Thank you for accepting my comments on the U.S. Department of Education's Notice of Proposed Rule Making regarding Direct Grant Programs, State-Administered Formula Grant Programs. On behalf of the American Council of Trustees and Alumni (ACTA), I urge you to reconsider rescinding § 75.500(d) and § 76.500(d) which prohibit public institutions of higher education from denying to any student organization whose stated mission is religious in nature "any right, benefit, or privilege that is otherwise afforded to other student organizations because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely-held religious beliefs."

The department seeks to rescind these regulations because it argues that "they are not necessary to protect the First Amendment right to free speech and free exercise of religion; have created confusion among institutions; and prescribe an unduly burdensome role for the Department to investigate allegations regarding IHEs' treatment of religious student organizations."[1] These arguments are simply not true. In fact, there are multiple recent instances in which religious student groups at public higher education institutions were treated unfairly due to their stated missions.

Consider the 2021 lawsuit between the University of Nebraska–Lincoln and the student group Ratio Christi, an organization that seeks to advance, teach, and defend Christian beliefs. This group requested student activity funding of $1,500 from the university to invite Notre Dame University Professor Robert Audi to give a lecture on the rationality of believing in God. The university denied the group's request, expressing that the school would not promote "speakers of a political or ideological nature," even though student organizations with secular missions were regularly allowed to invite speakers without pushback from university administration. In response, Ratio Christi filed a lawsuit in Nebraska's U.S. District Court, and in December 2022, two university officials agreed to settle the case, as well as change the university's policies to ensure fair and viewpoint-neutral treatment of student groups.[2]

In 2020, the Students for Life group at the Georgia Institute of Technology filed a lawsuit against several officials, alleging that the group was discriminated against because it was denied a request for funds to invite pro-life activist Alveda King to an event. The lawsuit claimed that the student government association denied funding on account of Ms. King's religious and pro-life views, a violation of the civil liberties guaranteed by the First Amendment and Fourteenth Amendment. Later that same year, Georgia Tech officials agreed to a settlement with Students for Life and corrected the institution's policies.[3]

Even though both lawsuits reached settlements and both institutions agreed to update their policies, these stories clearly demonstrate the necessity of the regulations that the Department of

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[1] U.S. Department of Education, "Direct Grant Programs, State-Administered Formula Grant Programs Proposed Rule," ED-2022-OPE-0157-0001, posted February 22, 2023, https://www.regulations.gov/document/ED-2022-OPE-0157-0001.

[2] Leah MarieAnn Klett, "Christian group wins lawsuit against university that denied funding of philosopher's lecture on God," *The Christian Post*, December 20, 2022, https://www.christianpost.com/news/christian-group-wins-discrimination-lawsuit-against-university.html.

[3] Michael Gryboski, "Pro-life students sue Georgia Tech over refusal to fund Alveda King event," *The Christian Post*, April 3, 2020, https://www.christianpost.com/news/pro-life-students-sue-georgia-tech-over-refusal-to-fund-alveda-king-event.html.

Education is proposing to rescind. All student organizations at both public and private colleges and universities should be afforded equal opportunities to advance their missions so long as their actions do not conflict with constitutional protections.

Furthermore, the Higher Education Act of 1965 requires religious liberty protections:

> SEC. 112. [20 U.S.C. 1011a] PROTECTION OF STUDENT SPEECH AND ASSOCIATION RIGHTS. (a) PROTECTION OF RIGHTS.—(1) It is the sense of Congress that no student attending an institution of higher education on a full- or part-time basis should, on the basis of participation in protected speech or protected association, be excluded from participation in, be denied the benefits of, or be subjected to discrimination or official sanction under any education program, activity, or division of the institution directly or indirectly receiving financial assistance under this Act, whether or not such program, activity, or division is sponsored or officially sanctioned by the institution. (2) It is the sense of Congress that— (F) nothing in this paragraph shall be construed to modify, change, or infringe upon any constitutionally protected religious liberty, freedom, expression, or association.[4]

These stories, and others like them, along with existing statute, are reason enough for the Department of Education to continue to investigate allegations of unfair treatment of religious student organizations and, if necessary, to rescind full or partial grant funding until the institution corrects its policies.

[4] "Higher Education Act of 1965." U.S. Government Publishing Office. Accessed March 23, 2023. https://www.govinfo.gov/content/pkg/COMPS-765/pdf/COMPS-765.pdf.