreements are contractual in character, applicable terms and statutory obligations must be unambiguous.[19]

We also note that the Uniform Guidance itself requires that termination provisions be "clearly and unambiguously specified" in the terms and conditions of an award.[20] Proposed § 75.901 effectuates that requirement by adding the statement of authority from the terms and conditions of individual awards to the published regulation itself, where every prospective applicant can read it in advance. That will ensure transparency for recipients.

Merit Practices and High Standards Under §§ 75.500 and 76.500 Serve the Statutory Purposes of the Programs the Department Administers.

Proposed §§ 75.500(f) and 76.500(f) require that hiring, admissions, promotions, and compensation practices carried out under a Department grant rest on merit and high standards, without regard to race, color, religion, sex, or national origin, or proxies for those characteristics; that grantees not condition employment, promotion, admission, project participation, or a promised benefit on statements of belief for or against political views. They also require grantees to maintain the free-expression policies (those protecting freedom of speech, inquiry, and press) required by § 75.500(b)–(d) for institutions of higher education (IHE). The Department explains that it "seeks to reinforce its commitment to ensuring excellence as a bedrock component of all Federal education programs," and that its discretionary grants "will be most likely to achieve program objectives if awarded to entities that will emphasize merit, ability, and high standards in their hiring practices, as appropriate."[21]

That reasoning represents a simple expression of longstanding law. The nondiscrimination obligations it recites are already incorporated into § 75.500(a), which requires every grantee to comply with Title VI of the Civil Rights Act of 1964,[22] Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.[23] Proposed paragraph (f) adds an affirmative statement of the principle those statutes embody, with the addition of religion as a protected class.[24] In all, opportunity should—whether governed by EDGAR or other federal law—turn on ability rather than on ancestry, faith, or any immutable characteristic. The Supreme Court reaffirmed this principle in *Students for Fair Admissions* when it wrote that "[e]liminating racial discrimination means eliminating all of it."[25]

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[17] 2 C.F.R. § 200.340(a)(4); Proposed Rule, *supra* n.1 (proposed 34 C.F.R. § 75.901).

[18] 48 C.F.R. §§ 49.502, 52.249-2; *see also Krygoski Constr. Co. v. United States*, 94 F.3d 1537, 1541 (Fed. Cir. 1996).

[19] *See Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[L]egislation enacted pursuant to the spending power is much in the nature of a contract.").

[20] 2 C.F.R. § 200.340(b).

[21] Proposed Rule, *supra* n.1 (proposed 34 C.F.R. §§ 75.500(f), 76.500(f)).

[22] Though we note that Title VI's application to employment is expressly limited by 42 U.S.C. § 2000d-3.

[23] 34 C.F.R. § 75.500(a) (citing 42 U.S.C. §§ 2000d et seq., 6101 et seq.; 29 U.S.C. § 794; 20 U.S.C. §§ 1681 et seq.; and implementing regulations at 34 C.F.R. pts. 100, 104, 106, 110).

[24] However, proposed paragraph (f) *eliminates* disability and age as protected classes. We would strongly encourage the Department to maintain both, in order to ensure consistency with paragraph (a)'s non-discrimination obligation and clarity in interpretation.

[25] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023).

The merit standard is not foreign to Federal administrative practice, either. Congress, for example, has prescribed that "[r]ecruitment" for the Federal civil service should target "qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity."[26] Proposed §§ 75.500(f) and 76.500(f) ask little more of grant-funded activity than Congress has long asked of the Federal workforce itself.

The compelled-belief component of proposed paragraph (f) likewise comports with settled constitutional law, while extending the existing obligations of IHE's to protect free speech, expression, and religion to LEAs, charter schools, States, and community nonprofits. While a new obligation for non-IHE grantees, this is a welcome development: conditioning employment, promotion, admission, or a promised benefit on an affirmative statement of political belief is the kind of compelled ideological endorsement that the Supreme Court has long abhorred. It held over eighty years ago that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[27] More recently, the Court reaffirmed that "measures compelling speech are at least as threatening" to First Amendment values as measures restricting it.[28] Extending that principle to activity paid for with Federal education funds is a modest and defensible exercise of the Secretary's authority to prescribe rules governing program administration.[29]

We also commend the Department for drafting the provision with clear exceptions that leave nothing else to be implied. Proposed paragraph (f) preserves the position of religious organizations, consistent with Title VII's religious-employer exemption,[30] and preserves the position of organizations operating under government-ordered remedial action. By naming those exceptions in text, the Department has provided clarity that religious grantees can rely on.

Finally, extending the same merit expectation to Part 76 is important. State-administered formula programs move the largest share of the Department's funds. A merit expectation that applied only to discretionary awards under Part 75 would reintroduce precisely the asymmetry between Parts 75 and 76 that the rest of the NPRM attempts to eliminate.

The Proposed Rule Clarifies Much of the Authority the Department Already Possesses.

A recurring feature of the NPRM, and one we want to emphasize, is that the Department claims little new power. The termination authority stated in proposed § 75.901 is, as the Department says, "similar to the existing authority at 2 C.F.R. 200.340(a)(4)."[31] The continuation-award revisions codify "existing practices and agency interpretation."[32] The high-risk conditions clarified at 2 C.F.R. § 3474.10 rest on 2 C.F.R. § 200.208. The merit obligations of proposed §§ 75.500(f) and 76.500(f) rest on civil rights statutes long since incorporated at § 75.500(a). And the amendments to § 75.105 do not create priorities the

[26] 5 U.S.C. § 2301(b)(1).
[27] *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).
[28] *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 585 U.S. 878, 893 (2018).
[29] 20 U.S.C. §§ 1221e-3, 3474.
[30] 42 U.S.C. § 2000e-1(a); *see also Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 339–40 (1987); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–47 (2020).
[31] Proposed Rule, *supra* n.1 (proposed 34 C.F.R. § 75.901); 2 C.F.R. § 200.340(a)(4).
[32] Proposed Rule, *supra* n.1 (proposed 34 C.F.R. § 75.253).

Secretary could not otherwise establish but simply clarify where the Secretary announces those priorities.[33]

Any ambiguity within this framework would be expensive for grantees. A single grantee could, for example, be subject at the same time to a program statute, to GEPA, to the Department of Education Organization Act, to the OMB Uniform Guidance adopted by the Department in 2 C.F.R. pt. 3474, to the non-procurement debarment rules at 2 C.F.R. pt. 3485, to EDGAR Parts 75 through 79, to the enforcement provisions of 34 C.F.R. pt. 81, and to the terms and conditions of its own award. Reconciling these provisions is difficult for a well-resourced university but nearly impossible for a small charter school. When the governing rule is written down, a grantee can read it, plan around it, and if necessary, challenge it.

Agencies must give regulated parties "fair warning of the conduct a regulation prohibits or requires."[34] A regulation must be likewise sufficiently clear that "regulated parties know what is required of them so they may act accordingly."[35] The clear-statement principle applicable to spending conditions reinforces these terms. Conditions on Federal funds must be imposed unambiguously so that recipients can "exercise their choice knowingly, cognizant of the consequences of their participation."[36]

Regulatory clarity is more important now than ever in the wake of *Loper Bright Enterprises v. Raimondo*. Today, an agency's reading of an ambiguous statute no longer commands judicial deference,[37] and even under *Kisor v. Wilkie,* deference to an agency's reading of its *own* regulation is available only after a court has exhausted the traditional tools of construction and found genuine ambiguity.[38] An agency that wants its practices understood and followed should concretize them in the regulatory text, adopted after notice and comment. This rulemaking does just that, subjecting the Department's existing practices to public scrutiny and comment before codifying them.

RECOMMENDED CLARIFICATIONS AND IMPLEMENTATION GUIDANCE

While DE supports the proposed rule, we offer the following recommendations to strengthen it and to reduce the likelihood of avoidable disputes during implementation.

Define the operative terms in proposed §§ 75.500(f) and 76.500(f).

The final rule, or its preamble, should clarify (i) whether the phrase "under the grant" reaches only positions and activities charged to the Federal award or the grantee's program more broadly; (ii) what the Department means by "proxies" for protected characteristics, with illustrative examples; (iii) that the religious-organization exception offer no less protection than that offered by 42 U.S.C. § 2000e-1(a) and is not narrowed by the rule; and (iv) whether the assurance is executed at application, at award, or annually, and how it interacts with other assurances grantees already provide. These definitions and terms will prevent the provision from being read more broadly, or more narrowly, than the Department intends.[39]

Specify the procedural incidents of a termination for convenience under § 75.901.

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[33] *See* 34 C.F.R. § 75.105(b) (methods by which the Secretary may establish priorities).
[34] *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156 (2012) (cleaned up).
[35] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).
[36] *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).
[37] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024).
[38] *Kisor v. Wilkie*, 588 U.S. 558, 573–79 (2019).
[39] 42 U.S.C. § 2000e-1(a); *see also* Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb-1.

The final rule should state the precise form and timing of the written notice a recipient will receive, its effective date, the Department's treatment of allowable costs incurred before termination, its treatment of closeout costs, and whether and how 34 C.F.R. pt. 81 or the hearing provisions of GEPA apply. The Department should also clarify that award terms and conditions will state the convenience authority "clearly and unambiguously," as 2 C.F.R. § 200.340(b) requires. All this is consistent with the Department's retention of discretion and will substantially reduce the possibility of future litigation.[40]

Clarify that notice-and-response practice for reductions and non-continuations under § 75.253 is retained in a different paragraph.

Currently, § 75.253(g) requires that, for non-continuation decisions, the Secretary "will notify the grantee of that decision [and] the grounds on which it is based" and, "consistent with 2 CFR 200.342, provide the grantee with an opportunity to request reconsideration." We note that paragraph (g) has been moved forward to (h), and commend the Department, as a matter of sound administration, for retaining opportunities for grantees to respond before such decisions take effect. But we urge the Department to clarify that the opportunity to submit written comment and request reconsideration—essential procedural protections when high-dollar contract awards are at stake—is retained, though relocated.

CONCLUSION

The Department's proposed rule carefully modernizes a framework that has grown internally inconsistent. It harmonizes Parts 75 and 76, aligns the Department's notice and priority-setting practices with the Uniform Guidance and with common Federal practice, confirms the procedural discretion the Secretary has long exercised over continuation awards and terminations, and reinforces merit and high standards as expectations for federally funded activity. It also restores fiscal responsibility to an agency long over-extended by prioritizing competitive preference for applicants voluntarily charging lower indirect costs and clarifies the process by which the Department may frontload grant funds.

DE respectfully urges the Department to finalize the proposed rule with the clarifications and implementation guidance described above so grantees, applicants, States, and the students they serve can proceed with the certainty federal law demands.

Respectfully submitted,

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[40] 2 C.F.R. § 200.340(b); *see also id.* §§ 200.343–200.344 (effects of suspension and termination; closeout); 34 C.F.R. pt. 81.