

July 20, 2022



Carole Johnson
Administrator
Health Resources and Services Administration

Dr. Luis Padilla
Associate Administrator
Bureau of Health Workforce

Tammy Mayo-Blake
Health Resources and Services Administration

Sent via email

Dear Administrator Johnson, Dr. Padilla, and Ms. Mayo-Blake,

I am an attorney at the Foundation Against Intolerance & Racism (FAIR), a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties, and promoting a common culture based on fairness, understanding, and humanity. We have more than ninety chapters and tens of thousands of members nationwide. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write regarding the Centers of Excellence (COE) grant administered by the Health Resources and Services Administration (HRSA). Among other things, the COE grant provides stipends for individuals pursuing degrees in medical and health care professions. 42 U.S.C. sec. 293. In its Notice of Funding Opportunity (NOFO), the HRSA has limited those stipends only to individuals deemed to be members of underrepresented minority groups. (2022 NOFO, HRSA-22-042, pp. 27). Furthermore, the NOFO establishes that only schools which meet certain minimum percentages of URM students are eligible for the COE grant. (Ibid, pp. 11-13). The NOFO provides three tables which specify “the minimum graduation percentage of [Hispanic/Native American/ “Other URM”] students earning a health professions degree ... required for a [school] to qualify as a [Hispanic/Native American/ “Other URM”] COE program applicant.” (2022 NOFO, pp. 11-13)

As an organization committed to pro-human anti-racism, FAIR supports efforts to achieve greater fairness and advance worthy initiatives in medical education, including promoting a diverse workforce. We believe, however, that HRSA’s policies regarding the COE grant violate the Constitution’s equal protection guarantees by restricting eligibility for grants based on the racial composition of medical schools and restricting stipends based on students’ skin color and ancestry. Relatedly, recipients of the COE grant would violate Title VI of the Civil Rights Act by complying with HRSA’s requirement that only URM students can receive stipends.

In *Adarand Constructors, Inc. v. Peña* 515 U.S. 200 (1995), the Supreme Court held that granting a preference to minority-owned businesses in awarding federal contracts was, like all classifications based on race, subject to strict scrutiny. Under *Adarand*, HRSA's use of the racial composition of a school to determine eligibility for the COE grant is subject to strict scrutiny. Government programs that award benefits based on race, such as HRSA's racial composition eligibility requirements for COE grants, will pass strict scrutiny only if the entity proves it has a compelling interest in treating applicants differently based on skin color, and the means used to achieve that interest are narrowly tailored.

HRSA's racial composition requirements do not satisfy strict scrutiny. While HRSA may have a compelling interest in administering the COE grant to promote diversity in the medical workforce, these eligibility requirements are not necessary to further that goal. HRSA could instead consider the broader efforts of the school to promote a diverse workforce; the NOFO itself suggests some of the relevant factors that could be considered, including student recruitment efforts, financial support, and faculty diversity. Furthermore, the Supreme Court has long held that furthering that compelling interest in diversity requires programs "flexible enough to consider all pertinent elements of diversity" beyond just racial categorization or ancestry. *Grutter v. Bollinger*, 539 U.S. 306, 309. Accordingly, any program that makes "race or ethnicity the defining feature of the application," cannot be narrowly tailored. *Ibid*. Because requiring a particular racial quota of graduates is neither necessary nor narrowly tailored, this eligibility criteria violates the Constitutional guarantee of equal protection.

The COE Program also violates the guarantee of equal protection by requiring that "stipends for student participants may be awarded only to URM individuals to encourage participation and provide support needed to participate in structured programs of the COE Program." (2022 NOFO, HRSA-22-042, pp. 27). The NOFO defines URM as "racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population," and specifies that "Asian individuals shall be considered by the various subpopulations of such individuals." (*Ibid*, pp. 9). This requirement is facially discriminatory and explicitly classifies people by race and ethnicity for the purposes of awarding a benefit. Therefore, this rule is also subject to strict scrutiny, which it does not satisfy for largely the same reasons as the racial composition requirements. Because this requirement makes "race or ethnicity the defining feature" of eligibility for a stipend under a COE grant, the requirement cannot satisfy strict scrutiny.

Finally, COE grant recipients would violate Title VI of the Civil Rights Act if they complied with HRSA's requirement that stipends only be awarded to URM students. Title VI provides that:

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. By virtue of accepting federal funds through a COE grant, schools are subject to Title VI's prohibition on discrimination. It is well established that under Title VI racial classifications like the stipend eligibility criteria are subjected to the same strict scrutiny analysis as under the Equal Protection Clause. Accordingly, for the reasons established above, if a school complies with HRSA's requirement and restricts stipend eligibility to URM students, that school will be in violation of Title VI.

In light of the above, we urge HRSA to take the following actions:

- 1) Remove the requirement that a particular percentage of graduates of a medical school be of a particular racial categorization or ethnicity for that school to be eligible for a COE grant. Ensure that no pending COE applications are denied because a school failed to meet these quotas and that no future cycles of the COE grant include or enforce such a requirement.
- 2) Remove the requirement that stipends may only be awarded to URM students. Ensure that no pending COE applications are denied for failing to adequately award stipends only to URM students and that no future cycles of the COE grant include or enforce such a requirement.
- 3) Promptly inform all COE grant recipients that they are prohibited from restricting stipends or any other benefit on the basis of racial categorization, ethnicity, or skin color. Monitor all COE grant recipients to ensure they act expeditiously to adjust their COE programs to comply with Title VI and other applicable civil rights laws.
- 4) Require all future applicants for the COE grant to demonstrate that their proposed uses for the COE funds, including stipends, comply with Title VI and other applicable civil rights laws.

We believe that these changes would further HRSA's efforts to move the medical profession and the country toward greater diversity and inclusion.

We would like to give HRSA an opportunity to respond. Please let us know within the next week if you intend to do so.

Very truly yours,



Leigh Ann O'Neill
Staff Attorney

Foundation Against Intolerance & Racism