July 13, 2026

Andrew Reisig and Joel Savary
Office of Federal Financial Management
Office of Management and Budget
725 17th St NW
Washington, D.C. 20503

Submitted via regulations.gov

RE: Regulations for Federal Financial Assistance, OMB-2026-0034, *et al.*

Dear Mr. Reisig and Mr. Savary;

The Legal Defense Fund, LatinoJustice PRLDEF, and the undersigned civil rights, racial justice, and allied organizations write to oppose the "Regulations for Federal Financial Assistance" proposed by the White House Office of Management and Budget (OMB) and other federal agencies.[1] Federal financial assistance funds essential health care, food and nutrition, housing, education, job training, scientific research, civil rights counseling and other programs as directed by Congress. Since taking office, however, the Trump administration has sought to turn federal grantmaking into a political tool to chill lawful programs advancing diversity, equity, inclusion, and accessibility and ensuring equal opportunity; force compliance with its divisive agenda; and punish organizations which disagree with its viewpoint. The Trump administration's weaponization of grantmaking has disproportionately harmed Black, Latino, and other communities of color. The proposed rule would accelerate these harms by giving political appointees additional powers to decide who receives federal funding and imposing burdensome new restrictions on how federal funding can be used. These regulations exceed OMB's authority and conflict with existing statutory and constitutional law. OMB and the other federal agencies fail to offer a reasoned explanation for the proposed rule. While our comment addresses the authority of OMB specifically to issue this proposed regulation and highlights the harms of specific provisions, we oppose efforts to finalize any of the proposed provisions by any agency. We urge OMB and the other federal agencies to withdraw the proposal in its entirety.

I. <u>The Trump Administration Has Weaponized Grantmaking, Disproportionately Harming Black, Latino, and Other Communities of Color.</u>

Federal financial assistance is meant to fund "national priorities,"[2] directing taxpayer dollars toward essential health care, food and nutrition, housing, education, job training,

---

[1] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (May 29, 2026), https://www.govinfo.gov/content/pkg/FR-2026-05-29/pdf/2026-10817.pdf (hereinafter "Proposed Rule").
[2] *Grants Management: Observations on Challenges with Access, Use, and Oversight: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affs.*, 118th Cong. 1 (2023) (statement of Jeff Arkin, Director, Strategic Issues, U.S. Gov't Accountability Off.) (hereinafter "Statement of Jeff Arkin"); *see also* NAT'L COUNCIL OF NONPROFITS, 2026

scientific research, civil rights counseling, and other congressionally authorized programs. Since it resumed office in January 2025, however, the Trump administration has utilized federal grantmaking as a political weapon to discriminate against organizations that disagree with its viewpoint, severely harming communities who depend on federal grant programs for access to economic opportunity, housing, life-saving health care, and education.[3] The President's grant cancellations and terminations have already disproportionately harmed Black, Latino, and other communities of color by targeting funding that has been used to prevent or remedy discrimination and barriers to opportunity. The proposed rule would further empower the Trump administration's use of funding cuts to enforce its discriminatory ideology.

In a series of unilateral actions, including executive orders,[4] guidance memoranda,[5] and other tactics,[6] the Trump administration has targeted organizations advancing values the administration views as contrary to its political agenda. Many of these values—related to racial, ethnic, and gender inclusivity—are targeted by the proposed rule. Some of the executive orders issued in the administration's first few days in office closely track the language and purpose of the proposed rule and are explicitly referenced therein.[7] While the Trump administration claims its goal is to end "illegal" and discriminatory conduct, in practice it is targeting expression and values it disagrees with and communities it disfavors. It has frequently circumvented civil rights enforcement procedures to achieve those ends. In addition, in pursuit of its goal, the administration has frequently skirted civil rights laws, withholding funding without due process,[8] adding unlawful new conditions to grants and other federal funding opportunities,[9]

ADVOCATING FOR FEDERAL SPENDING: A PRACTICAL GUIDE FOR NONPROFITS 3 (2026) ("Federal funding often reflects national priorities. When *Congress* funds a program, it signals that the issue matters." (emphasis added)).

[3] WHITE HOUSE, CUTS TO WOKE PROGRAMS (FY 2026), https://www.whitehouse.gov/wp-content/uploads/2025/05/Cuts-to-Woke-Programs-Fact-Sheet.pdf; WHITE HOUSE, CUTS TO WOKE PROGRAMS (FY 2027), https://www.whitehouse.gov/wp-content/uploads/2026/04/cuts-to-woke-programs-fact-sheet.pdf.

[4] Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025) (directing OMB and other agencies to "coordinate the termination of all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA) mandates, policies, programs, preferences, and activities"); Exec. Order No. 14,173, 90 Fed. Reg. 8663 (Jan. 21, 2025) (among other instructions, directing agencies to "excise references to DEI and DEIA principles" from federal contracts and grants and to "[t]erminate all 'diversity,' 'equity,' 'equitable decision-making,' 'equitable deployment of financial and technical assistance,' 'advancing equity,' and like mandates, requirements, programs, or activities"); Exec. Order No. 14,168 90 Fed. Reg. 8615 (Jan. 20, 2025) (rejecting the concept of gender identity and directing, "[f]ederal funds shall not be used to promote gender ideology"); Exec. Order No. 14,187, 90 Fed. Reg. 8,771 (Jan. 28, 2025) (directing agencies to pull funding from institutions providing gender-affirming care to individuals under the age of nineteen); Exec. Order No. 14,281, 90 Fed. Reg. 14,281 (April 23, 2025) (declaring "[i]t is the policy of the United States to eliminate the use of disparate-impact liability in all contexts").

[5] Memorandum from U.S. Attorney General Pamela J. Bondi for All Federal Agencies: Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination (July 29, 2025) (on file with U.S. Dep't of Just.), https://www.justice.gov/ag/media/1409486/dl (hereinafter "July 29, 2025 Memo").

[6] *See, e.g.*, Katherine Knott, *What to Know About Trump's Compact for Higher Ed*, INSIDE HIGHER ED (Oct. 20, 2025), https://www.insidehighered.com/news/government/politics-elections/2025/10/20/5-things-know-about-trumps-higher-ed-compact (discussing the Trump administration's Compact for Academic Excellence in Higher Education, which proposed to give certain universities "preferential treatment for funding if they enact[ed] a number of policy changes").

[7] Proposed Rule at 32215 (discussing proposed revisions to 2 C.F.R. § 200.300).

[8] Emily Badger & Alicia Parlapiano, *Trump Keeps Finding New Ways to Withhold Money Even After 198 Lawsuits*, N.Y. TIMES (Mar. 3, 2026), https://www.nytimes.com/interactive/2026/03/03/upshot/trump-funding-lawsuits.html.

[9] *See, e.g.*, Complaint at 28, Freedom Network v. Trump, No. 1:25-cv-12419, 2026 WL 1899186 (N.D. Ill. Mar. 23, 2026); Cory Turner, *Head Start Centers Told to Avoid 'Disability,' 'Women,' and More in Funding Requests*, NPR (Dec. 11, 2025), https://www.npr.org/2025/12/11/nx-s1-5640757/head-start-hhs-funding-dei.

and threatening False Claims Act investigations[10] in order to pressure organizations to comply. These actions have frequently been blocked by the courts.[11]

While these actions have harmed organizations and communities across the country, they have disproportionately targeted Black, Latino, and other communities of color. In a purported effort to eliminate funding to projects believed to advance diversity, equity, inclusion, and accessibility, in just a few months the federal government had flagged, revised, cut, or canceled more than $1.5 billion in grants to organizations that advance underrepresented racial and ethnic groups' welfare and equal access to opportunity through advocacy, provision of services or education, or research.[12] These include:

- Early Childhood Education: For more than sixty years, Head Start has holistically "served millions of children and families . . . including almost 800,000 in the last year for which data is available," through "early childhood education, services during pregnancy, . . . mental health services," and other critical support.[13] The program was initially aimed toward "supporting Black families" in Southern states that were "openly hostile toward equitably investing in Black communities,"[14] and it continues to eliminate disparities in child care access and economic opportunity today. Despite the crucial

---

[10] Press Release, U.S. Dep't of Just., Justice Department Establishes Civil Rights Fraud Initiative (May 19, 2025) (on file with authors).

[11] *See, e.g.*, Chicago Women in Trades v. Trump, 778 F. Supp. 3d 959 (N.D. Ill. 2025) (granting in part plaintiff's motion for preliminary injunction on First Amendment and separation of powers grounds, regarding termination and certification provisions in challenged executive orders); NAACP v. U.S. Dep't of Educ., 779 F. Supp. 3d 53 (D. Md. 2025) (granting plaintiff's motion for preliminary injunction in challenge against Department of Education (ED) February 14, 2025 letter and accompanying documents "directing federally funded educational institutions to cease all . . . unlawful DEI programs"); San Francisco Unified School District v. AmeriCorps, 789 F. Supp. 3d 716 (N.D. Cal. 2025) (granting plaintiff's motion for preliminary injunction challenging AmeriCorps directive imposing anti-diversity, equity, and inclusion conditions); San Francisco A.I.D.S. Found. v. Trump, 786 F. Supp. 3d 1184 (N.D. Cal. 2025) (granting in part plaintiff's motion for preliminary injunction in challenge to executive orders rolling back diversity, equity, and inclusion initiatives and targeting programs "promoting 'gender ideology'"); Am. Fed. of Teachers v. U.S. Dep't of Educ., No. 1:25-cv-00628, 2025 WL 2374697 (D. Md. Aug. 14, 2025) (granting in part plaintiff's motion for summary judgment in challenge to ED February 2025 letter and accompanying documents); Nat'l Educ. Assoc. v. U.S. Dep't of Educ., 779 F. Supp. 3d 149 (D.N.H. 2025) (granting plaintiff's motion for preliminary injunction as to the same); Rhode Island Coalition Against Domestic Violence et al. v. Kennedy, Jr. et al., 812 F. Supp. 3d 180 (D.R.I. 2025) (granting plaintiff's motion for preliminary injunction in challenge to new funding conditions imposed by the Department of Housing and Urban Development pursuant to executive orders).

[12] Mary Ellen Flannery, *Trump Cancels Federal Research Grants. What Are the Consequences?*, NEAToday (May 27, 2025), https://www.nea.org/nea-today/all-news-articles/trump-cancels-federal-research-grants-what-are-consequences.

[13] Karla Coleman-Castillo & Sonia Marton, Nat'l Women's Law Ctr., Attacks on Head Start Are Part of a Sustained Strategy to Undermine Progress for Families with Low Incomes: A Timeline of the Trump Administration's Efforts to Eliminate the Program 1 (2026), https://nwlc.org/resource/attacks-on-head-start-are-part-of-a-sustained-strategy-to-undermine-progress-for-families-with-low-incomes-a-timeline-of-the-trump-administrations-efforts-to-eliminate-the-program/; *see also* Casey Peeks, *Project 2025 Would Eliminate Head Start, Severely Restricting Access to Child Care in Rural America*, Ctr. for Am. Progress (June 26, 2024), https://www.americanprogress.org/article/project-2025-would-eliminate-head-start-severely-restricting-access-to-child-care-in-rural-america/ (estimating that Head Start had, as of the date of publication, served forty million children).

[14] Chrishana M. Lloyd, Julianna Carlson, & Marta Alvira-Hammond, Child Trends, Federal Policies Can Address the Impact of Structural Racism on Black Families' Access to Early Care and Education 7 (2021), https://www.childtrends.org/publications/federal-policies-can-address-the-impact-of-structural-racism-on-black-families-access-to-early-care-and-education.

support it has long provided for low-income families of all races nationwide[15] and its "role in . . . reducing gaps caused by poverty and racism,"[16] in December 2025, Head Start was instructed "to remove a list of almost 200 commonly used words (like 'Black' and 'women') [from its] federal funding applications or risk the applications being denied."[17] Eliminating Head Start would be devastating for low-income families from all racial and ethnic backgrounds, as it would severely restrict access to childcare, "undermine economic growth[,] and exacerbate inequality."[18]

- Health Research and Health Care: The National Institute of Health (NIH) terminated thousands of grants during the first six months of the Trump administration. The National Institute of Minority Health and Health Disparities "lost both the largest share of grants and the largest share of funding."[19] Approximately 130 of the canceled NIH grants were meant to support 160 active clinical trials—and about 57% of these canceled grants had "mentioned racial or ethnic subpopulations."[20] In another example, an organization leading research on child welfare topics—Child Trends—lost a major grant "for a Center for Research on Hispanic Children and Families."[21] The administration's executive actions have similarly targeted groups or organizations providing gender-affirming health care or otherwise providing services inclusive of transgender individuals. In response to an executive order "[r]equiring that federal funds are not used to 'promote gender ideology,'" some clinics and other health facilities have withheld or plan to withhold gender affirming care out of fear that their federal funding would otherwise be canceled.[22] Other programs and health centers "los[t] funding as a result of supporting programs inclusive of transgender people."[23] The impacts of these terminations are felt across the nation and throughout the economy, as communities lose access to critical programs and cuts compound the $320 billion annual cost of racial health disparities.[24]

---

[15] *Head Start Program Facts: Fiscal Year 2024*, HEADSTART.GOV, https://headstart.gov/program-data/article/head-start-program-facts-fiscal-year-2024 (last accessed July 3, 2026).
[16] *Early Head Start: Social Emotional Outcomes for Black Children,* APPLIED RSCH. ON CHILDREN LAB, UNIV. OF CONN. https://arclab.hdfs.uconn.edu/projects/ehs-outcomes-for-black-children/ (last accessed July 13, 2026).
[17] Coleman-Castillo & Marton, *supra* note 13, at 3.
[18] Peeks, *supra* note 13.
[19] Latoya Hill & Samantha Artiga, *Elimination of Federal Diversity Initiatives: Updates and Current Status*, KFF (June 4, 2026), https://www.kff.org/racial-equity-and-health-policy/elimination-of-federal-diversity-initiatives-updates-and-current-status/.
[20] ASS'N OF AM. MED. COLLS., IMPACT OF NIH GRANT TERMINATIONS 2 (2025), https://www.aamc.org/media/83686/download.
[21] John Kelly, *Trump Administration Cancels Several DEI-Related Child Welfare Grants*, IMPRINT (Dec. 26, 2025, 5:07 A.M.), https://imprintnews.org/youth-services-insider/administration-cancels-several-dei-related-child-welfare-grants/269841.
[22] Lindsey Dawson & Jennifer Kates, *Overview of President Trump's Executive Actions Impacting LGBTQ+ Health*, KFF (Feb. 24, 2025), https://www.kff.org/lgbtq/overview-of-president-trumps-executive-actions-impacting-lgbtq-health/ (last updated July 3, 2026).
[23] *Id.*
[24] Mariam Rashid & Perry N. Halkitis, *How Federal Attacks on Diversity and Inclusion Policies Have Dismantled Public Health Infrastructure and Threaten National Health Security*, CTR. FOR AM. PROGRESS (Jun. 1, 2026), https://www.americanprogress.org/article/how-federal-attacks-on-diversity-and-inclusion-policies-have-dismantled-public-health-infrastructure-and-threaten-national-health-security/.

- Higher Education: In 2025, the U.S. Department of Education cancelled $350 million for minority-serving institutions,[25] claiming the programs violated the Equal Protection Clause.[26] In fact, these programs have served to remedy the historical exclusion of minority students from institutions of higher education, while serving *all* students at these institutions. For example, federal grants for Hispanic Serving Institutions covered research grants, lab equipment, and programs to support students regardless of ethnicity.[27] These funding cuts will threaten the quality of education of all students at the institutions that previously qualified for these grants.[28] According to LDF's analysis of Department of Government Efficiency (DOGE) grant data, HBCUs lost an average of 62% of the grant dollars included in the DOGE cancellation dataset, compared with an average loss of 50% across all colleges and universities in the dataset. The analysis indicates that grant terminations disrupted student-support programs, STEM initiatives, and research activities at affected institutions.[29] While cuts to these programs have particularly impacted Black and Latino students, overall, Department of Education cuts have impacted institutions in every state in the country, costing some schools hundreds of dollars per student.[30]

- Environmental Justice: The Trump administration has also cancelled and terminated environmental justice funding under similar pretenses. Black, Latino, and low-income communities bear the disproportionate burden of environments hazards and sources of pollution.[31] For example, under President Trump, the Environmental Protection Agency has cancelled and terminated billions of dollars in climate and environmental justice grants.[32] These grants were used to address issues such as "utility costs, air pollution,

[25] Michael Burke, *Trump Administration, Congress Leave Hispanic-Serving Colleges Confused Over Funding*, EDSOURCE (Feb. 29, 2026), https://edsource.org/2026/trump-administration-congress-leave-hispanic-serving-colleges-confused-over-funding/752064.
[26] Press Release, U.S. Department of Education, U.S. Department of Education Ends Funding to Racially Discriminatory Discretionary Grant Programs at Minority-Serving Institutions (Sept. 10, 2025) (on file with authors).
[27] Olivia Sanchez, *California Colleges Scramble to Fill Gaps Left by Federal Grant Cuts to Latino Students*, L.A. TIMES (Feb. 3, 2026), https://www.latimes.com/california/story/2026-02-03/california-colleges-scramble-to-fill-gaps-left-by-federal-grant-cuts-to-latino-students.
[28] *Id.*
[29] Tonya Farrow-Chestnut, Kesha Moore, & Clare Walker, DOGE Grant ESDA Analysis (New York: Legal Defense Fund, 2026), unpublished data analysis.
[30] Greta Bedekovics & Will Ragland, *Mapping Federal Funding Cuts to U.S. Colleges and Universities*, CTR. FOR AM. PROGRESS (Jul. 23, 2026), https://www.americanprogress.org/article/mapping-federal-funding-cuts-to-us-colleges-and-universities/.
[31] Press Release, Harvard T.H. Chan Sch. of Pub. Health, Racial, Ethnic Minorities and Low-Income Groups in U.S. Exposed to Higher Levels of Air Pollution (Jan. 12, 2022) (on file with authors); *Communities of Color Across the US Suffer a Growing Burden from Polluted Air*, G.W. MILKEN INST. SCH. OF PUB. HEALTH (Mar. 6, 2024), https://publichealth.gwu.edu/communities-color-across-us-suffer-growing-burden-polluted-air; Sam Zeno et al., *The Nature Gap: Communities of Color and Those With Low Incomes Are Bearing the Brunt of America's Nature Loss*, CTR. FOR AM. PROGRESS (Feb. 23, 2026), https://www.americanprogress.org/article/the-nature-gap-communities-of-color-and-those-with-low-incomes-are-bearing-the-brunt-of-americas-nature-loss/.
[32] While a federal judge just ruled that Trump administration's termination of some of these environmental justice grants, specifically the Environmental and Climate Justice Block Grants, was "illegal," it is unclear whether the Trump Administration will be ordered to resume the grants. Lauren Dalban, *Trumps EPA Unlawfully Cancelled Environmental Justice Grants, Judge Rules*, INSIDE CLIMATE NEWS (June 12, 2026), https://insideclimatenews.org/news/12062026/judge-rules-trump-environmental-justice-grant-cancellations-unlawful/; *see also Litigation Tracker: Legal Challenges to Trump Administration Actions*, JUST SEC. (June 29, 2026), https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/ (tracking over one hundred challenges to the pausing or cancellation of government grants and assistance).

aging infrastructure, extreme heat," and other issues which disproportionately harm communities of color and low-income communities.[33]

- Fair Housing Enforcement: Housing discrimination remains a persistent reality, and the number of race-based discrimination cases have increased since Fiscal Year 2019.[34] In Fiscal Year 2023—the most recent year for which data is available—2,158 of the 8,272 total complaints filed involved race-based housing discrimination.[35] Yet the Trump administration tried to cut grants for fair housing enforcement,[36] and prevent agencies from addressing unfair disparate impacts.[37]

Other grant cancellations and terminations that disproportionately impact communities of color include: $600 million in cuts to teacher training over concerns of spreading "divisive ideologies" such as acknowledging and responding to racism;[38] major proposed cuts to the Minority Business Development Agency;[39] and funding cuts to nonprofits providing abortions in addition to other essential health services for low-income individuals.[40] The proposed rule provides the President with another avenue to impose his administration's ideology, including this administration's perversion of civil rights laws.

What constitutes a national priority is dictated by the congressional statutes creating and mandating funding under the various federal grant programs—not just by the Executive

---

[33] Dalban, *supra* note 32; Prior to the Trump administration's cuts, the government, for example, provided funding for lead mitigation, which disproportionately impacts Black communities. Black children are more likely to have higher median blood lead levels than white children. Brian Doctrow, *Racial Segregation Makes Consequences of Lead Exposure Worse*, NAT'L INST. OF HEALTH (Aug. 30, 2022), https://www.nih.gov/news-events/nih-research-matters/racial-segregation-makes-consequences-lead-exposure-worse. Two cancelled grants, one $500,000 grant slated to go to the nonprofit Childhood Lead Action Project another $1 million grant for Kansas City, Missouri, were going to be put towards soil lead mitigation. Nada Hassanein, *Trump Has Cancelled Environmental Justice Grants. Here's What Communities Are Losing*, STATELINE (Apr. 14, 2025, 5:00 A.M.), https://stateline.org/2025/04/14/trump-has-canceled-environmental-justice-grants-heres-what-communities-are-losing/. Black, Hispanic, Asian, and low-income communities are also more likely to be exposed to air pollution. Harvard T.H. Chan Sch. of Pub. Health, *supra* note 31; G.W. MILKEN INST. SCH. OF PUB. HEALTH, *supra* note 31. Some of the cancelled and terminated grants included projects meant to address these issues. For example, CleanAIRE NC, a nonprofit dedicated to ensuring all North Carolinians have access to clean air, had their $500,000 Environmental Justice Collaborative Problem-Solving grant cancelled. CleanAIRE would have used the funds to install air monitors across low-income white, Black, and Hispanic communities. Hassanein, *supra*. Further, the cancellation of the Community Change Grant defunded projects at the nonprofit organization Leadership Counsel that were intended to help farmworkers in San Joaquin Valley, California, many of whom are Spanish-speaking, and engage with local decision makers on issues like extreme heat. Declaration of Kaylon Hammond, Sustainability Institute v. Trump, 784 F. Supp. 3d 861 (D.S.C. 2025), *vacated and remanded*, 165 F.4th 817 (4th Cir. 2026), No. 2:25-cv-02152-RMG.

[34] U.S. DEP'T OF HOUS. & URB. DEV., 2023 FISCAL YEAR STATE OF FAIR HOUSING: ANNUAL REPORT TO CONGRESS 74 (2023), https://www.hud.gov/sites/dfiles/SFH/documents/FHEO_Annual_Report_FY_2023.pdf.

[35] *Id.*

[36] Jesse Bedayn, *Trump Administration to Slash Funding for Enforcement of Fair Housing Laws,* ASSOCIATED PRESS (Feb. 28, 2025, 8:46 PM), https://apnews.com/article/trump-doge-housing-crisis-cuts-discrimination-d0c6e3b4b030787a1f60a7dc153153dd.

[37] *See, e.g.*, Complaint at 18–19, Illinois v. Dep't of Hous. & Urban Dev., No. 3:26-cv-02262 (N.D. Cal. Mar. 16, 2026).

[38] Press Release, U.S. Department of Education, U.S. Department of Education Cuts Over $600 Million in Divisive Teacher Training Grants (Feb. 17, 2025) (on file with authors).

[39] Luke Broadwater & Michael C. Bender, *Trump Goes After Federal Programs He Calls 'Woke In Budget Proposal*, N.Y. TIMES (Apr. 3, 2026), https://www.nytimes.com/2026/04/03/us/politics/trump-budget-proposal-woke.html.

[40] Jil Rosenthal & Kierra B. Jones, *The Trump Administration Is Endangering Women's Reproductive Health*, CTR. FOR AM. PROGRESS (Jul. 21, 2025), https://www.americanprogress.org/article/the-trump-administration-is-endangering-womens-reproductive-health/.

Branch's own political agenda. The Trump administration, however, has replaced longstanding national priorities with its own political priorities. Cutting federal funds for critical programs like those described above, simply because grant applications aim to examine or address disproportionate harms on people of color, LGBTQ+ people, women, or others, has had a devastating impact on those communities and on the country at large. The proposed rule would exacerbate these harms.

II. The Proposed Rule Would Add Vague and Harmful Substantive and Procedural Requirements to Federal Financial Assistance.

To date, OMB has provided high-level oversight of federal financial assistance through its Uniform Guidance, which was last revised in 2024.[41] OMB now proposes to add dozens of new procedural and substantive requirements in one of the most substantial overhauls of the federal funding process. Many of these proposed requirements would give the President increased power to use federal programs authorized and appropriated by Congress to advance the administration's divisive political priorities. These requirements are written in broad and vague terms, giving agencies substantial discretion to award, limit, or terminate federal funding for reasons unrelated to the purpose of the award and creating confusion for applicants and recipients. These requirements include:

- Political Control Provision (Federal Agency Review of Merit of Proposals, § 200.205): Currently, OMB's Uniform Guidance for Federal Awards (Uniform Guidance) requires federal agencies to establish a merit review process "to select recipients most likely to be successful in delivering results based on the program objectives."[42] The proposed rule would dramatically alter this process, requiring "senior [political] appointees" to review discretionary grants to ensure such grants "demonstrably advance the President's policy priorities" and do not:

    > fund, promote, encourage, subsidize, or facilitate: (i) [r]acial 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; (ii) [d]enial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic; (iii) [i]llegal immigration; or (iv) [a]ny other initiatives that compromise public safety or promote anti-American values.[43]

    The proposed rule does not define "anti-American values" or the other relevant terms.

- Outside Activities Provision (Federal Agency Review of Risk Posed by Applicants, § 200.206): Currently, OMB's Uniform Guidance requires federal agencies to assess

[41] Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046 (Apr. 22, 2024), https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-07496.pdf (hereinafter "2024 Guidance").
[42] 2 CFR § 200.205.
[43] Proposed Rule at 32249 (proposing revisions to 2 C.F.R. § 200.205(b)).

applicants' financial stability, management systems and standards, history of performance, audit reports and findings, and ability to effectively implement requirements before awarding federal dollars.[44] The proposed rule would also require federal agencies to assess applicants' risk of "[e]ngaging in activities or initiatives that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination" or "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."[45] Notably, this provision mandates federal agencies to assess and make award decisions based on applicants' activities, initiatives, memberships, and affiliations as a whole, regardless of whether they are funded using federal dollars.

- <u>Arbitrary Termination Provision (Termination and Suspension, § 200.340)</u>: Currently, OMB's Uniform Guidance only permits federal agencies to terminate funding: 1) for failure to comply with the terms of the award; 2) on consent; 3) upon notification by the recipient or subrecipient; or 4) pursuant to the terms and conditions of the award. The proposed rule would give federal agencies the discretion to terminate funding at any time if "an agency determines it is no longer in the Federal Government's interest," even if that power was not included in the original terms and conditions of the award.[46] Recipients would not be entitled to objections, hearings, or appeals if an award is terminated because it is "no longer in the Federal Government's interest."[47]

- <u>Unfair Disparate-Impact Provision (Prohibition of Using Federal Awards to Promote or Support Theories of Disparate-Impact Liability, § 200.218):</u> For decades, federal civil rights laws have prohibited policies and practices that create unfair barriers for people based on race, gender, or other protected characteristics, unless those policies and practices are justified by a substantial, legitimate purpose and there is not a less discriminatory policy that could achieve that purpose.[48] Until recently, federal agencies required funding recipients to comply with this critical protection against discrimination, known as "disparate impact."[49] Contrary to this longstanding principle,

[44] 2 C.F.R. § 200.206.
[45] Proposed Rule at 32250 (proposing revisions to 2 C.F.R. § 200.206(b)(2)(vii)(C)).
[46] *Id.* at 32227 (summarizing proposed revisions to 2 C.F.R. § 200.340(2)).
[47] *Id.* at 32260 ("The [f]ederal agency is not required to allow for objections, hearings, and appeals related to any reasons for termination except termination for noncompliance.").
[48] *See, e.g.*, Griggs v. Duke Power Co., 401 U.S. 424 (1971) (confirming the disparate impact theory of liability under Title VII of the Civil Rights Act of 1964); Texas Dep't of Hous. and Cmty. Affs. v. Inclusive Cmtys. Project, Inc., 576 U.S. 519 (2015) (hereinafter "Inclusive Cmtys. Project*")* (confirming the same under Title VIII of the Civil Rights Act of 1964, the Fair Housing Act); 42 U.S. Code § 2000e-2(k) (describing the burden of proof in disparate impact cases brought under Title VII); Implementation of Title VI of Civil Rights Act of 1964 with Respect to Federally Assisted Programs Administered by Department of Justice, 31 Fed Reg. 10,265 (Jul. 29, 1966) (implementing Title VI of the Civil Rights Act of 1964 and explicitly prohibiting recipients of federal funding from "utiliz[ing] criteria or methods of administration *which have the effect of* subjecting individuals to discrimination" because of protected characteristics (emphasis added)).
[49] *See, e.g.*, Rescinding Portions of Department of Justice Title VI Regulations to Conform More Closely with the Statutory Text and to Implement Executive Order 14281, 90 Fed. Reg. 57141 (Dec. 10, 2025),

the proposed rule requires federal agencies to "eliminate the use of disparate-impact liability in all contexts relevant to Federal awards."[50] The proposed rule not only prevents federal agencies from prohibiting unfair policies or practices by funding recipients, but also blocks funding recipients from using federal funds to identify and remedy unjustified, discriminatory disparate impacts.[51] Moreover, the proposed rule, defines "disparate-impact liability" incorrectly as "a facially neutral policy or practice . . . [that] gives rise to an *automatic or near-insurmountable* presumption of the existence of unlawful discrimination . . . where there are *any* differences or disparities in outcomes (for example, disproportionate effects) among different races, sexes, or similar groups" (emphasis added).[52] This definition is inconsistent with how disparate impact is defined or applied under federal law.[53]

- <u>Anti-Equity Provision (Statutory and National Policy Requirements, § 200.300):</u> Currently, OMB's Uniform Guidance requires federal agencies to ensure federally-funded programs comply with the U.S. Constitution and applicable [f]ederal statutes and regulations.[54] The proposed rule would add new mandates specifically prohibiting the use of funds for diversity, equity, inclusion, and accessibility activities or gender affirming care, and requiring organizations to only serve transgender individuals and others who do not conform to a binary sex or identify with their sex at birth based on their biological sex rather than their gender identity.[55] While the proposed revisions to Section 200.300 only prohibit "diversity, equity, inclusion, and accessibility . . . policies, principles, or practices that violate any applicable Federal anti-discrimination laws,"[56] the proposed rule also makes it clear that federal agencies' interpretation of these laws is not guided by the courts or prevailing case law but by specific Trump administration guidance, including the Department of Justice's July 29, 2025, "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" (July 2025 DOJ Memo).[57] The other prohibitions on gender affirming care and fair treatment of transgender individuals in the revised Section 200.300 are not limited to what is required or permitted by federal law.

---

https://www.govinfo.gov/content/pkg/FR-2025-12-10/pdf/2025-22448.pdf (amending the Department of Justice's regulations implementing Title VI "to eliminate disparate-impact liability").

[50] Proposed Rule at 32252 (proposing revisions to 2 C.F.R. § 200.218).

[51] *Id.*

[52] *Id.* (proposing revisions to 2 C.F.R. § 200.218(e)).

[53] *See, e.g.*, *Inclusive Cmtys. Project*, 576 U.S. at 527 (describing the burden-shifting standard for disparate impact claims under the Fair Housing Act).

[54] 2 C.F.R. § 200.300.

[55] Proposed Rule at 32253 (proposing revisions to 2 C.F.R. § 200.300).

[56] *Id.* (proposing revisions to 2 C.F.R. § 200.300(b)(1)).

[57] July 29, 2025 Memo, *supra* note 5; Off. of the Sec'y, U.S. Dep't of Health & Hum. Servs., Dear Colleague Letter: Nondiscrimination Requirements for Medical Schools on the Basis of Race, Color, and National Origin Pursuant to Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023) (May 6, 2025), https://www.hhs.gov/sites/default/files/guidance-med-schools-dear-colleague-letter.pdf; U.S. Dep't of Transp., Letter from U.S. Transportation Secretary Sean Duffy to All Recipients of U.S. Department of Transportation Funding (Apr. 24, 2025), https://www.transportation.gov/sites/dot.gov/files/2025-04/Follow%20the%20Law%20Letter%20to%20Applicants%204.24.25.pdf; Off. for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter from Acting Assistant Secretary for Civil Rights Craig Trainor (Feb. 14, 2025), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf.

- Anti-Democracy Provision (Lobbying, § 200.450): Currently, OMB's Uniform Guidance prohibits recipients from using funding for lobbying and explicitly permits, among other things, "[n]onpartisan analysis, study, or research reports" and "[e]xaminations and discussions of broad social, economic, and similar problems."[58] The proposed rule would expand these restrictions to further prohibit nonpartisan advocacy and voter engagement. The proposed rule thus bars federal funds from being used for "[e]stablishing, administering, contributing to, or paying the expenses of a voter registration campaign, voter registration drive, or any similar activity, or paying the expenses of another entity engaged in such activities," "[e]ngaging in issue advocacy or 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," or "[a]ttempting to influence the executive branch of any State government on matters unrelated to the objectives or performance requirements of the Federal award."[59]

These new procedures and restrictions would apply to every program at every agency, even if they are irrelevant to the purpose of the federal award. If the proposed rule is implemented, recipients of federal financial assistance will be forced to choose between complying with these unnecessary and burdensome new requirements or foregoing federal funding, raising First Amendment concerns, as discussed in more detail in Section V(B) below.

III. OMB Does Not Have the Authority to Issue the Proposed Rule, Which Is Contrary to the Purpose of the Relevant Statutes.

A. The Proposed Rule Exceeds OMB's Authority.

Federal law provides OMB with limited power to provide guidance on the use of grant and cooperative agreements[60] and requirements on financial management.[61] Yet OMB now proposes to issue binding regulations proscribing who selects recipients, when awards may be terminated, and what activities federal financial assistance can support. Even if OMB does have the power to issue the rule, it is contrary to the purposes of its authorizing statutes and thus arbitrary and capricious. This rule must not go into effect and must instead be withdrawn entirely.

B. OMB May Only Issue Guidance on Financial Management and Oversight, Not Binding Restrictions on the Substance of Awards.

Federal agencies do not have inherent authority to issue binding regulations.[62] As the Supreme Court has explained, "Administrative agencies are creatures of statute. They

[58] 2 C.F.R. § 200.450.
[59] Proposed Rule at 32262 (proposing revisions to 2 C.F.R. § 200.450).
[60] 31 U.S.C. § 6307.
[61] 31 U.S.C. § 503(a)(2).
[62] *See, e.g.*, Fed. Election Comm'n v. Cruz, 596 U.S. 289, 301 (2022) (stating a federal agency "literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute" (cleaned up)); Fed. Maritime Comm'n v. Anglo-Canadian Shipping Co., 335 F.2d 255, 258 (9th Cir. 1964) (citation omitted) ("[T]he regulations of an agency of the United States must be issued within the powers conferred by Congress.").

accordingly possess only the authority that Congress has provided."[63] Congress granted OMB limited authority to issue guidance on specific subjects.[64] First, in 31 U.S.C. § 503, it gave OMB the power to provide "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements."[65] Second, in 31 U.S.C. § 6307, Congress gave OMB the authority to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements . . . and cooperative agreements."[66] These statutes grant OMB "an oversight role" over the administration of federal financial assistance[67] and the power to impose "procedural rather than substantive requirements."[68] While the proposed rule cites to a laundry list of additional statutes, OMB does not point to any specific provisions granting the agency more than mere supervisory powers. Indeed, the statutes listed permit OMB to provide guidelines for how federal financial assistance is administered across the government, rather than granting it authority over the substance of what is funded or how awards are selected.[69] OMB's limited authority allows the agency to encourage transparency, consistency, and sound management of federal financial assistance through interpretive guidance while permitting federal agencies to use their subject matter expertise to ensure federal financial assistance achieves the purposes outlined by Congress in the relevant statutes.

Consistent with OMB's authorizing statutes, the current Uniform Guidance[70] "establishes basic principles and procedures for federal grant accounting" and administration.[71] Prior revisions to the Uniform Guidance have addressed the mechanics of the federal funding process—such as rules regarding cost sharing,[72] the content of notice of proposed funding opportunities, and the length of award terms[73]—rather than how federal awardees are selected or granular limitations on specific activities. To the extent the Uniform Guidance addresses "statutory and national policy requirements," it merely reminds federal agencies of their duty to administer federal programs in accordance with the law, without announcing a particular view

[63] Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., Occupational Safety and Health Admin., 595 U.S. 109, 117 (2022).
[64] By contrast, Congress granted the heads of other agencies explicit authority to issue federal financial assistance on specific subjects within the guidelines established by the Legislative Branch. *See, e.g.*, 42 U.S.C. §§ 300u-1–300u-3 (authorizing the Secretary of Health and Human Services to issue grants regarding research programs, community health programs, and information programs); 42 U.S.C. § 2000c-3 (authorizing the Secretary of Education to "arrange, through grants or contracts, . . . institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation").
[65] 31 U.S.C. § 503(a)(2).
[66] 31 U.S.C. § 6307.
[67] Woonasquatucket River Watershed Council v. U.S. Dep't of Agric., 778 F. Supp. 3d 440, 473 (D.R.I. 2025), *appeal pending* No. 25-1428 (1st Cir.); Nat'l Council of Nonprofits v. Off. of Mgmt. and Budget, 775 F. Supp. 3d 100, 126 (D.D.C. 2025), *appeal pending* No. 25-5148 (D.C. Cir.).
[68] Bldg. and Const. Trades Dep't, AFL-CIO v. Allbaugh, 172 F. Supp. 2d 138 (D.D.C. 2001) (discussing 31 U.S.C. § 6307), *rev'd on other grounds*, 295 F.3d 28 (D.C. Cir. 2002).
[69] *See, e.g.*, Single Audit Act Amendments of 1996, Pub. L. 104-156, as amended, codified at 31 U.S.C. §§ 7501–07 (permitting the Director of OMB to provide guidance on which recipients of federal financial assistance are subject to audit requirements).
[70] 2 C.F.R. pt. 200.
[71] Ass'n of Am. Univs. v. Dep't of Def., 792 F. Supp. 3d 143, 152 (D. Mass. 2025).
[72] Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 78 Fed. Reg. 78590 (Dec. 26, 2013), https://www.govinfo.gov/content/pkg/FR-2013-12-26/pdf/2013-30465.pdf.
[73] *See generally* Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046 (Apr. 22, 2024), https://www.govinfo.gov/content/pkg/FR-2024-04-22/pdf/2024-07496.pdf (hereinafter "2024 Guidance").

of whether certain activities violate the law.[74] It requires agencies to assess applicants based on the risk they will misuse federal funds, not the risk the applicant disagrees with particular policy priorities.[75] Importantly, OMB has consistently stated that requirements outlined in 2 C.F.R. part 200 are merely interpretive "guidance" for federal agencies, not binding regulations.[76] Federal agencies must rely on "their legal authority and the particular statutes and regulations governing each of their grant programs" to implement the Guidance. [77]

Despite these clear limits on its authority, OMB now proposes to replace the Uniform Guidance with regulations that have a legally "binding effect across the Federal Government."[78] While OMB contends that issuing binding regulations will increase "uniformity, transparency, and regulatory clarity,"[79] among other benefits, the claim that this change is good policy does not mean it is within OMB's power. OMB's authorizing statutes do not give the agency clear authority to issue binding regulations. Nor does OMB provide any explanation for reversing its prior positions on the limits of its powers and the benefits of deferring to individual agencies to regulate their own award process.

The proposed rule also exceeds OMB's power to advise on grant and financial management, proposing to add substantive restrictions on how federal funding can be used in line with the Trump administration's divisive political agenda. As noted above, among other new requirements, the proposed rule would prohibit recipients from using federal financial assistance for "'diversity, equity, inclusion, and accessibility' (DEIA) policies," serving transgender individuals,[80] voter registration,[81] protections against unjustified disparate impact,[82] "[i]llegal immigration," or "[a]ny other initiatives that compromise public safety or promote anti-American values."[83] While OMB seems to claim such uses are "wasteful,"[84] that determination is ultimately up to Congress to make and, to the extent they are delegated the power to do so, the federal agencies dutifully implementing Congressional mandates. OMB has no power to impose such limits.

C. <u>The Proposed Rule Defies Statutory Purpose.</u>

Even if OMB has the statutory authority to issue this proposed rule, the proposed rule runs counter to the purposes of its authorizing statute and is thus arbitrary and capricious. As codified in 31 U.S.C. § 6301, the statute's requires OMB to:

(1) promote a better understanding of United States Government expenditures and help eliminate unnecessary administrative requirements on recipients of

---

[74] 2 C.F.R. § 200.300. OMB has stated explicitly this section does not add "any new legal requirements." 2024 Guidance at 30075.
[75] 2 C.F.R. § 200.206.
[76] 2 C.F.R. § 1.105 (stating the Uniform Guidance is "guidance, not regulation" and "OMB guidance is not regulatory"). *See, e.g.*, 2024 Guidance at 30108.
[77] 2024 Guidance at 30075.
[78] Proposed Rule at 32207.
[79] *Id.*
[80] *Id.* at 32253 (proposing revisions to 2 C.F.R. § 200.300).
[81] *Id.* at 32262 (proposing revisions to 2 C.F.R. § 200.450).
[82] *Id.* at 32252 (proposing revisions to 2 C.F.R. § 200.218).
[83] *Id.* at 32249 (proposing revisions to 2 C.F.R. § 200.205).
[84] *Id.* at 32200.

> Government awards by characterizing the relationship between executive agencies and contractors, States, local governments, and other recipients in acquiring property and services and in providing United States Government assistance; (2) prescribe criteria for executive agencies in selecting appropriate legal instruments to achieve—(A) uniformity in their use by executive agencies, (B) a clear definition of the relationships they reflect, and (C) a better understanding of the responsibilities of the parties to them; and (3) promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements.

The proposed rule contradicts several of these purposes. First, the proposed rule will add new and burdensome administrative barriers[85] in the form of vague and confusing mandates[86] that would make the federal funding process inefficient, in violation of Section 6301(1).[87] As explained above, the proposed rule requires recipients to comply with the government's reinterpretation of civil rights laws and does not provide clear guidance on how to do so.[88] This mandate will undoubtedly cause more confusion and create increased inefficiency in federal awards. Second, the broad discretion to award or terminate awards and the concentration of power in the hands of senior political officials through the Political Control and Arbitrary Termination Provisions will lead to arbitrary and inconsistent decisions across agencies, contrary to Section 6301(2). Finally, these provisions, combined with the Outside Activities Provision, would increase political control over awards, which is contrary to the goal in Section 6301(3) of creating a fair process where recipients are selected based on merit. [89] OMB should withdraw the proposed rule for running contrary to its authorizing statute's purpose.

IV. <u>OMB Does Not Offer a Reasoned Basis for the Proposed Rule.</u>

OMB and its sister agencies must withdraw the proposed rule because the agencies do not have a reasoned basis for the regulation. Barely two years after its last revision of its Uniform Guidance,[90] OMB now proposes a significant overhaul of the award process that would bind all federal agencies moving forward. Yet the proposed rule relies on inaccurate or insufficient evidence for these changes—and, in some cases, offers no explanation for the change at all. The proposed rule thus harms recipients' substantial reliance interest in a fair, orderly, and consistent process for applying for and receiving federal financial assistance. Because the regulation is arbitrary and capricious, it must be withdrawn.

---

[85] *See* 31 U.S.C. § 6301(1) (stating a purpose of the statute is to "help eliminate unnecessary administrative requirements on recipients of Government awards").
[86] *See* 31 U.S.C. § 6301(2)(c) (stating a purpose of the statute is to prescribe criteria for executive agencies to achieve "a better understanding of the responsibilities of the parties to them").
[87] *See* 31 U.S.C. § 6307 (permitting the Director of OMB to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements").
[88] *See supra* Section II (discussing the lack of specificity included in the Proposed Rule).
[89] *See id.* (discussing the Political Control Provision, which proposes to revise 2 C.F.R. § 200.205).
[90] *See generally* 2024 Guidance.

A. Agency Rules Must Be the Result of Reasoned Decisionmaking.

In order for a federal regulation to be valid under the Administrative Procedures Act (APA), it must be the product of "reasoned decisionmaking."[91] Agency rules are arbitrary and capricious in violation of the APA when, among other things, the agency has "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."[92] These same requirements apply when an agency revises its regulations.[93] Moreover, when an agency substantially alters an existing regulation, it must provide a "more detailed justification" for a change in policy when the "new policy rests upon factual findings that contradict those which underlay its prior policy" or where the previous policy has "engendered serious reliance interests that must be taken into account."[94]

Recipients of federal financial assistance, consistent with the statutes discussed in the prior section, have a substantial reliance interest in a fair, orderly, and consistent process for applying for and receiving federal financial assistance. Whether they are a state or local government, a hospital, a legal services organization, a university, a synagogue, or a homelessness services organization, recipients organize their activities and plan their budgets based on the belief their funding applications will be judged for the quality of their work. Recipients of federal funding do not and should not expect their applications will be judged for their alignment with the administration's political agenda, or that they would have to restrict their expression or alter their activities outside the award. The proposed rule upends these reasonable expectations.

B. The Proposed Rule Harms Recipients' Expectation that Funding Will Be Awarded and Supervised Fairly and Consistently.

The Political Control Provision in the proposed rule increases presidential control over awards, putting recipients at risk of having their funding denied or terminated, not because they are failing to serve people in their communities, but because they do not align with the President's agenda. Because many terms in the provision are not defined or are defined inconsistently with existing law, as discussed further below, political appointees will have substantial discretion to interpret and apply the criteria as they see fit. This discretion will lead to inconsistent decisions across agencies within a single administration and between administrations. The Provision also shifts decision making power away from career employees who have the deepest knowledge of federal programs and the laws governing those programs to individuals who may not have expertise needed to evaluate applications, making it more likely applicants will not be chosen based on merit.

[91] Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 53 (1983).
[92] *Id.* at 43.
[93] Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2217, 2125 (2016) (explaining while "agencies are free to change their existing policies," they must "provide a reasoned explanation for the change").
[94] FCC v. Fox Television Stations, 556 U.S. 502, 515–16 (2009).

The Arbitrary Termination provision would give federal agencies similarly broad discretion, permitting terminations for any or no reason with the potential to create significant harm. As the Center on Budget and Policy Priorities has explained,

> With the ability to freeze or terminate grants for reasons wholly unrelated to service delivery performance, the federal government would no longer be a reliable public-private partner. . . . Businesses and nonprofit organizations will face higher risks of doing business with the federal government, and fewer of them will be willing to compete to carry out that work, hurting the quality and breadth of potential applicants and the return on tax dollars. Smaller entities unable to withstand episodes where awarded funding is withheld for long periods or canceled altogether may decide that working with government is not viable.[95]

These harms also fall heavily on state and local governments. Across the country, federal dollars accounted for 34.2% of state revenue,[96] with states such as New Mexico, Alaska, Kentucky, Louisiana, and New York receiving some of the highest shares per capita.[97] If the federal government is no longer a reliable partner, state and local governments will be forced to raise taxes, cut critical services, or both.

Moreover, by placing recipients under constant threat of penalty or termination, the proposed rule increases the coercive power of the President over federal funding recipients. Even if a recipient is awarded funding, the only way for an organization to guarantee it will continue to receive it is by complying with the administration's agenda, which may change as frequently as every four years. Introducing this risk into federal awards may further deter organizations from participating. By upending recipients' reliance interests in an orderly funding process, the proposed rule will make it harder for recipients to receive and maintain federal awards, harming the communities who rely on their services.

C. The Proposed Rule Adds Unnecessary Burdens to the Award Process.

While the proposed rule claims the regulation will reduce the burden on recipients,[98] its numerous new restrictions will make it harder to participate in federal awards. The addition of new substantive limitations on federal funding inherently increases the compliance burden for recipients, who will have to invest in additional internal procedures to avoid spending federal funds in what may be deemed as impermissible ways. This general compliance burden is heightened because the requirements themselves are unclear or conflict with existing law. For example:

---

[95] JACOB LEIBENLUFT, ET AL., CTR. FOR BUDGET & POL'Y PRIORITIES, THE TRUMP ADMINISTRATION SEEKS TO END NONPARTISAN GRANTMAKING 2 (2026), https://www.cbpp.org/research/federal-budget/the-trump-administration-seeks-to-end-nonpartisan-grantmaking.
[96] Samuel Pittman et al., *Federal Share of State Budgets Continues Decline from Pandemic Highs*, PEW (May 28, 2026), https://www.pew.org/en/research-and-analysis/articles/2026/05/28/federal-share-of-state-budgets-continues-decline-from-pandemic-highs.
[97] FEDERAL FUNDS INFORMATION FOR STATES, FEDERAL GRANTS PER CAPITA, FY 2024 SPECIAL ANALYSIS 26-01 (2026), https://ffis.org/wp-content/uploads/2026/01/sa26-01.pdf.
[98] Proposed Rule at 32208.

- It is unclear what activities would be prohibited as "promot[ing]" or "support[ing]" illegal immigration, particularly because the text does not reference any statute or other legal prohibition. The Trump administration has prosecuted state and local officials for allowing undocumented immigrants to evade U.S. Immigration and Customs Enforcement agents[99] and threatened observers watching immigration enforcement,[100] indicating it intends to broadly target individuals who legally assist undocumented immigrants. Recipients may be unsure whether the Political Control Provision prohibits programs offering housing, food, or other assistance without screening for immigration status; legal services for immigrants;[101] or advocacy in support of immigrant rights.

- It is unclear what "other initiatives that compromise public safety or promote anti-American values" are prohibited. Without any clear definitions, those authorities could be abused to target racial justice organizations and protestors, which have long been targets of biased criminal and terrorism investigations.[102] Most recently, President Trump issued a broad executive order claiming that "anti-Americanism, anti-capitalism, and anti-Christianity; support for the overthrow of the United States Government; extremism on migration, race, and gender; and hostility towards those who hold traditional American views on family, religion, and morality" lead to violence and directing federal agencies to investigate organizations that allegedly advance these values.[103] Recipients may be unsure whether federal agencies will claim that opposing the administration or advancing racial justice violates the proposed rule's Political Control Provision.

- It is unclear whether the Political Control Provision's limitation on "racial preferences" and proxies would prohibit lawful diversity, equity, inclusion, and accessibility activities or disparate impact discrimination protections. These programs and protections do not require race-based decisions, yet the Trump administration falsely claims, in the

[99] Julie Bossman, *Judge Convicted of Obstructing Agents as They Sought Undocumented Immigrant*, N.Y. TIMES (Dec. 18, 2025), https://www.nytimes.com/2025/12/18/us/judge-hannah-dugan-trial-verdict.html.
[100] Rachel Levinson-Waldman, *Trump's Version of "Domestic Terrorism" vs. the First Amendment*, BRENNAN CENTER (Feb. 13, 2026), https://www.brennancenter.org/our-work/research-reports/trumps-version-domestic-terrorism-vs-first-amendment.
[101] While Congress has restricted some legal services to certain immigrants using Legal Services Corporation funds, Pub. L. 104-134, title V, § 504(a)(11), 110 Stat. 1321-50, 1321-53 (1996); Pub. L. 105-119, title V, § 502(a)(2), 111 Stat. 2440, 2510 (1998) (incorporated by reference annually thereafter), other funding is not similarly limited. Moreover, Congress explicitly exempted certain services from immigration restrictions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. §§ 1611(b)(1)(D); 1621(b)(4).
[102] *See generally* AMITH GUPTA, ET AL., PROJECT SOUTH, SPYING ON THE MARGINS: THE HISTORY, LAW, AND PRACTICE OF U.S. SURVEILLANCE AGAINST MUSLIM, BLACK, AND IMMIGRANT COMMUNITIES AND CONTEMPORARY STRATEGIES OF RESISTANCE (2021), https://ia801402.us.archive.org/15/items/umesh-heendeniya-files/Spying%20on%20the%20Margins%20-%20The%20History%2C%20Law%2C%20and%20Practice%20of%20U.S.%20Surveillance%20Against%20Muslim%2C%20Black%2C%20and%20Immigrant%20Communities%20and%20Contemporary%20Strategies%20of%20Resistance%20%2881%20Pages%29.pdf (discussing the ways Arabs, Muslims, and other communities perceived as "anti-American" have been profiled, surveilled, and targeted by the state)..
[103] National Security Presidential Memorandum-7 of Sept. 25, 2025, Countering Domestic Terrorism and Organized Political Violence, 90 Fed. Reg. 47225 (Sept. 30, 2025), https://www.govinfo.gov/content/pkg/FR-2025-09-30/pdf/2025-19141.pdf.

proposed rule and elsewhere, they involve "discrimination on the basis of federally protected characteristics."[104]

- The Anti-Equity Provision only explicitly prohibits diversity, equity, inclusion, and accessibility programs that violate federal anti-discrimination laws,[105] but repeatedly states recipients must comply with, *inter alia,* the July 2025 DOJ Memo, a document that by its own terms is non-binding and intended to describe "best practices."[106] The proposed rule claims the Anti-Equity Provision would just "clarify and emphasize specific applications"[107] of Section 200.300 consistent with the July 2025 DOJ Memo. The Memo, however, sets out a radical interpretation of civil rights laws which is contrary to existing antidiscrimination jurisprudence.[108] Recipients may be unsure whether they must certify compliance with those "best practices"—even though they are not required by the Memo itself.

- The Unfair Disparate Impacts Provision defines "disparate-impact liability" in a manner that is inconsistent with Supreme Court precedent, leaving recipients without any way to assess what activities are prohibited.

Because it is unclear what standards the Trump administration will apply when assessing compliance with these provisions, recipients will have to incur additional legal costs and spend significant time and effort to attempt to interpret the restrictions and evaluate how to respond. Yet OMB fails to account for these burdens in its cost-benefit analysis, claiming there are "no perceived impacts" of the Political Control Provision or the Unfair Disparate Impacts Provision and the "costs [of compliance for the Anti-Equity Provision] are expected to be minimal."[109]

D. The Proposed Rule Does Not Cite Relevant Facts or Law to Support Its Change in Position.

In order for a rule to survive judicial review, federal agencies must be able to provide the "essential facts upon which the administrative decision was based" and explain what justifies the determination with actual evidence beyond a "conclusory statement."[110] The proposed rule fails to do so. While the conclusory arguments in the rule may serve the Trump administration's political purposes, they are inadequate to justify the proposed rule.

At the outset, the proposed rule makes sweeping claims regarding alleged failures of the federal funding process under the prior administration, which OMB claims justify the planned

[104] Proposed Rule at 32213.
[105] *Id.* at 32253 (proposing revisions to 2 C.F.R. § 200.300(b)(1)).
[106] July 29, 2025 Memo, *supra* note 5, at 1.
[107] Proposed Rule at 32216.
[108] *See The Department of Justice's "Guidance for Recipients of Federal Funding on Unlawful Discrimination": What You Need to Know*, LEGAL DEFENSE FUND ET AL., https://www.naacpldf.org/wp-content/uploads/2-LDF-et-al.-Fact-Sheet-on-AG-Bondi-DEIA-Memo.pdf (last accessed July 13, 2026).
[109] WHITE HOUSE OFF. OF MGMT. & BUDGET, A REGULATORY IMPACT ANALYSIS OF PROPOSED REVISIONS TO 2 CFR 200 14 (2026), https://downloads.regulations.gov/OMB-2026-0034-0038/content.pdf.
[110] United States v. Dierckman, 201 F.3d 915, 926 (7th Cir. 2000) (quoting Bagdonas v. Dep't of the Treasury, 93 F.3d 422, 426 (7th Cir. 1996)) (internal quotations omitted); Allied-Signal, Inc. v. Nuclear Reg. Comm'n, 988 F.2d 146, 152 (D.C. Cir. 1993).

changes.[111] In particular, the proposed rule claims the prior administration used federal grants to promote "a 'woke' policy agenda" and "unlawful identity-based 'Diversity, Equity, and Inclusion' (DEI) policies and preferences."[112] In support of these claims, the proposed rule cites to Executive Orders and White House "fact sheets" from this administration that contain no references, citations, or actual facts,[113] as well as several partisan white papers.[114] It does not cite to any specific examples of the prior administration funding illegal diversity, equity, inclusion, and accessibility programs. Even if these claims are taken at face value, it is unclear how some of the changes, such as the Anti-Democracy Provision, would address this concern. While the proposed rule also cites nonpartisan reports from the Department of Homeland Security Office of the Inspector General and the Government Accountability Office, the proposed revisions to the Uniform Guidance are not consistent with the recommendations in those reports.[115] Such minimal and inapposite factual findings cannot support this sweeping rulemaking.

OMB also offers little or no explanation for why specific changes to OMB's Guidance are necessary or how those changes will advance the agency's alleged goals.

- <u>Political Control Provision (§ 200.205):</u> OMB claims this provision will "strengthen requirements for agency merit review," but does not explain why the current merit review process is inadequate or how granting additional control to senior political appointees will improve agency decisionmaking.[116] OMB does not provide any explanation for why assessing recipients based on criteria unrelated to the federal award will improve merit-based decisionmaking.

- <u>Outside Activities Provision (§ 200.206) and Anti-Democracy Provision (§ 200.450):</u> OMB provides no explanation for why these provisions are necessary or permissible.

- <u>Arbitrary Termination Provision (§ 200.340)</u>: OMB claims this provision is similar to existing law and necessary to provide further clarity to recipients. OMB does not provide evidence that recipients are unclear about their obligations. If OMB believes it already has broad termination authority, there would be no reason to revise existing regulations.

---

[111] Proposed Rule at Sections I, IV.
[112] *Id.* 32199–32200.
[113] *Id.* (citing to Exec. Order No. 14332, 90 Fed. Reg. 38929 at sec. 1 (Aug. 12, 2025); WHITE HOUSE, FACT SHEET: PRESIDENT DONALD J. TRUMP STOPS WASTEFUL GRANTMAKING (2025), https://www.whitehouse.gov/fact-sheets/2025/08/fact-sheet-president-donald-j-trump-stops-wasteful-grantmaking/; WHITE HOUSE, FACT SHEET: PRESIDENT DONALD J. TRUMP REQUIRES TRANSPARENCY FOR THE AMERICAN PEOPLE ABOUT WASTEFUL SPENDING (2025), https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-requires-transparency-for-the-american-people-about-wasteful-spending/.
[114] *E.g. id.* 32200 n.5 (citing a report by the Heritage Foundation).
[115] *See* Memorandum from Joseph V. Cuffari, Dep't of Homeland Sec. Off. of Inspector Gen., to FEMA (Mar. 28, 2023) (on file with DHS OIG) (recommending FEMA "incorporate controls in the American Rescue Plan Act of 2021 Humanitarian Relief Funding and Application Guidance to minimize future reimbursements of unsupported costs" and "review a sample of ongoing funding execution . . . to ensure funds approved are: reviewed and reconciled for completeness and accuracy; and supported with appropriate documentation, including rosters or other documentation for the number of people served"); *see generally* Statement of Jeff Arkin, *supra* note 2 (recommending federal agencies improve grant management by streamlining overlapping grant programs and reducing recipient reporting burden; ensuring that data regarding federal awards on USASpending.gov is complete and accurate; and improving audits and fiscal oversight to avoid improper payments).
[116] Proposed Rule at 32212.

- Unfair Disparate-Impact Provision (§ 200.218) and Anti-Equity Provision (§ 200.300): OMB spills a great deal of ink arguing that liability for unfair disparate impacts and diversity, equity, inclusion, and accessibility initiatives involve race-based decisions in violation of federal law. OMB does not cite any binding court decisions in support of this claim. While the proposed rule repeatedly cites to *Students for Fair Admissions v. Presidents and Fellows of Harvard College* and *University of North Carolina, et al.*,[117] that case was limited to the use of race-based admissions programs. It did not concern diversity, equity, inclusion, and accessibility programs or liability for unfair disparate impacts or make any statement regarding its legality under the U.S. Constitution. In fact, many of the specific practices called into question by the July 2025 DOJ memo, such as anti-bias trainings, are not only permissible[118] but ensure compliance with civil rights laws.[119] Similarly, the U.S. Supreme Court has repeatedly emphasized that institutions can take action to increase diversity and equal opportunity using initiatives that do not make decisions based on race or other protected characteristics[120] and may make decisions based on race or sex to remedy "specific identified instances of past discrimination."[121] Moreover, OMB fails to explain why the existing requirements of 2 C.F.R. § 200.300 are insufficient to address any concern, or acknowledge that disparate-impact liability is explicitly permitted by Supreme Court precedent[122] and federal statutes.

Importantly, if the goal of the proposed rule is to ensure federal financial assistance advances the "core purposes authorized by law" and "the needs of the American public,"[123] as

---

[117] 600 U.S. 181 (2023).
[118] *See, e.g.*, Young v. Colorado Dep't of Corr., 94 F.4th 1242 (10th Cir. 2024); Vavra v. Honeywell Int'l, Inc., 106 F.4th 702 (7th Cir. 2024).
[119] Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998) (discussing affirmative defense to harassment liability available where, among other things, an employer "exercised reasonable care to prevent and correct promptly any sexually harassing behavior" such as by informing employees of internal anti-harassment policies).
[120] *Students for Fair Admissions, Inc.*, 600 U.S. at 317 (Kavanaugh, J., concurring) (explaining "governments and universities still can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race" (internal quotations omitted)); Ricci v. DeStefano, 557 U.S. 557, 585 (2009) (declining to "question an employer's affirmative efforts to ensure that all groups have a fair opportunity to apply for promotions and to participate in the process by which promotions will be made"); Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 789 (2006) (Kennedy, J., concurring in part and concurring in the judgment) (explaining when government officials utilize "mechanisms [that] are race conscious but do not lead to different treatment based on a classification that tells each [individual] he or she is to be defined by race, . . . it is unlikely any of [these mechanisms] would demand strict scrutiny to be found permissible." (internal citations omitted)); City of Richmond v. J.A. Croson Co., 488 U.S. 469, 526 (1989) (Scalia, J., concurring) ("A State can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race. In the particular field of state contracting, for example, it may adopt a preference for small businesses, or even for new businesses—which would make it easier for those previously excluded by discrimination to enter the field. Such programs may well have racially disproportionate impact, but they are not based on race." (internal quotation marks omitted)); *see id.* at 507, 509 (plurality opinion) (criticizing the defendant city for not attempting to address racial barriers through race-neutral means and stating "the city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races").
[121] *Students for Fair Admissions, Inc.*, 600 U.S. at 207.
[122] *See, e.g.*, *Inclusive Cmtys. Project*, 576 U.S. at 543 ("The [Fair Housing Act] imposes a command with respect to disparate-impact liability."); Smith v. City of Jackson, 544 U.S. 228, 243 (2005) ("[W]e do not agree with the Court of Appeals' holding that the disparate-impact theory of recovery is never available under the [Age Discrimination in Employment Act of 1967]."); *Griggs*, 401 U.S. at 432 ("Congress directed the thrust of the [Civil Rights Act of 1964, Title VII] to the consequences of employment practices, not simply the motivation.").
[123] Proposed Rule at 32199.

OMB claims, the proposed changes undermine that goal. The proposed changes increase rather than decrease political control over the award process, making it more likely that this and future administrations will use federal financial assistance for partisan purposes rather than the purposes outlined by Congress. Rather than increasing "transparency, accountability, [and] oversight" over federal financial assistance, the numerous substantive restrictions will encode the divisive agenda of a particular President into federal regulations—which is what OMB claims the proposed rule is intended to stop.

V. The Proposed Rule Is Not in Accordance with Law.

OMB's proposed rule "is not in accordance with law" and, thus, must be withdrawn.[124] Multiple provisions of the rule run afoul of constitutional protections, including the Fifth Amendment's void for vagueness doctrine, freedom of speech under the First Amendment, and the Spending Clause. The broad scope of the rule also violates the purposes of the Federal Grant and Cooperative Agreements Act of 1977.

A. The Proposed Rule Is Unconstitutionally Vague.

The proposed rule provides "inadequate notice of the conduct it purports to prohibit," and is thus void for vagueness under the Fifth Amendment's Due Process Clause.[125] "Although due process does not require 'impossible standards' of clarity,"[126] it does require "guardrails" providing "fair notice of what conduct is prohibited."[127] An agency action may also be unconstitutionally vague if it contains "terms so vague that [individuals] of common intelligence must necessarily guess at its meaning and differ as to its application[s]."[128] A regulation may also be void for vagueness if it "authorizes or even encourages arbitrary and discriminatory enforcement."[129] Here, the proposed rule is void for vagueness, both because it fails to provide adequate notice of the prohibited conduct and because it also permits arbitrary enforcement by federal agencies.

First, several provisions do not define key terms. For example, the Anti-Equity Provision fails to concretely define "diversity, equity, and inclusion" or cite to any other agency enactments that do so. Instead, it incorporates various executive orders, memoranda, and guidance documents that use similarly open-ended language, some of which courts have found to be void for vagueness themselves due to their failure to define key terms.[130] The proposed rule provides

---

[124] *State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 41.
[125] Santa Cruz Lesbian and Gay Cmty. Ctr. v. Trump, 508 F. Supp. 3d 521, 534 (N.D. Cal. 2020) (internal quotations omitted); *see also Kolender v. Lawson*, 461 U.S. 352, 361 (1983) (concluding challenged statute was "unconstitutionally vague on its face because it encourage[d] arbitrary enforcement by failing to describe with sufficient particularity what [the regulated party] must do in order to satisfy the statute").
[126] *Kolender*, 461 U.S. at 361 (quoting United States v. Petrillo, 332 U.S. 1, 7–8 (1947)).
[127] *Santa Cruz Lesbian and Gay Cmty. Ctr.*, 508 F. Supp. 3d at 544 (internal citation and quotation marks omitted).
[128] Connally v. General Const. Co., 269 U.S. 385, 391 (1926); *see also* U.S. v. Williams, 553 U.S. 285, 306 (2008) ("What renders a statute vague is not the possibility that it will sometimes be difficult to determine whether the incriminating fact it establishes has been proved; but rather the indeterminacy of precisely what that fact is.").
[129] Hill v. Colorado, 530 U.S. 703, 732 (2000).
[130] *San Francisco AIDS Found.*, 786 F. Supp. 3d at 1224–26 (finding plaintiffs likely to succeed on the merits of their Fifth Amendment void for vagueness claim in their challenge to an executive order provision directing federal agencies to "terminate, to the maximum extent allowed by law, all . . . equity-related grants or contracts," including

even less clarity about what activities related to "illegal immigration," "public safety," or "anti-American values" would be prohibited by the Political Control Provision. Further, the proposed rule not only bans active participation in various undefined activities but also prohibits a recipient from "promot[ing]" or "support[ing]" such activities at all. The provisions fail to elaborate on the type and degree of involvement a recipient would need to undertake in relation to such activities before it would risk having its funds terminated.[131]

Second, as discussed above, *supra* IV(c), it is unclear whether the Anti-Equity Provision and the Unfair Disparate-Impact Provision are limited to enforcing existing law or require recipients to comply with the administration's inaccurate interpretations of the law as outlined in the July 2025 DOJ Memo and elsewhere. The July 2025 DOJ Memo,[132] incorporated by reference into the proposed rule, specifically questions certain activities that are not prohibited by law, including: (1) a federally funded entity "requir[ing] job applicants to demonstrate 'cultural competence,' 'lived experience,' or 'cross-cultural skills' in ways that effectively evaluate candidates' racial or ethnic backgrounds"; (2) "a federally funded program [that] requires applicants to describe 'obstacles they have overcome' or submit a 'diversity statement'"; (3) diversity, equity, inclusion, and accessibility training that includes statements like "all white people are inherently privileged" or "toxic masculinity"; and (4) "a scholarship program [that] target[s] 'underserved geographic areas' or 'first-generation students.'"[133] Some of these programs have been expressly upheld by courts[134] and found to *advance* civil rights compliance.[135] The Memo calls into question programs that can be administered in lawful ways.

---

because "the broad nature and applications of the term 'equity,' let alone with the additional modifier of '-related' . . . prevents grantees from determining how they can modify their expression to avoid termination or from even assessing which grants are implicated" (cleaned up)); *Nat'l Educ. Ass'n*, 779 F. Supp. 3d at 187 (finding ED's February 2025 Dear Colleague Letter addressing diversity, equity, and inclusion was void for vagueness under the Fifth Amendment, including because "the Letter does not make clear . . . what the Department believes constitutes a DEI program, or the circumstances in which the Department believes DEI programs run afoul of Title VI . . . [and] does not even define what a 'DEI program' is").

[131] *Santa Cruz Lesbian and Gay Cmty. Ctr.*, 508 F. Supp. 3d at 543 (finding that plaintiffs were likely to succeed on the merits of their Fifth Amendment void for vagueness claim where the challenged provision "direct[ed] agency heads to identify programs for which grants may be conditioned on the recipient's certification that it will not use federal funds to '*promote*' certain concepts," because the provision was "so vague that it [was] impossible for Plaintiffs to determine what conduct [was] prohibited" (emphasis added)); *see also supra* notes 99–100 and accompanying text (explaining, especially because the proposed rule fails to reference a statute or other legal authority, it is unclear what activities would be prohibited as "promot[ing]" or "support[ing]" illegal immigration); *infra* note 155 and accompanying text (explaining OMB's failure to define what it means to "promote" diversity, equity, and inclusion, for example, risks chilling protected speech).

[132] The proposed rule, in its description of its "Unlawful DEI Provision (and related Disparate Impact Provision)," namely its revisions to sections 200.300 and 200.18, specifically cites to the July 2025 DOJ Memorandum as guidance in interpreting these provisions.

[133] July 29, 2025 DOJ Memo, *supra* note 5, at 5, 8.

[134] *Compare, e.g.*, *Young*, 94 F.4th 1242 *and* Vavra, 106 F.4th 702 *with* Chislett v. New York City Dep't of Educ., 157 F.4th 172, 188–190 (2d Cir. 2025) (holding, on appeal from a motion for summary judgment, that a reasonable jury could conclude that the plaintiff experienced a hostile work environment based on evidence of comments expressed during anti-bias trainings as well as a pattern of comments to the plaintiff and a co-worker outside of the trainings); *see also Parents Involved in Cmty. Schools*, 551 U.S. at 789 (Kennedy, J., concurring) (endorsing the use of facially race-neutral means of achieving the district's goal of avoiding racial isolation in schools); *Students for Fair Admissions*, 600 U.S. at 189 (2023) ("[N]othing prohibits universities from considering an applicant's discussion of how race affected the applicant's life, so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university.").

[135] *Faragher*, 524 U.S. at 807; *Ellerth*, 524 U.S. at 765 (discussing affirmative defense to harassment liability available where, among other things, an employer "exercised reasonable care to prevent and correct promptly any sexually harassing behavior" such as by informing employees of internal anti-harassment policies); Agusty-Reyes v. Dep't of

For example, "cultural competence" is not a skill reserved for people from any single group and can be developed by individuals from varying backgrounds and employers can legally assess to what extent applicants and employees demonstrate these valuable job related comply with the restrictions. skills. Because the proposed rule cites Trump administration guidance that is inconsistent with the law, it is unclear how recipients will know how to comply with the restrictions.

Lastly, the proposed rule is void for vagueness due to its potential for arbitrary enforcement. Much like prior Trump administration efforts to restrict diversity, equity, inclusion, and accessibility initiatives, the proposed rule "'impermissibly delegates basic policy matters to [enforcers] for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.'"[136] As discussed above, *supra* IV(B), the proposed rule's Arbitrary Termination Provision would allow federal agencies to terminate funding whenever it "determines [an award] is no longer in the Federal Government's interest."[137] The provision creates no parameters for such termination. Instead, it writes federal agencies a blank check to target and discriminate against groups the administration disagrees with, including, potentially, groups advancing racial justice, immigration justice, religious tolerance, and gender equity. The Political Control, Outside Activities, and Anti-Equity Provisions raise similar risks of arbitrary and inconsistent enforcement.

B. <u>The Proposed Rule Infringes on Protected Expression.</u>

The proposed rule, if finalized, will infringe on recipients' First Amendment rights. It is axiomatic that the federal government may not target expression or discriminate against particular speakers because of their viewpoint.[138] While the federal government may "selectively fund a program to encourage certain activities,"[139] it cannot "discriminate invidiously in its subsidies in such a way as to 'aim[] at the suppression of dangerous ideas.'"[140] The federal

Educ. of Puerto Rico, 601 F.3d 45, 55 (1st Cir. 2010) (holding that a reasonable jury could conclude that the failure to disseminate the harassment policy and complaint procedure precluded the employer from establishing the first prong of the defense); Ortiz v. Sch. Bd. of Broward Cnty., Fla., 780 F. App'x 780, 786 (11th Cir. 2019) (per curiam) (denying summary judgment to the employer on the *Faragher-Ellerth* affirmative defense where there was evidence that the employer had failed to take reasonable steps to disseminate its anti-harassment policy); EEOC v. Spud Seller, Inc., 899 F. Supp. 2d 1081, 1095 (D. Colo. 2012) (determining a trial was required on the issue of whether the employer, which employed some individuals who spoke only Spanish, could satisfy the *Faragher-Ellerth* affirmative defense where the employer's handbook contained an anti-harassment policy in English, but there was no evidence its provisions were translated into Spanish or that written translations were supplied to Spanish-speaking employees); Miller v. Woodharbor Molding & Millworks, Inc., 80 F. Supp. 2d 1026, 1029 (N.D. Iowa 2000) (stating the gravamen of an effective anti-harassment policy includes three provisions: (1) training for supervisors, (2) an express anti-retaliation provision, and (3) multiple complaint channels for reporting the harassing conduct) (collecting cases supporting inclusion of each provision), *aff'd*, 248 F.3d 1165 (8th Cir. 2001); Clark v. United Parcel Serv., Inc., 400 F.3d 341, 349–50 (6th Cir. 2005) ("While there is no exact formula for what constitutes a 'reasonable' sexual harassment policy, an effective policy should at least . . . provide for training regarding the policy." (citing Varner v. Nat'l Super Market Inc., 94 F.3d 1209, 1214 (8th Cir. 1996) and Wilson v. Tulsa Junior Coll., 164 F.3d 534, 541 (10th Cir. 1998))).

[136] Am. Fed'n of Tchrs. v. Dep't of Educ., 796 F. Supp. 3d 66, 116 (D. Md. 2025) (hereinafter "*AFT*") (quoting Grayned v. City of Rockford, 408 U.S. 104, 108–09 (1972)).

[137] Proposed Rule at 32205.

[138] Reed v. Town of Gilbert, 576 U.S. 155, 163 (2015); Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 828 (1995).

[139] Rust v. Sullivan, 500 U.S. 173, 193 (1991).

[140] Regan v. Tax'n with Representation of Washington, 461 U.S. 540, 548 (1983) (quoting Cammarano v. United States, 358 U.S. 498, 513 (1959)) (internal quotations omitted).

government may not condition federal funding on either restricting expression unrelated to the purpose of the award[141] or limiting speech that is not funded by the government.[142] In addition, the federal government may not impose vague restrictions on expression that may chill protected speech.[143] The proposed rule violates all of these prohibitions.

1. *The Expression Targeted by the Proposed Rule Is Protected by the First Amendment.*

The Political Control, Outside Activities, Unfair Disparate-Impact, and Anti-Equity Provisions, among others, all either explicitly prohibit or give senior political appointees the discretion to restrict the use of federal funds for activities, including speech, based on the particular viewpoint it expresses—i.e., support for diversity, equity, inclusion, and accessibility or the existence and dignity of transgender and non-binary individuals, the illegality and redressability of unfair disparate impacts, support for immigrants, political opposition, or whatever the administration deems "anti-American values." When the government "single[s] out specific subject matter for differential treatment," it engages in "content-based" regulation.[144] When, however, the government targets "particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant."[145] Viewpoint discrimination is an egregious form of content discrimination from which the government must abstain, even when the limited public forum is the government's own creation.[146] The government cannot "hamstring the opposition" or "burden protected expression" as it attempts to "tilt public debate in [its] preferred direction."[147]

OMB may argue the expression prohibited by the proposed rule is not protected by the First Amendment, relying on its attempt to qualify these provisions by claiming that they only involve expression that violates federal civil rights or other laws. But the vague language exceeds and otherwise relies on inaccurate legal interpretations. Courts have already struck down similar efforts by the Trump administration.

In February 2025, the Department of Education issued a Dear Colleague Letter (the "Letter") directing federally funded educational institutions to terminate "illegal" diversity, equity, inclusion, and accessibility programs and other discriminatory practices. While the Letter claimed to "reiterate[] existing legal requirements" under Title VI of the Civil Rights Act and the United States Constitution and directs schools to "ensure that their policies and actions comply with existing civil rights law,"[148] it called into question a range of practices that are not clearly unlawful. In an accompanying document, *Frequently Asked Questions About Racial*

---

[141] Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 547 (2001) ("Congress cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.").
[142] Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc., 570 U.S. 205, 214–15 (2013) (distinguishing between "conditions that define the limits of the government spending program—those that specify the activities Congress wants to subsidize—and conditions that seek to leverage funding to regulate speech outside the contours of the program itself").
[143] *Fox Television Stations, Inc.*, 567 U.S. at 253–54 ("When speech is involved, rigorous adherence to [due process] requirements is necessary to ensure that ambiguity does not chill protected speech.").
[144] City of Austin v. Reagan Nat'l Advert. of Austin, LLC, 596 U.S. 61, 74 (2022) (quoting *Reed*, 576 U.S. at 169).
[145] *Rosenberger*, 515 U.S. at 829.
[146] *Id.*
[147] Sorrell v. IMS Health, Inc., 564 U.S. 552, 578–79 (2011).
[148] *See* Off. for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter, *supra* note 57.

Preferences and Stereotypes Under Title VI of the Civil Rights Act ("*FAQ*"), the government elaborated on its inaccurate interpretation of the Equal Protection Clause, Title VI, and *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023).[149] The Department of Education then demanded funding recipients certify compliance with the Letter or lose funding.

In one of several legal challenges to the Letter, the District Court of Maryland found "[t]he Letter's provisions proscribing specific forms of classroom speech run afoul of the First Amendment by regulating speech based on its content."[150] The Maryland Court also found the government "singled out classroom speech regarding 'systemic and structural racism' and teach[ing] students that certain racial groups bear unique moral burdens that others do not."[151] The Court went on to say that "[t]he Letter improperly terms those categories of speech 'discriminatory,'" and the Letter constituted viewpoint discrimination.[152] While the government argued it only sought to prevent discriminatory conduct and insisted the Letter would be enforced "consistent with the First Amendment," the Court found "that promise . . . rings empty" because it had previously found the prohibited speech was not discriminatory.[153]

The proposed rule suffers from similar infirmities. The July 2025 DOJ Memo,[154] incorporated by reference into the proposed rule, calls into question certain expression based on viewpoint, such as workplace trainings discussing particular topics that do not violate federal antidiscrimination laws. Moreover, the proposed rule itself expresses concern with "'questionable projects that promote[] diversity, equity, and inclusion (DEI) tenets or push[] onto science neo-Marxist perspectives about enduring class struggle."[155] Yet, as courts have explained, "The government cannot proclaim that it 'will no longer tolerate' speech it dislikes because of its motivating ideology'—that is a 'blatant' and 'egregious' violation of the First Amendment."[156]

2. *The Proposed Rule Restricts Protected Expression Regardless of Whether the Award Is Intended to Promote a Governmental Message.*

OMB argues the substantive restrictions on federal funding in the proposed rule (for example, in the Anti-Equity Provision and the Political Control Provision) do not violate the First Amendment because the government is merely "acting as a patron to subsidize speech—using discretion to fund certain activities under a Federal program and not others."[157] Yet the proposed rule would apply restrictions on protected expression across all federal programs,

---

[149] Office for Civil Rights, U.S. Dep't of Educ., *FAQ* (Mar. 1, 2025), https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf.
[150] *AFT*, 796 F. Supp. 3d at 111.
[151] *Id.* (internal quotations omitted) (modification in original).
[152] *Id.*
[153] *Id.*
[154] The proposed rule, in its description of its "Unlawful DEI Provision (and related Disparate Impact Provision)," namely its revisions to sections 200.300 and 200.18, specifically cites to the July 29, 2025 DOJ Memorandum as guidance in interpreting these provisions. Proposed Rule at 32220.
[155] Proposed Rule at 32200 (internal quotations omitted). Diversity, equity, and inclusion programs as a whole and "neo-Marxist perspectives" have not been found to violate antidiscrimination laws. Additionally, OMB does not explain what it means to "promote" diversity, equity, and inclusion, further risking the chilling of protected speech.
[156] *AFT*, 796 F. Supp. 3d at 111 (quoting *Reed*, 576 U.S. at 168).
[157] Proposed Rule at 32219.

regardless of whether those programs are intended to advance the government's viewpoint or to subsidize speech.

As the Supreme Court has explained, "funding by the Government, even when coupled with the freedom of the funding recipients to speak outside the scope of the Government-funded project, is [not] invariably sufficient to justify Government control over the content of expression."[158] While the federal government may choose which speech it will subsidize,[159] viewpoint-based funding decisions are thus lawful when "the government is itself the speaker . . . or instances . . . in which the government 'used private speakers to transmit specific information pertaining to its own program.'"[160] By contrast, viewpoint-based restrictions violate the First Amendment "when the government does not itself speak or subsidize transmittal of a message it favors."[161]

Here, the proposed rule is not limited to a specific context where "absolute neutrality [in selecting recipients for funding] is simply 'inconceivable,'"[162] or to programs intended to promote a governmental message. The restrictions apply across the board, regardless of the purpose of the award, [163] including in programs such as funding for lead pipe replacement and basic health research that lack any relationship to government speech. The restrictions are not intended to "advanc[e] any legitimate objectives embedded within the programs they burden—as appropriated and determined by Congress—but towards disfavored speech."[164] Furthermore, "[t]he government here is thus not merely selectively funding some programs but not others—it is render[ing] ineligible for federal funding *all* activities, speech, and conduct that is even related to the dangerous ideas it has identified."[165] For example, several federal grant programs provide funding to state and local governments and nonprofit organizations to investigate and represent individuals experiencing discrimination.[166] As explained above, the Unfair Disparate Impacts provision would limit these recipients' ability to use federal funds to pursue litigation involving disparate impact liability on behalf of their clients. The purpose of this funding is not to "promote a governmental message," but to ensure adequate civil rights enforcement and representation of indigent individuals.[167] The Supreme Court has repeatedly held that litigation

---

[158] *Rust*, 500 U.S. at 199.
[159] *Id.* at 193–194.
[160] *Velazquez*, 531 U.S. at 541 (internal citations omitted).
[161] *Id.* (quoting *Rosenberger*, 515 U.S. at 834).
[162] Nat'l Endowment for the Arts v. Finley, 524 U.S. 569, 585 (1998) (internal citation omitted).
[163] *See* Proposed Rule at 32199 (OMB "proposes to revise the Guidance for Federal Financial Assistance to improve *government-wide* policies . . . . OMB is proposing revisions that would improve transparency, accountability, and oversight for Federal awards *across* the Federal Government." (emphasis added)). *See, e.g.*, *id.* at 32202 n. 32 (explaining issues with past federal programs relating to environmental justice and federal infrastructure); *id.* at 32200 (explaining "unlawful DEI" in federally funded education); *id.* (discussing "misused" funds for "illegal immigrants).
[164] *San Francisco A.I.D.S. Found.*, 786 F. Supp. 3d at 1219.
[165] *Id.* at 1220.
[166] *See, e.g.*, *Grants*, LEGAL SERVS. CORP., https://www.lsc.gov/grants (last accessed July 13, 2026); *Fair Housing Initiatives Program (FHIP)*, U.S. DEP'T OF HOUS. & URBAN DEV., https://www.hud.gov/stat/fheo/initiatives-program (last accessed July 13, 2026); *Fair Housing Assistance Program (FHAP)*, U.S. DEP'T OF HOUS. & URBAN DEV., https://www.hud.gov/stat/fheo/assistance-program (last accessed July 13, 2026); *State and Local Programs*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/state-and-local-programs (last accessed July 13, 2026).
[167] *Velazquez*, 531 U.S. at 542 (comparing the Legal Services Corporation program with the student activity fee fund in *Rosenberger*, 515 U.S. at 833).

is entitled to the highest level of protection under the First Amendment[168] and has thus struck down similar conditions limiting what kinds of claims attorneys can bring on behalf of their clients.[169] Courts have struck down similar attempts to condition federal funding on suppression of expression related to diversity, equity, inclusion, and accessibility and gender identity, as required by the Anti-Equity Provision. [170]

3. *The Proposed Rule Chills Expression Outside of the Federally Funded Activities.*[171]

The proposed rule also claims the restrictions in the Anti-Equity Provision are permissible because they are "focused on activities within the scope of federally-funded programs."[172] OMB concedes that, while the government can choose what speech it subsidizes, it cannot "prohibit[] the recipient from engaging in the protected conduct outside the scope of the federally funded program."[173] As explained above, however, the Outside Activities provision requires federal agencies to assess the "risk" that award applicants engage in protected expression of activities, regardless of whether those activities are funded by the government—including allegedly discriminatory activities or initiatives, the same conduct and expression covered by the Anti-Equity Provision. Applicants that engage in such "risky" behavior may not receive awards. This provision thus allows the government to reach beyond the contours of the federal award to limit private expression.[174] A federal agency, for example, could prohibit an organization that does not use federal funds for diversity, equity, inclusion, and accessibility from receiving a federal award for engaging in diversity, equity, inclusion, and accessibility activities that conflict with the Trump administration's radical interpretation of civil rights laws. The broad reach of the proposed rule, and particularly the Outside Activities Provision, will increase the risk of chilling speech for private actors,[175] violating the First Amendment.

---

[168] *E.g. id.* at 548–49; In re Primus, 436 U.S. 412, 432 (1978); United Transp. Union v. State Bar of Mich., 401 U.S. 576, 585 (1971); United Mine Workers v. Ill. State Bar Ass'n, 389 U.S. 217, 221–222 (1967); Bhd. of R.R. Trainmen v. Va. State Bar, 377 U.S. 1, 6–8 (1964); NAACP v. Button, 371 U.S. 415, 433 (1963).
[169] *Velazquez*, 531 U.S. at 537.
[170] *San Francisco A.I.D.S. Found.*, 786 F. Supp. 3d at 1219.
[171] While this section focuses on how the proposed rule implicates the First Amendment rights of recipients, the proposed rule could also coerce recipients to limit the speech of third parties, including educators and students. Where a government uses the "threat of invoking legal sanctions and other means of coercion . . . to achieve the suppression" of disfavored speech, it functionally creates "a system of prior administrative restraints" that bears "a heavy presumption against its constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 67, 70 (1963). A government official "cannot do indirectly what [he] is barred from doing directly: . . . coerce a private party to punish or suppress disfavored speech on [his] behalf." Nat'l Rifle Ass'n v. Vullo, 602 U.S. 175 (2024). Courts have found that restrictions similar to the Anti-Equity Provision may lead to such impermissible coercion. *Nat'l Educ. Ass'n*, 779 F. Supp. 3d at 195.
[172] Proposed Rule at 32219.
[173] *Rust,* 500 U.S. at 197.
[174] The Outside Activities provision also requires federal agencies to assess whether applicants pose a risk due to their "membership in or affiliation with" particular organizations, which may impermissibly restrict the First Amendment right to freedom of association. NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958).
[175] *See* State of Md. v. Joseph H. Munson Co., 467 U.S. 947, 956 (1984) ("Even where a First Amendment challenge could be brought by one actually engaged in protected activity, there is a possibility that, rather than risk punishment for his conduct in challenging the statute, he will refrain from engaging further in the protected activity. Society as a whole then would be the loser.").

4. *The Proposed Rule Chills Speech Because It Is Vague.*

Even if a speech restriction does not violate the Fifth Amendment's prohibition on vagueness, ambiguous terms may also impermissibly chill speech in violation of the First Amendment.[176] As discussed previously, the proposed rule sets out an "indeterminan[t]" legal standard and relies on "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings."[177] As such, it violates the First Amendment.

C. The Proposed Rule Violates the Separation of Powers and the Spending Clause.

The proposed rule violates the principle of separation of powers and the Spending Clause by purporting to enforce conditions on recipients in excess of agencies' statutory authority to do so. The Constitution "grants the power of the purse to Congress, not the President,"[178] and the Executive Branch's purview is to "take Care that the Laws be faithfully executed."[179] Of course, "Congress may . . . delegate such authority to the Executive Branch."[180] In the absence of such a delegation, however, "the Executive Branch does not otherwise have the inherent authority . . . to condition the payment of . . . [appropriated] federal funds on adherence to its political priorities."[181] With this proposed rule, OMB usurps Congress's power, broadly implementing the administration's policy priorities under the guise of enhancing transparency and accountability in federal funding.

First, even if OMB had the power to issue binding, substantive regulations,[182] the proposed rule would violate the separation of powers because it broadly imposes conditions on recipients of federal funds that are not authorized or informed by clear, unambiguous language in the statutes underlying each federal program. As the proposed rule notes, "[t]he Supreme Court has explained that if 'Congress intends to impose a condition on the grant of federal [funds], it must do so unambiguously.'"[183] OMB, however, misapplies this rule. Instead of focusing on the existence of unambiguous language in the congressional *statutes* creating federal programs, it focuses solely on the language executive agencies themselves write in award agreements to impose conditions on recipients.[184] Federal courts have affirmed that the proper inquiry to determine whether a specific condition can be tied to federal funds focuses on the language of the underlying statute. No matter how unambiguous, agency-imposed funding conditions cannot pass constitutional muster unless the statute creating each federal program to

[176] *See, e.g.*, Reno v. ACLU, 521 U.S. 844, 870 (1997) (reasoning that "[r]egardless of whether" a restriction on "patently offensive" online messages was "so vague that it violates the Fifth Amendment, the many ambiguities concerning the scope of its coverage render it problematic for purposes of the First Amendment"); Minnesota Voters All. v. Mansky, 585 U.S. 1, 16 (2018) (holding that there was no reasonable basis for the state's exclusion of "political" apparel from polling places, because the law did not define the term and the state interpreted the term inconsistently).
[177] United States v. Williams, 553 U.S. 285, 306 (2008) (citing Coates v. Cincinnati, 402 U.S. 611, 614 (1971)).
[178] City & Cnty. of San Francisco v. Trump, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing U.S. CONST. art. I, § 9, cl. 7).
[179] U.S. CONST. art. II, § 3.
[180] City of Chicago v. Sessions, 888 F.3d 272, 283 (7th Cir. 2018).
[181] *Id.*
[182] *See* Section III, *supra* (discussing why OMB lacks the power to issue binding, substantive regulations at all).
[183] Proposed Rule at 32217 (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981)).
[184] *Id.* As discussed above, several of the proposed conditions are themselves vague.

which they apply unambiguously imposes or unambiguously authorizes the implementing agency to impose such conditions.[185]

Courts have already found that conditions similar to the ones OMB proposes cannot withstand scrutiny when applied to certain federal programs. In *Freedom Network v. Trump*, for example, a nonprofit organization challenged the constitutionality of funding conditions similar to those in the Anti-Equity Provision included in the Department of Justice's Notice of Funding Opportunities.[186] The program at issue had been created by the Trafficking Victims Protection Act (TVPA), in which the court found "no authority . . . condition[ing] grants on compliance with anti-discrimination laws, or prohibit[ing] federal grant recipients from engaging in equity-related work."[187] Similarly, unless Congress specified in a statute "that grant recipients should or should not conduct" activities covered by the conditions this proposed rule would impose, the conditions were not authorized.[188] An agency's imposition of unauthorized conditions pursuant to this rule would thus violate the separation of powers.

Second, the conditions the proposed rule imposes are not sufficiently related to the purpose of many statutes creating federal programs and are even in tension with the purpose of statutes created to correct inequities and advance equal opportunity by remedying historical discrimination, in violation of both the separation of powers and the Spending Clause. The constitution requires, however, that funding conditions "bear some relationship to the purpose of the federal spending."[189] Among the federal programs whose statutory mandates conflict with the proposed rule are the TVPA; the Transit Security Grant Program (TSGP) and Port Security Grant Program (PSGP); Title III, Part F of the Higher Education Act; Section 330 of the Public Health Service Act; and the Environmental and Climate Justice Block Grant (ECJBG). It would be difficult, if not impossible, for grantees under any of these or similar programs to comply with OMB's rule, if finalized, while also fulfilling the purposes of the grant they received. For example:

- TVPA: A federal court has found that anti-diversity, equity, inclusion, and accessibility conditions and immigration enforcement conditions contained in DOJ's Notices of Funding Opportunity under the TVPA were "completely unrelated to, and indeed are at odds with," the statute, which "does not use the terms equity or DEI" and "provides that victims of trafficking should receive benefits regardless of their immigration status."[190]

---

[185] Colorado v. U.S. Dep't of Just., 455 F.Supp.3d 1034, 1047 (D. Colo. 2020) ("[F]or agencies charged with administering congressional statutes[,] [b]oth their power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, . . . what they do is *ultra vires*." (quoting City of Arlington, Tex. v. FCC, 569 U.S. 290, 297 (2013))).
[186] Freedom Network v. Trump, No. 25 C 12419, 2026 WL 1899186, at *15 (N.D. Ill., Mar. 23, 2026).
[187] *Id.* at *15.
[188] *Id.*
[189] New York v. United States, 505 U.S. 144, 167 (1992).
[190] *Id.* at *16; *see also* City of Chicago v. U.S. Dep't of Just., 822 F.Supp.3d 873, 888 (N.D. Ill. 2026) (finding that city plaintiffs were likely to show that federal funding conditions attached to one of their grants, including an "Anti-DEI Condition," were "not reasonably related to the purpose" of the underlying statute and thus violative of the Spending Clause).

- TSGP and PSGP: A federal court in California has found that anti-diversity, equity, inclusion, and accessibility conditions imposed by the Department of Homeland Security and enforced against recipients of TSGP and PSGP grants are impermissible. Specifically, the court found that "the President's interpretation of DEI" was at odds with the purpose of the grants, "as Congress designated 'transit security grant funds to support security response training for transit employees, specifically including training in procedures to support *individuals with disabilities and the elderly*."[191] On these grounds, the court found that the plaintiffs had advanced a strong claim that the challenged conditions "violate[d] the separation of powers . . . by contravening Congress's clear intent in passing the relevant programs."[192]

- Title III, Part F: Title III, Part F competitive grants are set aside as mandatory funding under the Higher Education Act. The funds provided under this title are intended to "strengthen[] Historically Black Colleges and Universities and other Minority-Serving Institutions." Some of the subtitles require, for example, that "priority [be] given to [grant] applications that propose . . . to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics"[193] and that "25 grants of $600,000 annually" be made available for programs in areas including "improving educational outcomes of African American males."[194] In order to avoid the risk of losing their funding as a result of the proposed rule, grantees under this program would be forced to subvert or only partially fulfill the program's purpose in proposing projects or administering the funds they are issued.

- Section 330 Community Health Grants: Through a combination of mandatory and discretionary funding, Congress created a program to fund Community Health Centers through the Public Health Service Act. Among other services, the Act explicitly defines "required primary health services" to include "services that enable individuals to use the services of the health center (including outreach . . . and, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals)."[195]

- ECJBG: ECJBG mandatory block grants are intended to provide support for communities across the country disproportionately burdened by environmental harms and climate change. The statutory language creating and mandating the program directs those funds to "disadvantaged communities" and includes specific requirements defining eligible entities and activities.[196] The vague directives in the proposed rule appear to conflict with the mandatory statutory terms listed in the Clean Air Act.

[191] Cnty. of Santa Clara v. Noem, 815 F. Supp. 3d 979, 1026 (N.D. Cal. 2025) (internal quotation and citations omitted) (emphasis added) (cleaned up).
[192] *Id.* at 1026.
[193] 20 U.S.C. § 1067q(b)(2)(B)(i).
[194] 20 U.S.C. § 1067q(b)(2)(C)(ii).
[195] 42 U.S.C. § 254b(b)(1)(A)(iv).
[196] 42 U.S.C. § 7438(b)(1).

The proposed rule caveats that its restrictions are only applicable "to the maximum extent permitted by law."[197] It also claims, however, that "OMB is not aware of [f]ederal laws that expressly require funding" or "legislation establishing an entitlement to funds for the purposes of" activities that the administration considers "unlawful discrimination, promoting 'gender ideology' . . . , or assisting in the so-called 'transition' of a child from one sex to another."[198] This assertion renders the savings clause virtually ineffective and implies that OMB would choose to interpret at least some statutes in defiance of their plain language and explicit purpose.[199] Contrary to OMB's assertion, and as described above, several federal programs require lawful efforts to increase opportunity. OMB cannot insulate its inherently unlawful proposed rule from scrutiny simply by including this savings clause. The administration has attempted a similar tactic before, using nearly identical savings language in executive orders directing agencies to terminate awards advancing diversity, equity, and inclusion. At least six federal courts have found such clauses cannot "override"[200] the inherent unlawfulness of an executive decree, particularly when, as here, the decree "unambiguously commands action" of the agencies, in furtherance of the administration's political agenda.[201]

VI. <u>Conclusion</u>

Through the proposed rule, the Trump administration again seeks to abuse the federal funding process to coerce state and local governments, hospitals, PK-12 schools, higher education institutions, and nonprofits to comply with its political agenda. Yet OMB does not have the authority to issue binding regulations imposing substantive restrictions on federal awards. Moreover, OMB fails to provide a reasoned explanation for how imposing burdensome and confusing new restrictions will improve the federal funding process. While the proposed rule will harm all communities, Black, Latino, and other communities of color will bear the brunt of these policies. We strongly urge OMB to reverse course immediately.

Thank you for the opportunity to comment. If you have any questions, please contact Amalea Smirniotopoulos, Senior Policy Counsel and Equal Protection Initiative Co-Manager, Legal Defense Fund (asmirniotopoulos@naacpldf.org) and Namratha Somayajula, Legal Fellow, LatinoJustice PRLDEF (nsomayajula@latinojustice.org).

Sincerely,

The Legal Defense Fund

---

[197] Proposed Rule at 32215.
[198] *Id.* at 32218. Further, it is entirely incorrect to suggest that no such laws exist, as several statutes, including those described above, mandate funding for programs advancing accessibility and inclusion or require grantees to carry out services in a culturally and linguistically competent manner.
[199] Moreover, to the extent OMB concedes individuals agencies must modify the proposed rule in light of specific statutory mandates, this undermines its purported goal of consistent enforcement across government.
[200] *City and Cnty. of San Francisco*, 897 F.3d at 1240; HIAS, Inc. v. Trump, 985 F.3d 309, 325 (4th Cir. 2021); Louisiana v. Biden, No. 2:21-cv-778, 2021 WL 4312502, at *7 (W.D. La. Aug. 23, 2021); *Chicago Women in Trades*, 778 F. Supp. 3d at 992; Am. Fed'n of Gov't Emps. v. Trump, 139 F.4th 1020, 1038 (9th Cir. 2025); Washington v. Trump, 814 F. Supp. 3d 1173, 1206 (W.D. Wash. 2026).
[201] *See, e.g.*, *Chicago Women in Trades*, 778 F. Supp. 3d at 992 (quoting *City & Cnty. of San Francisco*, 897 F.3d at 1240).

LatinoJustice PRLDEF

afrolatin@ forum
Alliance to Reclaim Our Schools
Asian Americans Advancing Justice- AAJC
Blacks in Green
Center for Environmental Health
Center for Responsible Lending
Chesapeake Bay Foundation
Clearinghouse on Women's Issues
Common Cause
Earthjustice
ED-OCR Alumni Collective
Environmental & Climate Justice Initiative, NYU School of Law (which is not purporting to represent NYU or NYU School of Law)
Equal Rights Advocates
Feminist Majority Foundation
Hispanic Association of Colleges and Universities
Hispanic Federation
Institute for Women's Policy Research
Jewish Counsel for Public Affairs
Justice in Aging
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil and Human Rights
League of United Latin American Citizens (LULAC)
Legal Action Center
Legal Action Chicago
Moms for a Nontoxic New York (MNNY)
National Action Network
NAACP
National Center for Youth Law
National Coalition on Black Civic Participation
National Coalition on School Diversity
National Consumer Law Center (on behalf of its low-income clients)
National Latina Institute for Reproductive Justice
National Urban League
New Mexico Environmental Law Center
Out Accountability Project
PolicyLink
Poverty & Race Research Action Council
Public Advocacy for Kids (PAK)
Public Advocates
Southern Environmental Law Center
Sugar Law Center for Economic & Social Justice
West End Revitalization Association (WERA)

CC: Department of Health and Human Services

Department of Agriculture
Department of State
Agency for International Development
Department of Veterans Affairs
Department of Energy
Department of the Treasury
Department of Defense
Department of Transportation
Department of Commerce
Department of the Interior
Environmental Protection Agency
U.S. International Development Finance Corporation
National Aeronautics and Space Administration
U.S. Agency for Global Media
Nuclear Regulatory Commission
Corporation for National and Community Service
Social Security Administration
Department of Housing and Urban Development
National Science Foundation
National Archives and Records Administration
Small Business Administration
Department of Justice
Department of Labor
Department of Homeland Security
National Foundation on the Arts and the Humanities
Institute of Museum and Library Services
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Foundation on the Arts and the Humanities
National Endowment for the Humanities
Department of Education
Export Import Bank
Executive Office of the President
Office of National Drug Control Policy
Peace Corps
Election Assistance Commission
Gulf Coast Ecosystem Restoration Council
Federal Communications Commission
Consumer Product Safety Commission
Delta Regional Authority
Appraisal Subcommittee of the Federal Financial Institutions Examination Council
Marine Mammal Commission
Millennium Challenge Corporation
National Credit Union Administration

Demetria McCain, Director of Policy, LDF
Anita Teekah, Chief of Advocacy, LatinoJustice PRLDEF