EPN and L4GG Comments on Regulation for Federal Financial Assistance

Docket No.: OMB-2026-0034
July 13, 2026

Dear Mr. Vought and Mr. Zeldin:

Lawyers for Good Government (L4GG) and the Environmental Protection Network (EPN) submit these comments based on decades of collective legal, regulatory, technical, and scientific expertise in federal grant administration.

L4GG is a 501(c)(3) organization with in-house experts in regulatory law, climate, civil rights, and litigation, supported by a nationwide network of more than 125,000 pro bono attorneys. L4GG provides legal assistance to states, Tribal governments, local governments, nonprofits, schools, universities, religious institutions, and community organizations across the country. Its work spans climate and environmental justice, health equity, civil rights, and rule of law issues. L4GG has a direct interest in this proposed rule because it represents and advises hundreds of entities that rely on federal financial assistance and would be significantly harmed by these proposed revisions.

EPN brings the expertise of more than 800 former Environmental Protection Agency (EPA) career staff and Senate-confirmed officials from administrations of both parties, including former regulators, financial assistance specialists, attorneys, and scientists with decades of technical and programmatic experience. EPN has long provided technical assistance to governmental and nongovernmental organizations in obtaining and managing EPA financial assistance in compliance with 2 CFR Part 200 and therefore has a direct interest in the Office of Management and Budget's (OMB) proposed revisions.

Since January 2025, EPN and L4GG have worked with more than 800 states, local governments, Tribal governments, schools, universities, nonprofits, businesses, farmers, and religious institutions whose federal grants have been frozen, canceled, or terminated. We have witnessed firsthand the substantial harm caused when agencies fail to fulfill their statutory obligation to distribute congressionally-appropriated funds. These comments draw on our extensive experience advising recipients, administering federal financial assistance, and interpreting the legal framework governing federal grants to ensure agencies faithfully implement congressional mandates. We are deeply troubled by OMB's proposal.

I. Introduction

EPN and L4GG, along with thousands of other commenters, strongly object to OMB's proposed revisions to the Uniform Grant and Financial Assistance Guidance in 2 CFR 200 and 95 other sections ("NPRM" or the "Proposal"). Notwithstanding OMB's claim that the proposed revisions are necessary "to improve transparency, accountability, and efficiency of federal financial assistance programs,"[1] this proposal actually makes processes more opaque and burdensome. Further, it is apparent that OMB intends to politicize decisionmaking on all federally funded assistance programs that benefit the American people in order to further an ideological agenda that has not been approved by Congress or the American people. OMB lacks the authority to unilaterally dictate that over 40 agencies implement such sweeping revisions impacting over $1 trillion annually, that would be sure to significantly increase – not decrease – administrative burdens on both agencies and funding recipients. This proposal, if finalized, would have major economic impacts nationwide, as federal funding represents 36 cents of every dollar in state budgets, nearly all originating from federal grants and much of which is passed through to local governments.[2] In issuing this Notice of Proposed Rulemaking (NPRM), OMB has failed to follow the Administrative Procedure Act (APA), the Paperwork Reduction Act (PRA), the Regulatory Flexibility Act (RFA), the Congressional Review Act, the First and Fifth Amendments and many other requirements intended to ensure transparency, accountability, and fairness in the regulatory process necessary to protect the rights of all Americans and institutions receiving federal funding.

Moreover, it appears that OMB is operating in direct contrast to a recent court order by moving forward with this NPRM. As described more fully below, a recent court order specifically enjoined OMB (and nine of the 41 federal agencies) from adding anti-diversity, equity, inclusion (DEI) and anti-gender ideology conditions into federal financial assistance.[3] Indeed, it is unclear why OMB did not immediately withdraw this proposal on June 29, 2026, when Judge Jacobs Rothstein explicitly enjoined OMB and other federal agencies from implementing the DEI and Gender ideology provisions in Executive Orders 14173 and 14168, respectively. Any federal agency that respected the rule of law and the importance of compliance with court orders would immediately withdraw this proposal to ensure compliance with this court order.

In addition to general objections set forth in Section II of the EPN/L4GG submission, this letter provides comments on specific provisions of the proposed rule below that will need to be addressed. The objections to specific provisions are based on concerns regarding OMB's authority to override legal requirements stemming from the Constitution, statutes such as the APA and Title VI of the Civil Rights Act, as well as imposition of additional paperwork requirements that do not add value to proper administration of federal financial assistance.

II. The NPRM Violates the Constitution, Statutory Authority, and Existing Law.

A. Neither OMB nor the participating 41 Agencies have the Statutory Authority to Issue or Finalize this NPRM.

The entire NPRM suffers from countless legal vulnerabilities, including this fatal flaw: neither OMB nor the 41 federal agencies who have appeared to "delegate" their statutory authority to OMB maintain the prerequisite statutory authority necessary to issue this far-reaching NPRM.

[1] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32198 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-48.

[2] Congressional Research Service. Federal Grants to State and Local Governments: Trends and Issues. R40638. June 26, 2025. https://www.congress.gov/crs-product/R40638.

[3] *City of Seattle v. Trump*, 808 F.Supp.3d 1204 (W.D. Wash. 2026).

1. OMB Does Not Have the Statutory Authority to Promulgate this Regulation.

OMB cites 31 USC Sec. 503(a)(2) for the proposition that they have the authority to promulgate this regulation, which states that the Deputy Director Manager is able to "provide overall direction and leadership to the executive branch **on financial management matters by establishing financial management** policies and requirements, and by monitoring the establishment and operation of Federal Government financial management systems."[4] This NPRM goes far beyond financial management and also goes beyond "overall direction and leadership" by hamstringing agencies into doing OMB's bidding. The NPRM includes prohibitions on viewpoint discrimination, gender-affirming care, environmental justice and public health projects, diversity, equity, and inclusion, and directly contradicts the Supreme Court's decision in *Bostock v. Clayton County* related to sex discrimination. These are all policy requirements that OMB has zero authority to mandate. Indeed, very few of the new conditions proposed on federal funding have anything to do with the financial management of grants and federal financial assistance.

Moreover, this is the very first time that OMB is not providing direction in the form of guidance, but instead ***binding regulations.*** OMB also cites a provision of the Federal Grants and Cooperative Agreement Act[5] (FGCAA) as authority for promulgating this NPRM as a stand-alone regulation. The FGCAA statute only authorizes OMB to "issue supplementary **interpretative guidelines** to promote consistent and efficient use of …grant agreements … and cooperative agreements." The government has not historically considered 31 USC 6307 as a basis for an OMB regulation governing the entire federal financial assistance system.[6] Other OMB guidelines such as those contained in pre-2 CFR 200 "Circulars" were adopted and codified as "common rules" by agencies rather than promulgated independently by OMB. That this historical practice continued with the advent of 2 CFR 200 is reflected in the fact that 2 CFR 200 was originally issued as "Uniform Grant **Guidance**" that agencies could adopt and modify as necessary. OMB's assertion of independent regulatory authority over federal financial assistance is a newly-minted rationale for exercising centralized political control over agency decisions entrusted to them by Congress in statutes authorizing grant programs. Congress has never granted OMB this kind of statutory authority. Indeed, Congress' only actions have been to limit OMB's authority when it oversteps, as it has here.

OMB has no statutory authority under either 31 USC Sec. 503(a)(2) or 31 USC 6307 to impose stipulations and requirements on the statutory authority of, and congressional mandates on, agencies providing federal assistance through discretionary awards, in the form of an additional "Pre-issuance review" as part of merit review. More specifically, OMB does not specify when such pre-issuance review is to take place, but even if it did, OMB has no authority, as a regulatory requirement imposed on other agencies, to empower "senior appointees" in those agencies to conduct such a review - especially as based on the vague phrases "national interest" and "President's policy priorities," the latter of which OMB labels as a "principle." Similarly vague principles upon which political appointees can predicate subjective decisions are contained in proposed 200.205(b), including a determination of whether a discretionary grant will "(iv)....compromise public safety or promote anti-American values."

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[4] 31 USC § 503(a)(2) *et. seq.*
[5] 31 USC § 6307.
[6] *See* Implementation of Federal Grant and Cooperative Agreement Act of 1977, 43 Fed. Reg. 36860 (August 18, 1978). https://archives.federalregister.gov/issue_slice/1978/8/18/36852-36865.pdf#page=9.

Further, OMB has no authority to direct agencies under a newly invented "(c) Procedure for pre-issuance review," not to "ministerially ratify or routinely defer to the recommendations of others." In addition to the fact that the identity of such "others" is not specified, OMB does not offer any defensible procedures for how it would determine whether agencies have engaged in the practices it claims would be disallowed under the NPRM.

2. The 41 Federal Agencies Cannot Delegate Sufficient Authority to OMB to Issue this NPRM.

Second, agencies cannot simply delegate to OMB with one sentence their respective statutory authority to promulgate their own CFR sections (96 sections total). Each of the 41 federal agencies identified in the NPRM have their respective statutory requirements to regulate and implement hundreds of different congressionally-mandated programs, some of which explicitly require scientific peer review to take precedence over political reviews and/or to require different standards for reviewing and issuing federal financial assistance. As just one example, as explained further below, EPA has a procedure that requires it to complete a Tribal consultation before issuing such federal regulations. It is not clear to us that OMB would even know how to engage in Tribal consultation, much less on behalf of EPA and other federal agencies, in order to follow appropriate procedures to properly carry out Tribal consultation responsibilities in connection with this proposed rule. This raises the question of how EPA could have delegated such authority to OMB without following its own Tribal consultation process prior to adopting the revised version of 2 CFR 200 pursuant to 2 CFR 1500.2. Similarly, many of the other federal agencies have explicit statutory requirements that they must follow when issuing revisions to grant conditions. It is unclear from the NPRM whether any of the agency-specific Tribal consultation or regulatory requirements for adopting 2 CFR 200 have been followed.

Accordingly, we request that OMB provide a supplemental proposal describing respective regulatory schemes for each of the 41 delegating federal agencies and clarify - before issuing a final rule - citing the exact statutory authorizing each federal agency to delegate its respective authority for promulgating federal financial assistance regulations over to OMB.

And for the EPA, we would request confirmation that it has gone through its required Tribal consultation before delegating authority to OMB.

It is not at all clear from the NPRM that OMB has the authority to be a proxy signatory for all of the agencies that purported to co-sign this regulatory proposal. Despite the Trump Administration's vague characterization of OMB's responsibilities currently posted on the White House website,[7] past Presidents have offered a more fulsome description. For example, President Biden's White House stated that "The Office of Management and Budget oversees the implementation of the President's vision across the Executive Branch. OMB carries out its mission through five main functions across executive departments and agencies: (1) Budget development and execution; (2) Management, including oversight of agency performance, procurement, financial management, and information technology; (3) Coordination and review of all significant Federal regulations from executive agencies, privacy policy, information policy, and review and assessment of information collection requests; and (4) Clearance and coordination of legislative and other materials, including agency testimony, legislative proposals, and other communications with

[7] *Office of Management and Budget - About,* https://www.whitehouse.gov/omb/.

Congress, and coordination of other Presidential actions. (5) Clearance of Presidential Executive Orders and memoranda to agency heads prior to their issuance."[8] Nowhere in that list of responsibilities is there an indication that the management and coordination authority that OMB maintains includes speaking on behalf of all federal agencies. This NPRM is an unprecedented attempt to expand OMB's authority that will be carefully examined when the validity of this NPRM is ultimately reviewed by the courts.

It is also not clear whether each of the 41 delegating federal agencies has the authority to grant OMB this authority to overhaul their individual regulatory processes for issuing grants. Indeed, we can point to at least two examples in which federal agencies did NOT have the requisite discretion to delegate this to OMB without complying with their own policies.

As referenced above, EPA has policies in place that instruct Tribal consultation before making such sweeping changes in rules that clearly impact Tribal recipients and subrecipients.[9] We understand that such tribal consultation has not been completed prior to the issuance of this NPRM. We would ask OMB to consult directly with EPA before responding to this comment to clarify explicitly how EPA's delegation of authority to OMB to propose this rule complies with EPA's Tribal consultation policies.

Another example involves nine of the 41 federal agencies, including OMB, who have been explicitly enjoined by a District Court in Seattle from implementing anti-DEI and anti-gender-affirming care into grants conditions. Accordingly, these federal agencies do not have authority to incorporate these types of grant conditions themselves, much less the authority to delegate such authority to allow OMB to require the same. In *City of Seattle v. Trump*, the court makes it clear that an agency cannot impose terms and conditions based on Executive Orders - which, again, are not law. More specifically, the court points out that the Trump Administration's DEI order that paints DEI efforts as contrary to federal anti-discrimination law, and the Gender Order that directs agencies to end the use of federal funding to "promote gender ideology" did not create authority for agencies to insert terms and conditions that required compliance with anti-DEI principles or accept restrictions with respect to gender ideology. Based on the finding that the terms and conditions were arbitrary and capricious, the court issued a preliminary injunction preventing multiple agencies, including the Department of Justice (DOJ), the Office of Federal Contract Compliance Programs (OFCCP), the Department of Transportation, the Federal Transit Administration (FTA), the US Department of Homeland Security (DHS), the US Department of Housing and Urban Development (HUD) and **<u>OMB itself</u>** from implementing these grant conditions. OMB is doing nothing more or less than imposing unlawful terms and conditions predicated on Executive Orders in this proposal, which they are not permitted to do. Indeed, the court explicitly calls these provisions in Executive Order 14173 and 14168 "contrary to law **<u>and in excess of statutory authority.</u>**"[10] Similarly, in *Fresno v. Mullin,* an injunction was issued putting a temporary stop to implementing anti-DEI and immigration Executive Orders with respect to certain DHS, Department of Interior (DOI) and Federal Emergency Management Agency (FEMA) grants.[11] **<u>OMB's issuance of these rules would amount to a complete and utter disregard for clear findings in a court of law.</u>** A cursory statement in the NPRM limiting the application of the

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[8] Congressional Research Service. Office of Management and Budget (OMB): An Overview. RS21665. June 22, 2023. https://www.congress.gov/crs-product/RS21665.

[9] The EPA Policy on Consultation with Indian Tribes at 5 (December 7, 2023) (identifies rules and regulations as one type of activity that is appropriate for consultation). https://www.epa.gov/system/files/documents/2025-03/epa-policy-on-consultation-with-indian-tribes_0.pdf.

[10] *City of Seattle v. Trump,* 808 F.Supp.3d 1204 (W.D. Wash. 2026).

[11] *City of Fresno v. Mullin*, No. 26-cv-01535-WHO, 2026 WL 1998576 (N.D. Cal. 2026).

regulation to only those things "in compliance of the law" cannot overcome this critical flaw. Accordingly, this NPRM should be withdrawn to comply with the court's recent order.

And, finally, a third example includes the Department of Energy (DOE): the NPRM would supersede long-standing policies and laws that structure DOE's approach to financial assistance and create conflicting requirements. Since 2014, financial assistance at DOE has been subject to the more limited, umbrella OMB Guidance for Federal Financial Assistance (2 CFR. Part 200) and DOE's agency-specific Financial Assistance Regulations (2 CFR Part 910), which are informed by DOE's authorizing statutes, such as the Energy Policy Act of 2005. In Section IV, the NPRM explains: "OMB's objectives for the current proposed revisions to several parts of subtitle A of 2 CFR include: [...] (2) clarifying the status of the 2 CFR regulatory text as an OMB regulation." The NPRM would create a blanket policy that circumvents Part 910 and does not consider any statutory obligations that DOE may already have under other laws. DOE program officials and grants officers would face challenges in reconciling competing requirements. None of these statutory authority issues have been addressed in the NPRM.

We request that OMB work with *each* of the 41 federal agencies to specifically address – and include within the administrative record how OMB proposes to resolve – any inconsistencies that exist between the NPRM and the federal statutory requirements for each of the 41 federal agencies included in the NPRM, including but not limited to, addressing the issues identified above.

Moreover, with respect to statutory authority to require agencies to abandon disparate impacts and DEi, as fully fleshed out below, the proposal misreads judicial precedent, incorrectly interpreting authority that they simply do not have. OMB uses *Students for Fair Admissions v. President and Fellows of Harvard College*[12] (hereinafter *Harvard Admissions*) to draw a bright line against DEI, implying that DEI is broadly discriminatory and in violation of anti-discrimination laws. However, use of Harvard Admissions here is incorrect — that case dealt with affirmative action, which is a distinct and wholly different concept than DEI. Moreover, as described extensively above, courts have repeatedly struck down anti-DEI provisions in grant conditions as unlawful and contrary to law.

For all of the reasons discussed in this comment letter, we challenge OMB's asserted statutory authority to promulgate one government-wide regulation on federal financial assistance covering 96 separate sections of the CFR. OMB acknowledges[13] that agencies have not always adopted OMB's guidance into their own CFR sections through secondary rulemaking.

Moreover, we request that any response to this comment include a detailed statement identifying the statutory authority of every one of the 41 other federal agencies, including OMB's direct consultation with each federal agency.

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[12] *Students for Fair Admissions v. President and Fellows of Harvard College,* 600 U.S. 181 (2023).

[13] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32207 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-125 ("The "Uniform Grants Regulation" framework will avoid the need for dozens of secondary agency rulemakings merely to reaffirm identical requirements that apply government-wide—which OMB is authorized by statute to determine. Following 2014, such secondary agency rulemakings have generally not occurred under the existing structure").

B. The Entire NPRM Raises Significant Constitutional Issues That Must Be Addressed.

The Proposal constitutes viewpoint discrimination that violates the First Amendment and violates the Equal Protection Clause of the Fourteenth Amendment.

The proposed amendments to 2 CFR seek to codify the anti-equity rhetoric of the Trump Administration by placing restrictions on federal funding in violation of grantees' First Amendment rights. The so-called protections against what the administration has described as "unlawful DEI," "gender ideology," or "woke" policies are overly broad and vague, and place unconstitutional conditions on the receipt of federal funding.

Policies to which federal funding applicants and recipients must comply based on this NPRM do not differentiate between non-discriminatory practices that legally promote the achievement of legitimate goals using means that are consistent with law and those that may violate federal non-discrimination laws based on an evidentiary record establishing discriminatory action. To the extent that the proposal attempts to coerce compliance with administration policies intended to repeal the longstanding disparate impact standard – or, as discussed below, to prohibit the broad swath of actions that promote diversity, equity, inclusion, and accessibility (DEIA) – it is unconstitutionally vague, overbroad, and chilling of protected speech.[14]

Adherence to agency priorities in essence dictates whether an entity will get access to funding already obligated pursuant to a grant agreement. Not only does this clearly violate the First Amendment by amounting to viewpoint discrimination (something courts have repeatedly struck down) but it also classifies organizations into two categories and treats them differently, in violation of the Equal Protection Clause.

The Supreme Court has already found that, "by demanding that funding recipients adopt—as their own—the Government's view on an issue of public concern, the condition by its very nature affects 'protected conduct outside the scope of the federally funded program.'"[15] This extends to potential grantees, not simply those already awarded. "[T]he Government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected…freedom of speech even if he has no entitlement to that benefit.'"[16]

Similarly, the administration's attempt to terminate grants based on "political considerations" was recently struck down in federal district court.[17] The court, as many courts prior, found that so-called lack of adherence to "Administration's goals, policies, and priorities" based on political affiliation, resulted in

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[14] *See Thakur v. Trump*, 176 F.4th 1187, 1204 (9th Cir. May 26, 2026) (claims that termination of grants that promoted "DEI," "DEIA," and "environmental justice" were unconstitutionally vague and constituted viewpoint discrimination were intended to suppress a particular point of view and likely to succeed); *Am Council of Learned Societies v. NEH*, 2026 WL 1256545 *52 (S.D.N.Y., May 7, 2026) (termination of National Endowment for the Arts grants identified as "DEI-related" constituted viewpoint discrimination and violated First Amendment); *Freedom Network USA v. Trump*, 825 F.Supp.3d 638, 2026 WL 800392, at *10 (N.D. Ill., March 23, 2026) (claims that threat of enforcement of executive order ordering agencies not to support programs that support "illegal DEI" were likely to succeed on the ground that they were unconstitutionally vague and violated the First Amendment); *see also Nat'l Pub. Radio, Inc. v. Trump*, No. 25-1674, 2026 WL 877434, at *27 (D.D.C. 2026) (government ban on funding NPR and PBS was based on viewpoint-based grounds, in violation of the First Amendment).

[15] *Agency for Int'l Dev. v. Alliance for Open Society Int'l, Inc.*, 570 U.S. 205, 214-15 (2013).

[16] *Id.*

[17] *See City of Saint Paul, Minnesota v. Wright*, 816 F.Supp.3d 65 (D.D.C. 2026).

disparate treatment unrelated to a legitimate government purpose in violation of the Equal Protection clause of the Fifth Amendment.[18] In fact, the Supreme Court found long ago that, "[f]or if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare [governmental] desire to harm a politically unpopular group cannot constitute a legitimate governmental interest;."[19] Just because a group has political beliefs contrary to that of the current government administration does not mean that the administration can make it law to exclude them from federal funding.

The Supreme Court has long determined that, "[t]he regulation of speech based on 'the specific motivating ideology or the opinion or perspective of the speaker' – is a 'more blatant' and 'egregious form of content discrimination."[20] The proposed regulations present content-based, viewpoint-discriminatory restrictions on speech, aimed to chill, if not silence, First Amendment protected views, programs, and projects. The values of DEI are lawful and designing programs aimed at achieving such values are rooted in long-established principles of law. The proposed rule subverts bedrock Civil Rights principles in favor of unlawfully demanding that individuals seeking federal funding conform to the viewpoint of the current administration.

OMB's proposal to find that referencing Supreme Court case decision in *Bostock v. Clayton County*[21] is "unnecessary within the government-wide regulatory text, and no longer consistent with Administration policy" is an audacious example of an overreach of power. *Bostock* clarified that, "just as sex is necessarily a but-for cause [in discrimination] against homosexual or transgender employees, [discrimination] on these grounds inescapably intends to rely on sex in its decisionmaking."[22] OMB and this administration's attempt to overrule or ignore Supreme Court precedent based on supposed "[inconsistency] with Administration policy" is a blatant violation of separation of powers.

OMB understates the impact of this proposal in order to shoehorn the proposal into the requirements set out in *South Dakota v. Dole*[23] – one of the key requirements attached to funding conditions is that they cannot "be unduly coercive such that 'pressure turns into compulsion'."[24] OMB states that they are in line with this requirement because "an applicant or prospective recipient may simply opt out of a particular Federal award or program." But this approach makes critical federal funding dependent upon a recipient's viewpoint, which itself violates the Constitution. And for the thousands of states, Tribal entities, local governments, higher education institutions, nonprofits, and even private entities that rely heavily on federal funding, this approach is absolutely untenable. It requires entities that Congress intends to fund to pledge loyalty to the current administration's way of thinking before such funding will be released. That approach has been repeatedly rejected by courts all the way up to the Supreme Court and must be rejected here. It ignores the fact that the administration can decide down the line that something the organization starts doing is "illegal" discrimination and abruptly terminate their grant. Risk of arbitrary grant cancellation based on post hoc reconsiderations of the lawfulness of an organization's activity is heightened by the unconstitutionally vague language employed throughout the proposal. OMB employs broad language like "promote", "encourage", "facilitate" and "associated with" to describe its restrictions. This language fails to put grantees on notice of

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[18] *Id.*
[19] *U.S. Dep't of Agric. V. Moreno*, 413 U.S. 528, 534 (1973).
[20] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citation omitted) (1995).
[21] *Bostock v. Clayton County, Georgia*, 590 U.S. 644 (2020).
[22] *Id*. at 645.
[23] *South Dakota v. Dole,* 483 U.S. 203 (1987).
[24] *Id.* at 204.

what conduct is permissible and sweeps so broadly as to chill plainly lawful conduct. This is unconstitutional, coercive, and will not bode well for anyone trying to do business with the government.

OMB cites *New York v. United States*[25] for the proposition that conditions have to be reasonably related to the purpose of the funding. That is true, but that is not what is happening here. OMB is perpetuating and codifying an unlawful practice of imposing anti-DEI, anti-immigration, and other conditions despite having no bearing on the grant activities.[26] The authority under *Rust v. Sullivan*[27] is also narrower than OMB indicates; the conditions that the Supreme Court allowed were reasonably related to the purpose of the grant and the court did not give the agency unfettered discretion to decide what was permissible or not.

C. OMB Did Not Follow Proper Administrative Procedures in Issuing this NPRM.

Pursuant to the APA, there is an established process by which federal agencies must modify or rescind regulations that are not exempt from formal rulemaking requirements. Among other requirements, this process requires public notice and comment before such amendments may be effectuated by the federal agency that issued such regulations. As discussed in this section, OMB did not follow appropriate procedures for reasoned decisionmaking under the APA, as well as the PRA and RFA.

1. OMB Fails to Follow Proper Procedure in Adopting a Common Preamble

OMB asserts that all participating agencies have "adopt[ed] the common preamble"[28] of the proposal and that they plan to "issue the final rule as a joint rulemaking with a common preamble."[29] However, OMB and the participating agencies have not followed the correct procedure in issuing a joint rule or in delegating authority. Failure to adhere to these procedures demonstrates that the proposal is arbitrary and capricious and must be withdrawn.

Under guidance[30] from the Office of the Federal Register (OFR), there is a specific template that agencies must follow to issue a common rule (i.e., "when multiple agencies wish to adopt identical regulatory text"). OMB only followed portions of this template, and only where convenient. For example, OMB does not specify which agencies are amending which parts of the text, instead using the non-specific passive voice ("are proposed to be amended"). This approach intentionally obscures which agencies are amending which parts of the CFR and raises significant questions regarding who is authorizing the proposed revisions and whether they have the prerequisite authority to do so. For example, is HUD authorizing the proposed revisions to EPA's section in 2 CFR 1500? Are all agencies authorizing changes to 2 CFR 200? The fact that one cannot answer this question from reading the proposed rule highlights the vague and improper nature of the proposal.

[25] *New York v. United States,* 505 U.S. 144 (1992).
[26] See *Institute for Applied Ecology v. Burgum,* No. 6:25-cv-02364-MC, 2026 WL 1470638 (D. Oregon 2026).
[27] *Rust v. Sullivan,* 500 U.S. 173 (1992).
[28] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32233 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-401.
[29] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32207 (proposed May 29, 2026), https://www.federalregister.gov/documents/2026/05/29/2026-10817/regulation-for-federal-financial-assistance#p-48.
[30] Office of the Federal Register, Common Rule Template, https://www.archives.gov/federal-register/write/ddh/common-rule.

Critically, OFR requires that all agencies sign joint rules to clarify their approval.[31,32,33] Even if each of the federal agencies had the requisite authority – which as indicated above they do not – they would be required to sign the document to confirm their respective approval of the joint rule. This did not happen here – the 41 participating agencies did not each sign the document. OFR's Document Submission Portal[34] also states that "The uploaded document(s) must be digitally signed." Digitally signing a document for the Federal Register requires officials with appropriate signatory authority electronically certifying the document with their agency-issued individual Personal Identity Verification (PIV) card.[35] As OFR notes in their Document Drafting Handbook, signatures are critical to ensure that "contents of the document have not been tampered with."[36] Without signatures from all participating agencies, how can the public know that OMB did not revise the proposal after receiving delegated "approvals" from the participating agencies?

Instead of actually signing the proposal document, the preamble asserts without evidence that various staff at the 41 participating agencies aside from OMB "approved" Russell Vought at OMB "to digitally sign this document for purposes of publication in the Federal Register."[37] Providing vague "approval" without evidence is not sufficient and does not equate to having every participating agency provide the necessary signature that is required to make this regulation binding on all 42 participating agencies. Accordingly, we request that clear evidence of the alleged approvals (which are not digital signatures of the proposal), including any correspondence between the federal agencies, be placed in the docket for the proposal and that additional time be given to the comment period to give the public adequate time to review such evidence.

The titles of the approving officials vary substantially across agencies and departments, from Department Secretaries down to a Research Policy Director. OMB has provided no evidence in the docket that all of

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[31] 1 CFR § 18.7 ("Signature. The original and each duplicate original document must be signed in ink, with the name and title of the official signing the document typed or stamped beneath the signature. Initialed or impressed signatures will not be accepted. Documents submitted under § 18.4(c) may be authenticated as original documents by digital signatures").

[32] Office of the Federal Register, *Document Drafting Handbook, Revision 2.2* at 1-1 (Jun. 2025), https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf ("1.2 How can my agency issue a document jointly with one or more other agencies? ... Make sure an authorized official from each agency has signed a jointly issued or common rule document").

[33] *Id.* at 1-8 to 1-9 ("In the case of a joint document which requires multiple signatures, do not separate the signatures. All agencies should sign in the same place").

[34] Office of the Federal Register, *Document Submission Portal,* https://webportal.fedreg.gov/(S(u2azj0vpkwyvq5dl3ezjiofl))/view/Info.aspx#learn.

[35] Office of the Federal Register, *Document Drafting Handbook, Revision 2.2* at 1-10 (Jun. 2025), https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf ("All agency documents must have a valid signature, including those sent through the webportal. We will only accept documents signed with a medium assurance level digital signature certificate, cross-certified by the Federal Bridge Certification Authority in PKCS#7 open standard. Most Federal Government-issued HSPD-12 Personal Identity Verification ID cards meet this level of certification. For the purpose of digital transmission to the OFR, this process is abbreviated as Public Key Infrastructure, or PKI. The name in the signature block in the document must meet the name-matching requirements for PKI signatures provided in section 1.6 (see Table 1-2 and Example 1-13). All the rules for drafting documents still apply to documents that are digitally signed and submitted through the webportal").

[36] *Id.* at B-3 ("IF OFR NEEDS TO EDIT THE DOCUMENT, THEN WHY DO I NEED TO DIGITALLY SIGN IT? When your document arrives, with your digital signature still intact, we are able to confirm that: 1) Your name matches the name printed as the signer in the document; and 2) Since your signature is intact, the contents of the document have not been tampered with. CAN I EDIT THE DOCUMENT AFTER I HAVE SIGNED IT? WHY OR WHY NOT? Yes, but you must resign after edits are completed").

[37] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32238-40 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-532. .

these individuals have appropriate delegated authority to bind their agencies and to sign such Federal Register documents.[38,39]

As an example, EPA has a Delegations Manual that specifies in Delegation 1-21 precisely which positions are authorized to sign various types of Federal Register documents on behalf of the Administrator.[40] Our understanding is that substantive, burden increasing proposed rulemakings relating to EPA financial assistance are to be signed by the EPA Administrator. The EPA official who purportedly "approves" (without signing) this proposal is the Chief Financial Officer and Chief Administrative Officer. As this position has never signed a Federal Register document for EPA previously (i.e., a search for this title on the Federal Register search page only finds this OMB proposal), there is no evidence that there existed a delegation to allow her under this title to sign the proposal on behalf of the EPA Administrator at the time that she allegedly did so.[41] Signing (or "approving") under this title without an explicit delegation of authority from the EPA Administrator calls into question whether the agency legitimately authorized this proposal and whether it would therefore be binding on the agency, if finalized.

Even assuming that all of the officials listed in the preamble have authority to sign the proposal, authority cannot be delegated across agencies.[42,43] OFR has an FAQ[44] addressing delegations when allowed, stating "[i]f the person who would normally sign a document cannot, they can delegate the signature authority to someone who can." OFR also provides example language for allowable delegations, which the OMB proposal inappropriately uses.[45] However, nothing in this FAQ implies that such delegation can occur across agencies, the examples provided by OFR do not demonstrate this, and there is no statutory authority cited

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[38] Office of the Federal Register, *Document Drafting Handbook, Revision 2.2* at 1-6 (Jun. 2025), https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf ("The signer must be a Federal employee with the authority to act for the agency. [Footnote citation to 1 CFR 18.7.] The title in the signature block must be related to the authority to sign the document. Do not include honorary titles or titles associated with a different agency role").

[39] *Id.* at B-2 to B-4 (Jun. 2025) ("WHAT IF THE ONLY PERSON WHO IS AUTHORIZED TO SIGN THE DOCUMENT IS NOT AVAILABLE ? This is a business process question that is important for agencies to consider. Remember: no one is authorized to use someone else's credentials to sign a document digitally on someone else's behalf. This applies to both PIV card digital signing and "soft certificate" use such as Entrust certificates. So the signer MUST apply their digital signature themselves. Your agency may need to look at its delegations of authority to ensure that the individuals necessary can be available to sign documents when needed. The person whose name is in the document MUST be the person whose digital signature is applied to the document. If the names do not match, the document will be rejected by our office").

[40] EPA Delegation 1-21. Federal Register. 2002. https://downloads.regulations.gov/EPA-R06-OAR-2011-0938-0010/content.pdf.

[41] Office of the Federal Register, *Document Drafting Handbook, Revision 2.2* at 1-6 (Jun. 2025), https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf ("The title in the signature block must be related to the authority to sign the document. Do not include honorary titles or titles associated with a different agency role").

[42] 5 USC § 301 ("Departmental regulations. The head of an Executive department or military department may prescribe regulations for the government of **his** department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property") (Emphasis added).

[43] United States Department of Justice, Office of Legal Counsel, *Centralizing Border Control Policy Under The Supervision of The Attorney General* (Mar. 20, 2002), https://www.justice.gov/olc/opinion/centralizing-border-control-policy-under-supervision-attorney-general ("In general, the President may not transfer the functions of an agency statutorily created within one Cabinet department to another Cabinet department without an act of Congress").

[44] Office of the Federal Register, *Agency FAQs for OFR: Legal - How and when must my agency delegate signature authority?* https://www.archives.gov/federal-register/agencies/agency-questions#collapsepanel_72145.

[45] *Id.* ("The [agency official] of [AGENCY], [name of agency official], having reviewed and approved this document, is delegating the authority to electronically sign this document to [name of signer], who is the [title of person signing], for purposes of publication in the Federal Register").

by OMB to allow such delegations across agencies. Such delegation is not a substitute for an agency official signing the rule. In fact, this proposal is the only published Federal Register document ever to use these phrases: "to digitally sign this document for purposes of publication in the Federal Register" and "authorized to digitally sign the aforementioned document for publication in the Federal Register."

Notably, the process that OMB used for this proposal is different from that used in the 2014 interim final rule.[46] In the 2014 rule, each agency clearly identified which sections it was amending and signed each section. Agencies in 2014 did not "delegate" their authority or responsibilities to OMB. For example, the changes to EPA's CFR sections were signed by EPA Administrator Gina McCarthy, not delegated to a lower level official who then re-delegated their responsibility to OMB.[47] OMB's and EPA's departure from these previous procedures is unexplained and unjustified.

2. The Comment Period is Too Short to Provide Adequate Time for Review & Comment

On June 24, 2026, L4GG submitted a request[48] to extend the comment period to allow for a reasonable review and comment on a regulation that will directly affect the statutory regimes of 42 different federal agencies. We incorporate that comment period extension request by reference into this comment letter. In addition to submitting the request to the docket on Regulations.gov, L4GG also emailed it to the OMB point of contact at 4:55 pm EDT. By 9:11 am the next morning (only 16 minutes of business time), we received an email rejecting our request.[49] The curt rejection included no supporting facts or reasons. Indeed, given the short period of time between receipt and response, it's likely that OMB staff did not even read our request or the compelling reasons for it. One thing is clear: OMB definitely did not adequately consider it as required by law. Notably, our request was one of dozens of similar requests to extend the comment period, including from Congress,[50] all of which were rejected without a reason.[51] Rejection of a reasonable request is arbitrary and capricious.

Furthermore, the short 45-day comment period on this proposal is not the normal process for similar OMB proposals. OMB provided a 60-day comment period for their interim final rule in 2014,[52] a 60-day comment

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[46] Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 79 Fed. Reg. 75871 (Dec. 19, 2014) https://www.federalregister.gov/d/2014-28697 .
[47] *Id*. at 76063.
[48] Comment of Lawyers for Good Government, Comment on Period Extension Regarding Proposed Rule "Regulation for Federal Financial Assistance" 91 Fed. Reg. 32198 (proposed May 29, 2026) https://www.regulations.gov/comment/OMB-2026-0034-36229.
[49] See **Attachment 1**, email from OMB to L4GG.
[50] U.S. Senate Appropriations Committee (Majority), *Sen. Collins Asks OMB to Withdraw Parts of Grant Rule, Extend Comment Period* (Jul. 6, 2026), https://www.appropriations.senate.gov/news/majority/sen-collins-asks-omb-to-withdraw-parts-of-grant-rule-extend-comment-period.
[51] OMB Director Vought also rejected a request to extend the comment period without reason from Representative DeLauro. The transcript of that hearing is included with this comment letter as **Attachment 2**. House Appropriations Oversight Hearing: Office of Management and Budget (Jun. 30, 2026), https://appropriations.house.gov/schedule/hearings/oversight-hearing-office-management-and-budget ("Rep. DeLauro: Can you commit to granting a 45-day extension of the comment period? Vought: No").
[52] Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 79 FR 75871 (Dec. 19, 2014).

period on their 2020 proposed guidance,[53] and a 60-day comment period on their 2024 proposed guidance.[54] It is completely unreasonable for OMB to impose a shorter comment period on a proposal this broad-reaching that would affect, by OMB's own admission, 1,448 institutions of higher learning; 10,320 local, state, and territorial governments; 11,406 nonprofits; and 346 hospitals that provide critical care to Americans.[55] The least that OMB could do is offer additional time for these thousands of entities to adequately review the NPRM.

3. The NPRM Does Not Comply With the Regulatory Flexibility Act

By OMB's own estimates, 40% of unique federal financial assistance recipients are small entities, or about 32,653 based on FY 2024 numbers, representing 98,315 awards valued at $179,384,000,000 ($179 billion).[56]

In the NPRM, OMB acknowledged the increase in administrative burdens on small entities including "increased monitoring, documentation, payment justification, and compliance with updated national policy requirements, including time needed to navigate the learning curve and become familiar with new processes."[57] But OMB provides no evidence that these would be modest costs, particularly for smaller

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[53] Guidance for Grants and Agreements, 85 Fed. Reg. 3766 (January 22, 2020) https://www.federalregister.gov/d/2019-28524.
[54] Guidance for Grants and Agreements 88 Fed. Reg. 69390 (October 5, 2023) https://www.federalregister.gov/d/2023-21078.
[55] Office of Management and Budget, *Regulatory Impact Analysis of Proposed Revisions to 2 CFR 200, Table 2: Annual Average Number of Unique Recipients from USASpending.gov (2015-2024)*, https://www.regulations.gov/document/OMB-2026-0034-0038.
[56] Office of Management and Budget, *Regulatory Flexibility Act Small Entity Analysis of Proposed Revisions to 2 CFR, Table 2: Estimated Grant Activity by Small Entity Type, FY 2024*. https://www.regulations.gov/document/OMB-2026-0034-0006. Has OMB summed Table 2 of the RFA correctly? Should the sum of awards by small entities in Table 2 instead be 12,560 small entities with awards valued at $8.2 billion?
[57] Anonymous, Comment on Regulation for Federal Financial Assistance, Attachment 3, 91 Fed. Reg. 32198 (proposed May 29, 2026) https://www.regulations.gov/comment/OMB-2026-0034-29472 ("At minimum, small organizations would need to evaluate the following compliance tasks:

- Legal review of existing programs, forms, trainings, curricula, websites, contracts, subaward documents, privacy notices, and community partnerships for exposure under vague ideological funding conditions;
- Board review and possible revision of mission statements, nondiscrimination policies, anti-harassment policies, referral policies, volunteer policies, staff handbooks, public communication rules, and conflict-of-interest procedures;
- Staff training on what language, documentation, referrals, demographic questions, and service practices might create funding risk;
- Revision of intake forms, case-management systems, referral sheets, resource guides, demographic data fields, program evaluations, and public education materials;
- Creation of internal records to show why a program did or did not address particular populations, use particular terminology, or provide particular referrals;
- Grant-writing review to avoid language that could be characterized as promoting a disfavored concept, even if the language is accurate, evidence-based, or required by professional standards;
- Monitoring of executive orders, agency guidance, political appointee priorities, NOFO language, federal enforcement posture, and changing definitions of national interest or public safety;
- Audit-preparation practices to defend against clawback, termination, material-breach allegations, suspension, debarment, or reputational harm;
- Insurance and risk-management consultation regarding coverage for grant disputes, employment complaints, civil rights conflicts, or federal enforcement actions;
- Staff and volunteer retention planning because frontline workers may not remain in programs forced to lie, omit, or avoid accurate service to vulnerable people.")

entities, many of which likely have very small budgets and operating margins.[58] Further, OMB dismisses impacts on subrecipients as indirect.[59] Dismissing these impacts without quantification is not only arbitrary and capricious, but will hurt small businesses and everyday Americans.

Even if this NPRM only impacted grants to small entities by a small amount – let's say 1% of the grant– **the cumulative cost on small entities would exceed $1.79 billion.** This significant cost means that OMB cannot substantiate a determination under the RFA that the proposal, if finalized, would not have a significant impact on a significant number of small entities. Moreover, none of the 41 participating agencies can make this determination either, based on the lack of any quantified analyses in the docket. OMB asserts in the preamble,[60] without any evidence, that the NPRM will not have "a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act." However, OMB clearly proposes that this is a rule not a guidance document, and the comments in the docket clearly demonstrate that the rule, if finalized, would have a significant economic impact on thousands of small funding recipients, including thousands of hospitals and rural communities that have ever-decreasing budgets.

To fulfill the requirements of the RFA, OMB must expand their RFA analysis to also include quantification and to identify and adequately consider alternatives.[61] In addition, because the EPA, Consumer Financial Protection Board (CFPB), and Occupational Safety and Health Administration (OSHA) have co-signed this proposed rule, these agencies are also required to conduct an initial regulatory flexibility analysis and convene a Small Business Advocacy Review panel to comply with RFA Section 609 requirements prior to issuing the proposal.[62] The failure of OMB and all participating agencies to comply with their obligations under the RFA is unlawful. Although RFA Section 609 allows OMB and the Chief Counsel for Advocacy at the Small Business Administration (SBA) to waive the small business panel requirements, these statutory requirements have not been followed in this proposal.[63] Specifically, OMB and SBA failed to provide a written finding in the proposal explaining why skipping the panel would not advance the effective participation of small entities in the rulemaking process. This includes the extent to which EPA, CFPB, and OSHA consulted with affected small entities about the potential impacts of the proposed rule, whether/how those agencies considered those concerns, whether a panel would give a competitive advantage to certain small entities, or special circumstances. None of this was provided in the preamble or the docket for the proposal. Skipping these requirements is unlawful.

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[58] Hitchcock Center (a small nonprofit with 15 employees and an annual budget of $1.2 million) estimates 200 hours of additional staff time per year to implement this proposal. Hitchcock Center, Comment on Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.regulations.gov/comment/OMB-2026-0034-44656.

[59] Anonymous, Comment on Regulation for Federal Financial Assistance, Attachment at 2, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.regulations.gov/comment/OMB-2026-0034-29472 ("OMB also suggests that some small entities may be affected only indirectly by agency-specific implementation or interactions with recipients of federal awards. That conclusion is not adequately supported on the present record. If a small nonprofit receives a federal award, applies for a federal award, serves as a subrecipient, contracts under a federally funded program, participates in a pass-through structure, or designs programming in anticipation of federal assistance, the proposed rule can affect that organization directly. It can affect eligibility, application strategy, award conditions, certification risk, audit posture, recordkeeping, program design, termination risk, data practices, and willingness to serve targeted populations. Calling those consequences indirect does not make them disappear").

[60] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32235 (proposed May 29, 2026) https://www.federalregister.gov/d/2026-10817/page-32235.

[61] Anonymous, Comment on Regulation for Federal Financial Assistance, Attachment at 7, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.regulations.gov/comment/OMB-2026-0034-29472.

[62] 5 USC § 609.

[63] 5 USC § 609(e).

4. The NPRM Violates the Paperwork Reduction Act (PRA)

In the proposal, OMB states that because "[t]his regulation does not contain a new requirement for information collection" and only "streamlines requirements in specific sections….the Paperwork Reduction Act does not apply." However, this is demonstrably false, a fact which is particularly concerning given that OMB is charged with enforcing the PRA.[64]

Contrary to OMB's assertion, the PRA does not have an exemption for regulations that "streamline" information collections, and OMB does not cite any statutory section to support this incorrect assertion. OMB has not cited any legitimate PRA exemption because they are irrelevant to this proposal.[65]

Regardless, this proposed rule would not reduce paperwork burden, as demonstrated by OMB's own supporting analyses. OMB's Regulatory Impact Analysis (RIA) and RFA analysis list many examples of additional administrative and paperwork burdens that would be imposed on federal funding recipients, if this proposal is finalized. For example, implementing the proposal would require

- Additional reports and documentation
- Revisions to internal guidance, procedures, staff training
- Revised monitoring systems and databases
- Revisions to subaward terms and conditions and solicitation language
- Requirements to use Treasury's Do Not Pay system, conduct pre-payment verification checks, and participation in E-verify

In addition, OMB cannot possibly claim that PRA does not apply because there is no new collection. It would be more correct to say that PRA applies but the requirements have already been satisfied (if this were true). Even if approved information collection requests (ICRs) existed that covered 100% of the requirements in the proposal, OMB and the 41 participating agencies are still obligated to update those existing ICRs. OMB has not listed any of those ICRs in the proposal, which makes it impossible for the public to confirm that all of the requirements are covered.

Consistent with New York University's comment letter on this proposal,[66] the rule must be reproposed with required information on the associated information collection requests, or, alternatively, OMB must complete a stand-alone PRA approval process including opportunities for public comment.

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[64] 44 USC § 3503.

[65] 44 USC § 3518(c)(1) (enumerating certain limited exemptions such as "during the conduct of a Federal criminal investigation" or "during the conduct of intelligence activities"); *see also* 44 USC § 3507(j) (detailing the conditions required to receive an emergency PRA clearance).

[66] New York University Institute for Policy Integrity, Comment on Regulation for Federal Financial Assistance, Attachment at 7, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://policyintegrity.org/documents/Comments_to_the_Office_of_Management_and_Budget_on_Revising_the_Guidance_for_Grants_and_Agreements.pdf .

5. The Regulatory Impact Analysis is Severely Flawed

OMB has not fully considered the economic impacts of the proposal. OMB did not even attempt to quantify any costs or benefits, which is insufficient under Executive Order 12866 and OMB's own guidance in Circular A-4.[67] Inadequate consideration of these important impacts is arbitrary and capricious.

First, OMB significantly underrepresents the economic impact of this proposed rule. Rather than quantifying impacts, OMB's RIA[68] for this proposal concludes, "The RIA finds that the proposed rule is expected to generate qualitative benefits, modest administrative costs, and minimal transfer effects." This conclusion is inconsistent with another statement in the RIA that "OMB expects there to be minimal to modest costs for the Federal Government and minimal to modest to **substantial short-term costs for recipients** related to implementation of the rule."

However, OMB does not attempt to put a range on what these descriptions could represent in dollars. OMB's own Circular A-4 encourages quantification of benefits and costs even though it acknowledges that it is not always possible. In these situations, Circular A-4 encourages threshold or break-even analyses. OMB did not attempt these analyses either even though it has multiple methods available to them (e.g., using estimates from information collection request supporting statements, break-even analysis, bounding exercise, approximation).

Instead of quantifying impacts, OMB describes impacts qualitatively using these terms: minimal, modest, moderate, substantial, and transformative. Even with OMB's stated definitions, these terms are vague, subjective, and insufficient. This categorization seems to have no purpose other than to fit OMB's predetermined conclusion that this proposed rule would not have significant economic impacts.

OMB's choice to not quantify the impacts of this proposal is highlighted by their requests for comments throughout the RIA on how to estimate those impacts. Comments throughout this docket provide examples to the additional administrative costs that OMB should incorporate into the RIA for the final rule.[69] Failure to use this information provided in the public comment in the RIA accompanying the final rule would be arbitrary and capricious.

Second, given that there are more than 29,000 funding recipients every year that are directly affected, plus many more subrecipients, a minimal cost per recipient very quickly adds up and would easily exceed $100,000,000 cumulatively. Agency actions that exceed $100 million are considered economically significant under Executive Order 12866 and must prepare RIA following OMB's guidance in Circular A-4.

OMB could have estimated costs in multiple ways. For example, OMB could have estimated costs based on the additional burden to recipients to implement the new requirements. If the new burden was just 0.1 full-time equivalent (FTE) additional work per year per recipient, the economic costs on the direct recipients

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[67] Office of Management and Budget, *Circular A-4* (Sep. 17, 2003), https://www.reginfo.gov/public/jsp/EO/fedRegReview/CircularA4.pdf.
[68] Office of Management and Budget, Regulatory Impact Analysis of Proposed Revisions to 2 CFR, Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.regulations.gov/document/OMB-2026-0034-0038.
[69] E.g., Hitchcock Center estimates 200 hours of additional staff time per year. Hitchcock Center, Comment on Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026), https://www.regulations.gov/comment/OMB-2026-0034-44656.

alone would be nearly $300 million.[70] As many commenters throughout the docket have noted, they anticipate that the additional administrative burden would be much more than 0.1 FTE per year. Alternatively, OMB could have estimated administrative costs based on the award amount. If the increase in burden was just 0.1% of award amounts, the cumulative total would exceed $179 million. Most reasonable people would characterize 0.1 FTE or 0.1% of awards as a "minimal" burden (using OMB's definitions), but OMB expects up to "substantial" short-term costs for recipients. So, even these hypothetical cost estimates are likely an underestimate of the real impact.

To exceed $100 million/year, each unique recipient would only need to spend $3,436/year in additional administrative costs (assuming average wage is equivalent to GS-12 step 1 in Washington, D.C. at $49.07/hour[71]). That is only 70 hours per year or less than 1.5 hours per week or 0.034 FTE, which is likely well below actual burden, as demonstrated by commenters.[72] This wage rate does not even reflect overhead. It is not reasonable for OMB to conclude that this proposal would not be economically significant.

The OMB proposal was 412 pages with a word count of 113,764 words. Using an average reading time (250 words per minute), it would take 7 hours and 58 minutes simply to silently read the proposal.[73] Using the same wage rate as the above example, if only one person at each recipient organization read the proposal at an average reading speed, the administrative burden just for reading the proposal would exceed $11 million.[74] If you make a more reasonable assumption that the reading rate is slow (100 words per minute) because the proposal is highly technical[75] rather than a light novel, the reading time increases to 18 hours and 57 minutes, or $27 million at that wage rate.[76] OMB has not even attempted to calculate even this small piece of the additional administrative burden.

Third, OMB's RIA fails to meet their own Circular A-4 standards in additional ways. Circular A-4 states, "Once you have determined that Federal regulatory action is appropriate, you will need to consider alternative regulatory approaches." OMB's analysis of alternatives consisted of two sentences where "OMB determined that the alternatives would not be effective in achieving the intended oversight or accountability objectives." This supposed determination was asserted without any analysis, discussion, or justification. In

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[70] Calculation: 0.1 FTE (208 hours) * GS-12 step 1 salary in DC ($49.07/hr) * 29,105 direct recipients = $297,061,928.80.

[71] Office of Personnel Management, *Salary Table 2026-DCB, Hourly Basic (B) Rates by Grade and Step*, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/26Tables/html/DCB_h.aspx.

[72] Calculation: $100,000,000 / 29,105 direct recipients = $3,436 each / $49.07 wage rate = 70 hours. Many commenters in the docket have estimated the additional burden from implementing this proposal, including:

- Hitchcock Center estimates 200 hours of additional staff time per year. Hitchcock Center, Comment on Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (Proposed May 29, 2026), https://www.regulations.gov/comment/OMB-2026-0034-44656.
- An anonymous biomedical researcher estimates $24,000-$48,000 per year in additional publication costs for their laboratory. Anonymous, Comment on Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (Proposed May 29, 2026, https://www.regulations.gov/comment/OMB-2026-0034-0477.
- Build Reuse estimates 50-100 hours of additional staff time per year or $1,700-$4,000 in direct labor costs alone. Comment tracking number: mrd-njif-nsak.
- Deep South Center for Environmental Justice estimates 285 hours solely to support subrecipient compliance with E-Verify enrollment across 95 subawards. Comment tracking number: mrj-c5wv-fwmf.

[73] Word count and reading time calculations were made using Thereadtime.com.

[74] Calculation: 7.97 hours * GS-12 step 1 salary in DC ($49.07/hr) * 29,105 direct recipients = $11,377,853.72.

[75] Readabilityformulas.com quantified the Flesch Reading Ease of the proposal to be 43.00 with a reading difficulty of "difficult" and a grade level of "college". This demonstrates that the slow reading speed is a better assumption than the average reading speed.

[76] Calculation: 18.95 hours * GS-12 step 1 salary in DC ($49.07/hr) * 29,105 direct recipients = $$27,064,055.53.

Circular A-4, OMB advises consideration of different choices defined by statute, different effective dates, different enforcement methods, different requirements for different sized entities, informational measures rather than regulation, among others. OMB provides no evidence in the record that it truly considered any of these. OMB's failure to hold themselves accountable to the same standards as they hold other agencies to in their guidance is arbitrary and capricious.

Fourth, there are many examples of economic impacts that OMB did not even consider qualitatively. For example, as discussed further in **Section III** of this comment letter, OMB did not consider the economic impacts of expanding domestic procurement requirements to more grants, projects, and products, which would have expenses related to higher domestic product prices, additional market research, or compliance demonstration. In addition, OMB did not even consider the economic impacts associated with potential credit downgrades due to unsteady and volatile federal funding from unpredictable grant terminations, which Moody's ratings indicate could increase interest rates for states and localities and impacts to services.[77] Given that federal funding is a significant portion on state and municipal budgets (i.e., more than a third of state budgets),[78] this impact alone would likely be economically significant.

OMB's flawed and inadequate consideration of economic impacts is arbitrary and capricious.

6. This NPRM Must Be Treated as a Major Rule Requiring a 60-Day Delay to the Effective Date

For all of the reasons discussed in the previous section, we believe that the economic impacts of the rule would exceed $100 million per year, which would make this a major rule under the Congressional Review Act.[79] The Congressional Review Act prevents major rules from becoming effective until at least 60 days after publication of the final rule in the Federal Register and submittal to Congress and the General Accountability Office (GAO).[80] OMB's refusal to quantify the economic impacts does not absolve OMB from the obligation to delay the effective date.

There is no feasible way for OMB to make the final rule become effective on their stated date of October 1, 2026, without shortening the after publication delay and circumventing the Congressional Review Act requirements for major rules.[81] We anticipate that OMB may try to claim that the final rule is either not subject to or has "good cause" under the APA.[82] We presumptively reject any such arguments.

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[77] Association of American Universities, *OMB's Proposal Creates Fiscal Uncertainty for States, Localities, and Nonprofits and the People They Serve* (Jul. 8, 2026), https://www.aau.edu/newsroom/leading-research-universities-report/ombs-proposal-creates-fiscal-uncertainty-states.

[78] Congressional Research Service, *Federal Grants to State and Local Governments: Trends and Issues* (Jun. 26, 2025), https://www.congress.gov/crs-product/R40638.

[79] 5 USC § 804(2)(A) ("The term "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in— (A) an annual effect on the economy of $100,000,000 or more").

[80] 5 USC § 801(a)(3)(A) ("A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of— (A)the later of the date occurring 60 days after the date on which— (i)the Congress receives the report submitted under paragraph (1); or (ii)the rule is published in the Federal Register, if so published").

[81] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32235 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-426.

[82] 5 USC § 553.

First, this is a substantive rule (not a procedural rule). It clearly alters the rights and interests of non-agency parties that are recipients and subrecipients of federal financial assistance. OMB's revisions modify the current Uniform Guidance in substantive ways[83] that are not simply clarifications of existing requirements or procedural in nature. Because OMB co-signed this "proposed rule" (explicitly not "guidance") with 41 other agencies to simultaneously revise their CFR sections, this rule cannot be claimed to be guidance to federal agencies and certainly is not limited to internal agency organization, procedure, or practice. It is also not an interpretive rule or statement of policy. Given the proposed infringement on the rights of funding recipients beyond just the administration of its awards, it is also not a matter limited to agency management of grants and loans. OMB stated its intention in the preamble of the proposal[84] for the final rule to be a binding regulation that is directly enforceable on funding recipients. Indeed, OMB states that the goal of the proposal is to affect "transparency, accountability, and oversight for Federal awards across the Federal Government," which further demonstrates its intended expansiveness. As discussed in the previous section, this rule would clearly exceed the $100 million threshold for being a major rule. Therefore, this rule, if finalized, would be subject to the 60-day delayed effective date requirement under the APA in 5 USC 553 for major rules.

Second, OMB cannot claim in the final rule that there is "good cause" for this rule to bypass the delayed effective date. OMB has already forfeited any good cause arguments it could try to make in the final rule by following the traditional APA notice-and-comment process for the proposal and preparing a RIA, requirement specific to economically significant regulations in Circular A-4.[85] In addition, OMB has not provided sufficient time for federal agencies, funding recipients, and subrecipients to prepare for implementation of this rule, if finalized. Indeed, as discussed above, the comment period for this proposal was abnormally short compared to similar proposals and OMB rejected dozens of reasonable requests to extend it. OMB's stated intention for the final rule to be effective by October 1, 2026, is less than two months after the close of the comment period, which is far less than any previous revisions to the Uniform Guidance (five months for the 2020 revisions and over a year for the 2014 and 2024 revisions). This lack of sufficient public notice undermines any good cause argument that OMB may make in the final rule. Importantly, despite OMB's conflicting assertions, this rule is not streamlining but rather would increase burdens on the public in an economically significant way. The OMB's RIA demonstrates that this is not a rule that "relieve[s] a restriction" and would substantially affect the rights and obligations of non-agency parties. For all of these reasons, OMB does not have good cause to waive the delay to the effective date of the final rule and must submit the final rule to Congress and provide the full 60-day effective delay required for a major rule.

Third, during his recent hearing with the House Committee on Appropriations Committee, OMB Director Vought committed to assessing and responding to every comment received.[86] He further stated that this

[83] *See* 2 CFR § 200.111, 2 CFR § 200.218, 2 CFR § 200.219, 2 CFR § 200.300 (relating to Diversity, Equity, Inclusion and Accessibility).

[84] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32207 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/page-32207.

[85] Office of Management and Budget, *Circular A-4* (Sep. 17, 2003), https://www.reginfo.gov/public/jsp/EO/fedRegReview/CircularA4.pdf.

[86] House Appropriations Oversight Hearing: Office of Management and Budget (Jun. 30, 2026), .https://appropriations.house.gov/schedule/hearings/oversight-hearing-office-management-and-budget ("That said, we are out for comment on our proposed rule. We have probably record numbers of comments have come in. We're going to assess each one of those comments and make any changes that we need to"; "The number of comments that are coming in that we have to respond to is going to take us some time").

process would take time and that OMB will make needed changes. We intend to hold OMB to that commitment made under oath to Congress regarding the timing and content of the final rule.

III. Comments on Specific Provisions of the NPRM

A. The NPRM Raises Significant Civil Rights Concerns

1. Comments on 2 CFR 200.111, 2 CFR 200.218, 2 CFR 200.219, 2 CFR 200.300

This section describes substantial objections to specific provisions of the NPRM that would usurp statutory authority, trample on Constitutional guarantees, and particularly impact the rights and protections of the most vulnerable populations and communities that bear a disproportionate environmental burden in the country. They run contrary to this country's longstanding commitment to fairness and opportunity for all, and are arbitrary and capricious, in addition to not being in accordance with law or recent court decisions.

OMB's proposed revisions to 2 CFR 200.111, 200.218, 200.219, and 200.300 would overturn decades of Civil Rights and anti-discrimination law and precedent and violate the Constitution. This OMB action creates significant legal and financial risks to applicants and recipients and may have a chilling effect on efforts to seek federal funding, jeopardizing community access to critical services, as well as inhibiting scalable economic growth. Proposed requirements stemming from Administration Executive Orders (EOs) are vague and complex and rely on several EOs that are currently the subject of many court challenges, making it nearly impossible for recipients to know whether they are in compliance. The requirements also use broad language such as "promote," "encourage," and "facilitate" that will chill plainly lawful conduct. Because this OMB action exposes recipients to significant liability and coercion, the requirement has the effect of forcing them to spend time and resources defending themselves in audits, investigations, and possibly court, based on spurious allegations of fraudulent expenditures of federal funds. These coercive requirements may even force some recipients to betray their organizational mission and values, or take actions that conflict with the terms of their grants, at the threat of losing federal assistance. Notably, OMB failed to effectively evaluate reliance interests recipients have in their lawful DEIA practices that may be discontinued due to coercion, and also failed to consider the economic impacts of the proposed rule on applicants' and recipients' community relations and ability to comply with state and local civil rights and anti-discrimination laws.

In light of these issues, potential applicants may decide that it is not worth the risk and may forgo applying for federal funding. In turn, the number of applicants for financial assistance would become significantly smaller, in conflict with the mandate in 31 USC 6301(3) to encourage competition for these instruments. In turn, that would lead to fewer and/or disrupted services in communities nationwide, impacting critical environmental protection services, mental health services, infrastructure funding, disaster recovery and relief, housing, health, education, community services, and more. **Ultimately, the proposed changes will harm the very people and communities that are the statutory-intended beneficiaries of federal financial assistance**.

2. [200.111] English Language

OMB's proposed revision requiring applications to be submitted only in English runs afoul of the Constitution and raises significant concerns about potential violations of Title VI of the Civil Rights Act of 1964 (Title VI) by applicants and recipients of federal funds. Specifically, 42 USC 2000d(1) provides that, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Federal courts and prior Department of Justice interpretations have long recognized that discrimination against individuals with limited English proficiency constitutes discrimination based on national origin.[87] Because no federal law establishes English as the official language of the federal government or the United States, requiring English-only submissions would exclude individuals and communities whose primary language is not English from federally funded programs.

Title VI protects all "persons" in the United States, regardless of citizenship, and the Supreme Court has consistently held that undocumented individuals are "persons" within the meaning of the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments.[88] This interpretation is firmly supported by longstanding precedent and congressional intent. During debate on the Civil Rights Act of 1964, Senator Hubert Humphrey explained: "Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination."[89] Since the Supreme Court's 1974 decision in *Lau*, which held that Title VI requires language assistance sufficient to provide individuals with limited English proficiency meaningful access to federally funded programs and activities, lower courts have consistently held that language-based discrimination is a form of national origin discrimination prohibited by Title VI.[90] Accordingly, excluding individuals whose primary language is not English from access to federal financial assistance may constitute intentional discrimination, particularly in light of the federal government's longstanding guidance requiring recipients of federal funds to provide meaningful language access for persons with limited English proficiency.

To the extent proposed section 200.111 also restricts states, localities, or other non-federal entities from disseminating Federal financial assistance announcements, applications, or award information in languages other than English, it raises serious First Amendment concerns by restricting protected speech. It likewise increases the risk of Title VI liability by excluding individuals with limited English proficiency from participation in, denying them the benefits of, and subjecting them to discrimination in federally- funded programs on the basis of national origin.

The proposal is particularly concerning because the agencies like EPA have repeatedly recognized that communities disproportionately burdened by pollution and environmental harms often include individuals with limited English proficiency.

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[87] *See, e.g., Lau v. Nichols*, 414 U.S. 563 (1974).

[88] *See*, e.g., *Plyler v. Doe*, 457 U.S. 202,210-211 (1982); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

[89] 110 Cong. Rec; 6543 (Sen. Humphrey; quoting from President Kennedy's message to Congress, June 19, 1963). March 30, 1964. https://www.congress.gov/88/crecb/1964/03/30/GPO-CRECB-1964-pt5-8-1.pdf.

[90] *See*, e.g., United States v. Maricopa Cnty., 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (citing *Lau*, 414 U.S. at 568); *see also* Colwell v. Dep't of Health & Human Servs., 558 F.3d 1112, 1116-17 (9th Cir. 2009) (noting that *Lau* concluded that "discrimination against LEP individuals was discrimination based on national origin in violation of Title VI".

Courts have repeatedly recognized such claims. In *Cabrera*,the district court held that Spanish-speaking plaintiffs with limited English proficiency plausibly alleged intentional national origin discrimination where a federally funded public housing authority repeatedly refused requests for language assistance, permitting an inference that its failures "were motivated by discriminatory intent."[91] Likewise, in *Almendares*, the court held that Spanish-speaking food stamp beneficiaries with LEP sufficiently alleged intentional discrimination where State officials knowingly distributed program materials only in English despite understanding that the plaintiffs could not comprehend them.[92]

3. Sections 200.218 & 200.300 Exceed OMB Authority, Violate the Administrative Procedure Act, Raises Significant Constitutional Concerns, and Would Likely Eviscerate Critical Federal Funding for Underserved Americans

We have substantial adverse comments about the proposed modifications to Sections 200.218 and 200.300 as they:

- Exceed OMB's authority by attempting to bypass rulemaking pursuant to Title VI of the Civil Rights Act of 1964 and **use a regulatory process limited to grants management to rescind Supreme Court precedent** that allows for the consideration of disparate impact, including consideration as a factor when analyzing claims of intentional discrimination, which is binding on applicant and recipient of federal financial assistance pursuant to 42 USC 2000d.
- Risk significant harm to the development, implementation, and enforcement of environmental laws, regulations, and policies and, particularly, the nation's commitment to equal protection of the most vulnerable populations and environmentally overburdened communities.
- Violate the APA, 5 USC 551, et.seq., because OMB lacks authority to modify the regulations that each federal agency created pursuant to 42 USC 2000d-1.
- Violate the First Amendment rights of applicants and recipients of federal financial assistance.
- Use language that is likely unconstitutionally vague to threaten grant termination, including a prohibition on "supporting" or "promoting" disparate impact.
- Fail to recognize and distinguish between DEIA and gender initiatives that violate federal nondiscrimination statutes and those that are consistent with those mandates, in contravention of the holding in *Harvard Admissions,*[93] and other precedent.

a) Sections 200.218 & 200.300 of the NPRM Exceed OMB's Authority by Vacating Agency Regulations Required by Title VI of the Civil Rights Act and Violate the Administrative Procedure Act.

OMB exceeds its authority by attempting to vacate or supersede the individual regulations of all federal agencies implementing Title VI of the Civil Rights Act through this NPRM. Under 42 USC 2000d-1, each federal agency was mandated to create regulations to implement Title VI of the Civil Rights Act , which they did, beginning the same year that the statute was passed in 1964. Since 1964, obligations under Title VI have been well-established and reiterated by both federal court precedent and repeated agency and congressional

[91] *Cabrera v. Alvarez*, 977 F.Supp.2d 969, 975 (N.D. Cal. 2013).

[92] *Almendares v. Palmer*, 284 F. Supp. 2d 807, 08 (N.D. Ohio 2003).

[93] *Harvard Admissions,* 600 U.S. 181, 230-31 (2023).

action. Nothing in the statutory text of Section 2000d-1 authorizes OMB to unilaterally act on behalf of all federal agencies or otherwise to revise 2 CFR 200 as a replacement for going through formal rulemaking to amend agency rules promulgated pursuant to Title VI, as required under existing law. Revisions to regulations validly promulgated pursuant to statute cannot be revised by sleight of hand pursuant to OMB's limited authority under 31 USC 6307 to issue interpretive guidelines on financial assistance, as discussed more fully above in **Section I**. The NPRM is not limited to the narrow set of financial assistance policies that are within OMB's remit but instead broadly implicates civil rights standards in regulations implementing the Civil Rights Act and attempts to require all applicants and all recipients of federal financial assistance to comply with Executive Order 14173 and other administration policies critical of DEIA or the disparate impact standard without drawing the authority it needs from the explicit language and terms in existing federal nondiscrimination statutes.

As discussed in **Section II.C** of this comment letter, this proposal is subject to the APA. Here, OMB attempts to bypass APA requirements detailing the administrative process agencies must use to issue Civil Rights Act related regulations. It is important to note that even when an agency articulates that the rulemaking is related to its grantmaking authority and is therefore exempt from formal notice and comment, such authority is not without limits and cannot extend to de-facto modifications of other regulations, such as agency-specific regulations implementing the Title VI of the Civil Rights Act, which includes 40 CFR Part 7 for EPA.

Additionally, the NPRM attempts to override long-standing precedent and federal court decisions that have supported a variety of methods for establishing intentional discrimination under Title VI of the Civil Rights Act of 1964, as well as the Fifth and Fourteenth Amendments. In *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*,[94] the Supreme Court established that a variety of factors may be considered when evaluating claims of intentional discrimination, including: statistics demonstrating a clear pattern of discriminatory effect; the historical background of the decision and other decisions on comparable matters; the sequence of events leading up to the decision, as compared to other decisions on comparable matters; departures from normal procedures or substantive conclusions; relevant legislative or administrative history; and consistent pattern of actions of decision-makers that impose much greater harm on minorities than on non-minorities.[95] Nothing in *Harvard Admissions*[96] vacated or overruled *Arlington Heights*. OMB and the Executive Branch are ignoring the Supreme Court by attempting to eradicate an applicant's or recipient's consideration of disparate impact to analyze a claim of intentional discrimination. Also, such action, if allowed to stand and to be followed by applicants or recipients potentially could result in applicants and recipients failing to comply with 42 USC 2000d or engaging in conduct that the Supreme Court has deemed unconstitutional.

Indeed, it is fallacious to suggest that a standard prohibiting actions with an unjustified disparate impact are de facto contrary to federal anti-discrimination laws. OMB's NPRM would contravene longstanding regulations and policy that has been in place for decades and on which recipients and applicants of federal financial assistance rely.[97] The initial Title VI regulations were developed contemporaneously with the

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[94] *Vill. of Arlington Heights v. Metro. Housing Dev. Corp,* 429 U.S. 252, 266–68 (1977).

[95] United States Department of Justice Civil Rights Division, *Title VI Legal Manual, Chapter 5,* https://19january2021snapshot.epa.gov/sites/static/files/2021-01/documents/titlevi_legal_manual_rev._ed_1.pdf.

[96] *Harvard Admissions,* 600 U.S. 181, 230-31 (2023).

[97] Disparate impact is a long-standing standard for identifying discrimination. *See, e.g.*, *Griggs v Duke Power*, 401 U.S. 424, 431

statute in 1964,[98] and uniformly and explicitly prohibited actions by programs or activities receiving federal financial assistance with an unjustified disparate impact.[99]

b) The Vague Language in Sections 200.218 and 200.300 Violates the First Amendment and Constitutes Viewpoint Discrimination

As discussed in Section II.B., this proposal raises multiple Constitutional concerns, including vague and unenforceable terms that violate applicants' and recipients' First Amendment rights. This section focuses on the proposed regulatory text in Section 200.300.

Under this proposal, as a condition of establishing or maintaining eligibility to apply for federal funding, federal funding applicants and recipients would be required to agree not to "promote or support the use of disparate impact liability," nor engage in DEIA practices, per the vague descriptions in DOJ's July 2025 memo[100] and Executive Order 14173. The NPRM includes an inaccurate definition of "disparate impact liability" that departs substantially from case law and other authorities, contains language that is largely rhetorical (such as the idea that disparate impact liability "gives rise to an automatic or near- insurmountable presumption" of liability, which is contrary to fact), and fails to provide the unambiguous notice that is required to impose conditions on funding. In evaluating claims of disparate impact, there is no "presumption of the existence of unlawful discrimination" once "any differences or disparities in outcomes" is shown.[101] Similarly, the reference to "DEIA" in proposed 200.300(b)(1)[102] is inaccurately and vaguely

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(1971) (writing about the disparate impact standard under Title VII, "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.").

[98] *See* Nondiscrimination in Federally-Assisted Programs at the Departments of Interior, Agriculture, Health, Education and Welfare, General Services Administration, and Housing and Home Finance Agency - Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed. Reg. 16273 (Dec. 4, 1964).

[99] *See*, e.g., Nondiscrimination in Federally-Assisted Programs of the National Science Foundation – Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed. Reg. 16035 (recipients "may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination…."); Nondiscrimination in Federally-Assisted Programs of the Housing and Home Finance Agency – Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed Reg. 16281 (prohibiting actions with the effect of subjecting persons to discrimination); Nondiscrimination in Federally-Assisted Programs of the Department of Labor – Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed. Reg. 16284 (prohibiting actions with the effect of subjecting persons to discrimination); Nondiscrimination in Federally-Assisted Programs of the Department of Interior – Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed. Reg. 16293 (prohibiting actions with the effect of subjecting persons to discrimination).

[100] United States Department of Justice, Office of the Attorney General, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (Jul. 2025), https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.

[101] *See* United States Department of Justice Civil Rights Division, *Title VI Legal Manual, Chapter 7*, https://19january2021snapshot.epa.gov/sites/static/files/2021-01/documents/titlevi_legal_manual_rev._ed_1.pdf ("Courts have adopted a three-part test to determine whether a recipient's policy or practice violates the Title VI disparate impact regulations. First, does the adverse effect of the policy or practice disproportionately affect members of a group identified by race, color, or national origin? Some courts refer to this first inquiry as the "prima facie" showing. If so, can the recipient demonstrate the existence of a substantial legitimate justification for the policy or practice? *N.Y. Urban League,* 71 F.3d at 1036. A violation is still established if the record shows the justification offered by the recipient was pretextual.... Finally, is there an alternative that would achieve the same legitimate objective but with less of a discriminatory effect? If such an alternative is available to the recipient, even if the recipient establishes a justification, the policy or practice will still violate disparate impact regulations") (Citations omitted).

[102] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32215 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/page-32215. (""Diversity, equity, and inclusion" (DEI) or "diversity, equity, inclusion, and accessibility" (DEIA) policies, principles, or practices that violate any applicable Federal anti-discrimination laws. This

defined, and many organizations will be discouraged from engaging in practices that are not only consistent with applicable federal anti-discrimination law but are also important to the organization's effective performance or compliance with State, Tribal, or local laws. To the extent that the proposal requires adherence to Administration policies beyond the prohibition against taking action that is illegal, the proposal is unconstitutionally vague, overbroad, and chilling of protected speech. Indeed, Executive Order 14173, as applied to terms and conditions, has been enjoined across the country in ongoing litigation.[103]

c) [200.218 & 200.300] Statutory and National Policy Requirements - The NPRM Would Undermine Efforts to Provide Environmental Protections like Clean Air and Clean Water to the Most Environmentally Burdened Populations and Communities.

Our objections to this OMB NPRM are driven by, among others, concerns that it will further undermine our nation's commitment to remedying historic environmental injustice and, particularly, to ensuring equal protection of vulnerable populations and environmentally overburdened communities. The proposed rule is premised on a false narrative reflected in Section 3 of Executive Order 14173, which characterizes Executive Order 12898[104] as illegal discrimination. In fact, the core concepts of environmental justice focus on public engagement and equal treatment and are consistent with the Constitutional mandate for equal protection. Pursuant to Executive Order 12898, for example, EPA defined Environmental Justice as "...the **fair treatment of people of all races, income, and cultures** with respect to the development, implementation and enforcement of environmental laws, regulations, and policies, and their meaningful involvement in the decision-making processes of the government" (emphasis added). A crucial component of Environmental Justice is compliance "with Title VI[105] of the Civil Rights Act of 1964,[106] and agency regulations, [that] ensure that all programs or activities receiving Federal financial assistance that potentially affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, policies, practices, or methods of administration that discriminate on the basis of race, color, or national origin. . ."[107]

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includes racial preferences or other forms of racial discrimination used by the recipient or subrecipient that violate any applicable Federal anti-discrimination laws, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation (the "Unlawful DEI Provision")).

[103] *See*, e.g. *Cnty. of Santa Clara v. Noem*, 815 F.Supp.3d 979 (N.D. Cal. 2025) (preliminarily enjoining DHS terms and conditions relating to general compliance with all EOs and Anti-DEIA EOs specifically, under APA706(A-C), Separation of Powers, and Spending Clause); *City of Chicago v. United States Dep't of Just.*, 822 F.Supp.3d 873 (N.D. Ill. 2026) (preliminarily enjoining enforcement of Executive Order 14173 conditions in DOJ COPS grants, as violative of APA 706(A-C), separation of powers and Spending Clause); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, 767 F. Supp. 3d 243 (D. Md. 2025), opinion clarified, 769 F. Supp. 3d 465 (D. Md. 2025) (nationwide preliminary injunction (pre-CASA) of enforcement of EOs 14151 and 14173 across multiple federal agencies, on First Amendment and due process void-for-vagueness grounds).

[104] Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994), https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf.

[105] United States Commission on Civil Rights, *Not in My Backyard: Executive Order 12, 898 and Title VI as Tools for Achieving Environmental Justice - Chapter 2: What is Environmental Justice?* https://www.usccr.gov/files/pubs/envjust/ch2.htm.

[106] 42 USC § 2000d.

[107] The Trump Administration's revocation of E.O.s 12898 and 14096 does not break the linkage between compliance with federal civil rights laws and environmental justice. *See* Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, Sec. 3(a)(x) (Apr. 21, 2023), https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all (directing agencies that distribute federal financial assistance to make

The U.S. Department of Health and Human Services recognizes that discrimination adversely impacts health at individual, family, community, and population levels. Environmental justice programs respond to evidence of discrimination and support equitable delivery of government services[108] consistent with the letter and spirit of federal civil rights law. This evidence includes environmental health information collected by EPA, as well as other agencies with scientific missions, to carry out its responsibilities, consistent with non-discrimination laws, including blood lead levels, fine particulate matter pollution levels, age-adjusted hypertension, underweight and pre-term birth, childhood asthma, and life expectancy.[109] Congress has also acknowledged the linkage between historic underinvestment in disadvantaged communities health outcomes. When selecting Brownfields grants for funding, EPA is required by 42 USC 9604(k)(6)(C)(x) to consider "the extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations." The NPRM's codification of the policies in Executive Order 14173 does not preclude EPA -- or any other federal agency for that matter – with a congressional mandate to address disparate impacts- from carrying out this statutory mandate.

Both EPN and L4GG have already seen how the implementation of anti-DEIA policies can have a direct impact on clean air and clean water in overburdened communities. EPN and L4GG have worked with over 800 grantees that have had their grants terminated, frozen, or canceled, including 105 grantees under the Community Change Grant program that had their grants summarily terminated for a "change in agency priorities," including this administration's false equivalence of environmental justice projects with "unlawful" DEIA. Not only is this a complete misunderstanding of environmental justice, as well as the legality of DEIA, but this tortured interpretation has led to the cancellation of hundreds of critical public health projects under the Community Change Grant and Solar for Programs, including to name just a few:

- Replacing lead drinking water in Benton Harbor, Michigan (terminated)
- Placing air monitors in Houston, Texas in neighborhoods that have higher rates of asthma in children (terminated)
- Building resilience hubs in Louisiana and Georgia to ensure power in the event of heatwaves and power outages (terminated)
- Providing free or low-cost solar in Georgia, Florida, Alabama, Louisiana, and many other states to low income individuals who can no longer afford to pay their power bills (terminated)
- Monitoring to identify harmful pollutants in KY, TN, NC, SC, FL, GA, AL, MS (terminated)
- Building resilience hubs in Florida after Hurricane Ian (terminated)

Every single one of these grants was cancelled due to a "shift in agency priorities." And every single one of these cancellations directly harms the public health of everyday Americans. Unsurprisingly, every single one

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environmental justice part of their mission by ensuring recipients do not discriminate on the basis of race, color, or national origin in violation of Title VI).

[108] National Institute of Health, National Institute on Minority Health and Health Disparities, *NIMHD Research Framework Details,* https://www.nimhd.nih.gov/resources/research-framework/nimhd-research-framework-details.

[109] *See, e.g.,* United States Environmental Protection Agency, *Study Finds Exposure to Air Pollution Higher for People of Color Regardless of Region or Income* (Sep. 20, 2021), https://www.epa.gov/sciencematters/study-finds-exposure-air-pollution-higher-people-color-regardless-region-or-income; *see also* National Institute of Health National Library of Medicine, *Race, Healthcare, and Health Disparities: A Critical Review and Recommendations for Advancing Health Equity* (West J Emerg Med. 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10527840/.

of these terminations is also being litigated, leading to the waste of taxpayer dollars to defend unlawful actions that impact public health.

This is a mere preview of the types of impacts that would be amplified by orders of magnitude if this regulation is finalized and 42 different federal agencies are required to implement anti-DEIA measures.

Moreover, OMB lacks authority to require entities outside of the Executive Branch to comply with Executive Branch policy directives in Executive Order 14173, as well as other Executive Orders cited in this NPRM.[110] OMB has not cited any federal law, including appropriation statutes authorizing specific mandatory or discretionary grant programs, that require recipients to comply with federal Executive Orders generally or that preclude DEIA activities identified in Executive Order 14173 or any other activities identified in the other Executive Orders cited. Indeed, OMB could not identify such federal laws, **because none exist.**[111] The claim that "[f]ederal agencies must return to designing assistance programs and award activities to align with essential public purposes authorized by law"[112] grossly and mistakenly suggests that diversity, equity, inclusion, and accessibility, whether remedying racial, gender, or other disparities, are not valid public purposes authorized by law. This action, therefore, is arbitrary and capricious because "[OMB] has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[113]

EPA's abandonment of data collection on disparate impacts of legacy pollution[114] does not alter the fact that reducing such unjustified disparate impacts would advance EPA's mission of protecting human health and the environment of all people in the United States, or that such actions could be taken without violating civil rights law.[115] Rather, it conveys EPA's choice to "turn[] a blind eye toward … discriminatory

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[110] The other Executive Orders cited herein include: Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20, 2025), https://www.federalregister.gov/executive-order/14151 (DEI Executive Order); Executive Order 14168, *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Jan. 20, 2025), https://www.federalregister.gov/executive-order/14168 (Gender Ideology Executive Order); and Executive Order 14187, *Protecting Children from Chemical and Surgical Mutilation* (Jan. 28, 2025), https://www.federalregister.gov/executive-order/14187 (Protecting Children Executive Order). The President later issued Executive Order 14281 on April 23, 2025, entitled "Restoring Equality of Opportunity and Meritocracy" (Restoring Equality Executive Order), https://www.federalregister.gov/executive-order/14281.

[111] *See, e.g. Cnty. of Santa Clara v. Noem*, 815 F.Supp.3d 979 (N.D. Cal. 2025) (preliminarily enjoining DHS terms and conditions relating to general compliance with all Executive Orders and Anti-DEIA Executive Orders specifically, under APA 706(A-C), Separation of Powers, and Spending Clause); *City of Chicago v. United States Dep't of Just.*, 822 F.Supp.3d 873 (N.D. Ill. 2026)(preliminarily enjoining enforcement of Executive Order 14173 conditions in DOJ COPS grants, as violative of APA 706(A-C), separation of powers and Spending Clause); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, 767 F. Supp. 3d 243 (D. Md.), opinion clarified, 769 F. Supp. 3d 465 (D. Md. 2025) (nationwide preliminary injunction (pre-CASA) of enforcement of Executive Orders 14151 and 14173 across multiple federal agencies, on First Amendment and due process void-for-vagueness grounds), vacated and remanded, No. 25-1189, ECF 29, (4th Cir. Feb. 6, 2026).

[112] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32200 (proposed May 29, 2026) https://www.federalregister.gov/d/2026-10817/page-32200.

[113] *SEC v. Chenery Corp.*, 332 U. S. 194, 196 (1947).

[114] Harvard Law School, Environmental and Energy Law Program, *EPA Released Indicators of Environmental Health Disparities,* (Jan. 2, 2025), https://eelp.law.harvard.edu/tracker/epa-released-indicators-of-environmental-health-disparities.

[115] See LatinoJustice PRLDF, et al., *Significant Adverse Comments on the Department of Energy's Direct Final Rule, DOE-HQ-2025-0024* (Jun. 16, 2025) at 23-25, https://www.regulations.gov/comment/DOE-HQ-2025-0024-7305 (describing civil

practices,"[116] a practice that contradicts the Department of Justice's July 2025 guidance that is meant to enforce obligations under federal anti-discrimination laws. [117]

The NPRM relies to a significant extent on the Office of Legal Counsel's (OLC) December 2025 legal opinion contending that facially neutral "proxies" can be indicators of unlawful discrimination that preclude implementation of federal grant programs as designed by Congress in authorizing statutes. OLC's position is based on speculation about the basis for action and by overreaching, could preclude effective implementation of legal grant programs. For example, though there is no foundation for a claim that "proxies" for race have been considered, the NPRM, citing the OLC opinion, could preclude the Environmental and Climate Justice Block Grant program authorized by 42 USC 4378, which requires that EPA fund activities that benefit disadvantaged communities as defined by the EPA's Administrator. Notably, the definition of disadvantaged communities used by this program was race neutral. In fact, EPA and other agencies with statutory mandates to address environmental justice through financial assistance programs that target disadvantaged communities should not be precluded by revisions to 2 CFR 200 from fulfilling their congressionally-mandated legal obligations. As this section flies in the face of well-established law and EPA's mandate, it cannot be delegated to OMB to publish, promulgate, or enforce.

Imposing Administration policy positions on federal funding applicants and recipients as a matter of law exceeds the constitutional authority of the Executive Branch – and particularly OMB. The Executive Branch may require federal funding recipients to comply with the U.S. Constitution, applicable federal statutes, and regulations.[118] However, Executive Orders and Department of Justice memos are not law or regulation, and they are decidedly not a substitute for the Constitution. Each Executive Order contains a provision stating that it does not "create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." For example, Executive Order 14173 does not, and indeed legally cannot, render DEIA practices illegal simply because the current Administration doesn't agree with them.

d) DEIA is not Illegal

The anti-DEIA language in the proposed revision to 200.300 explicitly states that federal nondiscrimination laws apply to "programs or initiatives that involve discriminatory practices, including those labeled as "DEI or DEIA" programs. Recipients could reasonably read the placement of "including" in this statement to suggest that all programs labeled as DEI and DEIA are within the category of "programs or initiatives that involve discriminatory practices." That is simply untrue. Indeed, many efforts to advance DEIA are legitimate, lawful best practices, and in some instances even required under the law to address civil rights concerns. One of the perplexing aspects of the broad sweep of the NPRM, as well as the Executive Orders it purports to effectuate, is the idea that somehow accessibility is illegal. To the

rights enforcement at the Department of Energy (DOE) involving claims that actions had unjustified disparate impacts pursuant to DOE's long-standing Title VI rules that were designed to ensure that DOE financial assistance benefits everyone, and are not used to disproportionately help or hurt one group over another).

[116] United States Department of Justice, Office of the Attorney General, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (Jul. 2025) at 1, https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.

[117] *Id.*

[118] 2 CFR 200.300.

contrary, accessibility for persons with disabilities is mandated by the Americans with Disabilities Act and other federal, state, and local laws.

As Chief Justice Roberts observed in *Harvard Admissions,*[119] diversity is a "commendable goal[]," and even questions about the impact of race on a person's life can reveal qualities such as courage, determination, and leadership that are essential to identifying a strong candidate.[120] The majority opinion in *Harvard Admissions* indicates that the Supreme Court's decision should not be construed as prohibiting organizations from following employee or program beneficiary selection practices which consider how "race affected his or her life, be it through discrimination, inspiration, or otherwise."[121] The Court majority also acknowledged that considering how an individual's heritage or culture motivated leadership or stimulated the achievement of a particular goal is legally permissible.[122] Further, as the July 2025 DOJ Guidance cautions, neutral DEIA criteria such as cultural competence, lived experience or geographic preferences only ". . . violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics" such as race or sex.[123]

While the proposal purports to uphold federal anti-discrimination laws, the examples of what may constitute "illegal DEIA" contradict established judicial precedents.

The administration's policy assertion that race-neutral means may be unlawful as "proxies for discrimination" is inconsistent with well-established law interpreting constitutional principles permitting diversity-related goals through race-neutral means, under which no student is treated differently based on race. As recently as 2013, in *Fisher v. University of Texas,* a seven-Justice majority of the U.S. Supreme Court set forth rigorous race-neutral procedures and protocols to guide college and university efforts advancing their mission-related diversity goals. The Supreme Court's decision in *Harvard Admissions* did not affect this ruling.[124]

e) The Proposed Rule Violates the First Amendment's Guarantee of Free Speech.

The vagueness of the terms in EOs upon which this NPRM relies, such as "DEI," "DEIA," "proxy," etc., also has the impermissible effect of chilling the freedom of speech of applicants and recipients.

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119 600 U.S. §§ 181, 214 (2023).
120 600 U.S. 181 at 230-31.
121 *Id.* at 230.
122 See 600 U.S. 181 at 239-240.
123 United States Department of Justice, Office of the Attorney General, *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* (Jul. 2025) at 2, https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.
124 *See Vitolo v. Guzman*, 999 F.3d 353, 363 (6th Cir. 2021) (for a policy intended to address discrimination to survive judicial scrutiny, "the government must show `serious good faith consideration of workable race-neutral alternatives'," *citing Grutter v. Bollinger*, 539 U.S. 306, 339 (U.S. 2003)); *see also Holman v. Vilsack*, 582 F.Supp.3d 568 (W.D. Tenn. 2021) (highlighting the availability of race-neutral programs to address alleged harms, including requiring individualized determinations of disadvantaged status or prioritizing loans to applicants who had previously been left out of funding opportunities); *Miller v. Vilsack*, No. 21-CV-0595, 2021 WL 11115194 (N.D. Tex. Jul. 1, 2021); *Strickland v. U.S. Department of Agriculture*, 736 F.Supp.3d 469, 482 (N.D. Tx. 2024) (race conscious program affording benefits for socially disadvantaged farmers was not narrowly tailored because it failed to address alleged racial inequities through a "`workable race-neutral alternative,'" quoting *Fisher*, 570 U.S., 312).

That is, "even though individuals might want to engage in constitutionally protected speech, a requirement that is vague, overbroad, or creates significant barriers to speech could cause them to 'curtail their expression.'"[125] As the District Court in the Northern District of Illinois recently stated, an order prohibiting programs or activities from promoting "illegal DEI" leaves grantees "without any information to shed light on the types of conduct that may now constitute `illegal DEI'".[126]

Additionally, as the U.S. District Court for the District of Oregon recently held, recipients have protected First Amendment rights to follow DEIA practices that are inconsistent with the policies of the current Administration when engaging in activities that are not supported by federal funds.[127] The District Court's ruling was firmly rooted in the Supreme Court's decisions in *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*[128], and *Nat'l Endowment for the Arts v. Finley,*[129] as well as 9th Circuit precedent in *Koala v. Khosla*[130]and *Youth71Five Ministries v. Williams,*[131] which held that the First Amendment precluded the government from constraining recipients' exercise of their rights outside the contours of the programs for which the government awarded the funding. This OMB NPRM runs afoul of these precedents because it does not limit recipients' agreements not to engage in certain DEIA practices disfavored by the Trump Administration to their federally funded activities.

Any effort by the federal government to enforce final rules stemming from the OMB NPRM revisions to 200.300 is an unconstitutional violation of the First Amendment under standards that apply to statutory requirements that stand on a firmer legal footing. As stated in the *Freedom of Speech: Overview Report* published by the Congressional Research Service: "[t]he Free Speech Clause applies not only to laws that restrict speech, but also to laws that compel speech by requiring private persons to convey a particular message."[132] In addition to such direct regulations of speech, laws that burden speech or condition government funding or benefits on undertaking or forgoing speech activity may also implicate the First Amendment.[133]

Given the content of the OMB's NPRM, there is no question that it does not satisfy the legal restraints imposed when the federal government attempts to restrict free speech under the First Amendment. For instance, the proposal specifies that compliance with Part 200 be determined, in part, on applicants' or

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[125] See Congressional Research Service Report, *Freedom of Speec*h, (September 13, 2024), https://www.congress.gov/crs-product/R47986#fn27, (citing *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454,469 (1995); *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967)(""[f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."")

[126] *Freedom Network USA v. Trump*, *supra*, 825 F.Supp.3d 638, 659 (N.D. Ill. 2026).

[127] *Institute for Applied Ecology et. al. v. Burgum et. al*. No. 6:25-cv-02364-MC, WL 1470638 (D. Oregon 2026); *see also Thakur v. Trump*, 176 F.4th 1187, 1204 (9th Cir. May 26, 2026); *Brighton Park Neighborhood Council v. McMahon*, (D.D.C. 2026); *Am Council of Learned Societies v. McDonald*, 792 F.Supp.3d 448 (S.D.N.Y. 2026) (termination of National Endowment for the Humanities grants identified as "DEI-related" constituted viewpoint discrimination and violated First Amendment); *Freedom Network USA v. Trump,* 825 F.Supp.3d 638 (N.D. Ill. 2026).

[128] *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 214-215 (2013).

[129] *Nat'l Endowment for the Arts v. Finley,* 524 U.S. 569, 587-88 (1998).

[130] *Koala v. Khosla*, 931 F.3d 887, 898 (9th Cir. 2019).

[131] *Youth71Five Ministries v. Williams*, 160 F.4th 964 (9th Cir. 2025).

[132] E.g., *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 755 (2018); *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

[133] Cong. Rsch. Serv., *Overview of Unconstitutional Conditions Doctrine*, Constitution Annotated. https://constitution.congress.gov/browse/essay/amdt1-7-13- . https://www.congress.gov/crs-product/R47986#fn27.

recipients' exercise of free speech, if such speech is found to be associated with a DEIA policy, even if such policy is consistent with federal nondiscrimination laws. Such viewpoint discrimination, which restricts speech based on an entity's use of language disfavored by the Administration, is the very type of action that was found by the Supreme Court to violate the Constitution.[134] Moreover, OMB's NPRM also violates the First Amendment to the extent that it attempts to explicitly curtail freedom of association or takes actions that chill the associations of applicants or recipients.[135]

Lastly, OMB exceeds its constitutional authority and violates Article 2 of the Constitution in attempting to use this regulatory process, relying on the aforementioned December 2025 opinion issued by the Office of Legal Counsel, to usurp Congressional "plenary and exclusive" authority to regulate Indian affairs, including the affairs of those composing such Tribes, under the Commerce Clause.[136]

4. [200.219] Prohibition of Discriminatory Event Services

The proposed revision to this section potentially violates the Spending Clause because OMB attempts to abridge state sovereignty by imposing its legal interpretation of the First Amendment on states. Congress has not issued any explicit statute granting OMB and the Executive Branch authority to condition receipt of federal financial assistance based on adoption of the Executive Branch's First Amendment interpretations. Further, while the federal government may impose terms and conditions on grants, this discretion is not without limits. This discretion stems from Spending Clause jurisprudence that has recognized three limitations on Congress' ability to induce States to bargain away their sovereign powers. Specifically, Congress: 1) may not "impose conditions 'unrelated to the federal interest' in enacting spending legislation; 2) **<u>may not" 'coerce' the States into accepting funds and the regulations that come with them</u>**; and 3) must "state those conditions 'unambiguously' in the text of the statute."[137] Another limitation on Congress is that a condition may not violate other constitutional provisions, although this is a limitation that is rarely litigated.[138]

OMB has not cited any Congressional language mandating that this proposed revision be made, or indeed that any of the proposed revisions to the NPRM be promulgated. And, to the extent that they are relying on the promotion of "American values," such language is vague, overbroad and replete with divisive ideological baggage. As the OMB proposal recognizes, public entities at the state, county, local and municipality levels are already covered by the First Amendment. Additionally, such entities also have their own legal staff who provide necessary legal guidance about compliance with federal Constitutional obligations and any state law

134 *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972) (holding "restrict[ion]" of "expression because of its message, its ideas, its subject matter, or its content.")

135 *See, e.g.*, *Americans for Prosperity Foundation v. Bonta,* 594 U.S. 595 (2021) (invalidating a California requirement that charities share the names of donors who contributed more than $5,000, saying it violated the rights of association protected under the First Amendment because "exacting scrutiny" required the government to demonstrate action was narrowly tailored to an important government purpose).

136 *See, e.g., Morton v. Mancari*, 417 U. S. 535, 551–552, and 553 n. 23 (1974) ("The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself, " and Indian status is a "political rather than racial" classification); *see also United States v. Holliday*, 70 U.S. 407, 417 (1865) (holding that Congress had Constitutional authority to regulate "commerce with the Indian tribes, including commerce with the individuals composing those tribes.")

137 *Ohio v. Yellen*, 547 F.Supp.3d 713, 730 (S.D. Ohio 2021).

138 *See, e.g., New York v. United States*, 5 US 144, 171-72 (1992).

First Amendment obligations. Accordingly, without citing any federal statutory support for the proposed requirements in 200.219, OMB exceeds its legal authority.

Further, while OMB has been given general authority to provide interpretive guidance on financial assistance matters in 31 USC 6307, OMB lacks explicit authority to create new regulations for compliance with the Administration's views on the First Amendment.[139] Also, as OMB noted, all public applicants and recipients are already obligated to comply with the First Amendment and have legal advisors explaining these obligations, and the proposed regulation is redundant nor has OMB explained the necessity of the proposed redundancy.

B. Comments on 2 CFR 200.202, 200.205, 2 CFR 200. 432, 2 CFR 200.450, 2 CFR 200.454, and 2 CFR 200.461, Relating to Scientific Research

1. [200.202] Restrictions on international collaboration in science and technology

Guidelines from the Office of Science and Technology Policy's (OSTP) National Science and Technology Council (NSTC)[140] open with this background on the benefits and risks to the U.S of international collaboration in science and technology:

> "The open and collaborative nature of the U.S. science and technology (S&T) research enterprise, along with the integrity and public trust with which it operates, underpin America's innovation, S&T leadership, economic vitality, and national security. Maintaining an open research environment is critical to fostering research discoveries and innovations that benefit our Nation and the world. Principled international collaboration and foreign contributions are critical to the success of the U.S. research enterprise. In particular, they enable cutting-edge research that cannot otherwise be achieved, strengthen scientific and diplomatic ties, leverage resources, and support training of a robust S&T workforce capable of solving global problems. At the same time, this open environment must be balanced by mechanisms that protect intellectual capital; discourage misappropriation of research plans, pre-publication data, and outcomes; and ensure responsible management of U.S. taxpayer dollars."

The National Science Foundation (NSF) website on research security states:

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[139] *See, e.g., Denver Area Ed. Telecommunications Consortium, Inc. v. FCC,* 518 U. S. 727, 737 (1996) ("We recognize that the First Amendment, the terms of which apply to governmental action, ordinarily does not itself throw into constitutional doubt the decisions of private citizens to permit, or to restrict, speech-and this is so ordinarily even where those decisions take place within the framework of a regulatory regime such as broadcasting.") .

[140] National Science & Technology Council, *Recommended Practices For Strengthening the Security and Integrity of America's Science and Technology Research Enterprise* (2021), https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/NSTC-Research-Security-Best-Practices-Jan2021.pdf.

> "Principled international collaboration is critical to success [in the U.S. S&T enterprise], but improper foreign influence is a threat to international collaboration in the science and technology enterprise. **It is important to distinguish the difference.**"[141] (emphasis added)

We agree with this statement and support broad adoption of the term "principled international collaboration" to mean collaboration conducted in a manner that is (1) consistent with the best practices for research integrity[142] and (2) fully compliant with federal policies and initiatives for research security. This term provides a useful, positive counterpoint to "improper foreign influence," where collaborative research is vulnerable to foreign theft, misuse, abuse or the exploitation of U.S. intellectual property and technology.

National Security Presidential Memorandum 33 (NSPM-33)[143] directs action by participants in the U.S. research and development (R&D) enterprise to strengthen protections of government-supported R&D against foreign government interference and exploitation. It specifies three research security goals: "to protect America's national security while promoting openness in the research community; to make it clear so that well-intentioned researchers can easily and properly comply; to ensure that policies do not fuel xenophobia or prejudice."

In response to NSPM-33, federal agencies have developed guidelines and initiatives to help U.S. research institutions implement its requirements for research security in federally-funded R&D. These include the National Institute of Standards and Technology's research security framework ("Safeguarding International Science: A Research Security Framework by the National Institute of Standards and Technology," updated 2025)[144], which establishes a methodology for "integrated, mission-focused, risk-balanced research security … designed to safeguard intellectual property while maintaining open scientific exchange and the integrity of our innovative research ecosystem." In addition, NSF's program "Safeguarding the Entire Community of the U.S. Research Ecosystem (SECURE)"[145] uses a partner-based model in which academic centers work with the federal government to provide resources to American research institutions for informed decision-making about research security. Guidelines from NSTC ("Recommended Practices For Strengthening The Security And Integrity Of America's Science And Technology Research Enterprise") characterize violations of research security in terms of behaviors that deviate from six principles and values that underpin the integrity of the U.S. R&D enterprise: openness and transparency; accountability and honesty; impartiality and objectivity; respect; freedom of inquiry; reciprocity; and merit-based competition.

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[141] United States National Science Foundation, *Research Security at the National Science Foundation* https://www.nsf.gov/research-security.

[142] We were not able to find a definition of "principled international collaboration". Our interpretation is inferred from the principles and values outlined in the document "Recommended Practices For Strengthening the Security and Integrity of America's Science and Technology Research Enterprise." National Science & Technology Council, *Recommended Practices For Strengthening the Security and Integrity of America's Science and Technology Research Enterprise* (2021), https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/NSTC-Research-Security-Best-Practices-Jan2021.pdf.

[143] *Presidential Memorandum on United States Government-Supported Research and Development National Security* (2021). https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/

[144] Gregory F. Strouse, *et. al., Safeguarding International Science: Research Security Framework,* National Institute of Standards and Technology (Nov. 2025), https://nvlpubs.nist.gov/nistpubs/ir/2025/NIST.IR.8484r1.pdf..

[145] United States National Science Foundation, *Research Security at the National Science Foundation* https://www.nsf.gov/research-security.

[146] It recommends balanced, behavior-based and risk-based practices for research organizations to enhance the security and integrity of America's R&D enterprise.

Together these initiatives and guidelines have built a robust research security framework that encourages safe, productive research collaborations while mitigating their potential risks. We support these and other agency policies developed in response to NSPM-33 to minimize security risks and maximize the rewards of collaborative science with domestic and international partners in all sectors of the global R&D enterprise.

OMB must continue giving federal agencies and grantees the information, resources, and political support they need to establish safe, productive international collaborations that strengthen the U.S. R&D enterprise without undermining American security or global competitiveness.

2. Departure from multidisciplinary, independent merit-based review weakens scientific quality and integrity

The NPRM would upend long established standards and practices for objective, multidisciplinary merit-based review of scientific proposals. Currently, federal agencies use transparent and consistent criteria to evaluate the merit of individual research proposals for federal funding. Although terminology varies somewhat across agencies, major funders (including the National Institutes of Health (NIH); NSF; National Aeronautics and Space Administration; Department of Defense, Department of Education; Department of Energy; and the United States Department of Agriculture) share a common set of core questions designed to assess each research proposal's *mission relevance, feasibility, scientific quality, scientific integrity, technical innovation, economic impact, and national security*; i.e., merit.[147]

The proposal purports to "restore gold standard science" and promote scientific integrity, including transparency and independent (unbiased) peer review. However, it is difficult to see how it would achieve these objectives in the federal grant review process. Currently, political leadership exercises oversight of extramural funding by setting clear strategic priorities for federally-funded R&D – not evaluating specific proposals for funding, which typically requires expertise spanning multiple disciplines.

The proposal would instead focus high-level political oversight on review of individual research proposals, consuming time that would better be used for appropriately high-level leadership responsibilities. In so doing, it assumes that individual political judgement can legitimately supersede objective assessment of merit by multidisciplinary expert peer review. This fundamental change to the current federal process for objective merit-based proposal review would make peer review subordinate to ideological screening ("pre-issuance review") by a high-level political appointee with newly-invented authority to reject or terminate any proposal that does not in his or her personal ("independent") judgement "demonstrably advance the President's policy priorities."

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[146] National Science & Technology Council, *Recommended Practices For Strengthening the Security and Integrity of America's Science and Technology Research Enterprise* (2021), https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/NSTC-Research-Security-Best-Practices-Jan2021.pdf.
[147] HJ Falk-Krzesinski and SC Tobin, *How Do I Review Thee? Let Me Count the Ways: A Comparison of Research Grant Proposal Review Criteria Across US Federal Funding Agencies*, J Res Adm; 46(2):79-94 (2015), https://www.nsf.gov/funding/merit-review; *see also* National Institutes of Health, *Grants Process*, https://grants.nih.gov/grants-process.

Currently, federal agencies make grant review criteria readily available in requests for proposals and on government websites. Use of clear, consistent criteria ensures that applicants and reviewers understand what is required for compliance with rigorous federal standards for mission relevance, feasibility, scientific quality, scientific integrity, technical innovation, economic impact and national security (i.e., merit).

In stark contrast, the proposed mandate for "pre-issuance review" gives political appointees complete control over grant awards, with little or no accountability for their actions to applicants, the funding agencies, or the public. Decisions made by appointees cannot be appealed and require only a brief written statement of rationale. In lieu of transparent, consistent criteria for decision-making, appointees are instructed to use personal judgement that, by fiat, can pre-empt input from subject-matter experts or other advisors.

The current system of agency review for federally-funded research has been developed around the principle that technical merit should be evaluated primarily by nonaffiliated experts working in an environment that is free from conflicts of interest, political interference and other sources of inappropriate influence. By prioritizing personal (in the proposal text, "independent") judgements about which research proposals will or will not "demonstrably advance the President's policy priorities," **OMB conflates its proposed and existing definitional guidelines for independence in the grant review process in the 2004 OMB Peer Review Handbook.**[148]

The OMB Peer Review Handbook establishes government-wide standards "concerning when peer review is required [for government science documents] and, if required, what type of peer review processes are appropriate." It presumes that peer review includes multiple subject-matter experts and stipulates as a basic requirement that "the selection of participants is based on expertise, with due consideration of *independence* and conflict of interest" (emphasis added). Accordingly, current agency – including OMB – policies for independent (i.e., unbiased) peer review of research proposals require that candidate reviewers and researchers disclose any and all personal interests, affiliations or outside activities that could compromise or influence the integrity or security of the proposed research and thereby preclude their participation.

In contrast, the proposed rule instructs appointees to exercise "independent" judgement based solely on personal (and potentially biased) interpretations of fluctuating standards, including term-limited presidential priorities and cultural trends (e.g., ill-defined concepts of "woke ideology"). It specifically forbids political appointees, by rule, to "defer" to the findings of merit-based review panels or other advisors. Political appointees are authorized to reject or terminate grants without considering merit, or worse, apply politically-biased interpretations of "gold standard science" in place of merit-based review.

By establishing the supremacy of one person's independent (in the sense of not looking for advice or guidance from others) political judgement over multidisciplinary panel findings, OMB is ignoring or downgrading its own guidelines for independent (in the sense of being free from conflict of interest) "gold standard science" in peer review.

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[148] Office of Management and Budget, *Memorandum for Heads of Departments and Agencies: Issuance of OMB's "Final Information Quality Bulletin for Peer Review"* (Dec. 16, 2004), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/memoranda/fy2005/m05-03.pdf.

The proposed role for OMB also subjugates agency mission-specific independence to OMB authority over pre- and post-award of federal grants. Under the proposal, OMB's role in grant decision-making would shift from neutral administrative management to programmatic control over detailed agency decisions, with power to override internal agency decisions (pre-award) and terminate or interrupt grants that are later considered to be inconsistent with the priorities of the current administration (post-award).

The proposed revisions to the selection and management of federal grants, cooperative agreements and other forms of financial assistance appear hasty, and are disordered in their radical departures from established roles and practices for merit-based review of federally-funded research. No review process confers perfect foresight in decision-making. Expert peer review, for example, relies on science not prescience, and federal agencies are aware that even the most qualified technical reviewers can and will make some mistakes in their evaluations of research proposals. Even so, external peer review by nonaffiliated subject-matter experts has proven to be the most reliable and unbiased way to vet R&D proposals for merit and adherence to best, i.e., "gold standard", practices for scientific excellence. **<u>Our concern with this proposal is not whether merit-based review founded in scientific and research integrity is or can be made perfect; rather, it is whether OMB's proposed additional mandatory political review will improve (or harm) the stated aim of objective merit review and ultimately, the quality of the outcomes of federal research grant awards.</u>**

Compounding the concern that decisions on discretionary awards will be inherently subjective is the fact that although OMB retains the statement in 200.205(a) that "merit review is an objective process," by creating and requiring an additional "pre-issuance review" placed in the hands of a senior political appointee, such objectivity is contradicted, especially by the OMB's statement in 200.205(c) that "senior appointees … must … use their independent judgment when evaluating Federal award proposals." While acknowledging that peer review remains advisory, without more clear direction, agency decision makers may readily infer that their independent discretion includes completely ignoring peer review reports in favor of their beliefs in their own expertise and, expressed or not, their own understanding of presidential "policy priorities."

3. External peer review by nonaffiliated subject-matter experts is the most reliable and unbiased way to vet R&D proposals for merit and "gold standard" scientific excellence.

No individual has the range or depth of expertise needed to evaluate proposals for highly-complex research and development. For example, OMB has identified nuclear fuel cycling as an administrative priority for federally-funded R&D in FY2027. Evaluation of the best qualified proposals for technology options for recycling components of irradiated nuclear fuel would require peer review by multiple, independent experts in relevant disciplines, e.g., nuclear physics and engineering, chemistry, materials science, safety, economics, national security, health, and environmental science.

The proposed rule is part of a disturbing recent trend in the federal government to soften or side-step requirements for professional integrity and rigor (e.g., in peer review) in the name of efficiency. For example, until recently NSF proposals required a minimum of three external peer reviews. Panel discussions among three to ten subject-matter experts were standard practice, and reports synthesizing reviewer assessments were provided to internal program officers who recommended awards based on panel consensus. In

December 2025, the minimum review requirements for NSF funding were reduced to two individual reviews, one of which can be conducted by NSF staff (e.g., the program officer, an affiliated staff scientist) rather than an external (unaffiliated) expert. Panel discussions are now optional and, if used, panel reports are limited to a few sentences. These options clearly weaken scientific integrity standards for transparency and independent (unbiased) peer review. The likely outcome of such inferior peer review standards – especially in combination with greater reliance on personal judgement by a political appointee – will be rejection of scientifically strong projects in favor of scientifically or technologically weaker projects that have lower immediate costs, less-detailed proposals, or presentations that resonate with a particular political appointee's or program officer's point of view. As a result, agencies will end up wasting federal dollars on lower quality science, decreasing credibility of U.S. scientific findings and further eroding trust in federal institutions.

In addition, if robust peer review becomes subordinate to minimal merit review and personal judgement, researchers and the public will lose confidence in the belief that competition for federal funds is fair and funding decisions are genuinely merit-based. **Loss of scientific integrity in the selection process "poisons the well" as high-performing researchers and institutions may withdraw from the applicant pool, leaving federal agencies with fewer options for research in advanced fields of highly specialized science and engineering.**

OMB's National Science and Technology Memorandum 2[149] demonstrates and reinforces the appropriate role of political leadership and critical need for independent, multidisciplinary peer review in the grant review process. The prioritized areas of scientific research and technology development identified in NSTM-2 are characterized by highly-specialized subject matter and rapid advances that will make it very difficult for non-experts or individuals with only broad scientific understanding to assess proposals using brief, surface-level summaries or checklists for proposal review. Deciding which specific proposals merit public investment and provide evidence-based potential to revitalize America's S&T enterprise depends on multidisciplinary expertise comparable to or better than that of the applicants submitting the proposals. Recognizing the value of advice from experts who know the state of the science and/or technology, and are competent to objectively assess technical merit of proposals, is not deferral—it is good leadership.

4. Proposed disallowable expenses are incompatible with the tenets of "Gold Standard Science" and would hamper U.S. R&D

a) Gold Standard Science

While it has not been precisely defined in this NPRM, the White House Office of Science and Technology Policy has proffered nine "tenets" of Gold Standard Science: reproducibility; transparency; communicating error and uncertainty; collaborative and interdisciplinary; skeptical of its findings and assumptions; structured for falsifiability of hypotheses; subject to unbiased peer review; accepting of negative results as

[149] Office of Management and Budget and Office of Science and Technology Policy, *Memorandum for Heads of Departments and Agencies: Fiscal Year 2027 Administration Research and Development Budget Priorities and Cross-Cutting Actions* (Sep. 23, 2025). https://www.whitehouse.gov/wp-content/uploads/2025/09/FY27-OMB-OSTP-RD-Priorites-Memo-FINALSIGNED.pdf.

positive outcomes; and without conflicts of interest.[150] The proposed rule is in conflict with many of these tenets while insisting that research must have benchmarks to demonstrate their compliance with Gold Standard Science.

- [200.202, 200.205, 200.300] Proposed changes reject unbiased peer review and present conflicts of interest

The proposed pre-issuance review requires senior political appointees to sign off on every discretionary award based on alignment with "Presidential policy priorities" and "the national interest." Peer review is reduced to advisory status, and deference to scientific expertise is explicitly prohibited despite the importance of independent analysis of the merit of research proposals in the selection process. This places grant decision-making in the hands of politically-appointed non-experts and subjects grant funding to the shifting priorities of changing administrations, creating enormous uncertainty for the continuity of any and all funded research programs. In addition, adding a policy compliance test to the research that will be funded ensures conflicts of interest in the research. Any research finding that contradicts the policies of the administration cannot be pursued. Any finding that inconveniently contradicts a policy can lead to a grant being summarily terminated. All research will be based on the policy interests of the administration and therefore subject to bias.

- [200.220, 200.202e] Proposed changes do not foster science that is collaborative and interdisciplinary

The proposal stifles collaboration and the development of interdisciplinary projects because it places limitations on where and with whom scientific collaborations can develop. Restricting international collaboration puts U.S. research at a disadvantage; it will prevent American efforts from benefiting from the scientific breakthroughs made in other countries and it will diminish U.S. presence in the international science community. We will lose our standing as leaders in science.

- [200.421, 200.432, 200.454, 200.461] Proposed changes do not allow for science that is reproducible, transparent, communicative of error and uncertainty, or skeptical of its findings

The proposed changes in these sections related to professional society memberships, conference fees, and publication and printing costs will directly hamper the dissemination of scientific data and key results to the greater research community and to the general public. Research relies upon the reproducibility of shared results to establish, test, and confirm the scientific record. These proposed changes also limit transparency, the communication of possible error and uncertainty, and limit opportunities for the testing of findings and assumptions, again because they prevent scientists and researchers from sharing results in an unfettered way and limit their opportunities to discuss and receive feedback on their work.

[150] Office of Science and Technology Policy, *Memorandum for Heads of Departments and Agencies: Agency Guidance for Implementing Gold Standard Science in the Conduct & Management of Scientific Activities* (Jun. 23, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/03/OSTP-Guidance-for-GSS-June-2025.pdf

b) Proposed disallowable expenses are inconsistent with Gold Standard Science and would harm R&D

(1) [200.432] Conference Costs

OMB proposes to restrict the allowability of costs for conference participation to conferences that are expressly approved by the federal agency and included in the terms and conditions of the award. This proposed provision is inconsistent with OMB's streamlining rationale for proposing extensive revisions to 2 CFR 200.

The informal interactions at scientific meetings often lead to collaborative and interdisciplinary research. For a long-term research project, it may not always be possible to anticipate every relevant meeting at the time that a research institution and the federal agency negotiate the terms and conditions for the award. It is not unusual for scientific conferences to be put together quickly to address a new area of discovery. Not all scientific discoveries happen in a linear way – many are serendipitous. As the tenets of Gold Standard Science suggest, the best science is collaborative and interdisciplinary and professional development and informal interactions at conferences are critical to this process. The barriers this proposed rule would create present a false efficiency and will lead to isolation and deterioration of U.S. Science.

In addition, there are often several sectors in attendance at scientific meetings. For example, there may be scientists working for industry, academic researchers, government researchers and regulatory scientists. If the academic sector, which is far more dependent on federal financial assistance support than the others, is inhibited from attending, the meeting can take on a biased atmosphere. It is within this mixture of perspectives that the proper levels of skepticism and scrutiny are accomplished

Access to previous research on a topic is critical to formulating a solid hypothesis. Scientific research builds on the findings of earlier work. The OMB proposal prohibits grant money being used for this purpose. This will greatly impede the ability of grantees to keep current in their areas of research. U.S. scientific leadership will deteriorate and the nation will lose our creative edge. It is clear that the provisions of this proposed rule are incompatible with Gold Standard Science.

In addition to adversely impacting scientific research agreements, the proposed restriction on using federal funds for conference attendance will inhibit Tribal employee and member participation in peer-to-peer training and policy development workshops essential to Tribal implementation of financial assistance programs. These opportunities often cannot be anticipated when Tribes and Intertribal Consortia apply for funding and negotiate terms and conditions, particularly for long-term continuing environmental program grants awarded by EPA and similar grants awarded by other agencies for ongoing tribal programs. This decreased flexibility will increase administrative burdens on both recipients and federal agencies.

If OMB is unwilling to withdraw the proposed revision, the coverage in 2 CFR 200.432(b) should be modified to allow agencies and recipients to negotiate flexible terms and conditions that approve the use of funds for specified types of conferences. The terms and conditions could provide federal program officers the authority to approve requests for using financial assistance funds participation in conferences on a case-by-case basis without going through the burdensome process of amending the assistance agreement.

(2) [2 CFR 200.450 and 2 CFR 200.454] Memberships, subscriptions, and professional activity costs and costs for memberships in organizations engaging in "issue advocacy"

OMB proposes to revise 2 CFR 200.454 to substantially restrict the allowability of costs for memberships in professional, civic, business, and technical organizations ("professional societies") and to make the cost of subscriptions to business, professional, academic and technical periodicals categorically unallowable. This reflects a significant shift in federal financial assistance policy from the current coverage in 2 CFR 200.454 without providing a reasoned explanation for the proposed change, which will adversely impact the quality of federally-funded scientific and technical research. Further**,** OMB proposes to significantly expand the types of costs for memberships in professional societies that are *per se* unallowable to include organizations that engage in "issue advocacy" in addition to organizations that lobby as is the case with the current coverage in 2 CFR 200.450 and 2 CFR 200.454.

EPN and L4GG oppose OMB's proposal to revise 2 CFR 200.450 and 2 CFR 200.454.

Under the OMB proposal, allowable costs for professional society memberships will be limited to memberships necessary to fulfill the award requirements and recipients and subrecipients must receive prior written approval of the awarding Federal agency. This purported "clarification" imposes additional administrative burdens on partners in federal financial assistance programs since it may not be apparent at time of award what types of organizational memberships meet the "necessity" standard for fulfilling award requirements.

Science advances through collaboration. Professional societies build scientific communities by creating venues where researchers can meet with collaborators, attend workshops, exchange ideas and form research networks. Societies also organize regular scientific conferences where research ideas and findings are presented directly and in real time to peers and funders (vs through the slower process of journal publication). Conferences facilitate exchange of scientific information and provide vital opportunities for scientists to interact with resource managers, policymakers, educators, and the public. As such, professional societies are key to training for next generation scientists.

Membership in professional societies and access to professional periodicals confer multiple benefits, including reduced conference registration fees, free access to journals published by the society, policy updates, career-building services, training and professional certifications, and leadership opportunities. Annual dues vary by career status and range from ~$100-$400 for large societies and ~$50-$200 for smaller or regional societies. For many active researchers, conference discounts alone can offset a meaningful portion of annual dues. That said, when combined with responsibility for publication and periodical costs, even modest fees for society membership can prove to be prohibitive; a hypothetical cost scenario for an active researcher with 2-3 memberships and 1-3 open access publications per year could range from ~$3,500 – $9,000+ per year.

Making the costs of subscriptions to academic periodicals as well as other types of professional publications unallowable as a direct or indirect cost under federal awards inhibits the effectiveness of federally-funded scientific research by making it difficult for principal investigators and other research staff to remain current in the latest developments in their fields of expertise. Costs for subscriptions are a relatively small portion of research grant budgets and are often included in indirect cost pools. OMB has not provided an explanation for this short-sighted reversal of the current allowability coverage in 2 CFR 200.454.

According to OMB's proposed revisions to 2 CFR 200.450, the term "issue advocacy" refers to "public messaging that promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award." This restriction appears to be intended to prevent recipients and subrecipients from using federal funds directly or indirectly for memberships in any organization with a mission that encompasses protection of scientific integrity or interaction among members with different points of view on issues of public importance. Whether an organization's publication of scientific findings relates to social or public policy matters that runs afoul of "issue advocacy" will inherently require subjective judgements. In contrast to the current restriction on the allowability of costs for memberships in organizations that lobby, recipients and subrecipients will not be able to rely on an organization's tax-exempt status as an Internal Revenue Code 501(c)(4) nonprofit organization that lobbies to determine compliance. Other tax-exempt nonprofits such as educational and scientific organizations (IRC 501(c)(3)) or trade associations (IRC 501(c)(6)) should be able to properly engage in "issue advocacy," as described in proposed 2 CFR 200.450.

We believe OMB's proposed revisions to 2 CFR 200.454 as well as the "issue advocacy" coverage in 2 CFR 200.450 is a short-sighted effort to further restrict scientific collaboration and independent federally-funded research. These restrictions will have long-term adverse impacts on America's standing as one of the premier nations for scientific research. Rather than impose draconian limitations on the allowability of professional society costs and subscriptions to academic and technical periodicals, in addition to vague prohibitions on memberships in organizations that advocate for the public good, OMB should maintain the current coverage in 2 CFR 454 and 2 CFR 200.450. Alternatively, OMB could limit the allowability of costs for memberships in professional societies and costs for academic and technical periodicals to indirect costs - with prior Federal agency approval required for using Federal funding for direct costs for these items.

(3) [2 CFR 200.461] Publication and printing costs.

OMB proposes to substantially revise 2 CFR 200.461 to eliminate the presumption of allowability of the costs for publishing the results of federally-funded research in peer-reviewed scientific journals and similar publications in favor of a requirement that federal agencies approve the allowability of the publication costs in advance on a case-by-case basis unless the publication costs are specifically required by federal statute. Significantly, OMB's proposed revision provides that "a general requirement to make results publicly available must not be construed as authorizing publication costs." EPN and L4GG oppose OMB's proposal to revise 2 CFR 200.461.

The case-by-case advance approval requirement will impose significant administrative burdens on both recipients and federal agencies already facing significant scientific personnel shortages, in contradiction of the burden reduction rationale OMB has asserted to justify the revisions in this NPRM. Moreover, the presumption that these costs would not be eligible along with the need for advance case-by-case approval is based on a fundamental misunderstanding of how publishing the results of federally-funded research supports agency missions and administrative objectives.

- Publication of research in credible journals is fundamental to the advancement of science. Science progresses through a continual process of documentation, scrutiny, and improvement of cumulative findings from individual studies. While not perfect, journal publication is the most effective way to validate and accumulate detailed information on the full body of scientific knowledge created by federal (and other) research projects.

- The proposed rule states that publication costs are not inherently necessary to carry out the core programmatic objectives of most federal awards. This is a patently false assumption for research grants. Peer-reviewed publications document study design, methods, analyses, results, assumptions, conclusions, and cited studies in sufficient detail for readers to understand and replicate the authors' work. This benefits Federal funders by enhancing transparency, enabling reproducibility, facilitating scientific consensus (through replication, meta-analysis, systematic review and synthesis of findings), providing accountability for grant budgets, and establishing a stable scientific record for use by future researchers.

- Publication can, however, be expensive. Currently, major federal funders allow costs for publishing, including journal Article Processing Charges (APC)[151], to be included in proposals as a direct cost. The proposal would disallow these charges as a covered cost absent compliance with burdensome case-by-case advance approval requirements, shifting the financial burden of publication to research institutions. This will disproportionately impact smaller/public universities that lack the infrastructure and resources of top-tier universities and industry laboratories.

- In many cases graduate students, post-doctoral fellows, and faculty could be required to pay publication fees out of their own pockets if the federal agency declines to provide advance approval or approval is delayed due to capacity limitations on federal research staff. This would certainly prohibit the ability of those with limited financial means to publish their research, with punishing effects on career advancement. Publication is the single most important factor for career advancement and establishes a scientist's credentials for future merit-based grant review. Some academic institutions have agreements with publishers for discounted publication but such agreements are rare for smaller/public universities.

- Traditionally, scientific journals have required an institutional or individual subscription for access to content. This publication model limits access to those who can afford to pay the going rate, which varies by journal and ranges from ~$1000 - $10,000/year for institutions and $100 - $500/journal/year for individuals. Non-subscribers typically pay $30–$60/article for access. Scientific journals are increasingly moving to open-access models of publication that provide free, immediate access to all users. Open access retains the core functions of journal publication while increasing the visibility and, importantly, public use of scientific research.[152] This trend is synergistic with requirements for greater transparency and more widespread access to federally-funded scientific research.

- Open access is free to readers but not for authors. Depending on the journal, the up-front fees for open-access publications are significantly higher than for traditional subscription publications, especially in high-impact journals. Top-tier academic and industry laboratories that promote

[151] Note: APC fees cover fund journal production, publisher infrastructure, and citation indexing. They do not include peer review labor, which is voluntary.
[152] Yifang Wang, *et al., Funding the Frontier: Visualizing the Broad Impact of Science and Science Funding* (submitted Sep. 19, 2025), https://doi.org/10.48550/arXiv.
2509.16323.

open-access to their research have agreements with publishing companies for free-to-authors publication, but that is not the norm. Federal agencies that require public access to funded research as a condition of funding (e.g., NIH, NFS) do not maintain any such agreements but routinely allow open-access publication to be included in proposals as a direct cost.

Publisher	Approximate APC Range (varies by journal*)
SAGE Publications[153]	~$800 – $4,000
Taylor & Francis[154]	~$1,000 – $4,500
Wiley[155]	~$1,000 – $6,000
Elsevier[156]	~$200 – $11,400
Springer Nature[157]	~$1,500 – $13,000

Table 1. APC for 5 major publishers of scientific and engineering journals.
*Mainstream open-access journal charges are typically ~$1000 - $3000 (Borrego 2023).[158]
Higher-impact journals have higher APC.

As indicated in **Table 1**, publication costs, especially in the science and engineering fields, are high and rising. If the federal government wants the research it supports to be disseminated widely for the public good, it cannot insist that the costs of that dissemination be borne solely by the researchers and their institutions. It must be a partner in that crucial stage of the research process.

If OMB is unwilling to restore the presumption of allowability of scientific publication costs in 2 CFR 200.461, we recommend that OMB modify the advance federal agency approval requirement to authorize agencies to provide approval for the use of grant funds for publication in types of journals or to other publications identified in the terms of the grant agreement at time of award. Case-by-case approval should only be required if the recipient intends to publish the report on research findings in a different type of journal or if the Federal agency does not authorize any types of publication costs at time of award.

5. The Proposed Rule Increases Uncertainty, Discourages Risk-taking, and Undermines Investment in U.S. Research and Development

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[153] Sage Journals, *Submission, Page, and Publication Charges,* https://www.sagepub.com/journals/editorial-policies/page-and-publication-charges .
[154] Taylor & Francis Author Services, *Open Access Cost Finder,* https://authorservices.taylorandfrancis.com/choose-open/publishing-open-access/open-access-cost-finder/.
[155] Wiley, *Author Publication Charges,* https://authors.wiley.com/author-resources/Journal-Authors/open-access/article-publication-charges/index.html.
[156] Elsevier, *Pricing,* https://www.elsevier.com/about/policies-and-standards/pricing.
[157] Springer Nature, *Costs of Publishing in Springer Nature Journal,* https://support.springernature.com/en/support/solutions/articles/6000084580-costs-of-publishing-in-springer-nature-journal.
[158] Ángel Borrego, *Article processing charges for open access journal publishing: A review,* Learned Publishing, 36: 359-378 (Jul. 03, 2023), https://doi.org/10.1002/leap.1558.

Shifting funding authority from agency experts to political leadership can have short-term strategic benefits for an administration; however, over the longer term it will create great uncertainty in the funding environment. We already see widespread impacts from politically-driven federal budget cuts, staff reductions, and project terminations in 2025-2026 in universities across the United States.[159] As universities cut doctoral programs, close research facilities, and curb or pause admissions and hiring, prospective Ph.D. students, post-docs, and career professionals are looking for opportunities in countries that offer more stable funding and work environments (e.g., Europe and Asia have ramped up programs and incentives to attract scientists and engineers from overseas).[160]

Economists distinguish between *risk*, where the rules are known and the probabilities of different outcomes can be estimated, and *uncertainty***,** where the rules change unpredictably and probabilities cannot be estimated. Like businesses, research organizations are much better able to cope with risk than with uncertainty. For example, research institutions can adapt to lower, but predictable, funding rates. It is much harder to adapt to an uncertain funding environment in which evaluation criteria and continuation decisions change abruptly.

With uncertain funding, R&D institutions can't plan for multi-year projects and will tend towards smaller, 'safer' research questions with predictable outcomes and short-term returns. Over the long term, an uncertain funding environment discourages institutional investment in people, equipment, and infrastructure – that is, in fundamental resources needed to support the kinds of basic and applied research programs that have led to major scientific breakthroughs and transformative technological advancements.

Perhaps the greatest risk of this proposal is its potential to create systemic, long-lasting instability in the U.S. basic and applied R&D ecosystem — the foundational work that makes today's technologies and tomorrow's advances in research and development possible. Scientific productivity and advancement are highly sensitive to funding stability, especially for research requiring long time horizons, investment in infrastructure (e.g., specialized equipment, high-tech research facilities), and recruitment of top-tier talent.

We concur with the observation in OMB's National Science and Technology Memorandum 2 [161] that:

> "America's innovation ecosystem is built on a unique partnership between government, academia, industry, and nonprofit research institutions. Universities have served as vital centers of scientific discovery and technical talent development. The private sector plays an increasingly central role, not only in late-stage development and commercialization, but also in applied research, bringing speed and scale to turn basic research into real-world products and platforms. And nonprofit research institutions can pilot novel models of collaboration and inquiry. Across this ecosystem, it is the role of the Federal Government to set clear priorities, align incentives, and ensure that public investments translate into strategic advantage."

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[159] Center for American Progress, *Mapping Federal Funding Cuts to U.S. Colleges and Universities*, https://www.americanprogress.org/article/mapping-federal-funding-cuts-to-us-colleges-and-universities/.
[160] Information Technology & Innovation Foundation, *US Brain Drain Threatens Scientific and Biopharmaceutical Leadership* (Dec. 18, 2025), https://itif.org/publications/2025/12/18/us-brain-drain-threatens-scientific-and-biopharmaceutical-leadership/.
[161] Office of Management and Budget and Office of Science and Technology Policy, *Memorandum for Heads of Departments and Agencies: Fiscal Year 2027 Administration Research and Development Budget Priorities and Cross-Cutting Actions* (Sep. 23, 2025). https://www.whitehouse.gov/wp-content/uploads/2025/09/FY27-OMB-OSTP-RD-Priorites-Memo-FINALSIGNED.pdf.

The productivity and competitiveness of U.S. R&D institutions depend on the decisions not only of funders but also on the long-term (3-20+ year) commitments of principal investigators, graduate students, postdoctoral fellows, administrators, industry leaders, and other non-governmental science and technology professionals (collectively, "contributors" in America's innovation ecosystem) in response to federal funding opportunities for R&D and incentives for public-private partnerships to move discoveries from basic research into experimental development and end-user applications.

Equally important are contributors' expectations for continuation of funding for the near- or long-term future, depending on the nature and scale of commitment needed. We support the recommendation for multi-year funding of grants and cooperative agreements in 2 CFR 200.202(f), with the understanding that commitments made by federal agencies are commensurate with those expected of the contributors.

Both pass-through entities and subrecipients will find it much easier to participate in federal awards if they are able to plan and budget for their operations over a multi-year period of time, where the project is one that will take more than one year. Without an assurance of multi-year funding, recipients will be reluctant to commit to multi-year projects. As a result, the more important projects are often multi-year, and may not be implemented if multi-year commitments are not available.

Regarding the preference for immediately demonstrable results (200.205(b)(4)), we recommend that the agency make an exception for technology development projects as well as basic R&D. Often, advancing technology requires lengthy periods of planning and engineering, development, and demonstration, before there can be widespread use of an advanced technology. Yet these projects may be among the most important, since without them significant progress cannot be made. If technology advancement projects are held to a standard of immediate results, such projects may never be approved, and important scientific and technological advances will not occur, possibly ceding the lead in these areas to other countries.

The credibility of funders and the predictability of rules that control pre- and post-award funding decisions are major determinants of the behavior of the entire research ecosystem, i.e., the integrated decisions by myriad contributors to pursue projects, careers, or investments in R&D and S&T that meet the needs of federal agencies and over years or decades, produce scientific breakthroughs and transformative technological advancements that fuel economic growth and improve the lives of all Americans.

C. Sections 2 CFR 200.101, 2 CFR 200.102, 2 CFR 200.340, 2 CFR 200.341 and 2 CFR 200.342 Relating to Suspensions and Terminations of Assistance Agreements are not only unlawful, but would make the federal governments - and by extension state governments - an unreliable business partners, bringing uncertainty to the market.

1. These Sections Override Specific Agency Regulations and the Federal Grants and Cooperative Agreement Act and Paves the Way for Substantial Abuse.

OMB proposes to dramatically expand federal agency authority to unilaterally suspend awards for a period up to 90 days, or terminate awards and entire "classes" of awards, based on a decision that termination is "in the interest of the Federal agency … including if a Federal award does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination." ("Discretionary Suspensions or Terminations" (DST)). The proposed OMB coverage will override agency-specific regulations on suspension or termination of awards that conflict with these provisions and require OMB approval for case-by-case exceptions to the DST regulations. Federal agencies need only provide brief justifications for their actions without making particularized findings that specific awards support activities that are no longer of interest to the federal agency or meet such subjective criteria as the national interest at the time of termination. Recipients' rights to dispute DSTs administratively will be essentially eliminated. The OMB proposal is rife with potential for abuse predicated on ideological and political animus.

As illustrated by the Trump Administration's mass terminations of awards based on directions or policy preferences in Executive Orders, many of which remain in litigation in which the Government has steadfastly avoided defending the substantive merits of the actions, these provisions will enable wholesale dismantling of congressionally- mandated grant programs. Further, there is no provision in the regulation itself or OMB's preamble that Tribal consultation will be undertaken before suspending or terminating classes of awards to Tribal nations or Intertribal Consortia.

The OMB rationale for the suspension and termination provisions is largely based on the authority in the Federal Acquisition Regulation (FAR) to terminate procurement contracts for convenience. This reasoning fundamentally ignores the distinctions in principal purposes of procurement contracts and financial assistance instruments specified in the Federal Grants and Cooperative Agreement Act (FGCAA) and is misplaced. The Act states that a procurement contract is used when the government is acquiring property or services for the direct benefit or use of the government, or is otherwise appropriate to use. Conversely, a grant or cooperative agreement is used when the principal purpose of the transaction is to carry out a public purpose of support or stimulation authorized by law instead of acquiring something for the direct benefit or use of the government. While termination for convenience principles may be suitable for contractual transactions that are for the direct benefit or use of the government so that the government can terminate a contract when it deems it no longer of use or benefit, these principles should not be applied to assistance agreement transactions that are for a public purpose.

2. These Sections Would Significantly Impact Federal Funding Recipient's Reliance Interests.

Additionally, OMB's explanation for why recipients and subrecipients reliance interests are adequately protected fails to take into account the distinctions the FGCAA makes between the statutorily authorized public purposes of financial assistance instruments and the commercial functions of procurement contracts. OMB claims that mere notice that a discretionary agreement typically awarded following rigorous competition can be abruptly terminated when the agency changes its mind about program priorities is sufficient; according to OMB, this notice, coupled with payment of what the agency owes anyway for pre-termination and closeout costs, sufficiently protects reliance interests when the agency has discretion, but not a duty, to provide additional compensation.[162] OMB's analysis ignores the damage that will be done to communities served by federally-funded projects that are prematurely halted, the careers of individuals hired to perform specialized work are disrupted, and environmental hazards that will remain unabated due to the loss of funding. Assistance agreements, unlike procurement contracts, are not profit-making ventures

[162] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32229 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-356.

in which expectancy harms can be remedied through compensation for lost revenue.[163] OMB's analogies to terminations for convenience under the FAR in dismissing reliance interests of beneficiaries of federal funding is woefully misplaced.

Given OMB's proposal to authorize suspensions and terminations of classes of grants based on priority shifts that stem from changes in administrations, public purposes of grants properly awarded prior to the administration change could be thwarted in violations of congressional enactments. Federally-funded scientific research in particular would be adversely affected as talented principal investigators would be reluctant to invest time and effort in applying for grants that could be summarily terminated mid-stream based on politically motivated concerns. Further, since effective research often requires long-term experimentation and measurement of results, federal funds would be wasted when projects are halted prior to completion of research procedures.

3. These Sections Give OMB Unfettered Discretion to Dismantal Critical Public Health Projects for Political Reasons

Authorizing agencies to pause or terminate classes of grants under vague standards such as "national interest" or "changes in program priorities" without evaluating the specific activities that numerous grantees are carrying out affords agencies virtually unlimited discretion to cancel congressionally-authorized grant programs through mass terminations. The brief explanations for such actions, if past agency actions under this administration reflect the norm, are likely to be boilerplate statements based on categorical generalities rather than reasoned decisions based on individualized reviews of grant projects.

OMB's efforts to impose unjustified requirements that compound compliance burden and provide agencies with unfettered discretion to terminate or pause grants or entire classes of grants based on vaguely defined priorities – and a subjective assessment of whether grantees are in line with those priorities – are in violation of the APA's requirement for reasoned decision-making, per *FCC v. Fox*.[164] While Justice Scalia in that case declined to find that the actions of the FCC were arbitrary and capricious, he did make it clear that agencies must meet certain standards — in the Supreme Court's words, "an agency may not, for example, depart from a prior policy *sub silento* or simply disregard rules that are still on the books…and of course the agency must show that there are good reasons for the new policy." (emphasis in the original). The NPRM does not meet those standards; OMB proposes that it is sufficient to "include a brief summary of the reason or reasons why an agency decided to terminate an award or class of awards." The implication is that they will continue to operate terminations similar to the scores that have already occurred. Agencies under the Trump Administration have engaged in en masse terminations, relying on vague and unsubstantiated "reasons," in contravention of statutory obligations. This proposal provides even more cover to engage in actions that are in clear violation of the APA.

4. Section 200.342 Violates Federal Funding Recipients' Due Process Rights.

Moreover, the OMB is also proposing to eliminate due process protections for these discretionary actions in administrative dispute procedures. Positing that 2 CFR 200.342 already allows them to bypass administrative

[163] 2 CFR § 200.400(g).
[164] *FCC v. Fox,* 556 U.S. 502 (2009).

remedies in all but non-compliance cases, OMB states "such administrative hearing procedures would not be required for other types of terminations unless expressly required by other law." However, courts will often require exhaustion of administrative remedies before hearing a case. But if there are no such remedies available, that would render such a requirement moot; this is an untenable conclusion. Moreover, agencies do have regulations that lay out administrative appeal processes, which are not limited to cases of non-compliance. For example, EPA at 2 CFR § 1500, Subpart E and USDA at 7 CFR § 11. These are regulations which must be followed per 2 CFR § 200.342.

5. The Termination Provisions Will Increase Uncertainty and Costs to Americans, Public Institutions, and Businesses.

Authorizing discretionary suspensions or terminations of assistance agreements based on arbitrary and subjective criteria undermines the long-term stability necessary to effectively carry out federally funded research, construction and program development projects. Costs, particularly for grantee procurement contracts, will increase given the uncertainty of continued funding. Contractors will charge premiums given the higher risk of cancellation and liquidated damages payments are likely to increase to cover the full cost of mobilization of equipment and labor as well. Similarly, grantees will have difficulty recruiting qualified staff due to their inability to ensure that the grant-funded project or program will continue throughout the agreed upon period of performance. OMB should withdraw this proposal in favor of the current coverage in 2 CFR 200 which requires that agencies find that recipients are in non-compliance with grant terms before suspending awards and that discretionary termination authority be unambiguously included in the terms of limited numbers of award agreements based on agency policies.

Alternatively, OMB should modify this proposed revision substantially to: 1) require agencies to make particularized and fully-supported findings to support suspensions or terminations of individual grants and restrict agency discretion to suspend or terminate classes of grants to situations in which all grants in the class are for identical projects; 2) afford affected recipients meaningful administrative dispute rights; 3) require Tribal consultation before suspending or terminating classes of awards that include significant amounts of funding for Tribal Nations and Intertribal Consortia; 4) limit the discretionary termination authority to terminate portions of a grant that constitute discrete projects that have not yet been begun; and 5) eliminate the authorization to transfer funds to a project that "better" serves the agency's desired purposes.

For both public and private entities, certainty is very important. If it is possible that a recipient or subrecipient will be left with a half-finished project, such as a half-built new technology project, it will be much more likely to avoid entering such a grant in the first place, and valuable work will not be performed. Moreover, the possibility of losing a grant that still serves the national interest merely because some federal official has unilaterally determined a different project would be "better" would introduce intolerable uncertainty into the process, and undermine the credibility of the selection process, if funds can be reassigned after they have been duly awarded pursuant to a competitive process.

D. Section 2 CFR 200.206 Regarding Risk Review Factors Violate Due Process Protections.

OMB proposes to substantially revise the risk review factors in 2 CFR 200.206 to encompass matters that have an attenuated relationship to the applicant's ability to effectively manage federal financial assistance. This proposed provision would authorize agencies to consider whether the applicant or its staff have engaged in "questionable practices" relating to publication of studies or activities or "initiatives" inconsistent with federal civil rights laws or religious liberty laws. The proposal would also authorize agencies to consider whether the applicant is a member of or "affiliated" with organizations that violate federal law, undermine public safety or national security, or advocate the violent overthrow of the government. While the proposed regulation requires agencies to rely on publicly-available and verifiable information in making these risk determinations, there is no requirement for the determinations to be based on indictments, convictions, civil judgements, administrative adjudications, or other judicially monitored proceedings. EPN and L4GG strongly object to the OMB proposal because the revisions to 200.206 lead to unlawful "de-facto debarments" without affording organizations established due-process protections mandated in 2 CFR Part 180.

These overly broad provisions will afford federal agencies the discretion to use subjective judgements to withhold funding based on mere allegations of plagiarism or inadequate attention to the replicability of studies without following the rigorous process of imposing sanctions for research misconduct contained in the Federal Research Misconduct Policy and implementing agency guidance, such as 2 CFR 910.132. It is not clear what OMB means by "publicly available and verifiable information" — that term could refer to media reports from biased sources based on mere allegations made by academic rivals or ideologically motivated groups opposed to the applicant's views.

The government cannot preclude an organization from receiving federal funds based on alleged violations of federal laws without affording appropriate due process protections, such as those contained in 2 CFR Part 180. Regulations implementing civil rights laws, such as 40 CFR Part 7, also require that agencies follow specified procedures that ensure reliability of the findings of violations before an organization can be precluded from receiving federal financial assistance. The absence of these due process requirements in OMB's proposed revisions to 2 CFR 200.206 will inevitably lead to unlawful de facto debarments. OMB should withdraw or substantially modify the proposed revisions to 2 CFR 200.206 to require agencies to rely only on official findings of misconduct arrived at after the applicant has been afforded due process.

E. Section 2 CFR 200.303 Mandating E-Verifications Would Significantly Increase Costs and Administrative Burdens.

OMB's proposal that all recipients of federal funding must participate in the Department of Homeland Security's E-verify program to confirm work eligibility of employees and contractors creates sweeping and burdensome administrative requirements for recipients that have nothing to do with the administration of Congressionally-mandated funding programs. The broad language of the proposed rule would seemingly require such verification for not only individuals whose positions are grant-funded, but all those whose work falls under a federal award, including clinical and support staff of healthcare providers. This creates massive administrative burdens for large healthcare institutions with many employees and contractors across multiple locations. It also creates significant hurdles for smaller healthcare safety-net providers who lack substantial resources and workforce to fill any gaps or cover delays in verification. Even when functioning perfectly, verification creates an immense administrative burden. However, the E-verify system is not foolproof, and it does on occasion erroneously flag an individual as ineligible. This would lead to additional disruptions in the workforce that directly impact patient care – particularly in already underserved areas such as low-income urban and rural communities, Indian reservations and Alaska. This addition of this section would cost Americans significant time and money and would not advance the congressionally-mandated programs to which these requirements would apply.

F. Section 2 CFR 200.305 Do Not Pay System and Payment Justification Would Impose Excessive Red Tape.

OMB's proposal would require federal agencies to use the Department of Treasury's Do Not Pay (DNP) system to verify the recipient's eligibility prior to disbursing federal funds. It would similarly require states who receive federal funding to verify payee eligibility. It also proposes that non-state recipients must include a written justification tying each payment to specific award activities – citing to section 3 of Executive Order 14222, "Implementing the President's 'Department of Government Efficiency' (DOGE) Cost Efficiency Initiative." Although the proposal asserts that this would increase accountability, it actually would create significant compliance burdens, creating financial delays and disruptions for funding recipients. This will particularly harm small funding recipients (e.g., healthcare safety-net providers), who typically operate on thin margins with limited cash reserves, forcing them to make decisions about payroll, supplies, and continuity of care. Further, the requirement that all non-state recipients submit a justification creates additional red tape, grants agencies charged with oversight undue discretion, and opens grantees up to near-constant potential for revocation based on vaguely-defined policy preferences and priorities.

G. Section 2 CFR 200.322 Expansion of Domestic Preference Requirements is Not Authorized by Statute.

OMB asserts in the preamble[165] that the proposed section 200.322 is simply a clarification of domestic preference policies rather than the substantive change that it really would be if this proposal is finalized. Similar to 2 CFR 200, OMB's guidance for implementing domestic preference requirements for federal financial assistance under the Build America, Buy America Act (BABA) in 2 CFR 184[166] is currently characterized as OMB guidance,[167] not regulation, but the proposed revisions in 200.322 would change that.[168] This is a substantive change, not a clarification, despite OMB's assertions.

OMB does not have statutory authority to expand domestic procurement requirements on federal financial assistance beyond projects where BABA would apply (i.e., public infrastructure) by statute. Indeed, OMB

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[165] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32224 (proposed May 29, 2026) ("OMB proposes to revise § 200.322 to ***clarify*** the policy related to domestic preferences for procurements under Federal awards." (emphasis added), https://www.federalregister.gov/d/2026-10817/p-308.

[166] 2 CFR § 184 (" Buy America Preferences for Infrastructure Projects").

[167] 2 CFR § 184.1(a) ("This part provides ***guidance*** to Federal agencies on the implementation of the Buy America Preference applicable to Federal financial assistance...")(emphasis added).

[168] The proposed revisions to the introduction to 2 CFR in § 1.100 would also change from OMB "aspirational" guidance regarding domestic preferences to binding regulation (e.g., "Federal agencies must") and the proposed regulatory text changes in 200.322(a) from "provide a preference for" to "must include terms and conditions in Federal award to maximize"). Notably, OMB has not proposed any revisions to 2 CFR 184 to change the characterization from guidance to regulation.

did not cite any substantive authority beyond the vague reference to a general authority in 41 USC 1125, which does not authorize such domestic procurement requirements. Without such explicit statutory authorization, OMB cannot require anyone to "maximize" domestic products. Further, BABA requirements explicitly apply only to public infrastructure projects, as provided in the underlying statute. The proposed regulatory text in 200.322 would expand domestic procurement requirements to all federal financial assistance awards (not just for infrastructure) even though OMB claims in the preamble that it is only requiring agencies to evaluate the possibility of requirements agencies "could" propose.

OMB acknowledges in the preamble[169] that neither they nor participating agencies clearly have statutory authority for such expansion and thus is instead proposing to require "agencies to evaluate its practicability and the legal authorities that apply to non-infrastructure financial assistance programs." However, this direction for agencies to only evaluate the legal authorities is just in the preamble and is inconsistent with the proposed regulatory text, which makes implementation a requirement. It is arbitrary and capricious for OMB to propose a requirement in Section 200.322(a) "to the greatest extent practicable and consistent with law" before they have even done any evaluation of the legal authority themselves. OMB twists itself in knots trying to claim that "it ***could*** be made a legal requirement" (emphasis added) despite their word "must" in the proposed regulatory text.

In the preamble, OMB describes what it expects agencies to do regarding the proposed domestic preference requirements ("agencies must evaluate their appropriations and authorizing statutes on a case-by-case basis to determine whether they have the legal discretion to impose such conditions," and "if agencies identify the necessary legal authority, and determine that imposing conditions would be practicable under the relevant program, they must include grant terms and conditions to maximize domestic content.") However, none of this is in the proposed regulatory text, despite OMB assertions in the preamble.

Further, there is no practical way to enforce what "maximize" means based on the proposed regulatory text. Is it a specific percentage of products funded by the grant? Is it anything that could plausibly be found in a domestic version? Is it only certain products purchased using federal award funds? Is it a percentage of components in a product? OMB provides no definition, leaving such an important definition up to every participating agency. This would inevitably lead to differences in interpretations across agencies, which OMB explicitly envisions (e.g., "agencies would be responsible for evaluating both the practicability and legal availability of imposing such conditions," "agency discretion to evaluate 'practicability' leaves considerable flexibility for implementation"). Not only does this open the door to arbitrary interpretations, it highlights how unnecessary this OMB requirement is and exemplifies how much the proposal is not a "clarification."

Expanding domestic procurement requirements beyond BABA for federal financial assistance is not practicable or good public policy. BABA requirements have been proven to increase costs for products and add substantial implementation administrative burden on agencies and funding recipients to verify

[169] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32224 (proposed May 29, 2026) ("OMB is … and the legal authorities that apply to non-infrastructure financial assistance programs"), https://www.federalregister.gov/d/2026-10817/p-311.

compliance.[170,171] It is simply not reasonable to apply such requirements to noninfrastructure projects (e.g., single family homes), as it would only increase the affordable housing crisis and delay critical projects.

OMB also does not clarify what funding recipients are supposed to do if they cannot find domestic products. Does the BABA waiver process apply even for projects where BABA doesn't apply? Do recipients just certify that they tried to comply? Outside of the BABA framework, it is impossible to determine how this proposed provision in 200.322 would be implemented.

Further, OMB has not even attempted to quantify the additional burden of maximizing domestic products. One reasonable assumption is to assume that domestic products cost 20% more than non-domestic products, as higher costs would be eligible for an unreasonable cost waiver under BABA. In addition, there is no quantification of the administrative burden it would impose on federal staff and recipients. Looking only at the burden associated with BABA waivers, one federal agency recently estimated that on average it would take 10 hours of time just for recipients to fill out the waiver request form,[172] which does not even include all of the market research and compliance verification time. OMB chose not to attempt this quantification, likely because it would demonstrate that the proposal is economically significant.

Ironically, the language that OMB uses in the regulatory text for this potential expansion is quoted from Executive Order 14005, which was signed by President Biden in 2021.[173] However, OMB does not cite the source of this language as it further demonstrates that this expansion is not based on any statutory authority, but rather a policy from a previous administration.

It is arbitrary and capricious for OMB to propose a requirement for domestic procurement when they do not even know if agencies have the legal authority to implement, have not considered key implementation questions, and have ignored the impacts of that proposed requirement.

H. Section 2 CFR 200.332 Reputational Harm Provision Violates the First Amendment.

OMB proposes a requirement that prime grantees police their subgrantees to ensure that the subgrantees do not "take actions that could significantly damage the reputation of the pass-through entity, awarding Federal agency, or the Federal Government." The proposed regulation further authorizes the federal agency to direct the prime grantee to terminate the subgrant or prime grant if the Federal agency determines that reputational harm has occurred.

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[170] Charlotte Kramon, *A Build America, Buy America law is causing construction delays amid the US housing crisis*, Associated Press (Mar. 30, 2026), https://apnews.com/article/affordable-housing-construction-baba-hud-delays-4302744b3b5839268acaee92bf172eb9.

[171] Cassandra Dumay, *Buy America, Build When?*, Politico (Jul. 1, 2026), https://www.politico.com/newsletters/morning-money/2026/07/01/buy-america-build-when-00983365.

[172] Renewal of Optional Form OF-2211 Build America Buy America Waiver Request Data Collection, 91 Fed. Reg. 39057 (proposed June 29, 2026), https://www.federalregister.gov/d/2026-13061.

[173] Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers*, 86 FR 7475 (Jan. 28, 2021) ("It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States").

Given that state and local governments receive substantial amounts of grant funding to provide pass-through support to other entities, this proposal will increase the burdens on governmental prime grantees to establish mechanisms to monitor subgrantee actions in areas unrelated to performing their subgrants. It is unclear how these prime grantees are expected to anticipate actions by subgrantees that offend officials at various awarding federal agencies while maintaining effective working relationships with organizations serving many segments or their constituencies. Prime grantees will also have to craft appropriate terms and conditions to specify the types of actions that may trigger the ire of Federal officials while ensuring that the First Amendment is not violated. Obviously, the costs and risks for administering pass-through funding will increase. Approximately 0.36 cents of every state dollar that may go out to a local government is from the federal government. This means that at least 30% of all state funding to local governments will be impacted by these pass-through impacts. **Moreover, while the NPRM claims that it applies only to "discretionary" federal funding, there are no protections in the NPRM to state that OMB will not automatically add these unlawful grant conditions onto formula funds or block grant funds. Indeed, we would strongly request that OMB add this specific clarification into any final regulation to clarify exactly how this would or would not impact formula funding.**

This extraordinary "reputation damage" provision would afford federal agencies the ability to censor protected speech or peaceful activities unrelated to performance of an assistance agreement that the federal agencies in their sole discretion have decided "harm" the agency's reputation. It chills Constitutionally-authorized freedom of expression on the basis of vague and subjective standards that do not effectively limit agency discretion. Agencies could discourage subgrantees from making lawful public statements expressing disagreement with Administration policies or similar activities that are protected under the First Amendment to the Constitution. Such a proposal should have never seen the light of day given Supreme Court precedent holding that agencies cannot violate recipients' First Amendment rights when engaging in activities the Government is not funding.[174] OMB should rectify this fundamentally flawed proposal by recognizing that it is un-American and withdraw the provision.

I. Sections 2 CFR 200.1, Fixed Amount Award; 2 CFR 200.102(c); 2 CFR 200.201(b), and 2 CFR 200.333 Removes Critical Tool Needed to Administer Funds Efficiently.

OMB proposes to eliminate authority in 2 CFR 200 for fixed-amount awards and subawards. This short-sighted and overly-broad proposal contradicts one of the stated purposes of the OMB revisions to 2 CFR 200, to reduce burdens on recipients and subrecipients. Fixed amount funding in which payments of federal funds are tied to objective performance metrics rather than reimbursement for incurred costs promote efficiency when an agency or pass-through entity provides relatively small amounts of funding for discrete project activities. EPN and L4GG oppose elimination of fixed amount awards.

Fixed-amount award instruments, when coupled with the authorization in 2 CFR 200.102(c) for agencies to impose less restrictive requirements on recipients/subrecipients, allow agencies and pass-through entities to support discrete projects with multiple sources of funds such as conferences or studies. Burdens on recipients/subrecipients with developing time accounting records for personnel costs in these circumstances

[174] *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214-215 (2013); *Nat'l Endowment for the Arts v. Finley,* 524 U.S. 569, 587-88 (1998).

are disproportionate given the relatively small amount of federal funding for the overall project. Fixed amount agreements are an established feature of federal procurement. While fixed amount awards of financial assistance can appropriately be limited to specific types of projects amenable to objective performance measurement, this important flexibility should not be eliminated entirely.

OMB's rationale for eliminating fixed amount awards assumes that there is insufficient transparency in how recipients and subrecipients are using funds as well as a perceived absence of sufficiently specific criteria in 2 CFR 200 for determining when fixed amount awards are appropriate. However, as currently recognized in 2 CFR 200.201(b)(1) agencies and by extension pass-through entities are to apply the general standards in 2 CFR 200.402 through 200.405 to ensure that anticipated costs are allowable and other provisions in the 2 CFR 200, Subpart E Cost Principles when negotiating agreement terms. This allows agencies and pass-through entities to ensure that federal funds are not used for such unallowable costs as alcoholic beverages, lobbying, or litigation. Profit is expressly unallowable given the express incorporation of 2 CFR 200.404(g) in the Cost Principles that apply to fixed amount awards. Further, 2 CFR 200.201(b) limits fixed amount awards to projects where performance is measurable and award amounts are paid only after achievements of milestones or the completion of the entire project. Recipients and subrecipients must certify that all costs meet the allowability standards of 2 CFR 200.403 and performance as well as expenditures are subject to audit.

Fixed amount awards can be particularly effective at the subaward level where small projects with measurable milestones are prevalent. Rather than eliminate fixed amount awards completely, OMB could reduce the maximum amount of fixed amount subawards to correspond to the small purchase threshold. OMB could also require that agencies issue guidance establishing appropriate limits on types of projects that can be supported through fixed amount subawards as well as agency approval on fixed amount subaward procedures. Section 9.0 of EPA's Subaward Policy[175] provides an example of this guidance. If OMB truly intends to reduce burdens on recipients, maintaining agency and pass-through entity flexibility on fixed amount subawards would be consistent with that worthy objective. EPN and L4GG recommend that OMB withdraw the proposal or, at a minimum, authorize agencies to approve fixed-amount subawards in appropriate circumstances. For example, a prime recipient should be allowed to provide a subrecipient with a fixed amount for replacing higher-polluting equipment with cleaner equipment. These awards are not designed to cover the entire cost of the investment by the subrecipient. Therefore, in these cases a fixed-amount award is appropriate and necessary.

J. Sections 200.303 Internal Controls and 200.507 Program-specific Audits Undermine Fiscal Integrity, Accountability, and Consistency.

OMB is proposing to remove references to the established internal controls guidance found in the "Standards for Internal Control in the Federal Government," created by the GAO's Comptroller General for recipients and subrecipients receiving federal grants authorized by legislative appropriations. These well-known universal standards help ensure accountability and consistency across organizations. Dropping them could lead to compliance uncertainty and increased complexity in oversight. OMB also proposes to

[175] United States Environmental Protection Agency, *Grants Policy Issuance (GPI) 16-01: EPA Subaward Policy for EPA Assistance Agreement Recipients* (updated Dec. 20, 2025),. https://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients.

weaken GAO-defined audit processes applied to awardee compliance with generally accepted Government Auditing Standards.

While OMB says GAO and other internal control frameworks could still be consulted by program recipients, they would no longer be required for compliance. This marks a major shift from GAO's mission as an independent watchdog ensuring federal spending meets objective standards to prevent fraud, waste, and abuse in the executive branch. The proposed OMB revisions would eliminate long-standing audit and internal control safeguards meant to provide unbiased oversight of federal financial assistance programs by the GAO.

The changes also expand OMB's role in overseeing agencies' financial and administrative compliance by introducing subjective political criteria like "American values" or avoidance of "divisive doctrines." This replaces the objectivity of GAO-defined standards with transient priorities of political appointees. As a result, long-term grant program performance could be swayed by unpredictable political decisions, undermining fiscal integrity, increasing corporate risk, and eroding confidence in the government's commitment to its awards.

1. Potential Conflicts with Current Federal Law

a) Public Laws 96-191 and 96-226, General Accounting Office Act of 1980; Public Law 97-255, Federal Managers' Financial Integrity Act

These laws strengthen federal financial accountability by requiring internal controls that support efficient operations, legal compliance, and financial integrity. They also reinforce GAO's independent, nonpartisan oversight role in reviewing federal spending and safeguarding taxpayer funds. Replacing GAO-defined standards with OMB discretion would weaken that oversight function, and shift that oversight role from the independent legislative branch which funds government grants to the executive branch.

b) 2 USC 681–692, Impoundment Control Act

Under the Impoundment Control Act of 1974 (ICA), 2 USC 681–692, the executive branch generally must obligate and spend appropriated funds as Congress directs. Delaying, withholding, redirecting, or canceling funds based on policy disagreement or subjective "presidential priorities" could raise ICA concerns absent clear congressional authorization. By creating a mechanism for political appointees to pause or terminate congressionally-appropriated research funds through non-technical review layers, the NPRM risks functioning as an unauthorized impoundment of congressional funding.

c) 5 USC 706(2)(A), Administrative Procedure Act

Under 5 USC § 706(2)(A), agency action is unlawful if it is arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. The APA requires a reasoned explanation for regulatory changes, but the preamble appears to rely on ambiguous political labels—such as "Gold Standard," "woke," "neo-Marxist," and "anti-American"—rather than evidence of specific flaws in the existing framework. Such undefined or subjective standards may raise APA concerns and corporate litigation if agencies cannot justify decisions through clear, lawful, and consistently applied criteria.

K. Section 2 CFR 200.477 on Abortion will Harm Patient Care.

OMB proposes to strengthen prohibitions on federal funding for so-called "elective abortions" under the Hyde Amendment; however, in practice, the relevant provisions are functionally duplicative of existing federal law and add nothing while creating unnecessary confusion and uncertainty about what activities could trigger grant termination. Neither OMB nor any other agency has the authority to unilaterally change the meaning, application, and scope of congressionally-enacted abortion prohibitions. Many of the agencies covered by 2 CFR 200 are not subject to the Hyde Amendment and have no basis to impose this restriction as a vehicle for implementing the Hyde Amendment.

The Hyde amendment limits funding for abortion services, not for "costs associated" with abortion. The proposed rule fails to define what could constitute "costs associated with" abortion. The proposed rule's use of the undefined phrase "costs associated with" abortion sweeps broadly and could be interpreted to prohibit a whole host of indirect expenses, such as facility overhead, staffing, and administrative costs. This places funding for plainly allowable healthcare activities in jeopardy based on their mere association with the provision of abortion.

As indicated in our detailed comments on proposed revisions to the termination provisions in 2 CFR 200, the proposal gives immense discretion to federal agencies to terminate grants based on vague determinations about whether the funding effectuates agency priorities or national interest. This, combined with the vague language around "association," raises serious concerns for healthcare providers who receive both federal and non-federal funding about whether their funds and expenditures will now face increased scrutiny. It also creates a risk of grant termination based on protected First Amendment activity. This is likely to create a chilling effect on delivery of patient care and cause some providers to decline federal funding altogether, worsening an already devastating maternal healthcare crisis in the U.S.

IV. Conclusion

For the reasons discussed above, we strongly oppose finalization of this NPRM and urge OMB to withdraw it in its entirety.

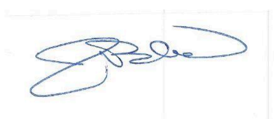
This NPRM abandons the longstanding, productive partnership between the federal government and recipients of federal financial assistance by politicizing the Uniform Guidance. No participant in that partnership opposes transparency, accountability, or responsible stewardship of taxpayer dollars. Nor do recipients object to reforms that genuinely reduce administrative burden and improve program integrity. This proposal accomplishes none of those objectives. Instead, it would increase costs, create uncertainty, invite unnecessary litigation, and undermine the effective delivery of federally-funded programs.

Recipients and subrecipients that misuse federal funds should be investigated and held accountable under existing law. That principle is not in dispute. What is deeply troubling is OMB's attempt to equate lawful activities with which the Administration disagrees as a matter of policy with fraud, waste, abuse, or ideological misconduct. Characterizing recipients as promoting "neo-Marxist perspectives"[176] or abusing taxpayer dollars based on policy disagreements represents a profound departure from the objective, nonpartisan administration of federal financial assistance and sets a dangerous precedent for future administrations.

OMB should carefully consider both the legal and institutional consequences of this proposal. If finalized, it will almost certainly be challenged in court, requiring the expenditure of substantial public resources to defend an unlawful assertion of executive authority. More importantly, it will jeopardize the effective delivery of essential services by states, Tribal entities, local governments, nonprofit organizations, institutions of higher education, schools, and other recipients that millions of Americans rely upon every day.

OMB should withdraw this NPRM and return to the bipartisan principles of neutrality, partnership, and sound grants management that have guided the Uniform Grant Guidance for over a decade. If OMB continues forward with this regulation, it will have long-standing, generational impacts on cancer research, environmental protection and public health, drinking water, mental health protections, child education and development, research and development, and so much more. When imagining just one of the cancer patients or homeless people that may go without critical assistance as a result of this regulation, it is not an exaggeration to state that this regulation, if implemented, will cause the loss of innocent American lives.

Regards,



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[176] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32200 (proposed May 29, 2026), https://www.federalregister.gov/d/2026-10817/p-29.