



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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January 14, 2025

**BY EMAIL** (Anamaria.Loya@ed.gov)

Anamaria Loya  
Chief Regional Attorney  
San Francisco Office, Office for Civil Rights  
U.S. Department of Education  
50 United Nations Plaza  
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San Francisco, CA 94102

**Re: Response to Erroneous Dismissal of Complaint and Request to Reopen**  
**[University of California, Berkeley - OCR Case Number 09-24-2575]**

Dear Ms. Loya,

We write in response to your letter of January 13, 2025, stating that the U.S. Department of Education's Office of Civil Rights ("OCR") is dismissing our complaint against the University of California, Berkeley, regarding the Haas Thrive Fellows program ("Haas Thrive Fellows") on grounds that the complaint failed to state a violation of one of the laws or regulations that OCR enforces.

The OCR determination is based on a serious mistake of fact, relying on language on the Haas Thrive Fellows website that was added after the filing of our complaint, as demonstrated by the archived website pages below. Because OCR relied on an erroneous factual basis, OCR should rescind its determination that we failed to state a claim for a civil rights violation. If OCR believes the violation has been remedied, OCR should close the case as resolved under OCR

guidelines but should not issue an erroneous determination that there was no violation. Dismissing this matter under subsection [108\(f\) of OCR's Case Processing Manual \(CPM\) \(July 18, 2022\)](#) is inconsistent with the facts and timeline relevant to this Complaint and will have serious repercussions if not fixed.

### **OCR Determination**

In the OCR dismissal letter, OCR stated that its decision to dismiss under CPM 108(f) was based on the Haas Thrive Fellows program's "Frequently Asked Questions" section and the use of the word "*Any*" (italics in original) in the eligibility requirements. In relevant part the OCR dismissal letter states (emphasis added):

"While the Program has a goal of supporting Latinx/Hispanic individuals to apply to graduate business school and a University-wide goal of becoming an HSI, **the Program's website also makes clear that the Program is open to anyone regardless of race, color, or national origin through its prominently displayed "Frequently Asked Questions."** The first question listed is the following, "Do I have to have a Latinx or Hispanic identity to participate in the Thrive Fellows?" The answer provided on the website states, "No. The Thrive Fellows program is open to anyone. Our Thrive Fellows alumni community includes people who do not identify as Latinx or Hispanic." Additionally, the Program's eligibility criteria do not include any race, color, or national origin requirements. The eligibility criteria state that "*Any* applicants who meet the following criteria are invited to apply" (emphasis in the original) ...."

However, as detailed below, based on the archived webpages it is clear that the FAQ section and the word "*Any*" were added after the filing of the complaint. This renders the dismissal under 108(f) inconsistent with the facts and timeline of how UC-Berkeley promoted the Haas Thrive Fellows program

### **Proof of Change in Website After Complaint Filed**

The Wayback Machine (archive.org) captures digital versions of internet website pages, either through user request to 'save' or automated robots that scan the internet. It is the most well-known and reliable archive site, and it saved pages of the Haas Thrive Fellows program seven (7) times between June 6, 2023, and September 9, 2024.<sup>1</sup> During this period, the program's website did not include a "Frequently Asked Questions" section or the word "*Any*" under eligibility. These additions to the website were made only after the Complaint was filed on September 3, 2024.

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<sup>1</sup> [https://web.archive.org/web/20250000000000\\*/https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/](https://web.archive.org/web/20250000000000*/https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/)

**Website Archived Timeline:**

**1. August 24, 2024:** No “Frequently Asked Questions Section” or use of the word “*Any*” in Eligibility section on the Haas Thrive Fellows Program website.

**Archived link:**

<https://web.archive.org/web/20240824130829/https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/> (screenshot below)

## Program Overview

Funded by Berkeley Haas alumni, the Haas Thrive Fellows program is a free MBA access program. Participants will attend monthly, Saturday, in-person sessions hosted by Berkeley Haas which will include various activities and services from September through June. The program is designed to be a one-year program with an opportunity for additional engagement with Berkeley Haas over time.

Curriculum	Benefits	Eligibility
The program will offer:		
<ul style="list-style-type: none"><li>Curriculum on<ul style="list-style-type: none"><li>graduate business admissions</li><li>seeking financial aid for graduate studies</li><li>GMAT or GRE preparation</li><li>Building a personal brand</li><li>Networking skills</li><li>Exploring career options and opportunities</li></ul></li><li>Culturally relevant programming addressing the unique needs of Latinx/Hispanics in management and leadership in the US</li><li>Guest speakers from the corporate community</li><li>Graduate-level discussions and case studies led by faculty</li><li>Networking opportunities with industry professionals and the Haas community</li></ul>		

## Application Materials

<u>Expand All</u>	
Transcripts	+
Resume	+
Letter of Recommendation	+
Required Essays	+
Socio-Economic Essay section	+
Optional Essay	+

Curriculum      Benefits      **Eligibility**

Applicants who meet the following criteria are invited to apply:

- Graduate of a four-year university and have completed up to two years of work experience
  - OR if considering attending a part-time MBA program and have up to 4 years of work experience
  - OR a current senior enrolled at a four-year university (students attending an HSI are strongly encouraged to apply)
- Applicants must be U.S. citizens, permanent residents, or undocumented.
- We accept applications from all majors—you just need to be interested in attending a graduate business program.
- While we do not have a minimum GPA requirement, we encourage applications from students with at least a 3.0 GPA.

**2. September 3, 2024:** The Equal Protection Project files a complaint against the Haas Thrive Fellows program.

**Link:** <https://equalprotect.org/wp-content/uploads/2024/09/OCR-Complaint-Berkeley-Haas-Equal-Protection-Project-9-3-2024.pdf>

**3. September 9, 2024:** No “Frequently Asked Questions Section” or use of the word “*Any*” in Eligibility section on the Haas Thrive Fellows Program website.

**Archived Link:**

<https://web.archive.org/web/20240909103943/https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/> (screenshot below)

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## Application Materials

<a href="#">Expand All</a>	
Transcripts	+
Resume	+
Letter of Recommendation	+
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Socio-Economic Essay section	+
Optional Essay	+

## Important Dates

Curriculum      Benefits      **Eligibility**

Applicants who meet the following criteria are invited to apply:

- Graduate of a four-year university and have completed up to two years of work experience
  - OR if considering attending a part-time MBA program and have up to 4 years of work experience
  - OR a current senior enrolled at a four-year university (students attending an HSI are strongly encouraged to apply)
- Applicants must be U.S. citizens, permanent residents, or undocumented.
- We accept applications from all majors—you just need to be interested in attending a graduate business program.
- While we do not have a minimum GPA requirement, we encourage applications from students with at least a 3.0 GPA.

**4. Current Website (as of 1/13/25):** “Frequently Asked Questions” added to the Haas Thrive Fellows program website and word “*Any*” (italics in original) added.

**Link:** <https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/>

**Archived Link:**

<https://web.archive.org/web/20250113214438/https://haas.berkeley.edu/diversity/events/haas-thrive-fellows/> (screenshot below)

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Funded by Berkeley Haas alumni, the Haas Thrive Fellows program is a free MBA access program. Participants will attend monthly, Saturday, in-person sessions hosted by Berkeley Haas which will include various activities and services from September through June. The program is designed to be a one-year program with an opportunity for additional engagement with Berkeley Haas over time.

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## Frequently Asked Questions

[Expand All](#)

<b>Do I have to have a Latinx or Hispanic identity to participate in the Thrive Fellows?</b>	—
No. The Thrive Fellows program is open to anyone. Our Thrive Fellows alumni community includes people who do not identify as Latinx or Hispanic.	
<b>Do I have to live in the Bay to participate?</b>	+
<b>Can I see the schedule of meetings?</b>	+

Curriculum      Benefits      **Eligibility**

Any applicants who meet the following criteria are invited to apply:

- Graduate of a four-year university and have completed up to two years of work experience
  - OR if considering attending a part-time MBA program and have up to 4 years of work experience
  - OR a current senior enrolled at a four-year university (students attending an HSI are strongly encouraged to apply)
- U.S. citizens, permanent residents, or undocumented.
- We accept applications from all majors—you just need to be interested in attending a graduate business program.
- While we do not have a minimum GPA requirement, we encourage applications from students with at least a 3.0 GPA.

### **Erroneous Dismissal For Failure To State A Claim Must Be Corrected**

This matter was dismissed under subsection 108(f) for failing to state a violation of one of the laws or regulations that OCR enforces. However, at the time of the Complaint, the evidence on which OCR relies for dismissal was not on the Haas Thive Fellows website, that information was added at some date after September 9, 2024. At the time the Complaint was filed (see Complaint for details) there was clear evidence that the program was in violation of Title VI. The fact that the website was changed after the filing of the Complaint supports the violation of law – why would UC-Berkeley change the website to add the allegedly exonerating wording?

Did UC-Berkeley inform OCR of this post-filing change? If not, that is extremely troubling.

At the time of the filing of the Complaint, and as set forth in more detail in the Complaint, the Haas Thive Fellows program’s stated purpose was to “educate, prepare, and motivate Latinx/Hispanic individuals to apply and succeed at a top business school, and support their career advancement.” This description made it clear that the program was intended specifically for Latinx/Hispanic individuals. As the Second Circuit recognized in *Ragin v. New York Times Co.*, 923 F.2d 995, 999–1000 (2d Cir. 1991), even subtle messaging can convey discriminatory preferences: “Ordinary readers may reasonably infer a racial message from advertisements that are more subtle than the hypothetical swastika or burning cross, and we read the word ‘preference’ to describe any ad that would discourage an ordinary reader of a particular



race from answering it.” As further explained in our Complaint,<sup>2</sup> there was additional evidence that the Haas Thrive Fellows program was violating Title VI at the time of its filing.

### **Dismissal on the Merits Must Be Rescinded**

We hope OCR would agree that accuracy is important, and an erroneous dismissal on the merits should be rescinded. Otherwise, UC-Berkeley will have been erroneously relieved of any accountability for discrimination by an after-the-fact website change. Such an erroneous conclusion is not consistent with OCR policy and sends a damaging message to universities.

We have received numerous determinations from OCR in other cases in which an after-the-fact change results in closure as “resolved”.<sup>3</sup> For example, just this morning we received a closure letter from your office regarding Santa Clara University (OCR Case Number 09-25-2052), stating in relevant part (emphasis added):

“Since you filed your complaint, OCR has confirmed that the Program is open to anyone regardless of race, color, or national origin. The **University removed language** from the website that indicated that the Program was exclusively for Black leaders and **added language** clarifying that the Program is open to anyone regardless of race, color, and national origin. For example, on the landing page for the Program, **it now states** that “[t]he Program welcomes executives from all backgrounds and identities, regardless of their race, color, national origin, or other characteristic protected by federal, state, or local laws, ...” .... The University also confirmed that the leadership of the Program is aware of the requirement that the Program be open to individuals from all backgrounds regardless of race, color, and national origin, and **oversaw the implementation of the website updates** to clarify this for members of the public who visit the website. Because **OCR has obtained credible information indicating that allegations are resolved**, the facts underlying the allegations are no longer present, and OCR has no evidence the law is violated, OCR is dismissing the complaint in accordance with subsection 110(d) of the CPM.”

The distinction between a dismissal on the merits and a dismissal because the matter is “resolved” is more than semantics. The former absolves the institution of discriminatory conduct, while the latter recognizes that after the complaint was filed the institution took remedial action. The appropriate resolution is under [subsection 110\(d\) of OCR’s Case Processing Manual \(CPM\) \(July 18, 2022\)](#), which closes an allegation when OCR obtains credible information indicating

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<sup>2</sup> <https://equalprotect.org/wp-content/uploads/2024/09/OCR-Complaint-Berkeley-Haas-Equal-Protection-Project-9-3-2024.pdf>.

<sup>3</sup> See, e.g., Kansas State University, OCR Complaint No. 07232191 (closed under Section 110(d) because Kansas State altered its public-facing website to reflect that the scholarship is open to students of any race); Western Kentucky University, OCR Complaint No. 03232277 (closed under Section 110(d) because Western Kentucky University removed its discriminatory fellowship from its website).

that the allegation has been resolved and there is no systemic allegation, rather than vindicating the institution.

Since the Haas Thrive Fellows program updated its website after our complaint was filed, dismissal for failure to state a claim based on the after-the-filing website entries was inappropriate. While we realize there is no formal “appeal” process at OCR, we also hope OCR would agree that its determinations should not be based on erroneous facts and that post-filing remedial action should not result in dismissal for failure to state a claim. Accordingly, we request that OCR rescind the dismissal, reinstate the case, and then if appropriate, dismiss the case as “resolved”.

Respectfully submitted,

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