July 13, 2026

Re: OMB-2026-0034, Office of Management and Budget (OMB) Regulation for Federal Financial Assistance

To Whom It May Concern:

The undersigned organizations submit this joint comment to express serious concerns about the proposal by the Office of Management and Budget (OMB) to both overhaul its existing, nonbinding "Guidance for Federal Financial Assistance" and at the same time convert it into a government-wide regulation that would legally bind federal agencies and their recipients and subrecipients (collectively "recipients") of federal grants and other forms of federal financial assistance. The proposal would elevate the Trump administration's preferences over Congressional mandates for how taxpayer dollars should be spent, judicial interpretations of what is or is not lawful, expert judgments of the rigor and quality of proposed research and programming, and state and local leaders' understanding of what their communities most need to thrive.

In several respects, OMB's approach is likely unlawful. And it would leave Americans—especially our most vulnerable students—worse off as services are cut off mid-delivery, redirected toward politically-favored topics and actors, or never even proposed as the chilling effects of OMB's prohibitions take hold. The federal government should always seek to improve the efficiency and effectiveness of its management of taxpayer dollars. Indeed, many of our organizations work every day to help advance ways to do that. But this overhaul is not designed to make the government more efficient or more effective. OMB should withdraw its misguided proposal.

**Substantive Prohibitions**: ***Prohibiting the Use of Federal Funds for Topics the Administration Disfavors***

- [200.205] [200.218] [200.219] [200.300]

Although every President focuses on their policy priorities, OMB seeks to enshrine the current Administration's views on federal civil rights laws and immigration—many of which have been rejected repeatedly by courts—in legally binding regulations that would remain in effect indefinitely. The proposal would prohibit recipients from using federal funding to cover costs associated with efforts to "fund, promote, encourage, subsidize, or facilitate" a wide range of topics the Administration disfavors. These extraordinarily broad prohibitions on conduct are applied to, among other things, efforts related to (in sections 200.205(b)(2) and 200.300(b)) diversity, equity, inclusion, and accessibility; issues of gender identity; support for undocumented immigrants; "anti-American values"; and (in section 200.218) "disparate impact liability."

These provisions 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 also raise serious First Amendment concerns. The provisions fail to define critical terms such as "anti-American values." Where it does define the key term of "disparate impact liability," OMB mischaracterizes the well-established disparate impact theory of proving illegal discrimination and at the same time confusingly applies it to non-legal contexts where the intended scope of the prohibition is inscrutable (e.g., “disparate-impact studies” or “activities based on the assumed risk of disparate-impact liability”). This lack of clarity would leave funding agencies and funding recipients without any shared understanding of what is or is not allowable.

OMB’s substantive prohibitions are impermissibly vague—and even more so in the context of this Administration’s track record of repeatedly characterizing lawful conduct as discriminatory, even when corrected by federal courts.[1] Recipients (and potential applicants) will not know what conduct may jeopardize their eligibility for or continued access to federal funding. For example, how would recipients know if their federally-funded activities are “encouraging” illegal immigration or “promoting” values the Administration does not like? Would a school’s federal funding be at risk for “promoting” the “denial…of the sex binary” if an educator uses a student’s preferred pronoun or fails to discipline the student for using it? Even absent concrete action by agencies to deny or cut off particular funding pursuant to these provisions, the predictable and coercive result will be to chill lawful conduct.[2] Similarly, OMB’s approach will discourage potential recipients from ever proposing to engage in lawful-but-disfavored conduct because they cannot assume the risk of losing essential funds based on the Administration’s interpretation of a vague standard.

Further, OMB’s proposal does not stop with prohibiting funding for disfavored topics. Section 200.205(b)(1) also would require all discretionary grants and cooperative agreements to “demonstrably advance the President’s policy priorities,” which could impose limitless (and potentially constantly shifting) Administration preferences on the funding process. Faced with such gate-keeping, agencies and applicants will orient federal funding toward the President’s preferences at the likely expense of what is most needed by the field—from research projects to student-facing supports—or even of agency-specific priorities identified through notice-and-comment rulemaking, such as the U.S. Department of Education’s Supplemental Grant Priorities. Rather than advance the Administration’s stated goal of returning education to the states, OMB’s proposal would make states’ priorities subservient to the federal government’s.

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[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.”).

[2] The Constitution‘s Spending Clause prohibits the government from attaching conditions to federal funding that “might be so coercive as to pass the point at which ‘pressure turns into compulsion.’” *Dole*, 483 U.S. at 211 (1987) (quoting *Steward Mach. Co. v. Davis*, 301 U.S., 548, 590 (1937)). For many recipients, OMB’s proposed regulations will amount to unlawful coercion. For many recipients, the choice to forgo federal funding would be no real choice at all. That is the clearest evidence of coercion.

Under our Constitution's separation of powers, the Administration should defer to Congress to decide what is or is not lawful and, where applicable, to the judiciary's interpretations of those laws. For example, recipients of funding from the U.S. Department of Education would unacceptably be caught between the OMB provisions' prohibition on equity and the congressional mandate for equity in section 427 of General Education Provisions Act.[3] Rather than claim that constitutional role for the Executive Branch, the uniform guidance (or regulations) should help federal agencies responsibly administer the nation's laws.

Finally, section 200.219 would prohibit both public and private recipients from discriminating on the basis of viewpoint, content, or subject matter of speech in providing services for federally-funded events such as higher security or crowd management costs. For public recipients, the prohibition would reach *beyond* their federally-funded activities to place the proposed restrictions on all of their "events, meetings, or other expressive activities." Education recipients, especially colleges and universities, may reasonably fear that the Administration could wield this broad new restriction to interfere with their lawful management of campus events.

**Procedural Changes: *Injecting Politics and Instability into Federal Grant-Making and Management***

- [200.202] [200.205] [200.206] [200.208] [200.340]

Beyond the prohibitions on *what* agencies can fund, OMB's proposal includes a long list of revisions to *how* agencies can award and manage federal financial assistance. Like the substantive prohibitions discussed above, many of these procedural changes improperly and unworkably elevate the Administration's preferences as the decisive factor in federal grant-making and management. Doing so will undermine congressional mandates, the stability of federally-funded services, and rigorous scientific research and development.

Beginning with the Department of Government Efficiency's (DOGE) indiscriminate terminations of grants and contracts, this Administration has an unprecedented record of freezing, canceling, and terminating federal grants. Many of these attempts have been successfully challenged in court, but even in those cases, the Administration's actions caused harm to both recipients and the communities they serve. OMB's proposal would codify this approach by infusing political and policy preferences into grantmaking and grant management:

- [200.205(b)] OMB would add a "pre-issuance review process" for all discretionary grants that would require the approval of a senior political appointee before funding any proposal,

[3] "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 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).

regardless of how that proposal scored in a peer review process. A vague screening for alignment with "agency priorities" and "the national interest" will force all grant proposals to first pass a political litmus test that is antithetical to responsible governmental decisionmaking informed by agencies' and peer reviewers' subject matter expertise and the values of rigor and merit.

- [200.340(a)(2) & 200.340(e)] OMB would codify DOGE's approach across the federal government by empowering agencies to terminate awards not only for noncompliance but also 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 would effectively hold grantees responsible not for their performance of their successful grant proposal but instead for remaining in lockstep with any unknowable shift in the Administration's priorities or vision of the "national interest." A related provision in section 200.340(e) would allow for immediate suspensions of up to 90 days, well beyond the time that many recipients could afford to continue providing services without their grant funding. Similarly, a 90-day pause in many research studies could be long enough of an interruption in the intervention and/or data collection to permanently ruin the studies, thus wasting any funding already used.

- Several proposed provisions would give agencies additional mechanisms for disadvantaging recipients or applicants the Administration does not approve of:

    - [200.202(d)] OMB would allow agencies to determine that it is necessary "to restrict eligibility among different types of nonprofit organizations." The provision does not create any guardrails around this to protect from political retribution: agencies would be instructed simply to exercise this "discretion when warranted by statute, program objectives, or risk considerations." The provision's broad language suggests that it could, for example, restrict eligibility for a grant competition to a subset of nonprofit institutions that the Administration favors (e.g., universities signing onto the "Compact for Academic Excellence in Higher Education" or scholarship-granting organizations that only provide scholarships for K-12 tuition at private schools).

    - [200.206(b)(2)] OMB would expand the list of factors that agencies consider in evaluating a funding applicant for "risk." The proposed list would include, among other things, in 200.206(b)(2)(viii), "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." Given how often the Administration has characterized organizations opposing its policies—including teacher organizations, advocacy groups, and those protecting free speech—as "terrorists," this proposal raises significant concerns about the right to free association under the First Amendment.

    - [200.208(f)] OMB would allow 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." OMB does not define "elevated programmatic risk" or explain how agencies would make such a determination. Without clarity or guidelines, the Administration could declare that recipients it disfavors—school districts teaching history accurately or colleges using holistic review in admissions—pose "elevated" risks and must meet additional, onerous conditions on their federal funding.

Taken together, OMB's procedural proposals would inject an unacceptable level of political interference in the grantmaking and management process. They would create even more risk to the stability of federal funding, likely further disrupting grant funds, program activities, and scientific research without warning or legal merit. This instability and uncertainty would affect all recipients, but it would particularly disadvantage recipients that do not also have significant non-federal funding, including rural school districts, small non-profit organizations (including many faith-based organizations), and other new applicants for federal grants.[4]

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For the reasons discussed above, we ask that OMB withdraw its proposal. This proposed overhaul (and conversion to government-wide regulations) would undermine the efficient and effective administration of federal financial assistance. It would undermine the scientific research and development that could help us improve education and the critical services provided to students on and off campuses across the nation, especially our most vulnerable populations. And, by turning to politics to pick winners and losers, the proposal would ultimately undermine trust in government.

Thank you for your consideration.

Respectfully submitted,

Advance Illinois
All4Ed
Collaborative for Academic, Social, and Emotional Learning (CASEL)
EDGE Partners
ED-OCR Alumni Collective
EdTrust
Educators for Excellence
Foundation for Child Development
InnovateEDU
Institute for Higher Education Policy (IHEP)
Kids First Chicago
MMSLM
NASPA - Student Affairs Administrators in Higher Education
National Association for Family, School, and Community Engagement (NAFSCE)
National Center for Learning Disabilities
National Charter Collaborative

[4] Indeed, the uncertainty and risk that OMB would inject into all federal funding opportunities is counterproductive to section 200.205(b)(4) that "[d]iscretionary awards should be given to a broad range of recipients."

National Parents Union
Socos Labs
The Learning Agency
The Study Group