



March 19, 2024

Submitted electronically

Kevin E. Bryant  
Deputy Director  
Office of Directives Management  
U.S. Department of State  
2201 C Street, NW  
Washington, DC 20451

**Re: Public comment regarding the proposed rule “Nondiscrimination in Foreign Assistance”**  
**RIN: 1400–AF66**

Dear Deputy Director Bryant:

Family Research Council (FRC) is a nonprofit research and educational organization whose vision is a prevailing culture in which all human life is valued, families flourish, and religious liberty thrives. We respectfully submit the following comment regarding the proposed rule “Nondiscrimination in Foreign Assistance.”

Action Requested of the Department of State

We ask the Department of State to withdraw this notice of proposed rulemaking (NPRM) and leave the current award terms in place.

Background

On January 19, 2024, the Department of State (“the Department” or “State”) published a notice of proposed rulemaking inviting comment regarding proposed regulations that seek to implement non-discrimination principles in “Department-funded foreign assistance activities.”<sup>1</sup> The Department is proposing to add a new award entitled “Nondiscrimination in Foreign Assistance.” As the NPRM notes, “[t]he proposed award term expressly states that recipients and subrecipients receiving Department-funded foreign assistance funds must not

discriminate on specified bases” against the beneficiaries. Additionally, recipients receiving such Department funds must not discriminate in certain ways regarding the employment decisions of those hired to perform the grant.<sup>2</sup>

The NPRM proposes that the following award term, in part, be incorporated in Department of State federal awards as applicable:

Department of State policy requires that the recipient or grantee not discriminate on the basis of race, ethnicity, color, religion, sex, gender, sexual orientation, gender identity or expression, sex characteristics, pregnancy, national origin, disability, age, genetic information, indigeneity, marital status, parental status, political affiliation, or veteran’s status or any factor not expressly stated as permissible in the award....<sup>3</sup>

The provision’s myriad restrictions are so all-encompassing that one pities any grant recipient trying to comply with them. Is anyone in a foreign country supposed to be able to understand these provisions without an American legal team?<sup>4</sup>

### Embedding Equity

Early on, the NPRM states its opposition to discrimination against foreign assistance beneficiaries and potential beneficiaries:

Because of this premise, *which underpins all of the Department’s programs*, the Department is *embedding equity* across its foreign affairs work and raising the visibility of inequities globally by providing equal opportunities for all eligible individuals, including members of minority groups and members of other underserved communities, through its foreign assistance programs.<sup>5</sup>

This may seem like boilerplate language, but it is not. This statement reflects an administration-wide commitment to emphasizing “equity” in its policies.

In fact, President Joe Biden’s first executive order was E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”<sup>6</sup> The E.O., issued in January 2021, called on each federal department and agency to produce, among many other things, an equity action plan to outline its implementation plans and efforts of the order.<sup>7</sup> It would be difficult to overemphasize the energy the Biden administration has placed and continues to place on driving “equity” as an ideological centerpiece of its efforts to transform the function and activities of the entire federal government. This push is clearly part of an effort to ideologically reframe or transform the focus and efforts of the American government and society.

In accordance with E.O. 13985’s mandates, the Department issued its first equity action plan in April 2022.<sup>8</sup> The Department issued an update in February 2024 titled the “2023 Equity Action Plan.”<sup>9</sup> Both plans make clear that they intend to “embed” equity in American foreign policy. The 2022 Equity Action Plan lays out its focus on embedding equity and its linkage of equity to foreign assistance:

The State Department will engage high-level diplomatic partners and individuals worldwide from underserved racial and ethnic groups and other underserved communities to better assess and *embed equity* into U.S. foreign policies.

\* \* \* \*

*In foreign assistance*, the State Department will establish key reporting requirements and *equity* analysis tools to align priorities and operations around *advancing racial equity* and supporting underserved communities through international aid.<sup>10</sup>

Similar statements were made in the update to the plan released in February 2024, making clear that the Department has a deep commitment “to embed equity into all aspects of federal decision-making.” “Over the past two years,” the Secretary noted, “we increased our efforts to *embed equity* in our foreign affairs work through diplomatic engagements, high-level dialogues, multilateral efforts, foreign assistance...and procurement and contracts.” Such efforts have brought more visibility to “racial and other inequities,” which “generated better-informed foreign policy to decrease barriers to equity and equality worldwide.”<sup>11</sup>

### The Purpose of This Focus on Equity and Embedding Equity

“Equity” is a keystone conceptual term in neo-Marxist social justice theory. If asked about it, most Americans would assert that “equity,” a slightly unusual term, means something akin to “equality,” and in everyday parlance, they would be correct. However, that is not the case in the context of social justice theory. In that context, which is the context that applies to the Biden administration’s usage of the term, “equity” is radically different.

This new social justice “equity” is not about equal treatment at all. Rather, “equity” requires the redistribution of resources (*e.g.*, power, income, education, jobs) to correct unjust power relationships and structures that have long existed in society. With that in mind, “equity” most likely entails the payment of reparations in some form to dispossessed or oppressed groups.<sup>12</sup> Someone elevating “equity” in their political program does not intend to create a society that provides equality of opportunity and a “level playing field.” In fact, such advocates tend to believe that there never has been or ever will be a “level playing field” or equality of opportunity. Such advocates want equality of outcomes, and inequality of outcomes represents structural injustices in the society.

Therefore, “equity” seeks to tilt the playing field by redistributing resources, power, privilege, etc. Furthermore, “equity” requires discrimination against holders of power and privilege (discriminating against the “oppressors” on behalf of the “oppressed”). The Department’s 2023 Equity Action Plan focuses on “marginalized and underserved communities” because it intends to support social and

political transformation around the world—to the detriment of more traditional activities like providing resources that would assist in the provision of electricity, clean water, and other society-wide economic capacity. This foreign policy is designed to find and support disaffected groups overseas that mirror the ideological proclivities of the American social justice movement and all its components. The foreign policy outline in the Department’s 2023 Equity Action Plan is an activist foreign policy intent on creating transformational or revolutionary infrastructures.

Critical Race Theory (CRT) is a subset of the critical social justice movement. Perhaps the foremost text used to introduce its concepts is *Critical Race Theory: An Introduction* by Richard Delgado and Jean Stefancic.<sup>13</sup> Delgado and Stefancic succinctly describe the core elements of this political, ideological movement. As they describe it, CRT is not a philosophical discipline. Rather, “[t]he critical race theory...movement is a collection of activists and scholars engaged in studying and transforming the relationship among race, racism, and power.”<sup>14</sup> They compare CRT with its predecessor worldview: “[u]nlike traditional civil rights discourse, which stresses incrementalism and step-by-step progress, critical race theory questions the very foundations of the liberal order, including equality theory, legal reasoning, Enlightenment rationalism, and neutral principles of constitutional law.”<sup>15</sup> For CRT proponents, liberals also err because “[t]hey believe in equality, especially equal treatment for all persons, regardless of their different histories or current situations.”<sup>16</sup>

The Biden administration seeks to “embed equity” across the U.S. government. This is not a minor thing. This new ideology they seek to embed is not about dispensing equal treatment before the law for all persons, which is the traditional understanding of the Constitution’s Equal Protection Clause. Rather, the focus here is not on protecting the individual’s rights but that of a group.

Liberalism’s core principle of non-discrimination against specific groups has been replaced with a focus on leveling outcomes so that all groups are treated “equitably.” It is a modern version of Karl Marx’s slogan: “From each according to his abilities, to each according to his needs.”<sup>17</sup> And the groups that matter the most are the “marginalized and underserved,” which include those that are systemically oppressed on account of race, gender, sexual orientation, gender identity, and many other categories, as we read in the NPRM.

It turns out that “embedding equity” is a social justice term found in many documents. One document produced by the National League of Cities in 2021 sheds helpful light on the term. Although the document is a euphemism-filled guide to taking over a community’s “early childhood agenda,” the League explains the role that “equity” must play in this process:

The principle of *equity* acknowledges that there are historically underserved and underrepresented populations and that *fairness* regarding these *unbalanced conditions* is needed to *assist equality* in the provision of effective opportunities to *all* groups. (Equity Advisor Council, 2013) A goal of *equity can be* to create conditions that allow *all* to reach their full potential, *erasing disparities* in race, ethnicity, socio-economic status, ability, geographic location, gender, religion, and sexual orientation.<sup>18</sup>

So, they are going to fix disparities of outcomes, not by providing equal opportunities, but by “creat[ing] conditions” that will “allow *all* to reach their full potential.”<sup>19</sup>

Most informative was an observation made in the “Actions to Embed Equity” section of the National League of Cities’ policy brief. Clearly fundamental to the success of the whole enterprise (*i.e.*, embedding equity) is its call to “create[e] a shared vision.” The brief urged its advocates to engage and listen to the community and stakeholders in order to “understand the current landscape.” But this was done for a seemingly ulterior motive: “Embedding equity includes disrupting the current narratives and building a shared vision where all can be who they are meant to be.”<sup>20</sup> Or, as one Christian author described such activities, “The only way to reconstruct reality in a just way is to subvert dominant discourses—and this requires control of speech.”<sup>21</sup>

In other words, “embedding equity,” whether inside an organization, a local government, a foreign society, or a foreign government, is about disruption. It is about disrupting the “narrative” or core beliefs that undergird the societies or countries being targeted. Postmodern Marxists seek to target, subvert, transform, and dominate by embedding their “shared vision where all can be who they are meant to be.” In June 2023, Family Research Council examined the myriad ways the Biden administration attempted to disrupt narratives in traditional religious societies through public diplomacy and other means at its disposal.<sup>22</sup> One way that equity can be embedded into the foreign assistance programs of the United States is to require the inclusion of extremely expansive non-discrimination categories that disqualify traditionally minded people from contracting or receiving grants.

The “equity embedding” social justice framework of the Biden administration and this Department of State bodes ill for America’s foreign assistance funding. It has wiped away all traces of the idealistic optimism of JFK-style liberalism and replaced it with a much-hated racialized, psycho-sexual imperialism. Unfortunately, the two rulemakings presented by the Department of State are designed to “embed” this radical political vision into America’s foreign policy apparatus by mandating ideological conformity to the administration’s agenda. And, as this NPRM indicates, the Biden administration intends to do this in U.S. foreign assistance programs.

#### Family Research Council Has a Different Vision for America

So, as we see it, the Biden administration has left American liberalism behind and has embraced an activist agenda based on critical social justice principles. A form of postmodern, neo-Marxism now appears to be the operating ideology of the U.S. government. As such, we cannot support your effort to implement a revolutionary or “transformative” foreign policy seeking to use the resources of the United States to advance a cultural-sexual imperialism around the world. Furthermore, we oppose your efforts to insinuate this ideology into all facets of the federal government, including the nation’s foreign assistance programs, without honestly informing the American people as to what is you are all about and gaining their approval beforehand.

FRC is a non-profit organization whose vision for America is one in which “a prevailing culture in which all human life is valued, families flourish, and religious liberty thrives.” We reject the critical

social justice framework the Biden administration has embraced and believe it is producing a disastrous foreign policy that has created anti-American animosity the world over.

FRC believes, as do all orthodox Christian believers, that human beings were created in the image and likeness of God. Accordingly, we are opposed to any constitution, treaty, statute, or policy that diminishes or erases the inherent right of humans to life, from conception (*i.e.*, fertilization) to natural death.

The political ideology embraced by the Biden administration crudely classifies people into groups like “oppressors” and “oppressed” or “marginalized.” Yet, its proponents cannot explain why they themselves are not merely another category of oppressors using their power to unjustly punish those with whom they disagree. The reasons for human failing and flourishing are manifold, as biblical Christianity understands, but the most important reason for human failing is the sinful nature each person possesses. Yet, while being sinful creatures, we have inherent dignity because we bear God’s image and likeness.

The U.S. government was founded by a society that embraced this Biblical framework for understanding the human person; it foresaw the need for governing institutions that would restrain the desires of human beings and limit their power. This is the core Madisonian understanding that undergirds the robustness of the U.S. Constitution. This biblical understanding of humanity embraces governments consisting of representative, constitutional nation-states with subsidiary provinces, counties, and municipalities that limit centralized power.

Most significantly, it sees the family and religious communities as critical components of human freedom because their authority is grounded in the natural law—above the political. America’s foreign assistance programs should respect those overseas communities that will promote human flourishing, starting with families and then with non-governmental organizations like churches that directly assist the poor and needy.

We share Senator Marco Rubio’s concerns about this rulemaking. If finalized, the Department’s ideological push in this NPRM “would violate the rights and beliefs of faith-based partner organizations and their beneficiaries, undermine relationships with key stakeholders, and threaten U.S. security interests.” As he noted, the goodwill produced overseas by our foreign aid in programs like the President’s Emergency Plan for AIDS Relief (PEPFAR) has “only been possible” because we work with “faith-based organizations that hold the same social values as the communities they serve.”<sup>23</sup> It will not be possible to maintain these relationships if this proposed rule goes into effect.

### Conclusion

For the reasons stated above, Family Research Council respectfully requests that the Department withdraw this NPRM and keep the relevant contracting rules and terms in effect as they now are.

Respectfully submitted,

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<sup>1</sup> U.S. Department of State, Notice of Proposed Rulemaking, “Nondiscrimination in Foreign Assistance,” Federal Register 89, no. 13 (January 19, 2024): 3583-3587, <https://www.govinfo.gov/content/pkg/FR-2024-01-19/pdf/2024-01059.pdf>.

<sup>2</sup> 89 Fed. Reg. 3583.

<sup>3</sup> 89 Fed. Reg. 3586.

<sup>4</sup> See especially, sec. 602.40 (a)(1-2).

<sup>5</sup> 89 Fed. Reg. 3626 (emphasis added).

<sup>6</sup> U.S. President, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government [E.O. 13985 of January 20, 2021],” *Federal Register* 86, no. 14 (January 25, 2021): 7009-13, <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

<sup>7</sup> U.S. Department of State, “White House Release of the U.S. Department of State’s Action Plan to Advance Racial Equity and Support for Underserved Communities in Foreign Affairs,” media note, April 14, 2022, <https://www.state.gov/white-house-release-of-the-u-s-department-of-states-action-plan-to-advance-racial-equity-and-support-for-underserved-communities-in-foreign-affairs/>; The White House, “FACT SHEET: Biden-Harris Administration Releases Agency Equity Action Plans to Advance Equity and Racial Justice Across the Federal Government,” April 14, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/14/fact-sheet-biden-harris-administration-releases-agency-equity-action-plans-to-advance-equity-and-racial-justice-across-the-federal-government/>; The White House, “White House Convening on Equity,” YouTube video, April 14, 2022, <https://www.youtube.com/watch?v=9asB2CleF3g>.

<sup>8</sup> U.S. Department of State, “2022 Equity Action Plan,” April 14, 2022, <https://www.state.gov/wp-content/uploads/2022/04/Equity-Action-Plan-Website-04132022.pdf>.

<sup>9</sup> U.S. Department of State, “2023 Equity Action Plan,” February 14, 2024, <https://www.state.gov/wp-content/uploads/2024/02/2023-State-Equity-Action-Plan.pdf>.

<sup>10</sup> U.S. Department of State, “2022 Equity Action Plan,” 2 (emphasis added). Secretary Antony Blinken’s press statement opened by stating, “Inequity is a national security challenge with global consequences.” Further down, he observed, “We know that embedding equity across our foreign affairs work will raise the visibility of racial and other inequities globally and generate better-informed foreign policies to decrease barriers to equity and equality worldwide.” He concluded, “The Department is committed to the principle of equity across all of our programs and policies, and the plan released today will serve as our blueprint for achieving that goal.” U.S. Department of State, “The Department of State’s Plan to Advance Racial Equity and Support for Underserved Communities in Foreign Affairs,” press statement, April 14, 2022, <https://www.state.gov/the-department-of-states-plan-to-advance-racial-equity-and-support-for-underserved-communities-in-foreign-affairs/>.

<sup>11</sup> U.S. Department of State, “2023 Equity Action Plan,” 1. [Note: The terms “embed equity” or “embedding equity” appear eight times in the document with minor variations.]

<sup>12</sup> “Equity,” New Discourses, <https://newdiscourses.com/tftw-equity/>; New Discourses, “Equity: A Translation from the Wokish | James Lindsay,” YouTube video, September 25, 2021, [https://www.youtube.com/watch?v=0oK\\_kuRG1oU&t](https://www.youtube.com/watch?v=0oK_kuRG1oU&t).

<sup>13</sup> Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2017).

<sup>14</sup> *Ibid.*, 2.

<sup>15</sup> *Ibid.*, 3 (emphasis added).

<sup>16</sup> *Ibid.*, 26.

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- <sup>17</sup> Karl Marx, *Critique of the Gotha Programme*, 1875 (written 1875, but of earlier origin); see Oxford Reference, “Karl Marx 1818–83, German political philosopher,” accessed March 19, 2024, <https://www.oxfordreference.com/display/10.1093/acref/9780191843730.001.0001/q-oro-ed5-00007147>.
- <sup>18</sup> National League of Cities, “Embedding Equity Into How Your City Does Business,” Early Childhood Municipal Policy Brief Series, 2021, 3, <https://www.nlc.org/wp-content/uploads/2021/06/YEF-EC-Embedding-Equity-Policy-Brief.pdf> (emphasis added).
- <sup>19</sup> Ibid.
- <sup>20</sup> Ibid, 4.
- <sup>21</sup> Timothy Keller, “A Biblical Critique of Secular Justice and Critical Theory,” *Life in the Gospel*, 2020, <https://quarterly.gospelinlife.com/a-biblical-critique-of-secular-justice-and-critical-theory/>. In a section entitled “Equity Progress Updates and Accomplishments,” [U.S. Department of State, “2023 Equity Action Plan,” 5.], we read, “U.S. Mission to Poland: Leading as Likeminded Embassies Coordinator on LGBTQI+ issues as ally embassies to combat hate and promote an inclusive environment.” This means the U.S. embassy was leading an effort of similarly disrespectful embassies to undermine traditional Polish Catholic and national mores to benefit the Department’s LGBTQI+ allies in Poland and Europe.
- <sup>22</sup> Arielle Del Turco and Chris Gacek, “Exporting LGBT Ideology: The Biden Administration’s Foreign Policy Priority,” Family Research Council, June 2023, <https://downloads.frc.org/EF/EF23F21.pdf>. See also Craig Austin Rose II, “The Development Deep State: Progressivism in USAID,” C-FAM (Definitions Series, Issue 31), June 19, 2023, <https://c-fam.org/wp-content/uploads/The-Development-Deep-Statei.pdf>.
- <sup>23</sup> Senator Marco Rubio et al. to Secretary Anthony Blinken, Department of State, February 7, 2024.