

Overview & FAQs of OMB's Proposed Regulations on Federal Financial Assistance

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The Trump Administration, through its Office of Management and Budget (“OMB”), is [proposing](#) sweeping, government-wide changes to requirements and restrictions related to federal funding, with public comments due by 7/13/26. If finalized, these changes would prohibit recipients and subrecipients of federal grants and other forms of federal financial assistance (collectively “recipients”) from using those funds to cover costs associated with a wide range of topics the Administration disfavors, including, among other things, unlawful diversity, equity, inclusion (and accessibility) (“DEI(A)”) efforts, “disparate impact liability,” and gender-related issues. OMB’s proposal would also significantly change the processes that all federal agencies use to make, monitor, suspend, and terminate awards. These changes would apply to many forms of federal financial assistance across sectors but will likely have stark effects on education, research, and nonprofit recipients.

The changes are especially concerning in light of the Administration’s broader attempts to re-interpret federal law and policy and to leverage federal funding to advance its positions. Specifically, the Administration has used numerous tools, including executive orders, policy guidance, administrative enforcement actions, and conditions on federal funding, to prohibit efforts to advance diversity, equity, inclusion, and accessibility, to restrict the rights and opportunities of transgender people, and to limit rights and benefits for documented and undocumented immigrants. The Administration has continued to advance its legal interpretations and expand its methods despite repeated losses in federal court.¹

These proposed regulations are another effort to codify the Administration’s legal interpretations via OMB controls on uses of federal funds. It is imperative that OMB’s final rule be clear and hew as closely as possible to established law to allow recipients to plan responsibly and prepare to defend their lawful conduct if necessary. To that end, anyone who may be impacted by OMB’s proposed rule, and particularly leaders in the education, research, and nonprofit sectors, should **consider [weighing in via public comment no later than 7/13/26](#)**.

The Administration, through the General Services Administration (“GSA”), recently proposed changes to the certification for [SAM.gov](#), a website that most entities must use to apply for federal financial assistance. As with OMB’s proposed rule discussed in this document, GSA’s proposed changes target DEIA and immigration, among other issues. Unlike OMB’s proposed rule, which generally applies only to federally funded conduct, the GSA proposal also seeks to restrict recipients’ conduct outside of federally funded programs.

Please refer to EducationCounsel’s [Overview and FAQ](#) for more information on GSA’s proposal, which is still pending.

¹ See, e.g., *AFT v. Dep’t of Educ.*, 796 F. Supp. 3d 66, 107 (D. Md. 2025) (“[T]he administration is entitled to its own views . . . But it is not entitled to misrepresent the law’s boundaries . . . It cannot blur the lines between its viewpoint and existing law.”); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1249 (W.D. Wash. 2025) (appeal docketed No. 25-3664, 9th Cir., June 10, 2025) (explaining that U.S. Department of Justice’s July 29, 2025 DEI-related guidance “is inconsistent with Supreme Court precedent” and leaves recipients “at the mercy of [the Administration’s] interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts”); *Nat’l Educ. Ass’n v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 149, 199 (D.N.H. 2025) (“Defendants’ argument that the [U.S. Department of Education’s] 2025 Letter merely interprets Title VI obligations announced in the *Students for Fair Admissions* case is not persuasive. While the Supreme Court held in *Students for Fair Admissions* that the use of racial preferencing in admissions failed to satisfy strict scrutiny, the Court did not hold that the Constitution commands color-blindness.”).

In this document, we summarize key provisions and issues in OMB’s proposal and seek to answer some emerging questions.² This document does not provide a comprehensive analysis of the legality of OMB’s proposed rule, nor does it outline all possible legal challenges to the proposed rule.³ Note that you can use hyperlinks in the following table of contents to navigate directly to particular sections of the document.

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² Consistent with our mission, EducationCounsel is working to update and support the field as federal actions consequential to education are unfolding. The information provided in this brief is not legal advice and its receipt does not constitute an attorney-client relationship. Given the pace of action, this brief could be outdated quickly; the information is now current as of 9:00 am ET on June 17, 2026.

³ Taken as a whole, the proposed regulations could raise myriad legal issues, including, but not limited to, concerns about infringement on First Amendment rights, overbreadth and vagueness, and coercion. These broader legal deficiencies are beyond the scope of this document.

OVERVIEW OF KEY PROVISIONS/ISSUES

On 5/29/26, OMB (a component of the Executive Office of the President) proposed revising its existing, nonbinding “Guidance for Federal Financial Assistance” and converting it into a regulation that would bind federal funding agencies and their recipients.⁴ Dozens of federal agencies that offer funding have joined OMB’s notice of proposed rulemaking, including the U.S. Departments of Education (“USED”) and Health and Human Services (“HHS”), the National Institutes of Health (“NIH”), and the National Science Foundation (“NSF”), which means that this proposed joint regulation would apply government-wide if adopted.⁵

The OMB proposal is long, complex, and most easily summarized as an attempt to exert more political oversight and control over federal funds.⁶ To provide a framework for understanding, we have divided the major proposed changes into substantive and procedural changes. **Substantive changes** are those relating to the content of the federally funded conduct/work (i.e., “what” federal agencies fund). **Procedural changes** relate to the process for getting and keeping funding (i.e., “how” federal agencies fund). Despite this distinction, some of the substantive prohibitions are housed within procedural requirements and some provisions are best described as hybrids of substance and procedure. To maximize clarity, the summary below attempts to group requirements thematically.

Please note, this is not a full accounting of every part of OMB’s proposed rule. We have summarized and briefly analyzed the provisions that would likely be most generally applicable to the education, research, and nonprofit fields, but each field may be affected in different ways by other provisions. Please consult legal counsel if you have questions about how the proposal could affect your institution or organization.

Substantive Changes

The proposed substantive changes seek to advance a number of the Trump Administration’s policy priorities by excluding a broad range of topics from the allowable uses of federal funding. However, it is important to understand the limits of each proposed prohibition and what programs and conduct they would implicate. For instance, except where noted, the proposed restrictions discussed would apply *to uses of the federal funding* rather than *to all conduct by the recipient*. In other words, recipients could continue to engage in the conduct OMB is targeting in the provisions summarized below so long as they did so with their own, non-federal funding.

1) Prohibition on Race/Sex (and Disability) Related Issues, Including Unlawful DEI(A) Practices

Two proposed regulations (sections 200.300 and 200.205(b)(2)) seek to bar agencies and recipients from using federal funds “to fund, promote, encourage, subsidize, or facilitate” certain diversity, equity, inclusion, and accessibility efforts. Because OMB states that these provisions are limited to **unlawful** DEI(A), it may be more difficult for recipients—who have long been required to comply with federal civil rights laws—to raise facial

⁴ If adopted, the new regulation would appear in 2 C.F.R., subtitle A, which currently houses the nonbinding guidance that OMB is replacing.

⁵ OMB asserts that, after this initial buy-in by agencies, any amendments OMB makes to the regulation will automatically apply across the government, without any additional action by individual agencies.

⁶ Different parts of the proposed rule apply to different types of federal funding. Some subparts apply only to grants and cooperative agreements, while others apply to all federal financial aid. Some of the individual regulations would also be limited to specific types of funding, like discretionary funds or research and development awards. Where limitations on subparts and on individual sections intersect and create ambiguity about what forms of aid are implicated, we deferred to the regulation’s general applicability provision.

challenges to those provisions.⁷ But even if the regulation itself is more appropriately limited, the continued, broad reference to DEI(A) will likely have a chilling effect, and much will depend on agencies' interpretation of federal civil rights laws. As we have seen, this Administration has characterized lawful conduct as discriminatory, even when repeatedly corrected by federal courts.⁸ This may give rise to vagueness challenges, given that it will be difficult for recipients to know what conduct may jeopardize their eligibility for or continued access to federal funding.

Proposed section 200.300 would apply to **all federal grants and cooperative agreements** and explicitly require federal agencies, to the maximum extent permitted by law, to ensure that federal awards or subawards are not used to fund, promote, encourage, subsidize, or facilitate DEI(A) "policies, principles, or practices that violate any applicable Federal anti-discrimination laws," including as examples "racial preferences or other forms of racial discrimination . . . including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation." Proposed section 200.205(b)(2) would apply only to **discretionary grants and cooperative agreements**⁹ and, like 200.300, seeks to prohibit "racial preferences or other forms of racial discrimination by the recipient, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation." Given this section's use of the same language as proposed section 200.300, it also seems to reach only unlawful DEI(A) efforts even though it is not as explicit as 200.300.¹⁰

2) Prohibition on Gender Identity Related Issues

The same two proposed regulations (sections 200.300 and 200.205(b)(2)) also seek to prevent federal funds from being used "to fund, promote, encourage, subsidize, or facilitate" the "denial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic," and in the case of proposed section 200.300, which applies to **grants and cooperative agreements**, the gender transition of people under 19 years old. The provisions state that agencies must act to the maximum extent permitted by law.

Unlike the DEI(A) prohibitions that, as described above, explicitly target only unlawful conduct, the provisions about gender identity would likely directly infringe on conduct that is, in many instances, lawful. Particularly to the extent that they seek to reach activities that simply "promote" or "encourage" lawful conduct, these provisions raise First Amendment concerns. The provisions are also vague, as it is not clear what conduct might "promote" the "denial . . . of the sex binary." However, given the Administration's past enforcement actions, this could include, for example, allowing transgender students to use their preferred pronouns or access restrooms that are consistent with their gender identity, or offering LGBTQIA+ themed clubs or activities. If

⁷ The anti-DEI(A) language here is more constrained than other, prior attempts by the Trump Administration to prohibit all DEI(A) efforts, not just those that violate federal civil rights laws. For more information about some of these prior attempts, please see two of EducationCounsel's Deep Dives: [Overreaching and Misleading: Analysis of the U.S. Department of Education's February 14, 2025, "Dear Colleague" Letter on Diversity, Equity and Inclusion Policies and Programs](#) and [Misguidance: An Analysis of the U.S. Department of Justice's July 29, 2025 Civil Rights Guidance](#).

⁸ See footnote 1 above for some examples.

⁹ A "discretionary award" is "an award in which the Federal agency, in keeping with specific statutory authority that enables the agency to exercise judgment ('discretion'), selects the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate." 2 C.F.R. § 200.1.

¹⁰ Commenters may wish to ask OMB to amend proposed section 200.205(b)(2) to say "*unlawful* racial preferences . . ." to promote clarity.

OMB and other agencies apply the provisions broadly, it will be very difficult for recipients to know exactly what is prohibited or how to comply.¹¹

3) Prohibition on Immigration Related Issues

Proposed section 200.205(b)(2), which applies to **discretionary grants and cooperative agreements**, would “to the extent consistent with applicable law,” also prohibit the use of federal dollars to “to fund, promote, encourage, subsidize, or facilitate . . . illegal immigration.” The provision’s introductory terms create real risk for recipients. If, for instance, a grantee operates a federally funded program and undocumented people participate, the funding agency might deny a grant award based on their interpretation that the program “encourages” or “facilitates” illegal immigration.¹²

Because agency action under this provision must be “consistent with applicable law,” public school districts can still use discretionary federal grants and cooperative agreements to serve undocumented students, who they must enroll under the U.S. Supreme Court’s ruling in *Plyler v. Doe*, 457 U.S. 202 (1982). It is worth noting that the Administration has been attempting to limit undocumented students’ access to certain public benefits by reinterpreting the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). For more information, see our Deep Dive, [“Who Benefits?”](#)

4) Prohibition on “Anti-American Values”

Proposed section 200.205(b)(2), which applies to **discretionary grants and cooperative agreements**, would also seek to prohibit the use of federal dollars to “to fund, promote, encourage, subsidize, or facilitate . . . initiatives that compromise public safety or promote anti-American values.” These terms are vague and recipients may not know how funding agencies will interpret them or what conduct or program content would be considered a threat to public safety or as something “anti-American.” If recipients have to guess about the Administration’s definition of these terms, this provision could also chill protected speech and conduct.¹³

5) Prohibition on Disparate Impact Liability

Proposed section 200.218, which applies to **grants and cooperative agreements**, instructs agencies to “eliminate the use of disparate-impact liability in **all contexts relevant to Federal awards**.” It would instruct agencies to ensure that, to “the maximum extent permitted by law,” federal awards do not “promote or support the use of disparate impact liability” and that “award activities based on the assumed risk of disparate-impact liability are not allowed” unless required by law.¹⁴ (It is not clear how this prohibition will interact with the mandate for equity in Section 427 of the General Education Provisions Act (GEPA) for grants and cooperative agreements funded by USED.¹⁵)

¹¹ Commenters may wish to request that OMB delete these provisions.

¹² Commenters may wish to request that OMB delete this provision.

¹³ Commenters may wish to request that OMB delete this vague provision or provide a definition or guidance as to how OMB would apply it.

¹⁴ For example, under Title VII, education institutions and systems currently have the right and responsibility under federal law to identify and eliminate both intentional discrimination that may be revealed in part by evidence of impact and disparate impact discrimination that is avoidable. See, e.g., 42 U.S.C. § 2000e–2(a) and 2(k)(1)(A) (Title VII disparate treatment and impact provisions); *Ricci v. DeStefano*, 557 U.S. 557, 577–78 (2009) (noting that “Title VII prohibits both intentional discrimination (known as ‘disparate treatment’) as well as, in some cases, practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities (known as ‘disparate impact’)” if the practice is not a business necessity or a less adversely impactful alternative is available but not used).

¹⁵ Section 427 of GEPA states that “The Secretary [of Education] shall require each applicant for assistance under an applicable program (other than an individual) to develop and describe in such applicant’s application the steps such

The proposed regulation includes, as part of this prohibition, using federal funds to support “disparate-impact studies, disparate impact litigation, or other related activities.”¹⁶ The scope here seems sweeping, especially for grantees that conduct research “studies,” which often focus on issues that disproportionately affect people of certain races or sexes. That said, the proposed regulation’s definition of “disparate impact liability” (200.218(e)) may somewhat limit the scope of the prohibition.¹⁷

These proposed prohibitions lack clarity and, if adopted, are likely to lead to significant confusion among recipients about what is or is not an allowable use of federal funds.

Further confusing things, OMB includes in proposed section 200.218 what at first blush appears to be an express exception for “conducting statistical or demographic analysis for internal program evaluation, research, or other purposes.” The provision goes on to clarify that the exception only applies to non-federally-funded analysis: “provided that Federal award funds are not used for conducting such analysis, and the results of such analysis are not used in connection with” the award. But, as noted above, the proposed rules do not reach non-federally-funded work of recipients anyway. Rather than provide a safe harbor for certain kinds of research, this additional language could create more confusion and could lead some recipients to read the prohibition on “disparate-impact studies” more broadly even than OMB intended.¹⁸

6) Advancing the President’s Priorities

Proposed section 200.202, which applies to **grants and cooperative agreements**, would require agencies, among other things, to design federal programs with clear goals and objectives that “[a]lign with administration policies and priorities.” Likewise, section 200.205(b)(1), which applies to **discretionary grants and cooperative agreements** would require that “where applicable and to the extent consistent with applicable law” discretionary awards “demonstrably advance the President’s policy priorities.” It is not clear when that requirement would be “applicable,” which could create great uncertainty as applicants attempt to craft their funding proposals. It is also possible that the provisions could be considered Executive overreach to the extent that they seek to convert the President’s policy priorities into requirements for covered awards beyond how Congress structured the program or appropriations.¹⁹

applicant proposes to take to ensure equitable access to, and equitable participation in, the project or activity to be conducted with such assistance, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age.” 20 U.S.C. § 1228a(b).

¹⁶ Commenters may wish to request that OMB strike “disparate-impact studies” given the negative impact it could have on research.

¹⁷ The proposed definition of “disparate impact liability” is “a theory under which a facially neutral policy or practice (for example, a merit-based employment policy or practice) gives rise to an automatic or near-insurmountable presumption of the existence of unlawful discrimination on the basis of federally protected characteristics (such as race or sex) where there are any differences or disparities in outcomes (for example, disproportionate effects) among different races, sexes, or similar groups.” This definition is not an accurate description of disparate impact theory under federal civil rights statutes, and it is difficult to understand how this flawed definition would apply outside of the legal context of civil rights investigations. Nevertheless, the Administration is likely to apply this prohibition broadly to all federally funded research that relates to disparities based on federally protected characteristics.

¹⁸ Commenters may wish to suggest that OMB delete this provision, or at a minimum, delete the reference to “studies,” and either correct the exception to allow recipients to use federal funds for internal studies or delete the exception to avoid confusion.

¹⁹ Commenters may wish to request that OMB delete this provision.

7) Prohibition on Voter Registration Efforts

OMB proposes amending a pre-existing section 200.450, which applies to **grants and cooperative agreements, with some exceptions**, and which prohibits using federal funds for lobbying, to now prohibit recipients from engaging in voter registration efforts. The provision would prohibit recipients from using federal funds for such efforts, but would not ban them from engaging in voter registration with their own funds. It is not clear how agencies will apply this provision to grants and cooperative agreements that explicitly allow funds to be used for voter registration.

8) Prohibition on Issue Advocacy and State Lobbying

The same section, proposed section 200.450, which applies to **grants and cooperative agreements, with some exceptions**, would also prohibit using federal funds to engage in “issue advocacy or public messaging,” promoting social, political, or public policy positions, or influencing the executive branch of state governments on matters that are unrelated to statutory objectives or performance requirements of the award. Again, this prohibition extends only to the use of federal funds for these reasons. It would not constrain recipients’ conduct outside of the federal award.

9) Prohibition on Abortion Funding

Proposed section 200.477, which applies to **grants and cooperative agreements, with some exceptions, including federal awards to hospitals**, would disallow “[c]osts associated with elective abortions” unless expressly authorized by federal law. Because of existing restrictions on funding for elective abortions, it seems unlikely that many organizations are relying on federal funds for this purpose.

10) Requiring Viewpoint Neutrality in Event Administration

Proposed section 200.219 would prohibit **public entities receiving federal grants or cooperative agreements** from discriminating on the basis of viewpoint, content, or subject matter of speech in providing services for events. The proposed regulation makes explicit that this includes imposing higher security or crowd management costs or administrative burdens on only some events. Unlike the changes described above, it seems that OMB intends for this provision to apply **beyond the administration of the federal funds** and would apply to a public recipient’s non-federally-funded events, as well. The proposed regulation would also apply to **private institutions receiving federal grants or cooperative agreements** “to the extent that the relevant activities are within the scope of activities funded by a Federal award.”²⁰

²⁰ Commenters may wish to request that OMB delete this section entirely or limit it to events by public recipients that are within the scope of activities funded by a federal award, consistent with the approach for private recipients. Commenters could further suggest that, if OMB retains this provision, OMB amends it to read “*To the extent required by the First Amendment*, public entities that are a recipient or subrecipient of Federal financial assistance must not discriminate”

Procedural Changes

OMB's proposal also includes procedural changes that could pose major obstacles to recipients' receipt and continuity of federal funds. The Administration has an unprecedented record of attempting to freeze, cancel, and terminate federal grants. Many of these attempts have been successfully challenged in court. With this proposed rule, OMB seeks to further codify into agencies' regulations its preferred funding process—one that infuses political and policy preferences into grantmaking and provides the Executive Branch with broad power over appropriated funds. If it is successful, the Administration may be more empowered to (continue to) regularly suspend and terminate recipients' funds when they are used in a way that does not align with the Administration's priorities. This would create even more risk to stability of funding, likely further disrupting program activities and scientific research without warning.

1) Creating a Pre-Issuance Review Process

Although the existing OMB guidance already contains a merit review process for funding proposals, proposed section 200.205, which applies to **discretionary grants and cooperative agreements**, would expand it to include a pre-issuance review process to ensure that all "proposals selected for funding are consistent with applicable law, Federal agency priorities, and the national interest." Agencies would be newly required to designate a senior political appointee to conduct that pre-issuance review, and although those appointees may designate someone else to do it, the reviewer must "use their independent judgment when evaluating Federal award proposals." The proposed regulation also states that, while peer review methods may be used to evaluate proposals, the senior political appointee (or their designee) may not routinely defer to or treat as "de facto binding" any peer review recommendations.

This combination of requirements would seemingly allow political appointees at agencies to deny funding proposals based on Administration priorities, rather than on subject matter expertise or the research/scientific rigor provided by peer reviewers. The regulation would not require political appointees to explain their "independent judgment" or document the reasons for the ultimate funding decision. It is also not clear whether an applicant would be notified that its application was rejected as a result of this new review process.²¹

2) Expanding Agencies' Termination/Suspension Discretion

Proposed section 200.340, which applies to **grants and cooperative agreements**, would make it easier for federal agencies to partially or fully terminate awards not only for noncompliance by a recipient or subrecipient but also (to the extent legally permissible) if it "is in the interest of the Federal agency or pass-through entity, 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." This discretionary termination provision would apply to **discretionary awards, not funds such as block grants, formula grants, or disaster recovery funds**.

This language would amend the existing OMB guidance that states that an agency may terminate funding under "the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." Since January 2025, the Administration, across federal agencies, has relied heavily on this existing language to cancel grants on the basis that they no longer effectuated the (current) Administration's "program goals" and "priorities." Federal courts are still navigating questions about the legality of the Administration's use of section 200.340, particularly in light of the fact that

²¹ Commenters may wish to request that OMB amend the proposed regulation to require that agencies document the decisionmaking in the pre-issuance review process and that applicants receive an explanation of the factors that contributed to their award being granted or denied.

the Administration's goals and priorities often seek to restrict lawful conduct. It may be that OMB proposes adding "as they exist at the time of the termination" to permit the practice of terminating grants during their funding period on the basis of not aligning with Administration priorities established after the competition was held and grants were awarded.²²

The proposed regulation would also add a temporary suspension provision allowing agencies to suspend an award for up to 90 days if it "determines that a suspension is in the interest of the Federal agency or pass-through entity." In light of the Administration's repeated attempts to suspend or freeze funding since January 2025, agencies might frequently employ this sweeping power, if adopted, adding to the risk of funding instability.²³

3) Expanding Ability to Add Specific Conditions

Proposed section 200.208, which applies to **grants and cooperative agreements**, clarifies that agencies may add specific conditions on funding at the outset of or throughout the award period based on, among other things, the recipient's history of compliance with terms and conditions of federal awards.

Proposed section 200.208(f) allows a funding agency to add specific conditions on an award that the agency determines "presents elevated programmatic risk related to program administration, program oversight, or effective monitoring of the use or expenditure of Federal funds by recipients or subrecipients." The provision does not define "elevated programmatic risk" or explain how agencies would make such a determination.²⁴

Notably, the proposed rules indicate that USED does not intend to adopt this particular provision. OMB does not explain USED's rationale.

4) Requiring Payment Justification for Non-State Recipients and Subrecipients

Proposed section 200.305, which applies to **grants and cooperative agreements**, would require that once agencies have appropriate systems in place, non-state recipients and subrecipients must submit a "brief, written justification" for every payment request they make under a federal award. The justification would describe the "activities or aspects of the Federal award that correspond to the payment request," such as project milestones, project activities, administrative activities, or other requirements. This justification requirement would apply to both advance payments and reimbursements. This proposed provision could significantly increase the administrative burden associated with accessing federal funds.²⁵

²² Commenters may wish to advocate against terminations (and suspensions) that are based on changing agency priorities or a vague, undefined notion of "national interest."

²³ If the Administration implements this proposal with respect to suspensions, this provision could serve to partially *constrain* the Administration's behavior. Since January 2025, the Administration has been freezing federal funds without any agreed-upon time limit such as the proposed 90 days. Commenters may wish to request that OMB shorten this time frame further to 30 days to limit the damage of funding suspensions.

²⁴ Commenters may wish to seek clarification on this issue.

²⁵ Commenters may wish to ask OMB to remove this provision or to exempt certain types of funding or specific programs.

5) Disallowance/Restriction of Certain Costs

In a departure from previous attempts by the Administration, OMB's proposed rule does **not** seek to cap indirect research cost reimbursement rates at 15%.²⁶ (And OMB said it will not consider comments on that issue.) But proposed section 200.205(b)(3), which applies to **discretionary grants and cooperative agreements**, would create a preference in the pre-issuance process for "institutions with lower indirect cost rates" if all other things are equal.

Additionally, various proposed regulations that apply to **grants and cooperative agreements, with some exceptions** would convert several costs from allowable to unallowable or require agency pre-approval for them, including attending conferences (200.432); fundraising and investment activities (200.442); memberships, subscriptions, professional activities (200.454); publication and printing (200.461); and selling and marketing products or services (200.467).^{27, 28} Proposed section 200.429 would also expand to all recipients the prohibition on using federal funds for commencement or convocation costs, which currently applies only to institutions of higher education.

6) "Domestic-First Framework"

Proposed section 200.202(e) would create a "domestic-first framework" for **research and development grants and cooperative agreements**. Specifically, the proposed regulation would prohibit such funding to foreign entities unless there is an express statutory authorization or a compelling interest for the agency's mission, the administration's priorities, and the United States. This determination would have to be made by a senior agency appointee. OMB's proposal would require agencies to design programs and evaluate applications with this in mind, including international elements only if "justified, consistent with program objectives, and in the national interest" It also lays out several factors that agencies must consider in determining whether an international element is necessary.²⁹

7) Focus on Science Grants

In addition to the restrictions on peer-review and international elements of research and development funding, and the disallowing of several costs that are relevant to science grants, as described above, several proposed provisions would further affect federal funding for science. We do not summarize them all here, but for instance, proposed sections 200.203(g) and 202.205(b)(4)–(7) would require funding agencies to advertise or assess research/science grants in specific ways, including by prioritizing an affiliated institution's "commitment to rigorous, reproducible scholarship over its historical reputation or perceived prestige"³⁰ and requiring a commitment to Gold Standard Science.

²⁶ In its first four months, the Administration sought to cap indirect cost rates at 15% on funding administered by the [National Institute for Health](#), [Department of Energy](#), and [National Science Foundation](#). These actions were successfully challenged in court.

²⁷ Commenters may wish to request that OMB allow these costs without new restrictions.

²⁸ Under proposed section 200.421, "advertising and public relations costs" would remain unallowable, with few exceptions. OMB's proposal would remove an exception for recruitment of personnel required for performance of the federal award, but it seems these costs would remain allowable under existing section 200.463, which OMB is not amending.

²⁹ Commenters may wish to ask OMB to remove this provision or, at a minimum, ask for clarity on how agencies will treat federally funded projects or proposals that involve collaborators or co-authors based in other countries or at foreign institutions.

³⁰ This standard is applicable to all discretionary grants.

Gold Standard Science is a standard created and promoted by this Administration via [executive order](#), which defines it as “science conducted in a manner that is:

- (i) reproducible;
- (ii) transparent;
- (iii) communicative of error and uncertainty;
- (iv) collaborative and interdisciplinary;
- (v) skeptical of its findings and assumptions;
- (vi) structured for falsifiability of hypotheses;
- (vii) subject to unbiased peer review;
- (viii) accepting of negative results as positive outcomes; and
- (ix) without conflicts of interest.”

It is not clear how federal agencies, and particularly how political appointees at federal agencies, will implement this standard, or how the standard will intersect with other requirements in the regulations, such as the requirement for political appointee review prior to grant awards or more generally to advance the President’s priorities.³¹

8) Restricting Eligibility of Certain Nonprofit Organizations

A new provision, proposed section 200.202(d), which applies to **grants and cooperative agreements**, would allow agencies to determine that it is necessary “to restrict eligibility among different types of nonprofit organizations,” if permitted by law. The provision does not specify the circumstances under which the Administration would invoke this provision, but encourages agencies to exercise this “discretion when warranted by statute, program objectives, or risk considerations.” The proposed regulation provides the example of distinguishing between 501(c)(3) and 501(c)(4) organizations, but OMB does not suggest that is the only way federal agencies might use this provision. The provision’s broad language suggests that it could, for example, restrict eligibility to a subset of nonprofit institutions of higher education.

9) Focus on Addressing “Fraud” and “Risk”

Section 200.113, which applies to **all federal financial assistance**, currently requires applicants, recipients, and subrecipients to promptly disclose credible evidence of fraud (and related crimes) in connection with the use of federal funds. The proposed regulation would add to this section a requirement that each agency’s Office of Inspector General report any such disclosures it receives to the U.S. Attorney’s Office for D.C. within 10 days of receipt, to ensure, as OMB explains in the preamble to the rule, “that credible allegations of fraud or misconduct are promptly transmitted to prosecutorial authorities.”³²

Proposed section 200.206(b)(2), which applies to **grants and cooperative agreements**, would also expand the list of factors that agencies consider in evaluating a funding applicant for “risk.” The proposed list would include, among other things, past performance and specify that positive and negative past outcomes must be given equal weight. It would also include “the applicant’s membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government,” which poses significant associational freedom concerns under

³¹ Commenters, particularly those in the science and research fields, may wish to ask OMB to clarify how this standard will work in practice and/or to rely on more well-established scientific standards or criteria.

³² Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32210 (May 29, 2026) (notice of proposed rulemaking).

the First Amendment. The regulation would also allow agencies to consider an applicant's history of "questionable practices" (including conduct inconsistent with federal civil rights laws or the Constitution's Equal Protection Clause), if publicly available and verifiable.

The Administration's past practices, including how it has described "fraud," "activities that violate Federal law," and actions that "undermine public safety," along with its efforts to use fraud statutes to enforce its interpretation of federal civil rights laws, suggest that we could expect to see agencies use these new rules in similar ways, if adopted.

10) Banning Fixed Amount Awards

Proposed section 200.201(b) would eliminate fixed amount awards and subawards unless they are authorized by Federal statute. OMB's current guidance defines fixed amount award as "a type of grant or cooperative agreement pursuant to which the Federal agency or pass-through entity provides a specific amount of funding without regard to actual costs incurred under the Federal award." Although these may represent a minority of the awards in the education sector, fixed amount awards are sometimes used for a number of important purposes, including, for example, certain agriculture-related awards for services to agriculture fields, training grants, seed grants to explore a new idea prior to a full research project, and certain health science center activities. The administrative burden and cost of these activities would likely increase substantially if these awardees were required to comply with the accounting and reporting requirements for cost reimbursable awards.³³

In the preamble to the proposed rule, OMB explains the Administration's position that such awards "limit transparency and hinder effective oversight," as well as allowing federal funds to be "wasted on activities that may not fully support the achievement of program outcomes."³⁴ Notably, this seems inconsistent with messaging in a [recent Executive Order](#), in which the President directed all agencies to use only fixed-price contracts.

FREQUENTLY ASKED QUESTIONS

Would these regulations apply to all federal funding?

Overall, the rule includes regulations that apply to all federal financial assistance across federal agencies, including but not limited to grants, cooperative agreements, non-cash contributions or donations of property, direct appropriations, food commodities, loans, loan guarantees, interest subsidies, and insurance. But various parts of the rule would have a more limited application, so not every form of funding is subject to all the same restrictions.

OMB's proposed rule would adopt most of the existing complex "applicability" framework set out in section 200.101. That section explains that the rule would generally apply to all agencies issuing federal awards to non-federal entities, but the framework also excludes certain types of federal financial aid or certain funding programs from parts of the rule. For example, section 200.101(b)(3) says that subpart C (the sections numbered in the 200.200s) and subpart D (the sections numbered in the 200.300s) of the rule apply only to grants and cooperative agreements, with a few exceptions.

³³ Commenters may wish to request that OMB reconsider this position and continue to allow fixed-amount awards or that it exempt fixed-amount awards made for certain purposes or under specific programs.

³⁴ Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32204 (May 29, 2026) (notice of proposed rulemaking).

Additionally, some of the proposed provisions—like section 200.205, which contains many of the new restrictions discussed above, including those related to DEI(A), gender identity, and immigration—would apply only to discretionary awards.

Finally, the regulation enumerates several programs that are exempt from some, but not all, of the rule’s requirements.³⁵ Potential recipients and commenters should consult counsel if they have questions about whether a particular provision will apply to their situation.

Would the regulations reach recipients’ non-federally funded conduct?

For the most part, no. Unless a broader applicability is noted above, the provisions described in this document apply to a recipient’s actions with respect to its use of federal funding.

Would this regulation change federal civil rights laws or other federal laws that establish or fund federal programs?

No. Federal regulations cannot override federal statutes. OMB acknowledges this limitation on its proposed rule. Proposed section 200.101(d) states that generally “[f]ederal statutes govern in any circumstances where they conflict with the provisions of this [rule].”³⁶ (OMB does assert that this regulation would override conflicting regulations that are “not required by a Federal statute,” but we suspect courts would analyze conflicts between federal regulations on a case-by-case basis.) If the rule is adopted, this limitation may help recipients argue, for example, that:

- Federal civil rights laws and courts’ interpretation of them—and not the Administration’s interpretation of them—govern what counts as “unlawful” DEI(A);
- The regulations cannot override procedural protections that appear in statutes, like the process for terminating funding under Title VI and Title IX; or

³⁵ These programs include, but are not limited to:

- Block grant awards authorized by the [Omnibus Budget Reconciliation Act of 1981](#) (including Community Services);
- Federal awards to local education agencies under [20 U.S.C. § 7702-7703b](#) (portions of the Impact Aid program);
- Federal awards authorized under the [Child Care and Development Block Grant Act of 1990](#);
- Temporary Assistance for Needy Families ([Title IV-A of the Social Security Act, 42 U.S.C. § 601-619](#));
- Federal Payments for Foster Care, Prevention, and Permanency ([Title IV-E of the Act, 42 U.S.C. § 670-679c](#));
- Certain provisions of Medicaid;
- Children’s Health Insurance Program ([42 U.S.C. § 1397aa-1397mm](#));
- Certain entitlement awards under [National School Lunch Act](#) programs;
- Certain entitlement awards under the [Child Nutrition Act of 1966](#) programs;
- Entitlement awards for State Administrative Expenses under the [Food and Nutrition Act of 2008](#); and
- Non-discretionary federal awards under the following non-entitlement programs:
 - Special Supplemental Nutrition Program for Women, Infants and Children ([42 U.S.C. § 1786](#));
 - The Emergency Food Assistance Programs ([Emergency Food Assistance Act of 1983](#)) [7 U.S.C. § 7501](#) note; and
 - Commodity Supplemental Food Program (Section 5 of the [Agriculture and Consumer Protection Act of 1973](#)) [7 U.S.C. § 612c](#) note.

³⁶ OMB carves out an exception to this for subpart F (sections numbered in the 200.500s) “which is required by the Single Audit Act.”

- Where a statute expressly requires grant funds to be used in a way that conflicts with the Administration’s priorities or requirements, the conflicting portion of the regulations cannot apply.

Is there any point to submitting comments? Won’t OMB just issue the regulations anyway?

The submission of comments is always an important part of the regulatory process. The public can provide critical viewpoints on the clarity, burden, workability, and legality of a proposed rule. Agencies are required to consider and address comments, as appropriate, in crafting a final rule. And public comments become part of the administrative record for the final rule, which a court can later review in determining whether the rule is valid. So, even if OMB does not change a single word in its proposed regulation, public comments serve important functions. Comments can force OMB to further explain its reasoning and hopefully clarify ambiguities, and they may strengthen legal challenges if the rule is adopted.

This proposed rule itself demonstrates the effectiveness of comments. The Administration has repeatedly tried to prohibit diversity, equity, inclusion, and accessibility efforts often without defining the terms “DEI” or “DEIA” or clearly limiting their policies to only unlawful actions. In this case, as discussed above, the DEI(A) provisions of the proposed regulations prohibit only unlawful DEI(A). OMB seemed to acknowledge that the decision was, at least in part, “[b]ased on other public comments.”³⁷

Is there anything that can make a comment more effective?

Submitting a public comment—on time and to the right place—is the most important thing. Beyond that, the experience of and applicability of the provision to the commenter is most likely to be effective as it often demonstrates why the provision raises practical and legal concerns. We encourage commenters to describe their institution’s or organization’s work and experiences that inform how these proposed regulations will affect them, including any ways they expect they will be unworkable or undermine important federally funded activities, like research and science. It is also important to point out parts of OMB’s proposed regulations that lack clarity or would lead to conflicts with existing law. Additionally, commenters may wish to affirm positive aspects of the proposal.

Where/how do I submit comments?

You can file comments [here](#). (If that link doesn’t work, please go to www.regulations.gov and search for docket OMB-2026-0034.) OMB requests that commenters begin each comment with the relevant section of the proposed revisions in brackets: “For example; if the comment is on 2 CFR 200.414, include the following before the comment [200.414].” Please remember, comments are public, so you should not include any confidential or private information in your comments.

When are comments due again?

July 13, 2026.

³⁷ Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32220 (May 29, 2026) (notice of proposed rulemaking).