

Guidelines for Third-Party Relationships and Postings¹

Legal Background

- Under federal civil rights laws, schools that receive federal funds, like DU, may not discriminate—either directly or through third parties—in their programs, activities, or employment practices.
- **Title VI** prohibits DU from discriminating on the basis of race, color, or national origin in its programs or activities, whether “directly **or through contractual or other arrangements.**” 34 C.F.R. § 100.3(b)(1).
- **Title IX** prohibits DU from discriminating on the basis of sex in education programs and activities, and prohibits DU from “aid[ing] or perpetuat[ing] discrimination against any person by **providing significant assistance** to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.” 34 C.F.R. § 106.31(b).

Consistent with the University of Denver’s Discrimination and Harassment Policy, and in furtherance of our obligations to comply with federal nondiscrimination laws, units must not post job, clerkship, internship, mentoring, or other notices or advertisements of opportunities for students and employees that either implicitly or explicitly indicate a **preference** for applicants of a particular race, color, religion, sex, or national origin, ***even if those postings or preferences are entirely those of a third party.*** Preferences include eligibility criteria based on comparative representation (e.g., historically underrepresented, minority, traditionally underserved).

Bottom Line: If a third party posting or program signals a preference or restriction based on race, color, national origin, religion, or sex, DU **should not post it, host it, subsidize it, or otherwise facilitate it**, unless a legal exception applies.²

¹ While federal nondiscrimination laws cover discrimination on the basis of many protected characteristics (including disability, age, religion, and veteran status), these guidelines are focused on ensuring nondiscrimination on the basis of race and sex. For purposes of this document “race” refers to race or ethnicity, color, and national origin, and “sex” includes sexual orientation and gender identity.

² For instance, under Title VII, while job postings generally may not reflect a preference for people of a particular sex or religion, certain BFOQ and ministerial exceptions apply. Additionally, Title VI and Title IX do not prohibit religious discrimination.

Four Steps to Legally-Sound Third-Party Practices:

- Step 1:** Publicize DU's **third-party opportunities statement** to clarify that the University will not participate in or post opportunities or programs that include any prohibited preference, limitation, or specification
- Step 2:** Require a **nondiscrimination attestation** from all third parties prior to participation or posting
- Step 3:** **Prescreen** third-party submissions for explicit or implicit preferences
- Step 4:** **Decline** problematic partnerships or postings or request revisions, as appropriate

STEP 1: Publicize DU's Third-Party Opportunities Statement

For any DU webpage, message board, or other DU platform with third-party scholarship, job, internship and other opportunities, include a **clear statement** that DU prohibits assisting in discriminatory practices of third parties.

The following statement is suitable for this purpose:

The University prohibits discrimination in all programs and activities and will not post, distribute, fund, host, facilitate, or otherwise assist third-party opportunities that implicitly or explicitly indicate a preference or restriction based on a person's race, color, national origin, religion, or sex, except as permitted by law. All third-party postings must comply with applicable federal and state anti-discrimination laws. The University reserves the right to decline or remove postings that do not meet these standards.

STEP 2: Require a Nondiscrimination Attestation from Third Parties

Require third parties seeking to advertise their job, scholarship, program or other opportunity to **attest** that they will comply with the University's Non-Discrimination Statement before allowing them to post or advertise their opportunity through the University.

Example:

"We attest that this posting does not express or imply preferences or restrictions based on race, color, national origin, religion, or sex, except where

expressly permitted by law and with notice to the University. We agree that consistent with the University's nondiscrimination obligations under Title VI, Title IX, and Title VII, postings violating nondiscrimination standards will be refused or removed."

Please note: An attestation by a third party does not create a safe harbor for the University if a posting still signals unlawful preferences, or the opportunity or program advertised operates in a discriminatory manner.

STEP 3: Prescreen Postings for Potentially Discriminatory Preferences

Every person with the **authority or ability** to post third-party opportunities through the University should be aware of their **obligation to prescreen** third party postings for potentially discriminatory preferences.

➤ Pre-screener must **review** postings and **flag** for further review:

!! Any **explicit preference, exclusion, or limitation** tied to a person's protected trait, e.g.,:

- Women only
- BIPOC candidates preferred
- Member of the LatinX community
- Applicant must identify as LGBTQI+
- Practicing Christian preferred
- Preference for American-born applicants

!! Any **quotas, targets, or application routing** that segregate by a protected trait, e.g.,

- Must hire at least 2 Hispanic interns this summer
- Express goal of the posting organization is to increase racial diversity of program participants
- Different links for men/women
- Priority given to LGBTQ+ individuals

!! Organizational **names** that imply exclusion, e.g.,

- Regional Women's Fellowship
- Latin American Heritage Council
- Minority Alliance Internship Program

!! Requirements or preferences that are susceptible to operating as **proxies** for protected characteristics:

- from an underserved community
- member of an underrepresented minority

- historically underrepresented
- member of a disadvantaged group
- required essay about personal experiences with discrimination
- participated in a pipeline or mentoring program intended to benefit members of a particular race, nationality, or sex
- member or leader of an organization or association that is primarily for persons of a particular race, nationality, or sex (e.g., is a leader in the Black Student Union)

!! Any posting by an **organization** that the University otherwise **knows** is likely operating programs where participation, membership, or other benefits are based on prohibited considerations.

➤ This **does not mean** that all postings that refer to a protected characteristic, or that involve organizations dedicated to supporting a particular protected group, must be flagged, particularly when the posting makes clear that **all are welcome to apply**, and the organization has signed the University's nondiscrimination attestation. For example:

- ✓ It is permissible for the National Women's Law Center to advertise internship opportunities for law students seeking to advance the rights of women and girls, so long as the position is open to all regardless of sex
- ✓ It is permissible for the Hispanic Bar Association to advertise an opportunity to serve as treasurer for the organization, so long as membership is open to all regardless of race or national origin
- ✓ It is permissible for a paid internship posting to express a preference for First Generation students or students with financial need
- ✓ It is permissible for a posting for a job at a free medical clinic to require Spanish-language proficiency and a demonstrated commitment to working with particular immigrant populations

STEP 4: Decline Posting or Request Revisions, as Appropriate

Once a posting has been flagged, the University should not publicize it without further review and, where needed, revision. Where revisions are required to conform with these Guidelines, the University should contact the posting organization to revise problematic language and confirm nondiscriminatory practices. The Office of General Counsel is also available to advise units on questions regarding whether a posting is permissible.