SCHOLARS
STRATEGY NETWORK

Nondiscrimination in Federally-Assisted Programs of the Department of Veterans Affairs

Kendall Dwayne Deas, University of South Carolina-Columbia

Re: U.S. Department of Veterans Affairs' Plan Regarding Title VI and Eliminating Disparate-Impact Liability from the VA's Regulations.

Dear Secretary Douglas Collins:

Thank you for the opportunity to comment on RIN 2900-AT04: "Nondiscrimination in Federally Assisted Programs of the Department of Veterans Affairs." I am Dr. Kendall Deas, an Assistant Professor of Education Policy, Law, and Politics in the Department of African American Studies with the McCausland College of Arts and Sciences at the University of South Carolina. I respectfully submit this public comment to express concerns regarding the Department of Veteran Affairs' proposed rule to eliminate disparate-impact liability from its Title VI regulations and limit enforcement exclusively to cases that involve intentional discrimination. The proposal would remove long-standing protections against policies and practices that, while on the face neutral, would produce significant discriminatory effects on veterans based on race, color, or national origin. As a scholar of education policy and law, I have engaged in research on racial inequality and the law. Specifically, I have written about the adverse effects school voucher programs can have on public schools serving Black students most recently in "How School Choice Policies Evolved from Supporting Black Students to Subsidizing Middle-Class Families."

While intentional discrimination must clearly remain prohibited, restricting Title VI enforcement to intentional acts of discrimination overlooks how discrimination tends to operate in today's institutions. Moreover, numerous studies and government reports on racial inequality along with health equity experts have documented that systemic barriers can frequently be embedded in existing policies that don't explicitly target protected groups yet nevertheless produce unequal outcomes. With the Department of Veteran Affairs eliminating disparate-impact liability, this proposed rule could significantly weaken the Department's capacity to identify and correct such barriers.

There are several misconceptions behind the department's proposed rule pertaining to Title VI regulations. First, the proposed rule is inconsistent with extensive evidence that racial and ethnic disparities continue to persist within veterans' health care and benefits systems. For example, the Department of Veteran Affairs' own National Veteran Health Equity Report found measurable disparities in patient experiences and quality of healthcare across racial and ethnic groups. In fact, pursuing the preparation of the report was undertaken by the department specifically to identify and address those disparities. This report was significant as it emphasized the critical need to reduce inequities and expressly recognized that these disparities remain present today within the veteran population in our nation.

In a similar vein, the Government Accountability Office (GAO) has consistently documented over time racial and ethnic disparities affecting our nation's veterans. For example, in 2019, the GAO reported that the Department of Veterans Affairs had identified worse health outcomes among some racial and ethnic minority veterans such as lower survival rates for Black veterans with certain types of cancer and cardiovascular illnesses. In fact, the GAO further concluded that the Department of Veterans Affairs was in dire need of stronger mechanisms to help identify, measure, and most importantly address these disparities.

Recently, the GAO found substantial disparities with veterans regarding disability compensation outlines. An analysis of claims by the GAO from 2010 through 2020 showed that African American veterans had the lowest approval rates among all racial and ethnic groups with an approval rate of 61 percent compared to 75 percent for White veterans. In addition, the GAO also reported existing disparities across several specific medical conditions and recommended further investigation into the root causes. These findings are significant as they demonstrate that unequal outcomes can exist even without direct evidence of discriminatory intent. Moreover, if disparate-impact liability is eliminated from Title VI regulations, many policies that contribute to these disparities run the risk of becoming effectively immune from challenge unless a complainant can prove intentional discrimination, which is often a high bar with our legal system.

Second, requiring proof of intentional discrimination is dismissive of decades of social science research which shows that intentional discrimination can often frequently manifest itself through neutral policies rather than overt bias. In fact, discrimination today is often structural, operating through administrative procedures, communication practices, or resource allocation decisions for example, that have disproportionate effects on protected populations. Further, experts in health equity consistently recognize structural discrimination as a significant contributor to disparities in health outcomes and access to care.

The practical consequence of this proposed rule is that discriminatory effects may persist unless direct evidence can be uncovered that officials acted with discriminatory motives. However, such evidence is sparse because contemporary, modern-day organizations rarely adopt openly discriminatory policies. As a result, a pure-intent based standard being proposed currently by the VA would narrow the government's capacity to address real-world inequities in our society.

Third, recent research demonstrates that racial and ethnic disparities remain present even in VA-funded care environments. For example, a 2024 study examining more than 230,000 veterans who received VA-funded community care found that African American and Hispanic veterans consistently reported worse expectations in several key areas such as provider communication, scheduling appointments, billing, and overall evaluations of care. To improve equity and veteran experiences, researchers concluded that focused interventions were needed. However, findings such as these do not necessarily indicate intentional discrimination by providers or administrators. Rather, the findings suggest that there are systemic barriers disproportionately affecting certain groups. The value of keeping disparate-impact liability and disparate-impact enforcement as components of Title VI regulations is that they provide a critical mechanism for both identifying and addressing barriers before they become entrenched. Moreover, the proposed elimination of these authorities would leave our nation's veterans with fewer protections against inequitable outcomes.

Another concern is the proposal may undermine public confidence in federally funded veterans' programs. Veterans from historically marginalized communities have experienced documented disparities in both healthcare and benefits administration. The VA itself recognizes these concerns and in 2024, it introduced an Equity Action Plan with the intention of reducing disparities in medical treatment, access to benefits, and

claims outcomes after internal reviews and external studies identified persistent inequities.

Finally, the Department of Veterans Affairs should recognize that the standards associated with disparate-impact liability have served as a critical preventive function for decades in our nation. These standards do not require quotas or mandate equal outcomes. Rather, they help ensure that recipients of federal funds assess whether policies unnecessarily burden protected populations. When major disparities are identified, organizations can modify procedures, enhance language access, improve outreach, revise eligibility criteria, or even adopt other measures that promote fairness and equality without compromising the department's program objectives.

For these reasons, I respectfully urge the Department of Veteran Affairs to withdraw or substantially revise the proposed rule regarding Title VI. The evidence demonstrates that we still live in a society where racial and ethnic disparities continue to affect the healthcare experiences, benefits access, and health outcomes of many veterans. Further, limiting Title VI enforcement exclusively to intentional discrimination would make it more difficult to identify and remedy systemic barriers. The proposed rule for Title VI would weaken protections for veterans from vulnerable populations and undermine the VA's broader commitment to advance equity and equal opportunity.

Whether it be discrimination that is intentional or unintentional, the outcome can still be harmful for individuals from vulnerable populations who are the victims or on the receiving end of these actions. Moreover, veterans deserve a civil rights framework capable of addressing both deliberate discrimination and policies that unnecessarily produce discriminatory effects. Most importantly, maintaining disparate-impact accountability should be an essential component of that framework.

Respectfully Submitted,

Kendall Deas, Ph.D

How School Choice Policies Evolved from Supporting Black Students to Subsidizing Middle Class Families, Kendall Deas, *The Conversation,* June 9, 2025.

National Veteran Health Equity Report 2021

VA Health Care: Opportunities Exist for VA to Better Identify and Address Racial and Ethnic Disparities

Veteran Health Equity: Reflecting on Patient Experiences and Unmet Health Needs Among Veterans of Color

New Study Documents Racial and Ethnic Disparities in Veterans' Experiences With VA-Funded Community Care

Racial and Ethnic Differences in Health Care Experiences for Veterans Receiving VA Community Care from 2016 to 2021

Unequal Treatment of Black, Minority Veterans Triggers New VA Plan to Weed Out Disparities

VA Disability Benefits:Actions Needed to Further Examine Racial and Ethnic Disparities in Compensation