



April 24, 2025

Director Jay Bhattacharya, M.D., Ph.D.
National Institutes of Health
9000 Rockville Pike
Bethesda, Maryland 20892

Sent by first class mail and email to NIHExecSec@nih.gov

Re: Heterodox Academy's objections to Notice of Civil Rights Term and Condition of Award (NOT-OD-25-090)

Dear Director Bhattacharya,

We are writing on behalf of Heterodox Academy (HxA) to congratulate you on your confirmation as Director of the National Institutes of Health (NIH) and to urge you to rescind the Notice of Civil Rights Term and Condition of Award (NOT-OD-25-090) issued on April 21, 2025, and instead to simply remove any ideological conditions NIH previously required of recipients.

We believe you are familiar with Heterodox Academy, and we know you share our commitment to open inquiry and viewpoint diversity in higher education. (HxA is a nonprofit, nonpartisan advocacy organization whose mission is to protect and promote open inquiry, viewpoint diversity, and construction disagreement in higher education.)

We agree that institutions of higher education too often use "Diversity, Equity, and Inclusion" (DEI) or "Diversity, Equity, Inclusion, and Accessibility" (DEIA) as political litmus tests in their processes for hiring and evaluating the performance of faculty and that doing so undermines open inquiry and forces viewpoint homogeneity. We also share your view that federal agencies should award research grants solely on the merits of the proposed research and should stop conditioning those grants on ideological alignment with unrelated political goals.

HxA is concerned that, while well-intentioned, the Notice's requirement that recipient institutions certify that "They do not, and will not during the term of this financial assistance award, operate any programs that advance or promote DEI, DEIA, or discriminatory equity ideology in violation of Federal anti-discrimination laws" ironically threatens the free speech and academic rights of institutions and researchers. It is also unconstitutional.

There is a key problem with the Notice's approach. The Notice does not place conditions on how the award money is spent, but rather seeks to require institutions to abandon activities that are protected by academic freedom pursuant to the First Amendment.

In *Sweezy v. New Hampshire*, the Supreme Court established that the First Amendment protects academic freedom and explained, "To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation."¹ And while it may be true that the government does not necessarily violate academic freedom when it imposes conditions on how award money is spent,² the unconstitutional conditions doctrine forbids the government from demanding a recipient waive a constitutional right to access funds.³

Because the Notice prohibits all DEI and DEIA activities and makes no effort to target only those practices which are actually unlawful (for example, hiring on a discriminatory basis), the Notice conditions funds on institutions abandoning protected activities.

This approach is wrong, not only because it is unconstitutional, but also because of its effect on open inquiry and viewpoint diversity. While using DEI or DEIA to eradicate "wrongthink" on those issues is an obvious threat to open inquiry and viewpoint diversity, broad bans that prohibit all efforts to promote the values of diversity, equity, inclusion, and accessibility also seek to limit the acceptable views on campus. We hope you will agree that viewpoint-based censorship is wrong regardless of the view that is targeted.

¹ 354 U.S. 234, 250 (1957).

² *Rust v. Sullivan*, 500 U.S. 173, 196 (1991)(*holding* that a regulation prohibiting funds from being used for abortion related services did not violate the First Amendment because the award recipient was not prohibited from using their own funds).

³ *Perry v. Sindermann*, 408 U. S. 593, 597(1972), ("even though the government may deny [a] . . . benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests -- especially, his interest in freedom of speech.").

During your Senate confirmation process you expressed your longstanding view that “dissent is the very essence of science.”⁴ The Notice’s approach to combating ideological litmus tests, however, also squashes dissent.

A better approach that would ensure that NIH funds are distributed according to merit would be to review the agency’s granting requirements and eliminate any ideological conditions. The Department of Energy’s Office of Science recently took this approach when it announced that it was “immediately ending the requirement for Promoting Inclusive and Equitable Research (PIER) Plans in any proposal submitted to the Office of Science.”⁵

Because the prior administration was requiring grant proposals to include a PIER plan, the DOE Office of Science could not reject all proposals with such a plan. To avoid penalizing applicants who were coerced into adding a PIER plan, the agency declared that “Reviewers will not be asked to read or comment on PIER Plans. Selection decisions will not take into consideration the content of PIER Plans or any reviewer comments on PIER Plans.”

HxA strongly recommends that NIH rescind the April 21, 2025, Notice and instead follow the Department of Energy’s sound approach. We would welcome the opportunity to discuss this with you or the appropriate members of your staff and will make ourselves available at your convenience for such a meeting.

Thank you for your attention to this matter and to our request to meet. We look forward to discussing our concerns and our hopes for your leadership at NIH further.

Respectfully,



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cc: Division of Grants Policy; grantspolicy@nih.gov

⁴ Bhattacharya, Jay. Opening Statement to Senate Health Education, Labor and Pensions Committee (Mar. 5, 2025);

<https://www.help.senate.gov/imo/media/doc/9bbb3a01-a465-093a-43a4-459d26cc8d0f/Bhattacharya%20Opening%20Statement.pdf>.

⁵ Executive Order Update to PIER Plan Requirement, (Jan. 28, 2025);

<https://www.energy.gov/science/articles/executive-order-update-pier-plan-requirement>.