



U.S. Department of Justice

Office of the Solicitor General

The Solicitor General

Washington, D.C. 20530

March 4, 2026

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

Re: Classification of Individuals Based on Race in the Digital Equity Act of 2021

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that the Department of Justice has concluded that the classification of individuals based on race in the Digital Equity Act of 2021 (DEA), 47 U.S.C. 1721 *et seq.*, violates the Constitution, that the Department of Justice will no longer defend the DEA's reliance on race in court, and that the Department of Justice has taken this position on the constitutionality of the DEA in ongoing litigation. See *National Digital Inclusion Alliance v. Trump*, No. 25-cv-3606 (D.D.C.).

Congress enacted two programs in the DEA: the State Digital Equity Capacity Grant Program, 47 U.S.C. 1723, and the Digital Equity Competitive Grant Program, 47 U.S.C. 1724. The State Digital Equity Capacity Grant Program awards grants to States to promote, among other things, the availability of broadband technology among "covered populations." 47 U.S.C. 1721(8); see 47 U.S.C. 1723(c)(1) and (d)(1). A State seeking grant funding under the program must identify "measurable objectives for documenting and promoting" certain program priorities "among each group [listed as a covered population] located in that State," 47 U.S.C. 1723(c)(1)(B), and the size of a grant under the program must be based in part on the number of individuals in the State who are members of "covered populations," 47 U.S.C. 1723(d)(3)(A)(i)(II). The Digital Equity Competitive Grant Program awards grants to various entities to "support efforts to achieve digital equity," among other goals. 47 U.S.C. 1724(a)(1); see 47 U.S.C. 1724(b). The DEA directs the Department of Commerce, in deciding whether to award a grant under the program, to consider whether the grant would "increase internet access and the adoption of broadband among covered populations." 47 U.S.C. 1724(d)(1); see 47 U.S.C. 1724(d)(2). For purposes of both programs, the DEA defines "covered populations" to encompass eight categories of individuals. 47 U.S.C. 1721(8). One of those categories is "individuals who are members of a racial or ethnic minority group." 47 U.S.C. 1721(8)(G). The DEA's definition of "covered populations" thus classifies individuals based on race.

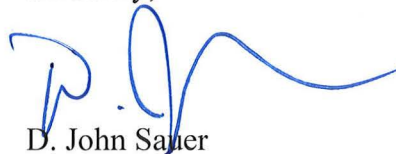
In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*), the Supreme Court held that race-based preferences in the admissions programs at Harvard and the University of North Carolina violated the Fourteenth Amendment's

Equal Protection Clause. *Id.* at 213. In so holding, the Court rejected the argument that race-based admissions programs can be justified by the government's interest in "remedy[ing] the effects of societal discrimination." *Id.* at 226. In addition, the Court explained that by relying on "racial categories" that were "arbitrary," "overbroad," and "underinclusive," the admissions programs at issue had "fail[ed] to articulate a meaningful connection between the means they employ and the goals they pursue." *Id.* at 215-216. The Court also emphasized that the programs' reliance on race had no "logical end point." *Id.* at 221 (citation omitted).

The Department of Justice has concluded that the DEA's classification of individuals based on race violates the equal protection component of the Fifth Amendment's Due Process Clause. In light of the Supreme Court's decision in *SFFA*, the Department of Justice has determined that an interest in remedying the effects of societal discrimination—to the extent Congress expressed such an interest here—cannot justify the DEA's reliance on race. The Department of Justice has also determined that, as in *SFFA*, that reliance lacks any meaningful connection to the programs' goals and lacks any logical end point. For those reasons, the Department of Justice will no longer defend the constitutionality of the DEA's classification of individuals based on race.

Please let me know if I can be of further assistance in this matter.

Sincerely,



D. John Sauer
Solicitor General