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Office of Management and Budget

Via Federal eRulemaking Portal, https://www.regulations.gov

RE: Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198 (May 29, 2026), Docket No. OMB–2026–0034

[Specific provisions referenced in this comment: 2 C.F.R. §§ 1.100, 1.105, 1.221, 1.231, 200.1, 200.101, 200.102, 200.112, 200.113, 200.201, 200.202, 200.204, 200.205, 200.206, 200.208, 200.211, 200.218, 200.219, 200.220, 200.300, 200.303, 200.305, 200.318, 200.320, 200.329, 200.331, 200.332, 200.333, 200.338, 200.339, 200.340, 200.341, 200.342, 200.343, 200.400, 200.401, 200.402, 200.403, 200.407, 200.421, 200.429, 200.432, 200.442, 200.450, 200.454, 200.455, 200.461, 200.477, 200.507, 200.512, 200.513, and parts 200 Appendix IX, 300–382, 700–782, 2200–2245, 3474–3485][1]

Dear Mr. Reisig:

We, the Attorneys General of New York, California, Colorado, Illinois, Massachusetts, New Jersey, Arizona, Connecticut, Delaware, Hawaiʻi, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the Governors of Kentucky and Pennsylvania, ("the States"), write to provide comments on the Office of Management and Budget's ("OMB")—and 41 other federal agencies'—Proposed Rule, Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198 (May 29, 2026) (to be codified at 2 C.F.R.) ("the Rule").[2] As the chief legal officers or executives for our respective States, the undersigned Attorneys General and Governors share a commitment to serving the public interest and promoting the rule of law. With those interests in mind, we write to oppose the Rule, which, if finalized, would severely harm the States and their residents, and violate federal law in numerous, unprecedented ways. In this comment, the States have striven to address the broad scope of illegality presented by the Rule.

We urge OMB and the other federal agencies to withdraw the Rule.

I. Introduction

Each year, Americans across the country pay federal taxes. Those taxes fund the federal government. The power over that purse belongs solely to Congress, which is made up of Representatives and Senators elected by those same Americans. Among its many critical responsibilities, Congress designs spending programs intended to provide services to this nation's residents as it deems appropriate. Those programs are designed to advance particular policy goals,

[1] The States reserve the right to argue that any portion or application of the Rule not addressed here is illegal, and the omission of any portion or application of the Rule here is not a concession of its legality.
[2] Citations to proposed versions of regulatory sections in the Rule are in the form "2 C.F.R. 200.300." Citations to currently-effective versions of regulatory sections in Title 2 of the C.F.R. are in the form "2 C.F.R. 200.300 (2026)."

including in education, healthcare, housing, scientific research, immigration, civil-rights enforcement, environmental protection, public safety, the arts, and other domains. Congress delegates the authority to administer spending programs to particular federal agencies, often with particular limits, conditions, recipients, and policy goals in mind.

In line with the exclusive authority Congress exercises over federal spending, the Executive has the corresponding responsibility to implement spending programs as dictated by Congress. Sometimes Congress leaves areas of discretion to the Executive, but in no circumstance does the Executive have the authority to refuse to pay funds appropriated by Congress or to pay funds inconsistent with Congress's intent. And while government-wide consistency in financial management and grant administration is an important public policy consideration, under no circumstance may federal agencies—creatures of statute—exceed the bounds of their delegated authority or act contrary to law in administering their programs.

In proposing this Rule, OMB flouts those separation-of-powers principles. It proposes to overhaul federal grants policy by imposing sweeping, government-wide conditions and restrictions on federal financial assistance, and making other significant changes to the way federal grants are administered. As set forth below, the Rule transforms the Uniform Guidance—OMB's longstanding non-binding guidance to other agencies related to the financial management of grants—into binding regulation. Simultaneously, 41 other agencies propose to adopt these far-reaching changes—themselves not yet final—with virtually no explanation. On top of that, the Rule significantly rewrites grant policy and imposes vague new obligations on grant recipients.

Among other things, the Rule requires grant recipients to adhere to undefined political priorities, and restricts funding related to topics as varied as "diversity, equity, and inclusion" ("DEI"), gender, immigration, and "anti-American values." It injects political considerations into grants for scientific research. It violates longstanding civil rights principles. It upends the finance of federal grantmaking through its exclusion of certain cost categories. And exacerbating all of these problems, it permits agencies to suspend or terminate discretionary grants based on new priorities that arise for any administration at any time. In addition to the States, which collectively receive over $1 trillion in federal financial assistance annually, the Rule's impacts will be felt by local governments, research institutions, universities, and non-profits that perform important research and provide critical services to hundreds of millions of people.

The Rule is unlawful for many independent and overlapping reasons. Foremost, OMB lacks authority to comprehensively regulate federal funding across the entire government. The statutes on which OMB relies authorize it to provide leadership and direction to the Executive Branch regarding financial management policy, not to promulgate binding regulations governing federal funding programs administered by other agencies, or regulations addressing the myriad policy areas covered by the Rule. And federal agencies may not formulaically adopt OMB's Rule with virtually no explanation or analysis of how the Rule would affect their particular funding programs, or subdelegate their own statutory authority to OMB as portions of this Rule do. The Rule also conflicts with many statutory schemes governing particular funding programs.

Second, the Rule raises serious constitutional concerns. Among other things, it unlawfully attempts to transfer significant portions of the spending power from Congress to the Executive; it violates the Spending Clause's prohibitions on vague and coercive conditions; and it leverages significant amounts of federal money to commandeer the States into enforcing federal policy.

Third, the Rule is a textbook example of arbitrary and capricious agency action. OMB justifies the Rule by claiming that it will promote transparency and regulatory certainty and reduce burdens on grant recipients, but the Rule would clearly do the opposite. It would unsettle the grantmaking landscape, sowing confusion and undermining longstanding reliance interests for those that rely on federal funding. OMB and the promulgating agencies do not recognize the Rule's significant costs, much less grapple with them in a meaningful way as required by the Administrative Procedure Act. And throughout the Rule, OMB and the promulgating agencies consistently violate basic principles of reasoned agency decision-making by considering factors Congress did not intend, failing to consider alternatives, relying on inconsistent reasoning, adopting vague standards, and in some instances not explaining proposed changes at all. Relatedly, the Rule violates basic notice-and-comment principles and other APA procedural requirements, beginning with its deficient regulatory analyses and the fact that the public had only 45 days to comment on this major rule.

The Rule will have immediate and severe consequences. In many circumstances, it will make it impossible for grant recipients to fully understand whether they are complying with federal regulations, and it will increase the likelihood that the Rule is invoked in arbitrary ways. The Rule's changes to the termination provision exacerbates these problems. Giving agencies the power to terminate grants, at any time, for any reason, makes it impossible for grant recipients to know if a program that is funded today will continue to be funded tomorrow, even if a recipient fully complies with its obligations. As such, grant recipients will face uncertainty about whether critical programs that support education, health, scientific research, social services, public safety, and the arts, will be funded. That uncertainty will chill grant recipients and increase compliance costs, diverting their resources away from the important programs that Congress intended them to administer. And of course, if this Administration—or any future administration—uses the Rule to actually withhold federal funding, the impacts on the public welfare would be devastating.

These harms are not theoretical; recent lawsuits underscore the risks of executive overreach with respect to federally funded programs created by Congress.[3] Some of these cases arose from baseless actions to simply stop the flow of federal funding entirely. For example, on January 27, 2025, the Acting Director of OMB issued Memorandum M-25-13, entitled "Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs." This policy, which froze nearly all federal funding, including mandatory spending, was rejected by the district and appellate courts and is subject to a preliminary injunction that the government has not appealed. *New York v. Trump*, 769 F. Supp. 3d 119, 127 (D.R.I.) ("Federal agencies and departments can spend, award, or suspend money based only on the power Congress has given to them—they have no other spending power."), *aff'd in part, vacated in part*, 171 F.4th 1 (1st Cir. 2026); *see also New York v. Admin. for Child. & Fams.*, No. 26-cv-172 , 2026 WL 673848, at *1 (S.D.N.Y. Mar. 10, 2026) (enjoining the federal government from attempting to freeze billions of dollars in "cash assistance and life-

[3] 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.

saving services for vulnerable and low-income children and for families and individuals with disabilities").

In still other cases, agencies have unsuccessfully sought to impose numerous irrelevant, unrelated, and political conditions on federal funds. *See, e.g.*, *R.I. Coal. Against Domestic Violence v. Bondi*, 794 F. Supp. 3d 58, 63–64 (D.R.I. 2025) (rejecting conditions on Violence Against Women Act funds relating to immigration enforcement and Executive Orders opposing "gender ideology" and "illegal DEI" that would have disrupted funds for victims of intimate partner violence); *Washington v. U.S. Dep't of Hous. & Urb. Dev.*, 171 F.4th 473, 492 (1st Cir. 2026) (concluding the imposition of policy conditions created a fundamental application timing problem that would effectively cut off critical funding to fight homelessness). In *Illinois v. Vought*, 820 F. Supp. 3d 727, 731 (N.D. Ill. 2026), the plaintiff states faced termination of public health funding as punishment for "sanctuary" policies. The same was true in a Department of Transportation ("DOT") effort to cut off transit security funding for New York because of "sanctuary" policies, even where the statute required the award of these funds to be based "solely on risk." *New York v. Noem*, 812 F. Supp. 3d 321, 335 (S.D.N.Y. 2025).

The Government Accountability Office ("GAO") has also concluded multiple times that this Administration has illegally impounded funding.[4] The GAO has reaffirmed in these findings that the Impoundment Control Act, which the Administration has relied on, only permits temporary suspensions in extremely limited circumstances that must be quickly approved by Congress.

If promulgated, the Rule would permit the Executive to seize Congress's power of the purse. In 2028, that Executive could be headed by a President whose politics differ from those of this Administration. The Rule offends the Constitution, and it is contrary to the public interest for any administration, regardless of party, to empower OMB or any other agency to ignore Congress's directions with regard to federal funding.

This comment proceeds in three parts. First, the comment articulates the common legal standards underlying many of the States' objections to the Rule. Second, the comment explains the primary reasons the Rule—both in its entirety, and with respect to many of its particular provisions—is unlawful. Third, the comment explains the devastating consequences to States and their residents that would occur if OMB proceeds with the Rule.

II. Legal Framework

A. The Statutory Authorities at Issue

The Director of OMB is authorized under 31 U.S.C. § 6307 to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements . . . and cooperative agreements." The Deputy Director for Management of OMB is authorized under 31 U.S.C. § 503 to, among other things, provide "overall direction and leadership to the Executive

[4] *See, e.g.*, GAO, B-337375, *Institute of Museum and Library Services—Applicability of the Impoundment Control Act to Reduction of Agency Functions*; GAO, B-337204.1, *Department of Homeland Security–Application of the Impoundment Control Act to Federal Emergency Management Agency Fiscal Year 2025 Federal Assistance Appropriations*.

Branch on financial management matters by establishing financial management policies and requirements." 31 U.S.C. § 503(a)(2). Section 503 originated in the Chief Financial Officers Act of 1990 ("CFO Act"). As the GAO has explained, the CFO Act responded to "[r]eported financial management problems," such as "unreliable financial information driven by widespread weaknesses in agencies' internal controls over financial reporting" and "obsolete and inefficient financial management systems throughout the government."[5] In developing the CFO Act, the House Committee on Government Operations described the statutory responsibilities of the Deputy Director for Management that the proposal cites as including the authority to "guid[e] government-wide financial systems improvement efforts . . . and work[] with other financial managers to ensure the Executive Branch develops a modern financial management structure which provides the President, Congress, and agency managers with timely and accurate information for decision-making." H. Rep. No. 101-818, at 18 (1990).

OMB's authority to establish "financial management policies and requirements" is not authority to impose substantive legal requirements on agencies. Rather, given its limited authority OMB has historically issued non-binding uniform guidance, which agencies then use to promulgate their own regulations adopting or adapting the guidance in an individualized fashion that takes into account their unique statutory and programmatic responsibilities.

One court has likened OMB's current guidance to an "accounting manual," which "serves 'to promote consistent and efficient use of . . . grant agreements[] and cooperative agreements.'" *Ass'n of Am. Univs. v. Dep't of Def.*, 792 F. Supp. 3d 143, 165 (D. Mass. 2025) (quoting 31 U.S.C. § 6307(1)). Similarly, courts in other contexts have observed that the broader "structure" of § 503 "strongly suggests that OMB occupies an oversight role" over financial management policies—not a position with direct authority over federal financial assistance. *Am. Fed'n of State, Cnty., & Mun. Emps., AFL-CIO v. OMB*, 807 F. Supp. 3d 1004, 1018 (N.D. Cal. 2025) (quoting *Nat'l Council of Nonprofits v. OMB*, 775 F. Supp. 3d 100, 126 (D.D.C. 2025), *appeal pending*, No. 25-5148 (D.C. Cir.)).

As described below, OMB's guidance is just that—guidance. OMB lacks authority to bind federal awarding agencies because those agencies may have statutory mandates that are inconsistent with the guidance or require agency-specific changes to the guidance. Conflicts are particularly possible with respect to mandatory spending programs, where agencies have no authority to deviate from a statute's formulas for determining benefit amounts or the procedures determining benefit eligibility.

B. The Antideficiency Act and Impoundment Control Act

The Antideficiency Act and the Impoundment Control Act of 1974 are separate laws that reaffirm the Legislative Branch's control over federal appropriations and provide the exclusive, very limited mechanisms available to the President for requesting changes to Congress's appropriations decisions.

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[5] GAO, GAO-20-566, *Federal Financial Management: Substantial Progress Made since Enactment of the 1910 CFO Act; Refinement Would Yield Added Benefits* 10, https://www.gao.gov/assets/gao-20-566.pdf

1. The Antideficiency Act

The Antideficiency Act prohibits executive officers from obligating or spending funds that Congress has not appropriated and imposes criminal penalties for violations. 31 U.S.C. §§ 1341, 1350. The Act was intended to curtail the Executive from obligating more than the amount appropriated by Congress. It requires the Executive to apportion funds across the fiscal year to ensure agencies do not spend their appropriations too quickly. 31 U.S.C. § 1512. To effectuate this purpose, it directs the President to apportion appropriated funds to agencies in the manner prescribed or as directed by the appropriation. 31 U.S.C. §§ 1512(b)(2); 1513(b). The President has delegated this apportionment authority to the Director of the Office of Management and Budget. Exec. Order No. 6,166 § 16 (1933).

The Antideficiency Act also allows for the creation of reserves in limited circumstances. Reserves may only be created "to provide for contingencies; to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or as specifically provided by law." 31 U.S.C. § 1512(c)(1). Reserves may not be created for policy reasons or in a manner that "thwart[s] the will of Congress." S. Rep., No. 93-688, at 75 (1974). This provision further requires that reserves must be reported to Congress as deferrals under the Impoundment Control Act. 31 U.S.C. § 1512(c)(2); 2 U.S.C. § 684.

2. The Impoundment Control Act

The Impoundment Control Act of 1974, 2 U.S.C. §§ 681 et seq. ("Impoundment Control Act" or "ICA"), was passed "to restore responsibility for the spending policy of the United States to the legislative branch" after escalating policy-based impoundments by President Nixon. H. R. Rep., No. 93-658, at 2 (1973). It "operates on the premise that when Congress appropriates money to the executive branch, the President is required to obligate the funds."[6] Its goal was to "reach all the past and future mechanisms which this President or any other Executive has devised or will devise" to frustrate "the full scope, intent, and objectives of Congress in enacting [] appropriation[s]." 93 Cong. Rec. 7913 (March 22, 1974) (statement of Sen. Ervin).

The ICA created procedures by which the Executive Branch may request that Congress rescind an appropriation or defer spending federal funds under highly circumscribed procedures and conditions. 2 U.S.C. §§ 683, 684. Given the narrowness of the exceptions it creates, the Impoundment Control Act reflects and affirms Congress's power over federal spending.

Under the Impoundment Control Act, the President "shall" transmit a "special message" to both Houses of Congress "[w]henever the President determines that all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided, or that such budget authority should be rescinded for fiscal policy or other reasons, or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year." 2 U.S.C. § 683. Authority to send these "special messages" has been delegated to the Director of the Office of Management and Budget by executive order. Exec.

[6] GAO Letter, No. B-329092, *Impoundment of the Advanced Research Projects Agency-Energy Appropriation Resulting from Legislative Proposals in the President's Budget Request for Fiscal Year 2018*, at 2 (Dec. 12, 2017), https://www.gao.gov/assets/b-329092.pdf.

Order, No. 12608, 52 Fed. Reg. 34,617 (Sept. 14, 1987).

The special message must identify the source and amount of funding, justify the deferral or rescission, estimate the likely fiscal consequences both broadly and specifically as to the programs for which the budget authority was provided, and contain "all facts, circumstances and considerations" considered. 2 U.S.C. §§ 683(a), 684(a). This special message proposes either a rescission or deferral to Congress. *See* 2 U.S.C §§ 683, 684.

In the case of a proposed rescission, once the President transmits the special message, the relevant budget authority "shall be made available" unless Congress passes a rescission bill revoking the appropriation in whole or in part in the following 45 days of continuous session. 2 U.S.C. § 683(b). The ICA also prohibits "the Executive practice of submitting seriatim rescission messages covering similar matter[s]" when Congress does not act on the first rescission request. H.R. Conf. Rep., No. 100-313 at 67 (1987); 2 U.S.C. § 683(b). Congress is free to ignore these special messages, and agencies must continue to obligate the appropriated funding as required by authorization and appropriation statutes. *See* 2 U.S.C. § 681(4).

As to deferrals, the ICA allows the President to defer budget authority only when consistent with legislative policy. 2 U.S.C. § 684(b). The ICA lists three categories of permissible deferrals: "(1) to provide for contingencies; (2) to achieve savings made possible by or through changes in requirements or greater efficiency of operations; or (3) as specifically provided by law." 2 U.S.C. § 684(b)(1)–(3). Deferrals made for any other purpose are prohibited, including policy deferrals, 2 U.S.C. § 684(b), and any that extend past the end of the fiscal year, *id.* § 684(a), or conflict with other statutory requirements, *id.* § 681(4).

Congress provided four disclaimers that guide interpretation of the Impoundment Control Act. They require that nothing in the ICA shall be construed as: "(1) asserting or conceding the constitutional powers or limitations of either Congress or the President; (2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect; (3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or (4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder." 2 U.S.C. § 681(1)–(4).

C. Legal Guarantees

The following section sets out the many legal prohibitions that the Rule implicates.

1. Claims Derived from Exceeding Statutory Authority

a. APA: Excess of Statutory Authority/Contrary to Law

"It is a bedrock principle that the power of an executive agency administering a federal statute is authoritatively prescribed by Congress." *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 19 (1st Cir. 2020) (cleaned up). "[A]n agency literally has no power to act unless and until Congress confers power upon it." *City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (cleaned up). For this reason, where "an agency acts in a manner not authorized by statute, its action is . . . a violation of the APA." *Ryan*, 974 F.3d at 19. Thus, under the APA, a court must "set aside agency action …in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

The scope of authority delegated to an agency by Congress, too, "reduces to a question of statutory construction." *Ryan*, 974 F.3d at 19; *see* 5 U.S.C. § 706. In deciding the scope of an agency's authority, "the role of the reviewing court under the APA is . . . to independently interpret" the statute" delegating that authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024).

When determining what a statute means, it can be relevant if the rulemaking implicates a "major question." The Court has described a "major question" as one involving vast economic or political significance and held that it is highly unlikely that Congress would hide an "unheralded power" for an agency in a "long-extant" statute. *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (quotations omitted). Thus, the Court expresses "reluctan[ce] to read into ambiguous statutory text" extraordinary delegations of Congress's powers. *Id.* at 723 (quoting *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014)).

The agency justifying such extraordinary powers must show clear and explicit congressional authorization. *Biden v. Nebraska*, 600 U.S. 477, 506 (2023). "These considerations apply with particular force where, as here, the purported delegation involves the core congressional power of the purse." *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 632 (2026).

b. Separation of Powers

"[T]he separation of powers is designed to preserve the liberty of all the people" and "whenever a separation-of-powers violation occurs, any aggrieved party with standing may file a constitutional challenge." *Collins v. Yellen*, 594 U.S. 220, 245 (2010); *see also id.* at 262 n.1 (Thomas, J., concurring) (recognizing an implied private right of action to challenge unconstitutional governmental action, including "separation-of-powers claims[s]").

The President's authority to act "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). The well-trodden framework articulated in Justice Jackson's concurrence in *Youngstown* governs the Executive's authority. *Id.* at 635–37 (defining the President's authority as "at its maximum" when acting pursuant to Congressional authorization, "at its lowest ebb" when acting contrary to the will of Congress, and within "a zone of twilight" where the President is relying on his own authority and Congress may have concurrent authority).

"The United States Constitution exclusively grants the power of the purse to Congress, not the President." *City & Cnty. of S. F. v. Trump*, 897 F.3d 1225, 1231 (9th Cir. 2018) (citing U.S. Const. art. I, § 9, cl. 7). "[W]hen it comes to spending, the President has none of 'his own constitutional powers' to 'rely' upon." *Id.* at 1233–34 (quoting *Youngstown*, 343 U.S. at 637 (Jackson, J., concurring)). Similarly, "[a]ll legislative Powers" are vested in Congress. U.S. Const. art. I, §1; *see Clinton v. City of New York*, 524 U.S. 417, 438 (1998) ("There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.").

Courts have repeatedly struck down as unconstitutional efforts by the Executive Branch to "redistribute or withhold properly appropriated funds in order to effectuate its own policy goals." *City & Cnty. of S.F.*, 897 F.3d at 1235; *see, e.g.*, *California v. Trump*, 963 F.3d 926, 949 (9th Cir. 2020), *vacated based on changed circumstances* (absent statutory authority, Executive Branch lacked independent constitutional authority to transfer funds for construction of border wall); *City & Cty. of S.F. v. Trump*, 779 F. Supp. 3d 1077, 1082 (N.D. Cal. 2025) (plaintiffs likely to prevail in demonstrating that the Trump Administration violated separation of powers in withholding federal funding). *Washington v. Trump*, 768 F. Supp. 3d 1239, 1261–63 (W.D. Wash. 2025) (plaintiffs likely to succeed on the merits of their argument that executive order barring the federal government from funding certain medical care for "an individual who does not identify as his or her sex" violated constitutional separation-of-powers principles).

2. APA: Arbitrary and Capricious

The vast majority of regulations must conform to the APA's prohibition against arbitrary and capricious agency action.

Under the APA, an agency action is arbitrary and capricious if it is not "reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Agency action fails this test if "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*); *see also Nat. Res. Def. Council v. U.S. Nuclear Regulatory Comm'n*, 879 F.3d 1202, 1215 (D.C. Cir. 2018) (agency action is arbitrary and capricious if it is "internally inconsistent"). Additionally, agency action is unreasonable, and therefore also arbitrary and capricious, when it "relies on an erroneous interpretation of the law." *Filazapovich v. Dep't of State*, 560 F. Supp. 3d 203, 243 (D.D.C. 2021), *rev'd and remanded on other grounds* sub nom. *Goodluck v. Biden*, 104 F.4th 920 (D.C. Cir. 2024); For decisions to be reasonable, agencies must offer "genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public." *Dep't of Commerce v. New York*, 588 U.S. 752, 756 (2019).

When an agency changes its existing policy, it must "display awareness that it is changing position" and "show that there are good reasons for the new policy[.]" *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502, 515 (2009) (*Fox*). Agencies must provide "more detailed justification" for a change in policy when their prior policy "engendered serious reliance interests." *Housatonic River Initiative v. EPA*, 75 F.4th 248, 270 (1st Cir. 2023) (quoting *Fox*, 556 U.S. at 515).

3. Intrusion on State Sovereignty

a. Tenth Amendment Commandeering

The Tenth Amendment reserves for the states all rights and powers "not delegated to the United States" federal government. U.S. Const. amend X. Commonly referred to as "traditional state police powers," the rights and powers of the states are broad, including "prescrib[ing] regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity." *Barbier v. Connolly*, 113 U.S. 27, 31 (1884).

This "independent power of the States . . . serves as a check on the power of the Federal Government." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (*NFIB*). "Impermissible interference with state sovereignty is not within the enumerated powers of the National Government." *Bond v. United States,* 564 U.S. 211, 225 (2011).

The "Constitution simply does not give Congress the authority to require the States to regulate." *NFIB*, 567 U.S. at 578 (quoting *New York v. United States*, 505 U.S. 144, 178 (1992)). The federal government interferes with State sovereignty and violates the Tenth Amendment when it attempts to bar States or local governments from enacting laws within their police powers or to compel them to implement and enforce federal programs. *Murphy v. Nat'l Coll. Athletic Ass'n*, 584 U.S. 453, 474–75 (2018); *Printz v. United States*, 521 U.S. 898, 925–33 (1997); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866–73 (N.D. Ill. 2018). This limit on federal power applies equally whether the federal government "directly commands a State to regulate or indirectly coerces a State to adopt a federal regulatory system as its own." *NFIB*, 567 U.S. at 578.

b. Spending Clause

The Spending Clause of the U.S. Constitution sets three limits on the kinds of conditions the federal government may attach to federal funding. This constitutional limitation applies not only when Congress attaches conditions to the receipt of federal funds but also when federal agencies apply them to funding streams authorized by Congress. *See, e.g.*, *California v. U.S. Dep't of Transp.*, 808 F. Supp. 3d 291, 309–11 (D.R.I. 2025); *Illinois v. FEMA*, 801 F. Supp. 3d 7, 96 (D.R.I. 2025) (same); *City of Los Angeles v. Barr,* 929 F.3d 1163, 1175 n.6 (9th Cir. 2019) (same); *New York v. HHS*, 414 F. Supp. 3d 475, 572 (S.D.N.Y. 2019) (holding that an agency rule violated the Spending Clause); *New York v. DOJ*, 804 F. Supp. 3d 294, 328 (D.R.I. 2025) (same as to agency notices).

First, federal funding conditions must be set out "unambiguously," to ensure that funding recipients can accept those conditions "knowingly, cognizant of the consequences of their participation." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). The unambiguous condition requirement "is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *NFIB*, 567 U.S. at 577.

Second, funding conditions must be "reasonably related to the federal interest in particular national projects or programs." *Massachusetts v. United States*, 435 U.S. 444, 461 (1978) (plurality opinion); *accord South Dakota v. Dole*, 483 U.S. 203, 207 (1987). When an agency imposes sweeping conditions without regarding to the particular projects or programs affected, the conditions "lack the necessary tailoring" to satisfy the Spending Clause's relatedness requirement. *Illinois*, 801 F. Supp. 3d at 96; *see also NFIB*, 567 U.S. at 580.

Third, the Spending Clause prohibits coercive conditions that exert "power akin to undue influence" and turn pressure "into compulsion." *NFIB*, 567 U.S. at 577. Where the size of the threatened funds creates a "gun to the head," the coercion is unconstitutional. *Id*. at 581.

4. Procedural Claims

Opportunity to comment. The APA requires a meaningful opportunity to participate in rulemaking. 5 U.S.C. § 553(c). The general purpose of such "notice and comment requirements [is] '(1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.'" *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449 (3d Cir. 2011) (quoting *Int'l Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005)). As Executive Order 12866 explains, "a meaningful opportunity to comment . . . in most cases should include a comment period of not less than 60 days." Exec. Order No. 12,866, Regulatory Planning and Review, § 6(a), (Oct. 4, 1993).

Congressional Review Act. Under the Congressional Review Act, a major rule is one with "an annual effect on the economy of $100,000,000 or more," a threshold that turns on a rule's effect on the economy, including transfer payments, rather than on compliance costs alone. 5 U.S.C. § 804(2)(A).[7] A major rule may not take effect until 60 days after the agency submits the Congressional Review Act's required report to each House of Congress and the Comptroller General. 5 U.S.C. § 801(a)(1), (a)(3).

Regulatory Analyses. An Initial Regulatory Flexibility Analysis ("IRFA") must reflect a "good-faith effort to carry out the RFA's mandate." *Cf. Nat'l Women, Infants, & Child. Grocers Ass'n v. Food & Nutrition Serv.*, 416 F. Supp. 2d 92, 108 (D.D.C. 2006) (quoting *United States Cellular Corp. v. FCC* 254 F.3d 78, 88 (D.C. Cir. 2001)). Further, the Regulatory Flexibility Act requires federal agencies to assess the impact of a rule on small entities, engage with the small entities, and consider alternatives. 5 U.S.C. §§ 601–612. Executive Order 13132 also requires an agency to address the federalism implications of the Rule. Exec. Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 10, 1999).

Negotiated Rulemaking. Congress has also required several federal agencies to develop program regulations through negotiated rulemaking. For example, in Title IV of the Higher Education Act, Congress directed that, before publishing proposed regulations, the Secretary of Education obtain public involvement and then submit the draft regulations to a "negotiated rulemaking process." 20 U.S.C. § 1098a(b).

Paperwork Reduction Act. Further, the Paperwork Reduction Act applies to a "collection of information," which is a reporting or recordkeeping requirement imposed on ten or more

[7] Office of Info. & Regulatory Affairs, OMB, Regulatory Impact Analysis: Frequently Asked Questions (Feb. 7, 2011), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/OMB/circulars/a004/a-4_FAQ.pdf. (OMB's guidance stating the identical $100 million threshold that governs both economic significance under Executive Order 12866 and major-rule status under the Act to "include[] benefits, costs, or transfers," so that "$100 million in annual . . . transfers is sufficient."); *see also* OMB, Circular A4, 45–46 (Sept. 17, 2003), https://www.reginfo.gov/public/jsp/EO/fedRegReview/CircularA4.pdf. (The 2003 Circular is the operative version of A4 after the November 9, 20-23 revision was rescinded. Exec. Order No. 14,192, § 6(b), 90 Fed. Reg. 9,065, 9,067 (Feb. 6, 2025)); OMB, Mem. M--25---15, Rescission and Reinstatement of Circular A-4 (Feb. 12, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/03/M-25-15-Recission-and-Reinstatement-of-Circular-A-4.pdf.

persons, the responses to which are obtained for and used by the awarding agencies. 5 U.S.C. §§ 601–612. An agency must publish a 60-day notice soliciting comment on the proposed collection, 44 U.S.C. § 3506(c)(2)(A); must obtain review by OMB's Office of Information and Regulatory Affairs and a control number before the collection may be imposed, *id.* at § 3507(a), (d); and must demonstrate the collection's necessity and estimate its burden, *id.* at § 3506(c)(1)(A).

III. The Rule Is Unlawful.

A. OMB and the Other Agencies Lack Authority to Promulgate this Rule, and the Rule Is Procedurally Improper.

1. OMB lacks authority to promulgate binding regulations governing all aspects of federal financial assistance.

In this Rule, OMB asserts sweeping authority to issue binding regulations governing all aspects of federal financial assistance administered by all other federal agencies. But the statutes on which OMB relies to justify the Rule do not support any such authority. *See* 91 Fed. Reg. at 32,201–02 (collecting statutes). There is no indication that Congress granted OMB substantive rulemaking authority in this domain at all, much less sweeping authority to regulate all topics concerning all federal grants programs. And changing 2 C.F.R. Subtitle A from guidance to binding regulation is much more than a change in nomenclature. It is a sharp departure from decades of agency practice that was grounded in OMB's longstanding interpretation of the limits of its own authority. For these reasons and others articulated below, OMB lacks authority to issue this Rule.

31 U.S.C. §§ 503, 6307. OMB primarily relies on 31 U.S.C. § 503—outlining the functions of the Deputy Director for Management—to justify its authority. As described above, that statute authorizes OMB to, among other things, provide "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements." 31 U.S.C. § 503(a)(2). But this language notably does not grant OMB substantive rulemaking authority. Rather, OMB's statutory role is one of providing "direction and leadership": Congress intended OMB to carry out its duties through guidance to other agencies in promulgating their own regulations, not by promulgating its own binding regulations in the first instance. Accordingly, that is how courts—and OMB itself—have consistently understood OMB's role with respect to financial management policy. As one court has explained, the "'structure'" of section 503 "'strongly suggest[s] that OMB occupies an oversight role,'" not one in which it directly regulates. *Am. Fed'n of State, Cnty., & Mun. Emps., AFL-CIO v. OMB*, 807 F. Supp. 3d 1004, 1018 (N.D. Cal. 2025) (quoting *Nat'l Council of Nonprofits v. OMB*, 775 F. Supp. 3d 100, 126 (D.D.C. 2025), *appeal pending*, No. 25-5148 (D.C. Cir.)). Other subsections within § 503(a)—such as authority to "monitor" or "review" action by other agencies, or "provide advice" to other agencies—"further indicates that OMB's role is mainly supervisory, rather than directly active." *Id.* And where Congress intends to grant agencies substantive rulemaking authority, it does so expressly, as numerous agencies' enabling statutes reflect. Congress did not do so for OMB in § 503.

Even assuming *arguendo* that OMB had some authority to issue rules under § 503, any such authority would be limited to "financial management" oversight. The plain meaning of the term "financial management" encompasses topics such as accounting; the process for payment of funds and the financial structure of grants; and auditing and financial monitoring. *See Ass'n of Am. Universities v. Dep't of Def.*, 792 F. Supp. 3d 143, 165 (D. Mass. 2025) (describing OMB guidance issued under § 503 as "essentially an accounting manual"). The statutory context confirms that understanding of "financial management." As explained, § 503 was enacted as part of the Chief Financial Officers Act of 1990, stemming from concerns regarding financial management problems and weak internal controls over financial reporting. That law has nothing to do with the myriad topics addressed by this Rule outside the realm of financial management, and OMB's cursory citation to § 503 in the Rule's preamble is insufficient to suggest otherwise. Congress granted the authority to substantively regulate federal programs to the agencies that administer those programs, not to OMB.

The structure of § 503 also confirms this understanding of "financial management." Subsection (a)(2), on which OMB primarily relies, 91 Fed. Reg. at 32,201, is part of a long list of powers that Congress granted to OMB, all of which are limited to financial or fiscal topics (rather than relating to federal grants policy generally, let alone all federal policy). For example, OMB has authority to review budget requests for financial management system and operations, review budget and legislative proposals, monitor the financial execution of the budget, oversee the administrative structure agencies' financial management activities, develop standards for agency chief financial officers, and similar topics. 31 U.S.C. § 503(a). It would violate a standard canon of statutory construction to ascribe a "broad" meaning to § 503(a)(2) that is "inconsistent" with the other duties described in that statute. *Yates v. United States*, 574 U.S. 528, 543 (2015) (describing the canon of *noscitur a sociis*, i.e., a word is known by the company it keeps).

That reading of § 503 is also consistent with constitutional limits on the Executive's power to control federal spending—a power expressly assigned to Congress—as well as the statutory framework Congress created in the Antideficiency Act and Impoundment Control Act. Those statutes create a carefully designed framework governing the circumstances under which the Executive Branch may rescind an appropriation or delay spending federal funds. It is implausible that Congress effectively repealed that framework by granting OMB the unfettered power to control federal spending in the ways this Rule contemplates.

OMB's contrary statutory interpretation—that § 503 grants it authority to regulate any policy area relating to any federal funding program administered by any agency—is far too thin a reed to support the weight of the Rule and would violate the major questions doctrine. OMB's Rule plainly implicates matters of vast economic and political significance, because it would regulate hundreds of billions of dollars in federal funding implicating major programs relating to health, education, social services, defense, scientific research, and the arts. OMB does not (and cannot) point to any clear statutory language indicating that Congress ever intended it to have such vast power.

Other Authorities. The other authorities on which OMB relies provide even less support for OMB's purported rulemaking authority. 31 U.S.C. § 6307 authorizes OMB to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements[.]" In administrative law, courts understand the phrase "interpretative guidelines" to mean non-binding interpretive guidance rather than binding regulations that "create new rights, impose new obligations, or change the existing law." *Equity in Athletics, Inc. v. Dep't of Educ.*, 639 F.3d 91, 105 (4th Cir. 2011); *see also Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000) (noting that agency "guidelines . . . lack the force of law"). No court nor OMB itself has ever relied on 31 U.S.C. § 6307 to issue binding rules like the one proposed here.

Next, OMB cites an additional laundry list of statutes and one executive order in a single paragraph of the Rule's preamble, with barely any mention of those statutes for the remainder of the Rule. 91 Fed. Reg. at 32,201–02. All of these authorities grant OMB even more limited authority over specific, technical aspects of financial management policy (or do not grant OMB authority at all). None, whether taken alone or viewed collectively, can plausibly justify this Rule. To address them in turn:

- Single Audit Act Amendments of 1996, Pub. L. 104-156, codified at 31 U.S.C §§ 7501–7507: This law concerns audits and gives OMB authority to issue "guidance" in explicit contrast to the federal agencies administering grant programs, who may issue "regulations" to conform with OMB's guidance and with the statutory requirements. *Id.* at § 7505(a).
- Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282 (FFATA): This law directs OMB to establish a public website showing information about federal awards for purposes of grant transparency.
- Digital Accountability and Transparency Act of 2014, Pub. L. 113-101: This law expands on the reporting requirements in FFATA by requiring OMB to create government-wide standards for reporting federal award spending data; previously, OMB has implemented this law through the issuance of guidance to other agencies.[8]
- Federal Program Information Act, Pub. L. 95-220 and Pub. L. 98-169, codified at 31 U.S.C. §§ 6101–6106: This law similarly authorizes OMB to "collect and review information on domestic assistance programs."
- Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95-224, codified at 31 U.S.C. §§ 6301–6309: This Act "prescribe[s] 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." 31 U.S.C. § 6301(2). It defines procurement contracts, grant agreements, and cooperative agreements, and explains when those different instruments are appropriate. It does not grant OMB broad rulemaking authority; in fact, as discussed above, it grants OMB only the authority to issue "interpretative guidelines." 31 U.S.C. § 6307(1).
- Office of Federal Procurement Policy Act, Pub. L. 111-350, codified at 41 U.S.C. §§ 1101–1131. This Act primarily concerns federal procurement, not federal financial assistance. The one subsection discussing grant recipients, 41 U.S.C. § 1125, authorizes OMB to promulgate "regulations" regarding "the procurement . . . of property or services . . . by recipients of Federal grants or assistance," which is a narrow authority and significantly

[8] OMB Memorandum M–2016–03, Re: Additional Guidance for DATA Act Implementation: Implementing Data-Centric Approach for Reporting Federal Spending Information (May 3, 2016), https://obamawhitehouse.archives.gov/sites/default/files/omb/financial/memos/management-procedures-memorandum-no-2016-03-additional-guidance-for-data-act-implementation.pdf.

different than authorizing OMB to promulgate regulations governing grants policy generally. Tellingly, Congress knew how to grant OMB regulatory authority when it so desired. And Congress did not do so in the circumstances here.

- Budget and Accounting Procedures Act of 1950, Pub. L. 81-784, codified at 31 U.S.C. § 1101–1126. This Act concerns budget policy and the process for the Executive Branch to compile and submit a budget to Congress.

- Chief Financial Officers Act of 1990, Pub. L. 101-576, codified at 31 U.S.C. §§ 503–504. This Act is discussed above, *supra* III.A.1.

- Trafficking Victims Protection Act of 2000, 22 U.S.C. §§ 7101–7115. This Act concerns a specific policy area—victims of trafficking—and plainly does not authorize the Rule.

- Executive Order 11541, Prescribing the duties of the Office of Management and Budget and the Domestic Council in the Executive Office of the President, 35 Fed. Reg. 10,737 (July 1, 1970): Executive orders cannot independently provide any authority to agencies; only Congress can. *See Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022) ("Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.").

Departure from longstanding OMB practice. Lastly, 2 C.F.R. Subtitle A, known as the Uniform Guidance, has always been "guidance, not regulation." 2 C.F.R. §§ 1.105 (2026). When OMB revised the Uniform Guidance in 2024, it responded to comments by making two fundamental points about OMB's authority with respect to national policy requirements in 2 C.F.R. § 200.300, both of which are at odds with OMB's current position. First, OMB emphasized that:

> [T]he structure of 2 C.F.R. part 200 generally requires Federal agencies to implement all of its provisions, including section 200.300, *consistent with their legal authority and the particular statutes and regulations governing each of their Federal financial assistance programs*.

89 Fed. Reg. at 30,075 (emphasis added). Second, OMB emphasized that:

> [S]ection 200.300 in particular does not impose any new legal requirements. Rather, its scope is limited to explaining that Federal agencies must implement their Federal financial assistance programs consistent with other, *existing* legal requirements that apply of their own force to the agency's programs.

89 Fed. Reg. at 30,075 (emphasis added). OMB failed to provide any explanation for this change in position, as required by the APA.

2. Agencies' formulaic adoption of OMB's Rule is substantively and procedurally improper.

a. The Rule violates agencies' obligations to engage in reasoned decision-making and to provide a meaningful opportunity to comment.

Under the APA, each agency adopting a rule must explain its action and identify the source of its authority such that the public may meaningfully comment. This Rule fails on both counts.

The authority OMB asserts in this Rule is unprecedented, the impact on federal funding is vast, and many specific provisions of the Rule conflict with federal agencies' enabling statutes, as explained below. Despite these significant legal complexities, the forty-one agencies "jointly" issuing this Rule with OMB have provided few, if any, of their own rationales for doing so.[9] Rather, agencies have formulaically proposed to adopt OMB's Rule: the Federal Register notice provides, following OMB's preamble explaining the changes to 2 C.F.R. Subtitle A, "[a]ll participating agencies adopt the common preamble above." 91 Fed. Reg. at 32,233. Only a few agencies—HHS, DHS, EPA, Delta Regional Authority, Federal Permitting Improvement Steering Council, and USAID—have provided "supplemental preamble text." Even these respective supplemental preambles consist of just one or several paragraphs, and they fail to address the vast majority of changes in the Rule.

This framework violates the APA's requirement that agencies engage in reasoned decision-making. It is arbitrary and capricious for one agency to "rubber stamp" another agency's proposal, without "consider[ing] relevant statutory objectives and factors" that are specific to itself. *See Carlson v. Postal Regulatory Comm'n*, 938 F.3d 337, 351 (D.C. Cir. 2019). Here, agencies appear not to have engaged in any independent judgment or analysis of the Rule. Nor have agencies considered the impact on their own programs or any alternatives. This is not only arbitrary and capricious, it also violates notice-and-comment principles because it is impossible for the public to comment on agencies' rationale for adopting the Rule, and their consideration of how the Rule will affect specific funding programs under agencies' enabling statutes, without having that explanation in the first place.

The APA also requires that a notice of proposed rulemaking include "reference to the legal authority under which the rule is proposed." 5 U.S.C. § 553(b)(2). Yet here, agencies have not identified specific statutory authority to implement the Rule's provisions, including ones that will significantly and materially affect how they spend federal dollars and ones that conflict with their own enabling statutes. Most glaringly, many agencies provide as authority to adopt OMB's Rule just two sources—5 U.S.C. § 301 and 2 C.F.R. part 200. *E.g.*, 91 Fed. Reg. at 32,264 (HHS); 32,266 (Agriculture); 32,271 (Treasury); 32,283 (U.S. Agency for Global Media); 32,285 (Social Security Administration); 32,291 (Labor). But 5 U.S.C. § 301 is a "housekeeping" statute with a "narrow" focus: it permits the head of a department to issue rules governing internal agency functions, not "substantive rules." *New York v. U.S. Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475, 520–21 (S.D.N.Y. 2019) (citing *Chrysler Corp. v. Brown*, 441 U.S. 281, 309 (1979)). And

[9] In other instances, Congress has explicitly directed agencies to engage in joint rulemaking. *See, e.g.*, 12 U.S.C. § 5334(b)(1) (directing a set of federal agencies to "jointly issue proposed rules for public comment" about a specific topic). Congress has not done so here.

2 C.F.R. part 200, which in current form is OMB guidance, plainly is not an independent source of statutory authority for agencies. Furthermore, for agencies that have cited additional statutes, the preamble does not describe those statutes or explain how those statutes provide authority to enact the Rule. It is impossible for the public to meaningfully comment under these circumstances.

These procedural defects are exacerbated by the fact that here, agencies are proposing to adopt a Rule—the proposed regulations in 2 C.F.R. Subtitle A—that itself is not yet final. OMB has an obligation to consider public comments made in response to its proposal to transform the Uniform Guidance into binding regulation, and to add significant new provisions. If OMB proceeds with the Rule in some form, presumably OMB would make some changes in response. Thus, agencies are proposing to adopt, in whole or in part, a moving target. This also violates notice-and-comment principles.

b. Agencies also may not adopt the Rule as "policy" without implementing regulations.

The Rule proposes that seven agencies—(a) Denali Commission, (b) Southwest Border Regional Commission, (c) Southeast Crescent Regional Commission, (d) Appalachian Regional Commission, (e) Northern Border Regional Commission, (f) Federal Permitting Improvement Steering Council, and (g) Export Import Bank of the U.S.—need not promulgate their own regulations adopting the Rule but rather have "received approval from OMB to implement the OMB regulations . . . as policy applicable to their Federal awards." 91 Fed. Reg. at 32,241 (proposed 2 C.F.R. § 1.221). OMB's justification for allowing these agencies to use this "alternative implementation method" is that those agencies have "limited rulemaking authorities," but that rationale raises more questions than it answers. 91 Fed. Reg. at 32,209. Most obviously, it is an end run around those agencies' "limited rulemaking authorities." OMB also does not explain what authority these agencies have to adopt the Rule outside the ordinary rulemaking process, and how implementing the Rule as "policy" differs from doing so via rulemaking. This proposed change is ultra vires, vague, and unreasoned, all in violation of the APA.

c. The Rule unlawfully subdelegates authority from agencies to OMB in perpetuity.

In this Rule, agencies have unlawfully ceded power to OMB. As described, agencies have rubber stamped OMB's decision—whatever it turns out to be in the Final Rule— and have failed to consider their own statutory obligations in proposing to adopt, with minimal deviations or explanation, OMB's Rule.

The problem is even worse, though. Under the new Rule, agencies are required to implement 2 C.F.R. part 200, "unless different provisions are required by Federal statute *or are approved by OMB*." 2 C.F.R. § 200.106(b) (emphasis added).[10] Furthermore, after agencies have adopted OMB's Rule, "the process for future updates of [agency] regulations in Subtitle B will be complete each time OMB issues a final rule amending this part." Once again, agencies can only

[10] A version of this requirement appeared in the Uniform Guidance, 2 C.F.R. § 200.106(a) (2026), but that requirement was only guidance, not regulation, and thus did not raise the same concerns as it does under the Rule.

deviate from those changes if required by statute "or otherwise approved by OMB." 2 C.F.R. § 200.110.

Federal agencies may not cede their own statutory authority to other federal agencies in this way. As explained, agencies "possess only the authority that Congress has provided" by statute. *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022). A corollary of that principle is that an agency may not redelegate (or subdelegate) that authority to another agency absent Congressional authority to do so. That is, "[a] general delegation of decision-making authority to a federal administrative agency does *not*, in the ordinary course of things, include the power to subdelegate that authority beyond federal subordinates." *U.S. Telecom Ass'n v. F.C.C.*, 359 F.3d 554, 566 (D.C. Cir. 2004); *see G.H. Daniels III & Assocs. v. Perez*, 626 F. App'x 205, 212 (10th Cir. 2015) (rejecting DOL's delegation of its own authority to DHS in the absence of a statute authorizing it to do so, explaining that "DOL is not a subordinate agency of DHS").

Under the new incorporation-by-reference provision, 2 C.F.R. § 200.106(b), and the binding limitation on agencies' ability to deviate from 2 C.F.R. part 200 absent OMB's approval or a contrary statute, 2 C.F.R. § 200.110, OMB now claims the unilateral authority to control funding programs established by the enabling statutes of other agencies, and administered by those agencies, in perpetuity, unless OMB changes these provisions of the Rule. This is a seismic transfer of agency discretion and decision-making authority away from the agencies that Congress intended to design and operate funding programs—and which house expertise in administering those programs—to the White House. That transfer of authority is unlawful.

Finally, these provisions will make it even harder for the public to comment meaningfully on changes to grants regulations in the future, as applied to particular funding programs, because any changes would be made only by OMB, not by awarding agencies themselves.

3. The Rule's framework for resolving regulatory conflicts is unlawful.

Statutory and regulatory conflicts (2 C.F.R. § 200.101(d)): The Rule creates a new framework for resolving "regulatory" conflicts between 2 C.F.R. subtitle A—which under the Rule is newly binding regulation—and agency-specific regulations governing awards, once a federal agency has adopted the Rule. That framework has two components. First, OMB's regulation in 2 C.F.R. § 200.340—concerning termination of awards—will supersede agency regulations "in any circumstances where they conflict." 2 C.F.R. § 200.101(d)(2).[11] Second, for all other regulations in 2 C.F.R. part 200 where those provisions conflict with existing agency regulations, agencies "should apply the Government-wide policies in [2 C.F.R. part 200] to the greatest extent permitted by law." 2 C.F.R. § 200.101(d)(2). That is a significant change from the status quo, in which agency regulations govern in the case of any conflict with the guidance. 2 C.F.R. § 101(d) (2026) ("Federal statutes or regulations govern in any circumstances where they conflict with the provisions of this part.").

[11] The requirements in subpart F, which are required by the Single Audit Act, *see* 2 C.F.R. § 101(d) (2026), also supersede conflicting agency regulations. This portion of the framework for resolving regulatory conflicts. preexisted the Rule.

This provision is unlawful because it is vague; it violates the *Accardi* doctrine; it requires agencies to unlawfully cede authority over their own funding programs to OMB; it is unreasoned; and it exacerbates problems with the proposed changes to 2 C.F.R. § 200.340.

First, the Rule's statement that agencies "should" resolve all non-§200.340 regulatory conflicts in favor of the OMB Rule "to the greatest extent permitted by law" is vague. The word "should" in common language suggests a recommendation rather than a requirement. That conclusion is reinforced by the context in which it is used here, because the Rule provides that § 200.340 categorically supersedes conflicting agency regulations, whereas § 101, describing the circumstances under which other provisions in the Rule would supersede conflicting agency regulations, is qualified by the word "should" and the phrase "to the greatest extent permitted by law." But the new Rule is meant to be binding, not mere recommendation. It is therefore unclear whether agencies would be free to apply their own conflicting regulations over non-§200.340 provisions of the Rule, and if so, under what circumstances.

Second, the absolute requirement—in cases of conflict with § 200.340—or apparent suggestion—in cases of conflict with other provisions in 2 C.F.R. part 200—that agencies disregard their own regulations violates the *Accardi* doctrine, under which "agencies may not violate their own rules and regulations to the prejudice of others." *Battle v. F.A.A.*, 393 F.3d 1330, 1336 (D.C. Cir. 2005). That doctrine precludes agencies from ignoring their own regulations in favor of OMB's conflicting regulations.

Third, § 200.101(d) as proposed constitutes an unlawful redelegation of authority from federal agencies to OMB, because if the Rule goes into effect, and agencies adopt the Rule, agencies have handed OMB the power to unilaterally alter the termination rules governing their funding programs, notwithstanding any subsequent changes they wish to make to their own agency regulations. *See U.S. Telecom Ass'n*, 359 F.3d at 566. It is unclear what, if any, power agencies will have to "opt out" of § 200.340—or, possibly, other provisions in 2 C.F.R. part 200—in the future.

Fourth, the change is unreasoned. Even assuming OMB has authority to prescribe a mandatory termination provision, or to suggest that agencies disregard their own regulations regarding other provisions, OMB failed to explore the alternative of having federal agencies review their regulations to determine which provisions conflict with Part 200 and revise those regulations to eliminate those conflicts. OMB's failure to consider this alternative places the burden of parsing potential conflicts between longstanding agency regulations and OMB's Rule on recipients. OMB did not address that burden in its cost-benefit analysis or in considering the change.

Finally, the proposed changes to 2 C.F.R. § 200.340, which would permit termination of grant awards for convenience, are unlawful for the many reasons explained below. *See infra* III.D.1. Requiring § 200.340 to categorically govern in any circumstance where it conflicts with agency regulations severely exacerbates those problems and magnifies their impact.

Exceptions (2 C.F.R. § 200.102): OMB proposes conforming changes to the provision governing exceptions—the circumstances under which federal agencies may deviate from 2 C.F.R.

part 200—making clear that deviations from § 200.340 would no longer be permitted under any circumstances. That change is unlawful for the reasons just articulated.

4. The Rule conflicts with statutory requirements for numerous agencies.

The Rule purports to make binding regulations across dozens of federal agencies without considering the various statutes Congress has enacted requiring those agencies to administer funding in particular ways. In so doing, the Rule ignores and cannot be squared with numerous statutory mandates. The Rule's "priorities" provisions include opposition to so-called illegal DEI, "Gender Ideology," and gender-affirming healthcare for young people, 2 C.F.R. § 200.300, and appear to conflict with dozens of statutes, across a number of agencies, where Congress has specifically directed that federal funding be targeted toward particular groups.[12] And the Rule violates myriad other substantive and procedural statutory mandates. As one example, the Drug-Free Workplace Statute includes in "the authority of the head of an agency" the ability to "waive a suspension, termination, or debarment" and specifically provides that this authority "shall not be delegated." 41 U.S.C. § 8105(b). But that is what numerous agencies have done in adopting wholesale the Rule as a binding regulation, notwithstanding that Congress directed the agencies not to delegate this authority.

Other agency-specific examples are provided below. Each of these examples shows a specific way in which the Rule is contrary to law, in that it appears to contravene a statutory mandate. And by failing to consider these statutory conflicts, OMB and the other implementing agencies acted arbitrarily and capriciously. Further, the conflict between the statutory mandates and the Rule also creates chaos and uncertainty—and as a result, additional burden—for grant recipients, which is another cost OMB and the other agencies did not consider in adopting the Rule. These examples also provide additional support for the principle Congress never provided nor intended for OMB to have the authority it now claims.

The Department of Health and Human Services ("HHS") (2 C.F.R. Parts 300, 376, 382). The majority of HHS financial assistance flows directly into Congressionally-created, mandatory state-administered health programs, including Medicaid, Temporary Assistance for Needy Families ("TANF"), the Community Services Block Grant ("CSBG"), and the Children's Health Insurance Programs ("CHIP"). HHS (much less OMB) has no authority to modify Congress's directives for these programs.

To take one example of an HHS program with which the Rule conflicts, consider TANF. TANF funds are allocated according to a mandatory formula based on the share each state had of TANF funding in 2002. 42 U.S.C. § 603(a)(1). In the TANF statute, Congress limits the process by which HHS can impose any limits on a state's disbursement of TANF funds, 42 U.S.C. § 609; prohibits HHS from cutting more than a quarter of a State's TANF payments, *id.* at § 609(d); and prohibits HHS from "regulat[ing] the conduct of States under" the TANF program "except to the

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[12] Native Americans have a distinct political and legal status in the United States. Tribal Nations are sovereign political entities, and the U.S. Supreme Court has long recognized that federal regulation of Indian tribal affairs is based on political classifications and not on racial classifications pursuant to the seminal case of *Morton v. Mancari*, 417 U.S. 535 (1974). Federally recognized Tribal Nations participate in federal programs not because of DEI initiatives, but based on their political status as sovereign governments.

extent expressly provided in this part," 42 U.S.C. § 617. Nonetheless, the Rule would regulate the TANF program in a way that violates these statutory provisions. For example, the revised § 200.339 purports to authorize suspension of TANF funds. The Rule purports to do this notwithstanding that the Southern District of New York just ruled that the Administration's efforts to overwrite TANF's mandatory statutes using the current, *less* stringent version of § 200.339 of the OMB Guidance was contrary to law because it conflicted with the TANF statute. *New York*, 2026 WL 673848, at *23 n.11.

Congress also already identified the nondiscrimination provisions that can be applied to TANF. 42 U.S.C. § 608(d). Acknowledging this, HHS has historically exempted TANF from its regulations incorporating broader antidiscrimination requirements for other programs. *See* Health and Human Services Grants Regulation, 81 Fed. Reg. 45,270, 45,271 (July 13, 2016). The Rule's section 200.339, which sets forth remedies for non-compliance when awardees "fail[] to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award," is far more expansive than the antidiscrimination provisions identified in the TANF statute and appear to conflict with 42 U.S.C. § 608(d).

The CSBG statutes also provide specific procedures for when a State can determine noncompliance, which the Rule's changes in § 200.332—expanding agency authority over terminations of subrecipient grants—would override. These statutes also provide for permissible grassroots partnerships with local law enforcement agencies, which could conflict with provisions in the rule that limit costs based on policy priorities. 42 U.S.C. § 9908.

The United States Agency for International Development ("USAID") (2 C.F.R. Parts 700, 701, 780, 782). The Rule would delete 2 C.F.R. Chapter VII entirely. In other words, it would remove the mechanism by which USAID awards federal funding. The Rule states that "[t]his change reflects recent Executive Branch actions to realign foreign assistance functions and responsibilities." This part of the Rule appears to be the latest step in the Administration's effort to effectively abolish USAID by eliminating all of its functions (or transferring them to other agencies) and impounding its funding. But USAID is a Congressionally established independent agency, and abolishing it would require Congressional action. *See* 22 U.S.C. § 6553. Thus, this change, by definition, violates each of the statutes that Congress enacted to create USAID and its mandate. Neither OMB, nor USAID or any other agency has any authority to destroy USAID's ability to award funds as directed by Congress. It is unlawful for the Rule to fail to analyze how its proposed deletion is consistent with Congressional mandates.

Corporation for National and Community Service (AmeriCorps) (2 C.F.R. Parts 2200, 2205, 2245): Several of the Rule's provisions conflict with various parts of the AmeriCorps statute. For example, Congress explicitly provided States discretion in selecting subgrantees. *See* 42 U.S.C. § 12572(f)(1). The national policy priorities and centralized political review of grant programs likely conflict with the statutory requirement that States retain discretion in deciding how to spend AmeriCorps funds. Additionally, AmeriCorps must provide "advance notice to potential applicants of any national service priorities to be in effect" including a description of any alteration made in the priorities since the previous notice. 42 U.S.C. § 12572(f)(2). Similarly, AmeriCorps must, through regulation, "ensure the equitable treatment of national service programs" that receive multi-year funding and would be "adversely affected by annual revisions in such national service priorities." *Id.* at § 12572(f)(3). To the extent the part 200 amendments apply new policy priorities to AmeriCorps grants programs, AmeriCorps must do so only as consistent with these statutory requirements, but its unqualified adoption of the Rule fails to do so.

Department of Education (2 C.F.R. Part 3474, 3485). The new policy conditions imposed by the Rule exceed and conflict with statutes that limit the Department of Education's ("ED") authority and generally bar federal control of education. In particular, the General Education Provisions Act, 20 U.S.C. § 1232a, the Department of Education Organization Act (DEOA), 20 U.S.C. § 3403, and the Every Student Succeeds Act, 20 U.S.C. § 7907, forbid federal officers and agencies from directing or controlling various elements of education, including the content of curriculum, hiring, and specific programs. Sections 200.205 and 200.300 would restrict the use of federal funds in "endors[ing]," "advocat[ing]," or teaching particular ideas, such as the so-called "chosen" or "mutable" nature of sex or gender identity or vaguely defined "anti-American values." Courts have held unlawful similar attempts by this Administration to insert such policy objectives into school curricula. *See Am. Fed'n of Tchrs. v. Dep't of Educ.*, 796 F. Supp. 3d 66, 109–111 (D. Md. 2025).

The Rule also conflicts with statutory requirements that recipients of ED funding conduct disparate impact analyses. The proposed changes to 2 C.F.R. § 200.218 provide that "[t]o the maximum extent permitted by law, to avoid violating the Constitution and Federal civil rights laws, recipients and subrecipients must . . . [n]ot adopt, issue, or enforce disparate-impact liability standards in administering programs or activities supported by a Federal award." However, several ED grant programs require the States to conduct a disparate-impact analysis or to assess whether program implementation is equitable. For example, the Individuals with Disabilities Education Act requires States to conduct a disparate-impact analysis with respect to children with disabilities, 20 U.S.C. § 1418(d), 34 C.F.R. § 300.646; and the Every Student Succeeds Act requires States to develop a State Plan describing how the State will ensure that minority children enrolled in Title I schools are provided with equitable teaching resources. 20 U.S.C. § 6311(g)(1)(B). It is not clear how a recipient can navigate these statutory requirements with a competing, maximalist disparate-impact prohibition.

Finally, the Rule as proposed violates statutorily required procedures as to certain subsets of ED's programs—negotiated rulemaking—and provides for adoption of future regulations without the same process. *See infra* III.A.5.e.

5. The Rule is procedurally improper.

a. Forty-five days does not provide a meaningful opportunity to comment on this Rule.

Given the massive implications of the Rule, along with its technical complexity and broad scope, the public requires at least sixty days to comment. The States requested a 15-day extension of time to comment on this Rule, but OMB denied that request. As explained in that letter and for the reasons below, 45 days is an insufficient amount of time to meaningfully comment on the Rule. *See* Regulatory Planning and Review, § 6(a), Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993) ("[A] meaningful opportunity to comment . . . in most cases should include a comment period of not less than 60 days.").

First, OMB has identified this Rule as a "significant regulatory action" under Executive Order 12866. 91 Fed. Reg. at 32,235. If finalized, OMB says the Rule will be applied to all federal financial assistance for awards issued after October 1, 2026. It has invited comment on "reliance interests" based on the existing guidance and regulations governing grantmaking. 91 Fed. Reg. at 32,235. Furthermore, the way this Rule impacts particular programs administered by particular agencies will differ. The Rule's significant effect warrants at least a 60-day comment period.

Second, when considering the adequacy of comment periods for regulatory repeals or delays, "courts have considered the length of the comment period utilized in the prior rulemaking process as well as the number of comments received during that time-period." *California by & through Becerra v. U.S. Dep't of the Interior*, 381 F. Supp. 3d 1153, 1176–77 (N.D. Cal. 2019). In its prior changes to the Uniform Guidance, OMB has offered the public more than 45 days to comment. The 2020 and 2024 revisions each carried 60-day comment periods, *see* 85 Fed. Reg. 3,766 (Jan. 22, 2020), 88 Fed. Reg. 69,390 (Oct. 5, 2023); and the 2024 cycle followed a request for information, 88 Fed. Reg. 8,480 (Feb. 9, 2023). Likewise, the original 2013 guidance followed a 2012 advance notice, 77 Fed. Reg. 11,778 (Feb. 28, 2012), and afforded a 90-day comment period that OMB extended to roughly 120 days, 78 Fed. Reg. 7,282 (Feb. 1, 2013), 78 Fed. Reg. 17,300 (Mar. 21, 2013). Furthermore, OMB has not adequately explained its departure from its previous practice in shortening the comment period here. That is itself indicative of arbitrary action, *Fox*, 556 U.S. at 515–16.

b. The Rule is a "major rule" under the Congressional Review Act.

If OMB finalizes this Rule in substantially the same form as the proposal, it will be a major rule for Congressional Review Act purposes because its effect on the economy will be more than $100 million. *See* 5 U.S.C. § 804(2). The government could not plausibly assert otherwise: the Rule's provisions would become the terms for federal awards to universities, States, local governments, hospitals, and nonprofits, in programs through which the federal government obligates more than $1 trillion in grants and cooperative agreements each year. The Rule changes both which applicants are funded and the conditions under which funds may be spent: it requires pre-issuance merit and risk review of discretionary awards by senior appointees, authorizes discretionary termination for convenience and a new 90-day suspension, adds cross-cutting national-policy conditions, and revises the cost principles to make publication and printing costs unallowable and to restrict conference and membership costs.

In fact, OMB's Regulatory Impact Analysis confirms that this is a major rule. The Regulatory Impact Analysis concludes that the rule produces "qualitative benefits, modest administrative costs, and minimal transfer effects"; yet, the same analysis estimates that proposed section 200.461 alone, which would make publication and printing costs unallowable, will reduce transfers by "around $300 million per year," a figure three times the $100 million threshold.[13] OMB inconsistently estimates an impact of $300 million annual transfer effects while

[13] OMB, Regulatory Impact Analysis for the Regulation for Federal Financial Assistance 17–18 (2026), Dkt. No. OMB-2026-0034-0038, https://www.regulations.gov/document/OMB-2026-0034-0038.

simultaneously declining to designate the rule economically-significant or major and calling its transfer effects "minimal."[14]

Nevertheless, OMB has declined to make the major-rule or economically-significant determination its own analysis supports, which is improper. Because it is a major rule, OMB also must include at least a 60-day period between publishing the Rule and its effective date. 5 U.S.C. § 801(a)(3). However, OMB states that it is targeting an effective date of October 1, 2026—in other words, OMB apparently plans to promulgate the final rule on August 1, leaving virtually no time for OMB to read and respond to roughly 300,000 comments.

c. **The Rule's regulatory impact, regulatory flexibility, and federalism analyses are deficient.**

Initial Regulatory Impact Analysis ("IRIA"): OMB acknowledges that its Rule is a "significant" rule under EO 12866 and includes an IRIA. At the outset, the IRIA appears deficient on its face because OMB analyzes only the proposed changes to 2 C.F.R. part 200, even though OMB proposes changes to many other parts of 2 C.F.R. IRIA at 1. Also, the IRIA must include an assessment and a *quantification* and *monetization* of benefits and costs anticipated to result from the proposed action and from alternative regulatory actions.[15] OMB acknowledges, however, that it "was unable to quantify" the expected costs *or* benefits of the Rule, pointing to amorphous "data limitations" in one system—USASpending.gov. IRIA at 17. Such a punt could be expected for a regulation involving some difficult-to-quantify subject matter but simply is beyond credulity in the realm of federal financial assistance, which fundamentally is quantified and quantifiable.

OMB fills its regulatory "analysis" with words largely devoid of substance that would allow commenters to assess the Rule's likely effects. For example, having acknowledged its failure to quantify costs or benefits, OMB speculates that its Rule may have "minimal to modest costs" to federal agencies and (absurdly) "minimal to modest to substantial short-term costs for recipients. . . ." IRIA at 17.[16] OMB posits this comically broad range despite having access to *decades* of grant-specific data in numerous federal systems and the analytical might of at least a *dozen* federal statistical agencies at its disposal. OMB also *entirely* fails to consider effects below the recipient level despite the Rule directly imposing requirements on subrecipient entities. OMB's failure to even *attempt* to make a quantitative analysis available for public comment, on a rulemaking affecting *all* federal financial assistance nationwide impermissibly shortcuts a full public vetting of the Rule.[17] These omissions render the IRIA (including its qualitative analysis to the extent that

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[14] *Id*.

[15] *Regulatory Impact Analysis: A Primer*, https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf; Executive Order 13563 requires agencies "to use the best available techniques to *quantify* anticipated present and future benefits and costs as accurately as possible." (emphasis added).

[16] Similarly, OMB concludes, without elaboration, that "These proposed changes are expected to improve financial transparency, increase accountability, and strengthen oversight" mentioning the goal and benefit of "transparency" *thirteen* separate times, though *none* with any elaboration, leaving commenters bereft of substance or data on which to meaningfully comment.

[17] For example, OMB expressly acknowledges that it did not analyze the "financial impact of subaward oversight and payment justification requirements" that it proposes to impose. *See* IRIA at 29 ("Current datasets do not reliably capture the impact of subaward oversight and payment justification requirements[.]")

merely reflects OMB's speculation unsupported by quantitative data) and any subsequent final agency action based upon it, absent a supplementary comment period, legally defective.[18]

Initial Regulatory Flexibility Analysis ("IRFA"): OMB asserts that its rule will not have a significant economic impact on a substantial number of small entities. OMB's assumption underlying this assertion, however—that it does not directly regulate such entities—is patently incorrect: Its Rule purports to *directly* regulate subrecipient and pass-through entities, requiring them to collect new or different data, undertake new oversight obligations, and update their electronic information systems. Many subrecipient and pass-through entities *are* small entities.[19] The case that OMB cites for the proposition that it would not directly regulate these entities via its Rule stands for the opposite: In *Nat'l Women, Infants, & Child. Grocers Ass'n v. Food & Nutrition Serv.*, 416 F. Supp. 2d 92, 109 (D.D.C. 2006), the court found dispositive that the regulation at issue spoke directly to "states," not small business entities. The Rule, in contrast, *does* speak directly to "recipients," "pass-through entities," "subrecipients" and "contractors [under a federal award]"—imposing requirements on entity categories that unequivocally include numerous small entities.

Perhaps hedging against its misleading threshold analysis, OMB provides an Initial Regulatory Flexibility Analysis ("IRFA"). This IRFA, however, is deficient in various ways and does not reflect a "good-faith effort to carry out the RFA's mandate." *Cf. Nat'l Women, Infants, & Child. Grocers Ass'n*, 416 F. Supp. at 108 (quoting *United States Cellular Corp. v. Fed. Communications Comm'n*, 254 F.3d 78, 88 (D.C. Cir. 2001)). OMB *entirely* omits small entities below the recipient level from its analysis, even though the Rule *directly* regulates subrecipients and contracts under awards (both of which include small entities) in numerous provisions.[20] This glaring omission materially and enormously understates the impact on small entities. Also, an agency must provide "a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule" and may rely on "more generally descriptive statements" only "if quantification is not practicable or reliable." 5 U.S.C. § 607. Federal grants are quintessentially quantifiable, and thus OMB's failure to quantify the effects of its proposal for purposes of its IRFA is contrary to law.

Moreover, like the IRIA, the IFRA addresses only the changes to Part 200, not the full scope of OMB's proposal, and thus must be cured and repromulgated for comment.[21] OMB in its IRFA vaguely alludes, without substantive analysis, to the effects of its Rule – *e.g.*, as requiring small entities "to adjust" and that its changes "may require updates" and revisions, and "additional compliance reviews" and to "adjust hiring and verification processes." IRFA at 3. OMB erroneously asserts that the Rule would not require "reporting systems, or capital investments." *Id.* at 4. But compliance with OMB's proposed new payment accountability requirements would do

[18] *See Window Covering Mfrs. Ass'n v. Consumer Prod. Safety Comm'n*, 82 F.4th 1273, 1288 (D.C. Cir. 2023) (a "serious flaw" in a cost-benefit analysis may "warrant vacatur on arbitrary and capricious grounds").

[19] OMB's decision to promulgate 2 C.F.R. as a binding regulation, instead of mere internal federal guidance, requires OMB—the issuing agency—to conduct the requisite regulatory analysis. Alternatively, if OMB were to assert that it is merely regulating the federal implementing agencies (a position belied by the proposed regulatory text), the implementing agencies must conduct the requisite IRFA—none have.

[20] *E.g.*, §§ 200.112, .303, .320, .324, .329. .334, .336, .340.

[21] Also, for the covered agencies under 5 U.S.C. § 609, OMB must take certain actions under section 609(b), *prior* to publication of the initial regulatory flexibility analysis. OMB has not done so.

just that: they would require thousands of small entities, across the entire country, to use a new reporting system to provide a justification for every federal payment.[22] Finally, OMB's SBIA does not so much as attempt to substantively engage in an analysis of alternatives to its proposed requirements, noting that "OMB did not identify significant alternatives…." IRFA at 4.[23]

Furthermore, the Regulatory Flexibility Act requires federal agencies to assess the impact of a rule on small entities, engage with the small entities, and consider alternatives. 5 U.S.C. §§ 601–612. By mischaracterizing the Rule's nature as simply "applicable to Federal agencies," OMB failed to engage with the rule's impact on small entities as Regulatory Flexibility Act requires.[24] In the "Small Entity Analysis," OMB lists new obligations the rule places on small entities, including revised subrecipient monitoring and documentation, written justifications for payment requests, Do Not Pay screening, pre-payment verifications by States, foreign-collaboration compliance reviews, and E-Verify enrollment for award employees and contractors.[25] It then concludes that the rule has no significant economic impact because it "does not impose new fees, reporting systems, or capital investments."[26] Written payment justifications and E-Verify enrollment are plainly new reporting and verification systems. OMB's analysis reaches small governmental jurisdictions directly, defining them to include "[l]ocal governments with populations under 50,000, including cities, counties, towns, townships, villages, school districts, and special districts," and U.S. territories, while conceding that its count of affected nonprofits is "a lower bound" and that it is "unable to estimate" the number of affected small governments beyond the counties it sampled.[27] That the analysis reaches these recipients directly defeats OMB's reliance on *Nat'l Women, Infants, & Child. Grocers Ass'n* for the proposition that indirectly affected small entities are not owed consideration under the Regulatory Flexibility Act. 416 F. Supp. 2d 92 at109–10 (D.D.C. 2006); *see* 91 Fed. Reg. at 32,235 (citing *Nat'l Women, Infants, & Children Grocers Ass'n*). The school districts, municipalities, and small nonprofits the analysis itemizes for this Rule are directly subject to the rule's award terms, unlike the downstream grocers in the cited case.

Federalism Implications. OMB has also failed to adequately address the federalism implications of the Rule as required by Executive Order 13132. OMB states that the Rule warrants no federalism consultation because 2 C.F.R. is "inherently national in scope and significance." 91 Fed. Reg. at 32,235; *see* Exec. Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 10, 1999) (placing conditions on rulemaking with Federalism Implications). That conclusion is, at best, inadequately

[22] *See* proposed 2 C.F.R. § 200.305(c) (acknowledging need for federal agencies to implement electronic systems that allow for new payment justification data and imposing the same payment justification requirements—and thus need for electronic system changes (likely requiring procurement, capital investments, staff training, and policy/procedural changes) directly on thousands of pass-through entities and subrecipients).

[23] "At a minimum, agencies should compare, with their preferred option, a more stringent and less stringent alternative, and assess the benefits and costs of the three possibilities . . . ." *Regulatory Impact Analysis: A Primer*, at 4.

[24] Proposed 2 C.F.R. § 1.100(a); *see* 91 Fed. Reg. at 32,235, 32,241.

[25] OMB, Initial Regulatory Flexibility Analysis (Small Entity Analysis) for the Regulation for Federal Financial Assistance § 4, Dkt. No. OMB-2026-0034-0006, https://www.regulations.gov/document/OMB-2026-0034-0006; *see* 91 Fed. Reg. at 32,235.

[26] Small Entity Analysis, § 6 (concluding the rule "does not impose new fees, reporting systems, or capital investments").

[27] Small Entity Analysis, § 3.

explained for a rule that, by the regulatory flexibility analysis's own account, requires the States to conduct pre-payment verifications and resets the terms on which the States administer pass-through programs and receive federal awards. Elsewhere in this comment, the Rule's "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" are discussed, direct compliance costs are noted, and its non-statutory or even *ultra vires* nature are described, leading clearly to the conclusion that OMB acted without reasoned analysis in determining the rule did not warrant a federalism consultation. 64 Fed. Reg. at 43,255–58.

OMB should designate the rule a major rule and an economically significant action, prepare a regulatory impact analysis that quantifies the costs and transfers it has conceded, and prepare regulatory flexibility and federalism analyses disaggregated by program and agency.

d. The Rule imposes new information collection burdens on recipients while declaring the Paperwork Reduction Act inapplicable.

OMB states in its regulatory-review discussion that the rule "does not contain a new requirement for information collection" subject to the Paperwork Reduction Act. 91 Fed. Reg. at 32,235. Section 200.305(c) creates a requirement for payment requests from recipients and subrecipients "to include justifications describing the purpose of the payment and the specific award-related work it supports," 91 Fed. Reg at 32,223, which OMB's own Regulatory Impact Analysis acknowledges will "necessitate the development of new monitoring systems and financial review procedures," and that recipients "may also need to update voucher submission instructions, provider guidance, and internal review procedures." IRIA at 13. Elsewhere, the Rule requires subaward financial reporting, Do Not Pay screening, pre-payment verifications by States, and E-Verify enrollment. Each is a "collection of information" within the meaning of the Paperwork Reduction Act: a reporting or recordkeeping requirement imposed on ten or more persons, the responses to which are obtained for and used by the awarding agencies. 44 U.S.C. § 3502(3). These requirements would require new or revised systems, workflows, staff training, and documentation practices across sponsored projects, finance, procurement, HR/payroll, subrecipient monitoring, research security, and clinical trial administration.

The Paperwork Reduction Act conditions such collections on steps OMB did not take. OMB did not publish a 60-day notice soliciting comment on the proposed collection, obtain review by OMB's Office of Information and Regulatory Affairs and a control number, demonstrate the collection's necessity, or estimate its burden. Forgoing a serious analysis and declaring the Act inapplicable, OMB performed none of these steps for the Rule's new collections.

The omission has a direct consequence. No person may be subject to penalty for failing to comply with a collection of information that does not display a valid control number, and that protection "may be raised in the form of a complete defense" at any time. 44 U.S.C. § 3512; *see* 5 C.F.R. § 1320.6. A new collection that OMB has not submitted for review, and for which no control number has issued, cannot be enforced against recipients. The mismatch between the Rule's statement that it imposes no new collection and the collections its text imposes is also evidence of the unreasoned decision-making the APA forbids. 5 U.S.C. § 706(2)(A); *State Farm*, 463 U.S. at

43.[28] The payment-justification, subaward-reporting, Do Not Pay, pre-payment-verification, cost-reimbursement justification, and E-Verify requirements are not peripheral to the Rule. They are mechanisms through which it proposes to control disbursements, monitor subawards, and prevent improper payments. Making unenforceable mechanisms mandatory invites inconsistent administration: a recipient that declines to comply incurs no penalty under section 3512, a recipient that complies bears burdens its peers do not, and the awarding agency is left administering a payment-integrity regime with unenforceable requirements.

OMB should withdraw the Rule and, before any final rule takes effect, submit its new information collections for review under the Paperwork Reduction Act by publishing the required 60-day notice, completing review by the Office of Information and Regulatory Affairs, and obtaining control numbers.

e. The Rule violates statutory negotiated rulemaking requirements.

Congress has required several federal agencies to develop program regulations through negotiated rulemaking. The Rule sets binding, government-wide terms for the administration of those programs, yet the phrase "negotiated rulemaking" appears nowhere in the 108-page rulemaking, and OMB's regulatory-review discussion does not mention the requirement. 91 Fed. Reg. at 32,235–36; see *id.* at 32,198–305. A rule that does not acknowledge a statutory procedure governing the programs it reaches has not considered an important aspect of the problem and is procedurally improper.

The Rule's conversion of the Uniform Guidance from guidance that agencies incorporate into their own regulations into a binding OMB regulation is incompatible with negotiated rulemaking. If OMB's terms for award administration apply by default across the negotiated-rulemaking programs unless and until a program agency secures a different result, that violates the requirements of negotiated rulemaking. *See* 2 C.F.R. §§ 1.105(c), 200.101(d)(2), 200.106(a); 91 Fed. Reg. at 32,241, 32,245–46. Negotiated rulemaking makes negotiation a precondition to regulating these programs; but the Rule makes OMB's terms the operative regulation first and relegates negotiation to a later, optional exception.

For example, the Federal TRIO Programs and the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) are discretionary grant programs authorized under Part A of Title IV of the Higher Education Act that fund pre-college outreach, academic instruction, and student support services for low-income and first-generation students.[29] ED has stated that Title IV's rulemaking procedures "clearly appl[y] to all Title IV programs," and that the GEAR UP regulations were "drafted subject to the negotiated rulemaking process required by section

[28] The States raise the defect to preserve the protection of 44 U.S.C. § 3512 and because the omission bears on the adequacy of agency decision-making.

[29] The Federal TRIO Programs are authorized under section 402A of the Higher Education Act, 20 U.S.C. § 1070a-11, and implemented at 34 C.F.R. parts 642–647. GEAR UP is authorized under sections 404A–404H of the Higher Education Act, 20 U.S.C. §§ 1070a-21 to 1070a-28, and implemented at 34 C.F.R. part 694.

492."[30] Negotiated rulemaking was also used to revise the TRIO and GEAR UP regulations when it implemented the Higher Education Opportunity Act of 2008.[31]

The Rule would immediately conflict with negotiated regulations. The negotiated GEAR UP regulations cap the rate a State or local grantee may charge GEAR UP funds at the lesser of its federally negotiated rate or eight percent, and they do so "notwithstanding . . . 2 C.F.R. part 200, subpart E."[32] That cap is a product of the section 492 negotiated rulemaking, written to control *over* the Uniform Guidance. The Rule reverses that order: agencies "must implement" subparts A through F "unless different provisions are required by Federal statute or are approved by OMB," and the Uniform Guidance becomes the default in any non-statutory regulatory conflict.[33] Because the eight-percent cap is regulatory, not statutory, the negotiated provision would require OMB approval under the Rule. The same conflict exists in allowable activities: the GEAR UP regulations authorize grantees to fund "professional development opportunities" for those working with eligible student cohorts,[34] while the Rule makes the cost of attending a conference allowable "only if . . . expressly approved by the Federal agency and included in the terms and conditions of the . . . award."[35]

Comparable requirements govern other federal assistance programs, including the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5328(d); *see* 25 C.F.R. pt. 900 (regulations developed through negotiated rulemaking); the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. § 4116(b)(2); 24 C.F.R. pt. 1000; and Title I of the Elementary and Secondary Education Act, 20 U.S.C. § 6571(b); see *id.* § 6572(a).

B. The Rule Unlawfully Imposes the President's Policy Priorities.

The Rule unlawfully attempts to impose the President's priorities on all federal grantmaking, even if contrary to those set by Congress.

Statutory and National Policy Requirements (2 C.F.R. § 200.300). The new § 200.300 requires agencies to consider various Administration policy priorities in the administration of

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30 Gaining Early Awareness and Readiness for Undergraduate Programs, 65 Fed. Reg. 24,760 (Apr. 27, 2000) (stating that the proposed regulations were "drafted subject to the negotiated rulemaking process required by section 492 of the" HEA and that section 492 "clearly applies to all Title IV programs").

31 See High School Equivalency Program and College Assistance Migrant Program, the Federal TRIO Programs, and Gaining Early Awareness and Readiness for Undergraduate Program, 75 Fed. Reg. 13,814 (proposed Mar. 23, 2010) (regulations for the TRIO and GEAR UP programs developed through the Department's negotiated rulemaking committee), adopted as final rule, 75 Fed. Reg. 65,772 (Oct. 26, 2010).

32 4 C.F.R. § 694.11 (capping the indirect cost rate a State or local government may charge to GEAR UP funds at the lesser of its federally negotiated rate or eight percent of modified total direct costs, "[n]otwithstanding . . . 2 C.F.R. part 200, subpart E—Cost Principles"). The cap was promulgated through the section 492 negotiated rulemaking and has remained in force since. *See* 65 Fed. Reg. 24,760 (Apr. 27, 2000); 75 Fed. Reg. 65,798 (Oct. 26, 2010) (redesignation).

33 Proposed 2 C.F.R. §§ 200.106(a), 200.101(d)(2); 91 Fed. Reg. at 32,245–46 (requiring agencies to implement subparts A through F "unless different provisions are required by Federal statute or are approved by OMB" and making the Government-wide policies the default presumption in non-statutory regulatory conflicts).

34 34 C.F.R. § 694.23(b) (authorizing State GEAR UP grantees to use grant funds for "professional development opportunities to individuals working with eligible cohorts of students"); *see* 75 Fed. Reg. 65,802 (Oct. 26, 2010) (promulgated through the section 492 negotiated rulemaking implementing the Higher Education Opportunity Act).

35 Proposed 2 C.F.R. § 200.432(b); 91 Fed. Reg. at 32,262.

federal grants. These priorities include opposition to "DEI," "Gender Ideology," and gender-affirming healthcare for young people. These provisions are unlawful and addressed in the following section. *See infra* III.C.1.

Program Planning and Design (2 C.F.R. § 200.202). In section 200.202, OMB proposes additional political factors that must be considered by Federal agencies. The existing provision covers routine program design purposes to ensure they are efficient and that they achieve *Congress's* intended goals. But under the Rule, agencies are empowered to blacklist disfavored nonprofit organizations by restricting eligibility of certain categories of nonprofits, without having to list every type of ineligible organization. 2 C.F.R. § 200.202(d). Agencies must also ensure that grant funds are not used to "promote, subsidize, or support" what the Administration deems "political activities," among other things that may "create the appearance of supporting such prohibited activities." 2 C.F.R. § 200.202(c).

Federal agency merit review of proposals (2 C.F.R. § 200.205). In section 200.205, OMB proposes to impose a new "pre-issuance" review process as part of the existing merit review process for evaluating grant proposals. Pre-issuance review would give senior political appointees broad powers to deny discretionary grant awards to recipients and projects of their choosing. This change is supposedly designed to implement Executive Order 14,332, *Improving Oversight of Federal Grantmaking* (Aug. 7, 2025).[36] The pre-issuance review may form the basis for an agency's decision not to select a particular proposal. Under the new regulation, all agencies would be required to designate a senior political appointee (or multiple) to review all discretionary awards to ensure they are "consistent with applicable law, Federal agency priorities, and the national interest." 2 C.F.R. § 200.205(b).

As part of this process, the appointee is required to evaluate eight policy-based "principles" (essentially a collection of requirements, prohibitions, and preferences) reflecting the Administration's policy priorities, including opposition to "racial preferences," "denial … of the sex binary"; "illegal immigration," or "any other initiatives that compromise public safety or promote anti-American values." 2 C.F.R. § 200.205(b). As detailed further *infra*, OMB does not have the statutory authority to impose such conditions at all, much less across most of the government. It is particularly egregious that OMB has not expressly exempted mandatory funding programs from this requirement. And it would be remarkable (and strain credulity) if Congress intended to hide this massive policymaking authority in OMB's financial management statutes. Because this provision is contrary to Congress's statutes and far beyond OMB's authority, it is unlawful for numerous reasons.

These "principles" are also all vague and ambiguous in various ways, and are unlawful to the extent that they do not provide applicants with notice of what would be required to pass pre-issuance review. Because they are vague, they are susceptible to being applied in arbitrary ways and in ways that would override a competitive selection process or more specific and well-defined statutory criteria that Congress intended to govern award selection.[37] The "principles," in some

[36] Exec. Order No. 14322, 90 Fed. Reg. 38,929 (Aug. 7, 2025).

[37] As the Supreme Court has explained, "[u]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public

cases, would functionally constitute eligibility criteria or restrictive conditions. Each "principle" has substantial defects:

- The "principle" in (b)(1) does not explain what "policy priorities" apply or how an applicant would "demonstrably advance" those.

- The "principle" in (b)(2) would broadly restrict the use of discretionary awards to fund, promote, encourage, subsidize, or facilitate various activities the Administration opposes for policy reasons. It thus seeks to embed the Administration's heavily disputed policy views on racial anti-discrimination principles, gender identity, immigration, and "initiatives that compromise public safety or promote anti-American values." None of the restricted activities are adequately defined and thus are vague and ambiguous, and some have been held unconstitutional or otherwise unlawful, vacated, and/or enjoined. *See infra* III.C.1.

- The "principle" in (b)(3), favoring entities with comparatively lower indirect cost rates, is, as explained below, vague, arbitrary, and unreasoned. *See infra* III.F.1.

- The "principle" in (b)(4), that "discretionary awards should be given to a broad range of recipients" and that "[r]esearch grants should be awarded to a mix of recipients likely to produce immediately demonstrable results and recipients with potential longer-term, breakthrough results, in a manner consistent with the notice of funding opportunity[,]" while perhaps merely hortatory, is nevertheless unduly vague and subject to abuse in its reference to a "broad range of recipients." Similarly, the preference (applicable to research grant recipients) is ambiguous in its reference to "immediately demonstrable results" and "potential longer-term, breakthrough results." Moreover, this provision also exceeds OMB's authority by purporting to prescribe government-wide research policy priority criteria. Also, OMB does not take into consideration statutorily vested authorities exercised by certain science and research agencies.[38]

- The "principles" in (b)(5), (6), and (7), among other things, set forth an ambiguous directive regarding "Gold Standard Science," which the Rule does not define. Overall, these three principles are unduly ambiguous,[39] and not reasonable or reasoned.[40] To the

policy." *Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 669 (1985); s*ee also Office of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990).

[38] *See e.g.*, Pub. L. No. 81-507, Sec. 2 (42 U.S.C. 1861) (National Science Foundation); 34 U.S.C. 10122 (vesting authority in the Director of the National Institute of Justice – not OMB – with "final authority over all grants, cooperative agreements, and contracts awarded by the Institute.").

[39] *E.g.*, (b)(5) requires reviewers to "apply the [] principle[]" that applicants "should commit" to complying with administrative "policies, procedures, and guidance" respecting "Gold Standard Science" in performing activities under the award but does not specify how agencies would demonstrate such commitment nor identify what "policies, procedures, or guidance" are applicable.

[40] *E.g.*, (b)(6) directs that "Discretionary *awards* should include benchmarks for measuring success and progress" and "awards pertaining to scientific research" should include "a commitment to achieving Gold Standard Science."[40] This directive to federal agency officials regarding the content of *awards* is nonsensical in a section on pre-issuance review because there is not yet any award at that stage. Moreover, the provision overlaps with existing requirements

extent that the provisions derive from the 2025 Executive Order, "Restoring Gold Standard Science," they would politicize research and threaten the integrity of scientific work done by institutions that rely on federal dollars.[41]

- The "principle" in (b)(8) merely references sections 200.202(c) (proposed section emphasizing compliance with use-of-funds restrictions and setting out new limits on "political advocacy, lobbying, or any attempt to influence legislation, elections, or government officials") and 200.300 (statutory and national policy requirements), which are themselves unlawful. Presumably the intent is that the reviewer would "apply the [] principles" in these sections, though this provision as drafted is, again, unduly vague and thus such a review would be arbitrary and capricious.

Finally, OMB has failed to analyze the cost and time burden of this change, both on reviewing officials and applicant entities. Such pre-issuance reviews in the context of only one agency, DHS, led to months of delays, creating chaos for state budgets and endangering public safety.[42] Expanding this failed approach government-wide requires a careful and realistic assessment of costs and benefits, which has not been conducted here.

Notices of funding opportunities (2 C.F.R. § 200.204). The changes to section 200.204 centralize the grant notice and application process and operate in tandem with the new pre-issuance review process outlined in section 200.205. They give OMB a tighter grip over discretionary awards and remove references to groups that are disfavored by this Administration.[43]

Specifically, the changes require all agencies to post NOFOs for discretionary awards on Grants.gov and require applicants to apply using Grants.gov, unless an exception from a statute or from the agency head applies. One of these exceptions is for national security or more broadly where doing so is in the "national interest." The changes would also create a new process for NOFOs that will receive a large volume of applications or that are long and complex: OMB "strongly encourage[s]" agencies to ask for a Statement of Interest (SOI), a short pre-application submission of a few pages, summarizing the "project concept, objectives, and anticipated approach." Agencies would then review the SOI according to the criteria in section 200.205—which criteria raise numerous concerns—to determine which applicants should submit full proposals.

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in Part 200 for performance measurement. It also is vague in its references to "awards pertaining to scientific research" and "a commitment to achieving Gold Standard Science." (emphasis added).

[41] *E.g.*, Nany Krieger, *Challenging the Administration's Weaponized and Lethal "Gold Standard Science"*, Health Affairs (Nov. 18, 2025), https://www.healthaffairs.org/content/forefront/challenging-administration-s-weaponized-and-lethal-gold-standard-science.

[42] Nicole Sganga and Camilo Montoya-Galvez, *DHS scraps Noem policy requiring secretary's review of all contracts above $100,000*, CBS NEWS (Apr. 1, 2026), https://www.cbsnews.com/news/dhs-scraps-noem-policy-approval-100000-contracts/

[43] The existing NOFO provision requires agencies to identify "all eligible applicants" for a grant, including "different types of nonprofit organizations such as labor unions and tribal organizations"), and to target "underserved communities" and "inexperienced applicants." 2 C.F.R. § 200.204(c)(2) (2026).

C. The Rule Violates Civil Rights Laws and Principles.

1. "DEI," "gender ideology," and attacks on gender-affirming care.

Statutory and national policy requirements (2 C.F.R. § 200.300). This Rule would set global policy conditions relating to supposedly unlawful "DEI," "gender ideology," and transgender healthcare—particularly the provision of gender-affirming healthcare to individuals under the age of 19—on all federal financial assistance. However, no statute empowers OMB or other federal agencies to set such conditions on all federal funding. The Rule is a substantial departure from the current version of 2 C.F.R. § 200.300, which references compliance with the "U.S. Constitution, applicable Federal statutes and regulations," rather than executive orders and other extra-legal policy requirements, as the Rule would require. Furthermore, the proposed conditions are ambiguous, unrelated to the particular programs to which they would apply, and coercive, in clear violation of the Spending Clause. Finally, the APA requires OMB to consider the disruption to reliance interests that these policy conditions would create, but OMB entirely disregards this requirement. Multiple courts have recognized that uniform agency-wide policy conditions such as these run afoul of the APA and Spending Clause. *See Massachusetts*, 2026 WL 1815807, at *15–23; *Illinois*, 801 F. Supp. 3d 75, *California v. U.S. Dept of Transp.*, 808 F. Supp. 3d 291 (D.R.I. 2025); *Massachusetts v. USDA*, 1:26-cv-11396-MJJ (D. Mass. June 25, 2026) ECF No. 72, Mem. of Decision (USDA does not have unlimited discretion to apply policy conditions to federal grants, and the agency is bound by "our nation's Constitution and federal laws"). OMB's attempt to impose these conditions across the entire federal government is similarly unlawful on an even greater scale.

Section 200.300(b) prohibits federal dollars from being used to "fund, promote, encourage, subsidize, or facilitate" three activity categories: "DEI", "gender ideology," and "so-called 'transition'" of a "child." But, along with failing to provide clarity on the bounds of these three prohibited categories, OMB does not define or explain what it means for federal assistance to "promote," "encourage," subsidize," or "facilitate" such activity. This lack of clarity would introduce unconstitutional ambiguity into every federal funding program in violation of the Spending Clause. This lack of clarity not only is unconstitutional but creates substantial disruption to countless programs—reliance interests that OMB wholly ignores. For decades, the undersigned grant recipients have certified compliance with anti-discrimination laws as a condition of receiving federal funds. As a result, they have developed robust procedures to interpret and apply these clear compliance requirements. By representing its policy priorities as purported interpretations of these laws—novel, vague, and confusing interpretations at that—OMB wholly upends this practice across thousands of grants worth tens of billions of dollars. And it does so without any consideration of the reliance interests at stake across innumerable critical programs.

Furthermore, OMB's description of each restricted activity creates additional violations of the Spending Clause and the APA. Section 200.300(b)(1) restricts "diversity, equity, inclusion, and accessibility" (DEIA) policies, principles, or practices, but the agency does not provide a definition of these phrases, providing only examples of what they "include." Indeed, "[a]lmost everyone agrees that the term 'DEI' is a capacious one," which clearly includes some significant "lawful conduct and speech that express important democratic values." *Am. Fed'n of Tchrs. v. Dep't of Educ.*, 796 F.Supp.3d 66, 95 (D. Md. 2025). States administer a wide array of federally supported programs and will be left to the whims of OMB as to what falls within the term "including." And while OMB purports to only bar practices that "violate applicable Federal anti-discrimination laws," explaining that "the proposed text does not expand the scope of applicable statutes," the agency at the same time argues for a new interpretation of such laws, arguing that cases such as *Ricci v. DeStefano*, 557 U.S. 557, 579 (2009), and *Students for Fair Admissions v. President and Fellows of Harvard Coll.,* 600 U.S. 181 (2023), impose new obligations on federal funding recipients, including the wholesale prohibition of "activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation," "imposing race-conscious quotas or objectives under a variety of names, labels, or proxies," or "conducting training sessions that endorse and encourage racial stereotyping and scapegoating, promote unlawful discrimination, or create a hostile environment." 91 Fed. Reg. at 32,220. None of the OMB's cited authorities recognize any such categorical prohibition against such activities.

Furthermore, OMB's proposed interpretation runs afoul of other requirements of federal law. *See, e.g.*, *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F.Supp.3d 716, 744 (N.D. Cal. 2025) ("[B]oth the statutes prescribing AmeriCorps' priorities and authorized activities and AmeriCorps' scoring criteria for grant proposals illustrate the centrality of diversity, equity, inclusion, and accessibility in AmeriCorps-funded programs."); *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1251 (W.D. Wa. 2025) ("Congress requires consideration of diversity when allocating HUD funds."). While OMB instructs agencies to give "due consideration" to applicable authorizing legislation when applying § 200.300(b)(1), OMB fails entirely to consider or analyze the nature of any such conflicts between this Rule and any other requirements of federal law. Finally, OMB leaves state officials in a quagmire in attempting to predict which funds may "promote, encourage, subsidize, or facilitate" practices prohibited by OMB's new interpretation of antidiscrimination laws. OMB is required to analyze and consider such a disruption to reliance interests when proposing this Rule, which it has not done.

Proposed § 200.300(b)(2) limits the use of federal funds to "fund, promote, encourage, subsidize, or facilitate" "gender ideology," but the phrase "gender ideology" is ambiguous, as is what it means to "fund, promote, encourage, subsidize, or facilitate" "gender ideology." And neither OMB's list of what gender ideology "includes" nor Executive Order 14168 resolves such ambiguity. *See Massachusetts*, 2026 WL 1815807, at *16 (incorporation of E.O. 14168 as funding condition violates the Spending Clause). OMB cites no statutory authority for imposing an "ideology" restriction on federal funding and disregards existing federal laws and regulations that *require* federal funding to be administered without discrimination on the basis of gender identity. *See, e.g*., 7 C.F.R. § 272.2(b)(1) ("no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race . . . be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under SNAP"). And while OMB asserts that this provision exists to ensure that no funds designed for "education, research, and health" are "improperly diverted" to other purposes, the text of the provision runs much broader than the purported misuse of program funds. Furthermore, many States have laws that expressly recognize, and prohibit discrimination on the basis of, gender identity, including laws that allow individuals to make certain changes to their birth certificates or other official documents.[44] A new

[44] *See, e.g.*, 410 ILCS 535/17(e); *Equality Maps: Identity Document Laws and Policies*, MOVEMENT ADVANCEMENT PROJECT, http://www.lgbtmap.org/equality-maps/identity_document_laws (last visited March 14, 2025) (collecting such laws).

regulation that could conflict with State law would upend substantial reliance interests, none of which OMB has analyzed or considered in proposing this Rule, and interfere with States' sovereign interests in maintaining and enforcing their own civil codes.

Proposed § 200.300(b)(3) imposes restrictions on funding for the "so-called 'transition' of a child under 19 years of age from one sex to another, including the chemical and surgical mutilation of children." However, OMB has no authority to set limits on uses of funds that are otherwise permitted under federal law governing medical care, including the Affordable Care Act. Furthermore, the phrases "so-called 'transition'" and "chemical and surgical mutilation" are ambiguous and unscientific, including as defined in E.O. 14187. Gender transition" could cover a wide range of activities or conduct, from social transition (changing one's name, pronoun, or style of dress) to behavioral health supports to medical interventions. It is wholly unclear which if any of these are included under the executive order or the Rule. Moreover, access to many of these types of services and supports are expressly protected under the laws of our States. Further, OMB has completely disregarded important facts when proposing this rule, including the reality of intersex individuals, extensive medical evidence relating to the appropriate treatment of gender dysphoria,[45] and the age of majority, which is 18. Finally, compliance with this new funding restriction would require changes to existing processes, including Medicaid frameworks. *See, e.g*, *Commonwealth v. Trump*, No. 25-cv-12162-AK, 2026 WL 1584837, at *3–*10 (D. Mass. June 3, 2026). OMB simply ignores such existing frameworks with this Rule.

Additionally, because the policy limitations in §§ 200.300(b)(1)–(3) apply to *all* federal financial assistance, this Rule attempts to coerce states into adopting OMB's preferred policy positions in direct contravention of the Spending Clause.

Finally, § 200.300 (c) imposes new restrictions based on "religious liberty," including the requirement that "Federal agencies and pass-through entities [] not discriminate against or in favor of an applicant on the basis of the organization's religious character, affiliation, exercise, or lack thereof, nor on the basis of conduct that would not be considered ground to favor or disfavor a similarly situated secular organization." OMB does not analyze whether this provision merely implements federal laws such as the Religious Freedom Restoration Act (RFRA) or expands upon such laws. As a result, without any consideration, OMB upends reliance interests of grant recipients who have mechanisms to interpret and comply with federal laws such as RFRA. Furthermore, many authorizing statutes for federal programs include their own criteria for selecting sub-applicants or confer discretion on state recipients to craft sub-applicant criteria.[46] OMB lacks the authority to craft novel criteria based on religion that deviate from what Congress has expressly provided.

[45] *See* Comment on Notice of Proposed Rulemaking to Prohibit State Medicaid and CHIP Plans from Using Federal Medicaid Dollars to Fund Transgender Youth Healthcare, Implementing Subpart (N) of 42 C.F.R. § 441.800 and Implementing Subpart (D) of 42 C.F.R. § 457, https://www.regulations.gov/comment/CMS-2025-1823-10773.

[46] *See, e.g.*, 34 U.S.C. § 10446(c) (establishing statutory criteria for sub-granting funding under the Violence Against Women Act).

Finally, because the social policy issues sought to be imposed by § 200.300 all address issues of major national significance, OMB's regulation of these issues must be supported by clear statutory authority. Because it is not, the proposed § 200.300 is unlawful.

2. English Language

English language (2 C.F.R. § 200.211). Since it was first adopted in 2013, 2 C.F.R. § 200.111 has expressly permitted funding recipients and subrecipients to translate federal award documents into other languages and has provided express clarification and assurance that in the event of a dispute or difference between the English language and translated version of a document, the English language would control. 78 Fed. Reg. 78,621; 89 Fed. Reg. 30,148. OMB now removes the clear permission for recipients and subrecipients to provide translations, and removes the language clarifying that the English language document controls in the event of a conflict between translations. In support of this proposed change, OMB simply asserts that "[t]his revision is intended to highlight the importance of recipients being able to understand Federal award requirements and program information in English to effectively meet program objectives and communicate with Federal officials about program and Federal financial assistance matters." 91 Fed. Reg. at 32,210.

OMB's cursory explanation fails to address language access for recipients of federal financial assistance, whether translations are permissible, and fails to recognize the benefits of or asserted requirements for recipients to provide translated documents. For example, in adopting a revised section 200.111 in 2024 that expressly permitted Federal agencies to provide translated grant documents, OMB stated that this change would "allow for more flexibility when working in international environments or in communities where English is not the primary language." 88 Fed. Reg. 69,438; 89 Fed. Reg. 30,067. Indeed, the Government Services Administration (GSA) in 2025 recognized the benefits of translations and advised that "a federal agency providing [financial] assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action" if a recipient of federal financial assistance fails "to provide meaningful access to [limited English proficient] persons."[47] With this new proposed change, OMB provides no explanation for how the requirement that federal award information must be in the English language would impact operations in international environments or in communities where English is not the primary language, or why such impacts should be ignored.

The States are also entitled to clarity with respect to their obligations under federally funded programs. The proposed change fails to consider that state laws may require federal grant-related documents to be translated into non-English languages, and OMB has removed the language that clarifies this translation is permitted for federally funded programs. For example, in 1973, then-Governor Ronald Reagan signed the Dymally-Alatorre Bilingual Services Act into law, requiring California state agencies to provide information in any non-English language spoken by a substantial portion of the public it serves. Cal. Gov't Code § 7295. Since the Uniform Guidance was first adopted in 2013, States have been assured that the translation of documents for federally

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[47] U.S. General Services Administration, *Translation and Interpretation Services SIN 541930 Ordering Guide* (Dec. 2025), https://www.gsa.gov/system/files/541930%20Translation%20and%20Interpretation%20Services%20Ordering%20Guide%20-%20December%202025.pdf.

supported programs was permitted, and the Uniform Guidance provided instruction on how to handle conflicts introduced by translation. Section 200.111 creates ambiguity regarding how States can communicate with their residents about federally funded programs, and may lead to conflicts with state law.

Lastly, when issuing the 2024 Uniform Guidance, OMB advised that "[t]ranslation costs may be allowable if they are allocable to the Federal award and are reasonable for the effective administration of the award." 89 Fed. Reg. 30,067. The revised section 200.111, deleting any mention of translations, creates uncertainty with respect to the allowability of translation costs for federal funding recipients, including for the States.

In light of the above, the proposed change is unlawful. The proposed change reverses a longstanding policy without an adequate explanation and does not consider the value or purpose of translation, and thus violates the APA. In addition, because this proposed provision is ambiguous as to the States' ability to provide translations and whether translation costs are allowable, the regulation also violates the Tenth Amendment and the Spending Clause.

3. Disparate Impact Liability

Prohibition of using Federal awards to promote or support theories of disparate-impact liability (2 C.F.R. § 200.218). Proposed 2 C.F.R. § 200.218 prohibits federal award recipients from using a theory of disparate impact liability, as defined in the Rule, both when federal funds are used to pursue litigation and when funds are used to avoid litigation. However, disparate impact remains a viable theory for discrimination claims across a wide range of contexts in both federal and state law. OMB lacks authority to require federal funding recipients to ignore that reality to the extent it seeks to do so.

Disparate impact liability holds people and institutions accountable for policies and practices that are facially neutral but fall more harshly on a protected group in practice and cannot be justified. The theory has a long history in American law. Preceding existing civil rights laws, disparate impact liability dates back at least to the New Deal.[48] In 1971, the Supreme Court recognized the disparate-impact theory of liability in suits against employers for discrimination under Title VII of the Civil Rights Act of 1964, explaining that civil rights laws prohibit "not only overt discrimination but also practices that are fair in form, but discriminatory in operation." *Griggs v. Duke Power Co*., 401 U.S. 424, 431 (1971). As the Court explained, the disparate impact theory of liability serves to eliminate "artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Id*. In 1992, Congress amended Title VII codifying disparate impact into the statute. Courts, including the Supreme Court, have also recognized viable disparate impact claims in other contexts, including for age discrimination under the ADEA, lending discrimination under the Equal Credit Opportunity Act, and housing discrimination under the Fair Housing Act.[49]

[48] Olatunde C.A. Johnson, *The Agency Roots of Disparate Impact*, 49 HARV. C.R.-C.L. L. REV. 125, 136 (2014) (discussing history of agency use of disparate impact analysis and citing, inter alia, Paul D. Moreno, FROM DIRECT ACTION TO AFFIRMATIVE ACTION: FAIR EMPLOYMENT LAW AND POLICY IN AMERICA, 1933–1972, at 1-2 (1997)).
[49] *See* Congressional Research Service, *What Is Disparate Impact Discrimination?* (July 9, 2025), https://www.congress.gov/crs_external_products/IF/PDF/IF13057/IF13057.1.pdf.

Furthermore, many States have anti-discrimination statutes that recognize liability for policies that have an unjustified disparate impact. *See, e.g.*, 14A C.J.S. Civil Rights § 238.

Notwithstanding the continuing legality of disparate impact claims in court and the importance of affirmative compliance with federal and state laws prohibiting disparate impact discrimination, proposed 2 C.F.R. § 200.218 further forbids the use of federal awards for "disparate-impact studies, disparate-impact litigation, or other related activities." This Rule prevents state agencies, including departments of human rights and labor, from pursuing potentially meritorious discrimination claims based on disparate-impact theories defined in the Rule, or conducting disparate-impact analyses, including to evaluate compliance with existing federal and state laws. Furthermore, the proposed regulation provides that "Federal award activities based on the assumed risk of disparate-impact liability are not allowed." This proposal functions to chill federal funding recipients from implementing policies and practices that would reduce barriers to opportunity in compliance with federal and state laws or mitigate the risk of being sued by a private plaintiff under a disparate-impact theory. State and local agencies face an ongoing risk of such lawsuits.[50]

OMB lacks the statutory authority to impose on federal funding recipients constraints that have the potential to undermine federal and state law. Furthermore, the Rule is too unclear to satisfy the Spending Clause's requirement for unambiguous conditions. For example, OMB defines disparate-impact liability as:

> a theory under which a facially neutral policy or practice (for example, a merit-based employment policy or practice) gives rise to an automatic or near-insurmountable presumption of the existence of unlawful discrimination on the basis of federally protected characteristics (such as race or sex) where there are any differences or disparities in outcomes (for example, disproportionate effects) among different races, sexes, or similar groups.

This definition is confusing, not least because it is entirely different than any definition the courts use in analyzing disparate impact claims. Courts do not impose disparate impact liability based on just "any" disparities in outcomes, nor do they apply an "automatic" or "near-insurmountable" presumption of discrimination. A disparate impact plaintiff cannot even state a *prima facie* case based solely on evidence of different outcomes. *Tex. Dep't. of Hous. & Cmty. Affs. v. Inclusive Cmtys. Proj., Inc.*, 576 U.S. 519, 542 (2015). And after a plaintiff shows a particular practice has an adverse impact on those with a protected characteristic, a defendant can still prevail by showing the practice is consistent with business necessity. *Ricci v. Stefano*, 557 U.S. 557 (2009). Given that OMB has not cogently or accurately defined the legal theory it purports to prohibit, it is not at all

[50] *See, e.g.*, § 1:25. State and local governments, 1 Fair Employment Practices § 1:25 ("Title VII covers state governments and their political subdivisions, agencies and instrumentalities as well as interstate agencies."); *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 524 (2015) (nonprofit suit against Texas housing department bring disparate impact claim under Fair Housing Act); *Easterling v. State of Connecticut*, 783 F. Supp. 2d 323, 325 (D. Conn. 2011) (summary judgment for correctional officer suing State of Connecticut Department of Correction under Title VII arising out of theory that physical fitness test had a disparate impact on the basis of sex).

apparent how funding recipients could comply with this regulation. This contravenes the clarity requirement of the Spending Clause.

This restriction is also arbitrary and capricious in violation of the APA. OMB failed to consider the possibility that regulating the speech of both lawyers and their clients may conflict with the First Amendment. *Legal Servs. Corp. v. Velazquez*, 121 S. Ct. 1043 (2001) The Constitution does not permit the Government to confine litigants and their attorneys to only certain arguments. The Rule potentially alters the kind of advice attorneys may give their clients, and the agencies entirely ignore this important aspect of this in proposing this Rule. !

Finally, OMB fails to conduct any analysis of reliance on a legal theory that has not been disturbed by federal or state courts. And by barring States acting as pass-through entities from "adopt[ing], issu[ing], or enforce[ing]" antidiscrimination standards involving disparate-impact theory, the Rule violates the Tenth Amendment's rule that Congress "cannot issue direct orders to state legislatures"—whether by command or prohibition. *Murphy v. NCAA*, 584 U.S. 453, 475 (2018).

4. Viewpoint discrimination

Prohibition of discriminatory event services (2 C.F.R. § 200.219). 2 C.F.R. § 200.219 commands entities that receive federal funding "not [to] discriminate on the basis of the viewpoint, content, or subject matter of speech" in "providing services for events, meetings, or other expressive activities." If the grant recipient or subrecipient is a public entity, the prohibitions apply to all activities of the entity, not just those that are federally funded. OMB explains this proposed provision would ensure that federal funds are not used "to subsidize violations of the First Amendment."

However, the Rule does not recognize that commercial speech also receives less First Amendment protection, and public entities have more limited constitutional obligations to accommodate such speech. *Cent. Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 562–63 (1980). This Rule may force public entities to host or provide services for commercial expressive events in violation of their current policies or state law,[51] limiting community non-commercial access to the public spaces.

The Rule also fails to account for the interests of the public entities themselves, for "when [a] government speaks for itself, the First Amendment does not demand airtime for all views." *Shurtleff v. City of Boston*, 596 U.S. 243, 247 (2022). A State may opt only to express certain viewpoints or content when it speaks for itself. *See Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 219–20 (2015). As the Supreme Court has recognized, government "would not work" if a government could not express a viewpoint while declining to express a

[51] For example, under California law, school districts can charge nonprofit organizations using school property an amount "not to exceed [the district's] direct costs," but if "an admission fee is charged or contributions are solicited, and the net receipts are not expenses for the welfare of the pupils of the school district or for charitable purposes," fair rental value can be charged for the use of the school facility. Cal. Educ. Code §§ 38134(c), (d), and (e).

counter-viewpoint. *Id.* at 207. The Rule contains no carveouts for the protected speech of government entities, which is critical for the entities to perform their governmental functions.

Similarly, the First Amendment does not prohibit public entities from disciplining employees for expressive activities that take place as part of those employees' official duties. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The Rule has no carve-out for the expressive activities of employees, and may conflict with employment policies and procedures at state and local public entities. Conditioning federal funds on a State's surrender of that personnel authority commandeers a core sovereign function in violation of the Tenth Amendment. *See Murphy v. NCAA*, 584 U.S. 453, 473–476.

The scope of the Rule in section 200.219(c) is astonishingly broad, applying to all "events sponsored, hosted, or permitted" by the fund recipient on any "property or facilities it owns, leases, or otherwise control[s]"—a wide swath of areas owned or used by school districts, public libraries, state agencies, park districts, and other public entities. For decades, public entities have operated within the First Amendment framework established by the Supreme Court, which has designated certain portions of the government, such as student organizations at public universities, "limited public forums" where the public entity can make "distinctions in access based on speaker identity" and can exclude speakers if they are "not a member of the class of speakers for whose special benefit the forum was created." *Christian Legal Soc. Chapter of the Univ. of Calif. Hastings School of Law v. Martinez*, 561 U.S. 661, 681 (2010). Other areas owned, leased, or controlled by public entities are considered "non-public forums" where content-based restrictions are permissible under the First Amendment. *See, e.g., Minn. Voters Alliance v. Mansky,* 585 U.S. 1, 12 (2018) (a polling place on Election Day, though "government-controlled property," is a "nonpublic forum" for First Amendment purposes); *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 267–73 (1988) (a high school newspaper is not a public forum). Although OMB claims that "the proposed language should not be construed to prohibit public entities" from "applying reasonable, view-point neutral restrictions in nonpublic forums," 91 Fed. Reg. at 32,214, no such limitation is found in the text of the Rule, which applies broadly. States, public universities, and local governments have carefully crafted policies and procedures regarding expressive activities, consistent with the Supreme Court's framework. This Rule would upend those policies and procedures, creating a separate, sometimes conflicting set of rules regarding expressive activities that will create a significant burden on the public entities and open them up for additional litigative risks in addition to risk of losing their federal funding.

The Rule would disrupt substantial reliance interests engendered by well-established principles of academic freedom in place in universities, public schools, public libraries, and other venues where the Constitution allows government entities to pick and choose what to say and what not to say. But OMB has provided no analysis of the societal effects of redistributing discretion over such speech away from local entities towards a single federal agency. At minimum, the APA requires such analysis.

OMB has no statutory authority to impose broad regulations regarding expressive activities, including those wholly unrelated to the federal funding. The proscriptions in this Rule are arbitrary and capricious because they are inconsistent with First Amendment jurisprudence, are susceptible to being applied in arbitrary ways, and are inadequately explained.

5. New risk assessment criteria

Federal agency review of risk posed by applicants (2 C.F.R. § 200.206). 2 C.F.R. § 200.206 amends the criteria for a "risk assessment" federal agencies must use when evaluating award applicants. While the current version of this rule lists factors to be considered regarding the success of a federal award, such as the financial stability or past record of the applicant, OMB now proposes a list of broad, undefined, and vague terms that an agency must consider such as "questionable practices," "public safety," and "national security." These vague new criteria for assessing applicant risk do not provide adequate notice to funding recipients as to how they will be assessed, and do not explain how the administration will interpret these factors or how it will verify the information about the applicant's activities. However, the Spending Clause of the U.S. Constitution requires such clarity. The vagueness of the new criteria could permit agencies to deny applications for extra-statutory reasons, based on an assessment of how "questionable" the applicant's practices are, even where the applicant is otherwise qualified for funding by the program terms set out by Congress. OMB's attempt to smuggle in policymaking authority at the agency level through vague phrases in the risk assessment is unjustified by any statutory authority.

Additionally, the Rule instructs agencies to consider the applicant's membership in or affiliation with organizations that "violate Federal law" or "undermine public safety or national security." An agency's view of what might "undermine public safety or national security" is unclear; the terms are undefined, subjective, and fail to give meaningful guidance to applicants. Considerations of an applicant's associations, past or present, could preclude applicants from receiving funds based on their protected First Amendment rights of association. This Rule may also have a chilling effect as it relates to activities that an agency might deem to "violate Federal law." For example, an applicant may stop working with organizations that provide legal services and support to immigrants out of fear of allegations that they have somehow violated 8 U.S.C. § 1324, even where such conduct is entirely lawful. Unfortunately, such fears are not unfounded or unreasonable. In *City of Chicago v. U.S. Dep't of Homeland Security*, for instance, the Department of Homeland Security froze funding based on generalized claims that grant recipients were "engaged in or facilitating illegal activities" related to immigration, even though the court ultimately found the agency offered no factual support for those allegations. No. 25-cv-05463, 2025 WL 3043528, at *24 (N.D. Ill. Oct. 31, 2025).

OMB lacks statutory authority to impose uniform threshold requirements in evaluating proposals for discretionary funding programs that are untethered to those agencies' enabling statutes, and the criteria are arbitrary and capricious because they are vague, are susceptible to being applied in arbitrary ways, and are inadequately explained.

6. Issue advocacy, public messaging, and related prohibitions (2 C.F.R. § 200.450)

Lobbying (2 C.F.R. § 200.450). 2 C.F.R. § 200.450 prohibits the use of federal funds by nonprofits and institutions of higher education to "[e]ngage 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 award, including messaging "designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award." Additionally, federal funds cannot be used to attempt to "influence the executive branch" of a State in matters unrelated to the "objectives or performance requirements" of the award, including "attempts to affect State agency policymaking, rulemaking, or administrative actions."

The Rule is a significant departure from this section's previous prohibitions that merely prohibited the use of federal funds to engage in traditional lobbying activities. The proposed expansion to prohibit any public messaging "designed to influence public attitudes on matters not necessary to accomplish the purpose" of the award is vague and will leave a great deal of uncertainty for funding recipients about what messaging the government might find improper. Nor is it clear what "public messaging" means, or if it applies anytime information is disseminated to the public. For example, epidemiology programs are responsible for identifying, analyzing, and communicating public health findings. These communications may include public health advisories, disease prevention guidance, outbreak updates, risk communications, and critical information and guidance for healthcare providers and communities. The Rule's lack of clarity on what may or may not be allowable messaging will create confusion and could slow or hinder life-saving public health messaging.

This prohibition will have a significant chilling effect on research being conducted by nonprofits and universities, as a broad reading would indicate that scientists and researchers could not inform the public about their findings if they do not conform to the Administration's views. The regulation also appears to conflict with statutes that provide funding for the purpose of disseminating information and research to the public, such as funding to land grant universities for agricultural extension programs, 7 U.S.C. § 3152, or funding for the dissemination of drug abuse prevention materials, 42 U.S.C. § 290bb-21(b), (c).

Expansion of this section's prohibitions may also have the unintended consequence of undermining essential services that assist domestic violence survivors with exercising their civil rights. Domestic violence survivors who have relocated and are keeping their address or identity private require specific advocacy and assistance related to protecting their safety while correctly registering for or maintaining their voter registration. It is unclear whether these critical programs would be unsupportable by federal funds under the Rule's new proposed prohibition on using federal funds 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."

This provision is illegal for numerous reasons: OMB lacks statutory authority to make these changes; it violates the Tenth Amendment, the Spending Clause, and the First Amendment; and it is arbitrary and capricious because these prohibitions are vague, susceptible to being applied in arbitrary ways, and inadequately explained.

7. Abortion

Abortion (2 C.F.R. § 200.477). Proposed 2 C.F.R. § 200.477 makes all "[c]osts associated with elective abortions [] unallowable, except as expressly authorized by Federal law." This regulation is vague, exceeds OMB's authority, and would be enormously burdensome for States. Section 200.477 extends far beyond the longstanding boundaries of the Hyde Amendment to threaten the entire health care ecosystem developed by States and health care providers over nearly

50 years. With no authority granted to OMB by Congress to exercise such a wide-reaching regulation, section 200.477 is unlawful in several ways.

OMB claims that section 200.477 "promotes uniform application of existing statutory funding restrictions" such as the Hyde Amendment. However, Congress has not delegated any rulemaking authority for implementing the Hyde Amendment to OMB. Congress has dictated in the Hyde Amendment that no funds provided in annual appropriations statutes "shall be available to pay for an abortion" except "if the pregnancy is the result of an act of rape or incest" or endangers the life of the woman. Pub. L. No. 119–75, Div. E, §§ 613-14, 140 Stat. 487 (2026). In contrast, section 200.477 would greatly expand the category of abortions for which federal funding is disallowed from those enumerated in the Hyde Amendment to all "elective abortions." Further, unlike the Hyde Amendment, section 200.477 prohibits "costs associated with" a restricted abortion instead of only the abortion itself.

The Rule's changes are also impermissibly vague. The terms "costs associated" and "elective abortions" in section 200.477 are nowhere to be found in current federal restrictions on funding abortions and are not defined anywhere in this regulation. They are vague, and neither is a legal term of art. It is not clear what this Administration considers to be an "elective abortion." Equally problematic, OMB and other federal agencies could interpret the "costs associated" with any such abortion to encompass anything remotely connected to an abortion procedure, from health care providers' janitorial services to their rent.

Finally, the Rule would significantly and negatively impact the States, which operate consistent with existing federal abortion restrictions. The Hyde Amendment, with exceptions for rape, incest, and danger to the life of the woman, has been in effect since 1979. Pub. L. 95-480, § 210. Accordingly, the existing Medicaid reimbursement system has been built in reliance on the Hyde Amendment's consistent carveouts for certain abortions. As direct recipients of millions in federal funds subject to the Hyde Amendment, States have constructed and maintained complex systems to both ensure compliance with the law and advance access to reproductive healthcare. Section 200.477 purports to override this decades-old infrastructure instituted by States. OMB failed to consider these reliance interests and the impact in its cost-burden analysis.

D. The Rule's Suspension and Termination Provisions Are Unlawful.

1. Termination Changes

Information Contained in a Federal Award (2 C.F.R. § 200.211). Proposed 2 C.F.R. § 200.211 makes several changes to the information that federal agencies must include in each new grant award. First, it eliminates the requirement that federal agencies "must provide a copy of the full text of the general terms and conditions [of a grant award] if a recipient requests it." 2 C.F.R. § 200.211(c)(3) (2026). Second, it adds the requirement that agencies "must always include the termination provisions set forth in § 200.340(a)(1) through (4) in each Federal award or expressly incorporate them by reference." *Id.* at 32,250–51. Third, it requires that federal agencies "inform" recipients of any additional termination provisions imposed under § 200.340(a)(5), the new discretionary termination provision. *Id.* at 32,251. Fourth, it requires that agencies include in each new award "any additional termination provisions" that an agency wants to "apply to a Federal award." *Id.* Fifth, the Rule specifies that such "additional provisions must not limit the right of the Federal agency to terminate [a grant award] for any of the reasons in § 200.340(a)(1) through (4).” *Id.*

Proposed 2 C.F.R. § 200.211 would remove the current § 200.211(c)(3), which provides that a “Federal agency must provide a copy of the full text of the general terms and conditions if a recipient requests it.” *See* 91 Fed. Reg. at 32,213, 32,250–51. OMB asserts that “[t]his requirement is outdated given the access that applicants and recipients now have to general terms and conditions on the internet” and that, if this is not the case, “agencies would be responsible for providing them to the recipient—typically in electronic form—with the Federal award instrument.” *See id.* at 32,213. Removing this requirement is unreasoned, arbitrary, and will improperly burden recipients. To start, OMB offers no reasoned basis for this change, as it generically claims that agencies would still “be responsible” for providing terms and conditions to a grant recipient, with no source of this obligation, while simultaneously removing the provision that would require them to do so. *Id.* at 32,213. Further, removal of this requirement is arbitrary and will burden funding recipients, who might have difficulty determining which version controls a particular funding vehicle. This will create inefficiencies and will complicate funding recipients’ attempts to stay in compliance with the terms and conditions of federal awards, ultimately undermining any federal interest in compliance with grant terms and conditions.

Moreover, the Rule’s requirement that all new awards incorporate the proposed termination provisions of 2 C.F.R. § 200.340, including any “additional termination provisions” an agency elects to include, is deficient for the same reasons that § 200.340 is deficient. Those substantial deficiencies are set forth in the analysis of § 200.340 below. Because the proposed revisions to § 200.340 are unlawful, the parallel proposed revisions to the incorporation requirement in § 200.211 are unlawful as well and should be withdrawn. Specifically, agencies should not be required to incorporate a “discretionary” termination provision or “additional” termination provisions that do not pass muster under the APA, governing statutes, or the U.S. Constitution.

Termination and Suspension (2 C.F.R. § 200.340). Proposed 2 C.F.R. § 200.340 unlawfully and fundamentally transforms the federal grantmaking process by bestowing on federal agencies unprecedented power to terminate and suspend discretionary grant awards (particularly competitive or merits-based awards,[52] which the Rule refers to as “discretionary grants”) at their whim, with no meaningful protections for recipients nor any ability to predict when or why such a termination or suspension will occur. Under the Rule, discretionary funding can be terminated even if the recipient is fully compliant, simply at the agency’s discretion. This vast—and congressionally unauthorized—expansion of agency power will undermine the grantmaking process by giving the Executive the option to withhold and terminate awarded funding to the States and other recipients on a whim rather than established statutory or contractual standards. The Rule thus creates a system in which grant awards are at continual risk, regardless of the recipient’s

[52] Competitive and merits-based grants are defined as “discretionary awards” typically made by federal agencies, “in keeping with specific statutory authority that enables the agency to exercise judgment (‘discretion’), select[ing] the recipient or the amount of Federal funding awarded through a competitive process or based on merit of proposals.” *See* 2 C.F.R. § 200.1. Discretionary awards also include an award “selected on a non-competitive basis, as appropriate.” *Id*. Mandatory grants are those awards an agency must make if a recipient meets the requirements set forth in the authorizing statute. Mandatory grants include entitlement grants in which the recipient is entitled to receive federal funds upon demonstrating that it qualifies for assistance as well as block and formula grants in which recipients receive federal funds pursuant to formulas set out in authorizing statutes.

performance. It gives the President considerable leverage to coerce recipients to comply with whatever new conditions his or her administration insists on, even after grants have been awarded and recipients have begun implementation, or otherwise risk termination. As a result, no matter how perfectly recipients perform, no matter how critical the project or program, and no matter the reliance interests that have accrued, recipients lack any assurance that awarded funds will remain available for the duration of the grant period. This uncertainty undermines programs and projects that Congress has appropriated billions to support and that millions of grant recipients—States, organizations, universities, and people—depend on.

Under the existing Uniform Guidance, there are only four circumstances under which grants may be terminated, all of which are focused on recipient compliance[53]: (1) "if the recipient or subrecipient fails to comply with the terms and conditions of the Federal award"; (2) "with the consent of the recipient or subrecipient"; (3) "[b]y the recipient or subrecipient upon sending . . . a written notification of the reasons for such termination" and "the portion to be terminated"; and (4) "pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities." 2 C.F.R. § 200.340(a)(1)–(4) (2026). Currently, an agency may only unilaterally terminate an award if the recipient fails to comply with the "terms and conditions" of the award or if the award fails to effectuate "program goals or agency priorities" that existed *at the time the award was initially made*. Agencies and pass-through entities are not permitted to terminate awards midstream based on changing views or evolving preferences as to what should or should not be funded. This is why the Uniform Guidance has long required that Notices of Funding Opportunities and grant awards themselves state the agency's funding priorities, as well as a program's goals and objectives, so that recipients know what is intended at the outset before applying for and accepting federal funding. *See, e.g.*, 2 C.F.R. Part 200, appendix I(b)(3)(i)(A); 2 C.F.R. § 200.204(a)(8) (2026) (stating that "notices of funding opportunities" must "summarize[] the goals and objectives of the program"); 2 C.F.R. § 200.211(a) (2026) (stating that federal awards, "where applicable," must include "performance goals, indicators, targets, and baseline data"). For suspension, only "if the recipient or subrecipient fails to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award," and the "noncompliance cannot be remedied by imposing specific conditions," may the federal agency or pass-through entity "[s]uspend . . . the Federal award in part or in its entirety." 2 C.F.R. § 200.339(c) (2026).

The Rule dramatically expands the grounds for termination by enabling federal agencies and pass-through entities to terminate awards at their "discretion." 91 Fed. Reg. at 32,258 (2 C.F.R. § 200.340(a)(2)) ("At the discretion of the Federal agency or pass-through entity."). Specifically, the Rule states that "[t]he Federal agency or pass-through entity, to the extent permitted by law, may terminate a Federal award in part or its entirety if the Federal agency or pass-through entity determines that a termination is in the interest of the Federal agency or pass-through entity, including if a Federal award does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination." *Id.* The Rule also allows federal agencies and pass-through entities to "terminate a Federal award in part or its entirety pursuant to

[53] The applicable subpart is titled "Remedies for Noncompliance." *See* 2 C.F.R. §§ 200.339–43 (2026).

any additional termination provisions included in the terms and conditions of the Federal award." *Id.* (2 C.F.R. § 200.340(a)(5)).

The Rule requires federal agencies and pass-through entities to "ensure that all Federal awards allow for termination for the reasons described in paragraphs (a)(1) through (4)," which include the discretionary termination provision. *Id.* (2 C.F.R. § 200.340(b)(1)). It also allows them to "include additional termination provisions not specified in th[e] section." *Id.* The Rule states that discretionary termination "does not apply to any Federal award in which inclusion . . . would conflict with a Federal statute." *Id.* (2 C.F.R. § 200.340(b)(2)). It specifies that the "discretionary termination provision is generally applicable to discretionary awards, but not to Federal awards made under programs where legislation establishes an entitlement to the funds on the part of the recipient, such as block grants, those awarded based on a statutory formula, or disaster recovery grants."[54] *Id.* The Rule requires federal agencies to "seek approval from OMB prior to allowing any class exceptions" from the discretionary termination provision "related to a Federal program or type of Federal award not set forth" therein. *Id.* at 32,258–59 (2 C.F.R. § 200.340(b)(2)). "If questions arise regarding applicability" of the discretionary termination provision, the Rule states that federal agencies "are strongly encouraged to consult with OMB." *Id.*

The Rule also adds a new "temporary suspension" provision that enables federal agencies and pass-through entities, "to the extent permitted by law," to "at any time issue a written order temporarily suspending a Federal award in part or its entirety" if it is "determine[d] that a suspension is in the interest of the Federal agency or pass-through entity." *Id.* at 32,259 (2 C.F.R. § 200.340(e)(1)). The "suspension order" cannot "exceed a period of 90 days unless the parties mutually agree to an extended period." *Id.* Like the discretionary termination provision, the Rule states that the suspension provision "does not apply to any Federal award in which inclusion … would conflict with a Federal statute," and it specifies that the "suspension provision is generally applicable to discretionary awards, but not to Federal awards made under programs where legislation establishes an entitlement to the funds on the part of the recipient, such as block grants, those awarded based on a statutory formula, or disaster recovery grants." *Id.* (2 C.F.R. § 200.340(e)(4)). And "[i]f questions arise regarding applicability of the suspension provision to specific Federal programs or types of Federal awards, Federal agencies are strongly encouraged to consult with OMB." *Id.*

The Rule's proposed expansion of federal agencies' and pass-through entities' termination and suspension authority represents extreme executive overreach and contravenes the APA, federal statutes, and the U.S. Constitution. For these reasons, among others set forth below, the Rule should be withdrawn or these proposed provisions eliminated.

First, OMB does not have the statutory authority to grant federal agencies or pass-through entities the power to terminate or suspend compliant grant awards midstream for "discretionary" reasons. Nor has Congress given federal agencies or pass-through entities such power directly. OMB has identified no statute that authorizes the broad termination and suspension power it

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[54] The Rule also exempts "agreements entered into in furtherance of international trade agreements or those awarded by the Department of Commerce under title XCIX of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283), the CHIPS Act of 2022 (Pub. L. 117-167), or division F of the Infrastructure Investment and Jobs Act (Pub. L. 117-58)." 91 Fed. Reg. at 32,258–59 (2 C.F.R. § 200.340(b)(2)).

proposes to confer on federal agencies and pass-through entities through the Rule.[55] As described above, neither 31 U.S.C. § 503(a)(2) nor 31 U.S.C. § 6307 confers such power to dramatically restructure the conditions under which awarded federal funds may be suspended or terminated. That power would also permit an agency to terminate a grant for goals or objectives unrelated to the purpose of the grant, effectively allowing agencies to add unrelated conditions to grants. Only Congress can authorize such conditions. Moreover, by purporting to give federal agencies and pass-through entities broad discretion to decide when and why to terminate or suspend awards, the Rule will almost certainly result in *in*consistent and *in*efficient use of grant awards, as further described below, inconsistent with § 6307's language. (OMB may issue "guidelines to promote consistent and efficient use of … grant agreements").

Likewise, OMB has cited no statute that authorizes individual federal agencies to suspend or terminate "discretionary" awards at any time for any reason that an agency determines is appropriate. OMB states that this power should be "implied" or deemed "inherent" from the "statutory authority provided by Congress allowing executive agencies to administer discretionary award programs—including deciding which entities receive awards and the amount of those awards." 91 Fed. Reg. at 32,228. Not so. Discretionary grants are governed by statutory language permitting an agency to select award recipients. For example, Congress gives FEMA the power to "make grants to eligible nonprofit organizations" pursuant to particular eligibility criteria. 6 U.S.C. § 609a. But the power to select a recipient at the outset in a competitive or merits-based award program prescribed by Congress does not imply authority to then suspend or terminate awarded funds based on an agency's "discretionary" view of its interests, the "national interest," or any "additional" interests. To the contrary, principles of statutory interpretation hold that the grant of one express power often implies a denial of a different power not expressly set forth, particularly when Congress would have known how to grant such authority but did not do so. *See, e.g.*, *Org. of Pro. Aviculturists, Inc. v. U.S. Fish & Wildlife Serv.*, 130 F.4th 1307, 1318 (11th Cir. 2025) ("Where Congress knows how to say something but chooses not to, its silence is controlling.") (citation omitted); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018) (applying the doctrine of "'*inclusio unius est exclusio alterius*' (the inclusion of one is the exclusion of the other)").

Furthermore, an agency's statutory authority to use discretion in grant administration is limited by the purposes of the particular grant program. *See, e.g*., *Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 884 (W.D. Wash. 2025) ("[E]ach of these enabling statutes provides substantial guidance as to how the agencies' discretion should be exercised in implementing these programs."); *see also City of Chicago v. U.S. Dep't of Homeland Sec.*, 815 F. Supp. 3d 727, 754 (N.D. Ill. 2025); *Climate United Fund v. Citibank, N.A.*, 778 F. Supp. 3d 90, 112–13 (D.D.C. 2025); *Colorado v. U.S. Dep't of Health & Hum. Servs.*, 788 F. Supp. 3d 277, 301 (D.R.I. 2025). For example, when the EPA suspended and terminated Greenhouse Gas Reduction Fund grants, the lawfulness of that decision was assessed in light of "a review of the statute, its specific deadlines, [and] how it specifically defines 'eligible recipients' and 'qualified projects.'" *Climate United Fund*, 778 F. Supp. 3d at 113. For most federal funding, agency discretion is cabined by a "statutory

[55] OMB simply claims that these provisions are consistent with Executive Order 14,332, *Improving Oversight of Federal Grantmaking* (Aug. 7, 2025), but this EO cannot grant OMB authority not given by either Congress or the Constitution. 91 Fed. Reg. at 32,225.

reference point." *Id*. OMB's proposed expansion of the termination authority permits terminations for reasons wholly unrelated to the program purposes, like "the national interest." Congress did not give such broad discretion to OMB or any other agency.

OMB itself appears to acknowledge that the proposed discretionary termination and suspension provisions will be unlawfully and inconsistently applied, but it tries to wave away any concerns about statutory authority by asserting that the "legality of any particular grant termination . . . can only be decided by a court at a more granular level." 91 Fed. Reg. at 32,228. The fact that a court may later determine particular terminations to be unlawful and inconsistent with an agency's statutory authority does not authorize OMB to promulgate regulations that facilitate those unlawful grant terminations in the first place. In other words, the fact that legality must be assessed on "a more granular level" is only further proof of the unlawfulness of OMB's sweeping approach to grant termination in the Rule. Regulations governing agency action must ensure that they comply with statutes and governing law before being implemented, not rely on post hoc judicial review once they lead to obviously unlawful actions. Nor can OMB insulate the Rule from review based on the boilerplate clause "to the extent permitted by law," because the Rule is specific and clear that the "discretionary" termination and temporary suspension provisions are "generally applicable to discretionary awards" and must be included in award terms and conditions. *See HIAS, Inc. v. Trump*, 985 F.3d 309, 325 (4th Cir. 2021) ("[W]e reject the government's attempt to immunize the Order from review through a savings clause which, if operational, would nullify the 'clear and specific' substantive provisions of the Order."); *see also New York v. Trump*, 171 F.4th 1, 23 (1st Cir. 2026) (similar); *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018) (similar). And there is no law that would ever authorize OMB to implement such provisions in any context. In other words, the mere fact that the Rule contemplates use of the provisions shows that the agency expects them to apply in situations when they are *not* "permitted by law."

Moreover, the Rule will likely lead to inconsistent applications. Where a federal agency believes there are "questions" as to whether the discretionary termination and temporary suspension can lawfully apply, the Rule merely states that it "strongly encourage[s]" agencies "to consult with OMB," but agencies are left entirely to their own devices, meaning two agencies facing identical or nearly identical legal circumstances could reach opposite answers. This underscores the arbitrariness of the scheme the Rule would set up and the uncertainty and burden it would impose on recipients.

Additionally, following an award, a grant recipient is in a substantially different posture than it is pre-award, as the recipient will normally have taken substantial steps to implement the grant and engaged in a variety of behaviors in reliance on it. To nonetheless infer the claimed discretionary termination or temporary suspension authority, from the very different authority to make an initial award, would effectively transform a limited delegation over the awarding of federal funds into roving authority to override congressional appropriations decisions and statutory program requirements well after awards have been made. If Congress intended to confer on agencies this extraordinary power, it certainly would have said so expressly. In the absence of a clear statutory grant of power, the asserted authority cannot be implied merely from the fact that agencies possess some discretion in selecting grant recipients and determining award amounts when administering congressionally appropriated grant programs pursuant to congressionally prescribed processes.

Second, the Rule's expansion of executive power over federal spending violates the separation of powers by usurping Congress's exclusive power over the federal purse, as enshrined in the Spending and Appropriations Clauses.

The Rule would circumvent those constitutional safeguards by allowing federal agencies and pass-through entities to suspend and terminate grant awards based not on the considered judgments of Congress or the congressional goals for which the federal funds were appropriated but based on shifting executive whims. Indeed, OMB itself contemplates that awards will be terminated due to "change[s]" and "evolv[ing]" "judgment[s]" in the Executive branch as to what should be funded. 91 Fed. Reg. at 32,227. Were this Rule to go into effect, then, after congressionally appropriated grant monies have been awarded through the congressionally prescribed process (*e.g.*, the competitive review process), the agency or pass-through entity could suspend or terminate in their "discretion," based on nothing more than their own evolving view (not Congress's view) of what is "in the interest of the Federal agency" or what is in the "national interest." In this situation, the Executive is exercising a legislative function (determining federal spending priorities) rather than simply executing the law. *See* U.S. Const., art. II, § 3 (Take Care Clause). The Rule also effectively nullifies Congress's decision that the funds be spent on qualifying projects and programs, snatching a significant portion of Congress's spending power into executive hands by allowing agencies to effectively veto whatever Congressional appropriations they disagree with. In short, allowing suspensions or terminations based solely on a generalized agency view of its interests or the national interest would override both Congress's statutory directives and the results of the grant process Congress mandated.

The proposed discretionary termination and temporary suspension provisions would also allow federal agencies and pass-through entities to effectively "impound" federal funds outside the exclusive process established by the Congressional Budget and Impoundment Control Act of 1974, which requires congressional approval for any rescission. *See* 2 U.S.C. § 683; *In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) ("[E]ven the President does not have unilateral authority to refuse to spend the funds. Instead, the President must propose the rescission of funds, and Congress then may decide whether to approve a rescission bill."). The rule would provide agencies a new line-item veto power by regulation, allowing agencies to nullify congressional directives by taking back monies that have been appropriated and awarded based solely on their own policy preferences. In doing, the Rule effectively creates a backdoor to unlawful impoundment. This unlawfully interferes with Congress's exclusive spending power.

Third, the Rule runs headlong into the major questions doctrine. The Supreme Court has repeatedly rejected assertions of sweeping executive authority resting on vague or uncertain statutory text where the asserted power carries significant economic and political consequences. *See, e.g.*, *Learning Res.*, 146 S. Ct. at 638–41 (2026). That principle applies "with particular force where, as here, the purported delegation involves the core congressional power of the purse." *Id.* at 639. The Rule's attempts to confer on federal agencies and pass-through entities capacious power to reshape the conditions under which billions upon billions of dollars in federal grant funding may be withheld or withdrawn from States and other grant recipients creates substantial economic and political significance for grant recipients across the country. It would also radically alter the longstanding relationship between federal agencies, pass-through entities, and grant recipients. Yet OMB cannot point to any clear congressional authorization for that power. As such, the major questions doctrine forecloses this expansive claim of power.

Fourth, the Rule violates the Constitution's Spending Clause in numerous ways. The proposed discretionary termination and suspension provisions allow for unlawful retroactive or post-acceptance conditions, are unlawfully ambiguous, are not reasonably related to the federal interest in particular grant programs and projects, are unconstitutionally coercive, and do not advance the general welfare. Each of these defects is independently fatal.

The proposed discretionary termination and suspension provisions eliminate any certainty for the States, as the Spending Clause requires, allowing federal agencies and pass-through entities to surprise them with post-acceptance terminations or suspensions (or to coerce acceptance of retroactive conditions) based on considerations that did not exist and the State could not have known at the time the award was accepted. By imposing this uncertainty on funding unconnected to project or program performance, it becomes impossible for States to evaluate the true risks and obligations of accepting the funds. These problems are only exacerbated by the fact that OMB intends for these provisions to apply to all ongoing awards as of October 1, 2026.

The proposed discretionary termination and temporary suspension provisions are also unlawfully ambiguous. According to the Rule, a termination could occur at any time whenever it is determined to be in the "interest" of the federal agency or pass-through entity, in the "national interest," or for any "additional" reasons that the federal agency—not Congress—chooses to incorporate into an award. Illustrating the ambiguous nature of this "discretionary" authority, OMB states that "additional" reasons could include not only the "public interest" but may also include "other additional reasons for discretionary terminations." 91 Fed. Reg. at 32,226. This is an ambiguous standard that exceeds even the broadest contours of agency authority, stretching beyond the already very broad terms "national interest" and "public interest" to encompass any undefined "additional" interest or reason the agency decides to impose and rely on as a basis for discretionary termination. Accordingly, recipients cannot possibly identify when a termination or suspension will occur or why.

The proposed discretionary termination and suspension provisions also do not require a rational connection between an agency or pass-through entity's decision to terminate or suspend a grant award and the federal interest in the particular national project or program. Indeed, the Rule would allow agencies or pass-through entities to target States or other recipients for temporary suspension or discretionary termination due to interests wholly unrelated to the purpose of a grant program or project, such as political retaliation or politically partisan interests.

The proposed discretionary termination and suspension provisions are also unconstitutionally coercive. Because of the magnitude and importance of federal grant funding to the States and other recipients, constituting many billions of dollars for critical programs and projects each year, these provisions are uniquely dangerous. The Executive could effectively command nationwide policy by threatening to use these funding termination and suspension measures to punish those who refuse to comply. Because State recipients and their residents rely on these federal monies for a range of vital measures, these provisions lay the path for precisely the type of “economic dragooning that leaves the States [and others] with no real option but to acquiesce.” *NFIB*, 567 U.S. at 523. Indeed, because States and other recipients will operate under the Damoclean threat that an agency or pass-through entity could wield discretionary termination and temporary suspension to punish disfavored recipients, they will be forced to proactively weigh the consequences of taking any action the Executive may disapprove of, a powerful restraint on their freedom of action and a powerful tool of executive coercion.

The proposed discretionary termination and suspension provisions also do not serve the general welfare. *See, e.g.*, *S. Dakota*, 483 U.S. at 207 (“The spending power is of course not unlimited, but is instead subject to several general restrictions articulated in our cases. The first of these limitations is derived from the language of the Constitution itself: the exercise of the spending power must be in pursuit of ‘the general welfare.’”). The Rule substantially increases the likelihood that termination and suspension decisions are not made in the interest of the public, or to advance the purposes related to particular grant programs or projects, but will instead be used to advance the narrow—possibly political and politicized—interests of those in charge of the Executive at any given moment.

Fifth, the Rule’s suspension and termination provisions are not reasonable, and OMB’s justification is not the product of reasoned decision-making. The Rule therefore is arbitrary and capricious because OMB has relied on factors that Congress did not intend it to consider, failed to adequately consider important aspects of the problem, failed to provide a plausible and rational explanation that connects facts found and the choices made, failed to meaningfully consider alternatives within the ambit of existing policy, failed to consider serious reliance interests engendered by the status quo, and failed to offer a reasoned explanation for departing from established principles and prior practice.

As discussed above, OMB points to no statute that sanctions the imposition of its proposed discretionary termination and temporary suspension provisions, either generally or for specific grant programs or projects. OMB’s decision to impose a one-size-fits-all termination and suspension solution on “discretionary” grants is thus arbitrarily broad.

OMB asserts that “the proposed discretionary termination and suspension provisions” are necessary “for ensuring ongoing stewardship and responsible management and oversight by Federal agencies of taxpayer resources.” 91 Fed. Reg. at 32,227. But OMB has not identified any changed circumstance or data that demonstrates that existing termination and suspension provisions have been inadequate, and OMB disregards a major aspect of the problem it claims to want to address: rather than protecting taxpayer resources and advancing the public purposes Congress funded, these newly proposed provisions undermine those goals by enabling the Executive to redirect appropriated funds towards its own shifting priorities and preferences. For example, rather than promoting fiscal accountability, the authority to “temporarily suspend” award activities and funding for up to 90 days provides agencies with a powerful mechanism to place recipients under immediate financial pressure while an executive administration seeks political concessions, gauges public reaction, and weighs potential litigation risk. The mere threat of suspension or discretionary termination alone is a powerful mechanism by which the Executive can coerce recipients into complying with conditions or preferences unrelated to the purposes for which Congress appropriated funds.

OMB further failed to consider how its proposal will affect the serious reliance interests of States and other recipients that rely on federal grants—and the longstanding framework governing grant awards—to fund longer-term projects and programs dependent on reliable federal commitments, some of which are detailed above. Those reliance interests are especially acute for public research universities and academic health centers, where federal awards may support clinical trials, human-subjects research, longitudinal studies, federally supported trainees, active subawards, major equipment purchases, data collection, patient and participant protections, and commitments to community and clinical partners. By allowing agencies and pass-through entities at their discretion to suspend or terminate awards without warning, the Rule transforms the federal dollar from a dependable source of support into an uncertain variable. That uncertainty will have significant costs, destabilizing the availability of other sources of financing, increasing financing costs, and forcing recipients to maintain costly contingencies against the possibility of the sudden loss of funding for reasons unrelated to project or program performance. Those costs may ultimately be borne by taxpayers through higher project expenses, delayed implementation, and reduced program effectiveness. Federal funds will also go to waste altogether, as the time and resources already invested in a program or project may lose their value when it is canceled midway.

OMB also failed to meaningfully consider alternatives to its proposed suspension and termination provisions. OMB claims that it "considered alternatives" such as "stricter up-front screening during the award selection process or enhanced monitoring," but it asserts that it "found that they do not remove the need for mid-award termination mechanism." 91 Fed. Reg. at 32,225. But OMB cites no data, no analysis, nor any comparison of outcomes for why these alternatives are supposedly inadequate. This bare assertion is therefore wholly insufficient to constitute reasoned decision-making, particularly when other established alternatives exist to protect taxpayer resources while preserving the reliance interests of recipients who structure programs and projects around awarded funds.

OMB has also provided erroneous and deeply flawed justifications for the discretionary termination and suspension provisions. OMB's assertion that the proposed "discretionary termination provision is similar to the already existing authority at § 200.340(a)(4)" is without merit. 91 Fed. Reg. at 32,225. That characterization is a clear misreading of the existing provision. Existing § 200.340(a)(4) (2026) authorizes termination only when an award no longer "effectuates the program goals and agency priorities" as they existed *at the time the grant was awarded*. Contrary to OMB's assertion, *see* 91 Fed. Reg. at 32,225–26, it does not permit termination based on *new* "program goals and agency priorities" identified *after* the award of the grant. *See New Jersey v. Office of Management and Budget*, No. 25-111816 (D. Mass. Aug. 4, 2025), ECF No. 65 (summary judgment brief explaining history of § 200.340). The proposed discretionary termination provision is therefore a significant and substantive departure from existing regulation, not a clarification of it (as OMB wrongly asserts).

Finally, OMB draws a false equivalence between federal procurement contracts and grant awards. Citing the Federal Acquisition Regulation (FAR), applicable to the acquisition process for federal agencies, *see* 48 C.F.R. § 1.000, OMB states that its proposed "discretionary" termination provision is "similar to the long-standing authority" that the federal government has exercised in the procurement context "to terminate . . . for convenience." 91 Fed. Reg. at 32,204, 32,225–28 (citing 48 C.F.R. §§ 49.502 and 52.249-2). According to OMB, its proposal would "create[] greater alignment between Federal financial assistance and the long-standing termination for convenience provision applicable to Federal procurement contracts." *Id.* at 32,226. OMB similarly states that the proposed suspension provision is "[s]imilar to a parallel provision in the FAR applicable to procurement contracts." *Id.* at 32,227–28 (citing 48 C.F.R. §§ 42.1303 and 52.242-15).

In advancing this faulty analogy, OMB disregards and fails to consider key differences that have led Congress and federal agencies to establish substantially different frameworks for procurement contracts and grant awards. When an agency contracts for procurement, it acts as a marketplace participant. But when an agency makes and administers grants, it acts pursuant to a particular directive from Congress to provide funds for a public purpose. As a result, an agency is limited to administering the grant program, including termination, solely in a manner that advances the statutory purpose. Indeed, Congress enacted the Federal Grant and Cooperative Agreement Act of 1977 (FGCAA) to "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." 31 U.S.C. § 6301(1)-(2). The FGCAA expressly distinguishes between "procurement contracts," "grant agreements," and "cooperative agreements." Procurement contracts are to be used when "the principal purpose . . . is to acquire . . . property or services for the direct benefit or use of the [U.S.] Government." 31 U.S.C. § 6303(1). In contrast, grant agreements are to be used when (1) "the principal purpose . . . is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the [U.S.]" 31 U.S.C. §§ 6304(1). As is plain, Congress has recognized these forms are distinct and serve distinct ends, and courts have long recognized that the federal government's choice of legal instrument matters with respect to what regulatory framework applies.

Notably, in the procurement context, "[t]he concept that the government may, under certain circumstances, terminate a contract and settle with the contractor for the part performed dates from the winding down of military procurement after the Civil War." *Torncello v. United States*, 681 F.2d 756, 764 (Ct. Cl. 1982). It developed from the "recognition that continuing with wartime contracts after the war" ends is unreasonable because of how "dramatically" circumstances change between war and peace and thus "the government had to have the power to halt the contractor's performance and settle." *Id.* It took more than a century for this wartime prerogative to eventually be extended "to peacetime military and civilian procurement," and even then, it was generally "recognized that the termination for convenience clause was only to be applied where there was some change from the parties' original bargain and was not to be applied as broadly as an untutored reading of the words might suggest." *Id.* at 763–66.

Even if the grant and procurement contexts are treated similarly, terminations for convenience still do not provide support for the broad termination authority OMB proposes. Although the precise limits of terminations for convenience for procurements has evolved, courts to this day guard against "bad faith" and ensure that such provisions do not lead to illusory contracts, prohibiting convenience termination when it is used "simply to acquire a better bargain from another source" or when "the Government enters a contract with no intention of fulfilling its promises." *Irwin Cnty. v. United States*, 170 Fed. Cl. 355, 370 (2024) ("It is an established principle that the government is not permitted to terminate a contract in bad faith, even if the contract gives it the ability to terminate with impunity."); *see also JKB Sols. & Servs., LLC v. United States*, 18

F.4th 704, 709 (Fed. Cir. 2021) ("A contract's termination for convenience clause 'is not an open license to dishonor contractual obligations.'"). The broad termination discretion OMB seeks to impose effectively would result in an illusory grant agreement and would allow the government to terminate a grant agreement in bad faith or simply to acquire a better bargain.

In contrast to the history and logic that underpins terminations for convenience in the context of procurements, rooted in the exigencies of wartime procurement and extended only gradually and with recognized limits to civilian procurement, this practice has not been applied to the grant context. To permit the executive to simply decide that it can terminate or suspend grant awards and procurement contracts in the same way would conflict with the procurement convenience doctrine's historical and functional moorings. Plus, as discussed above, it would undermine the reliance interests of grant recipients who structure programs, hire staff, and obligate their own resources based on federal assurances. Ultimately, because OMB does not even mention the differences between federal procurement contracts and federal grant assistance and how they have been treated by Congress and the courts, it offers no reasoned basis for treating these distinct legal instruments the same for purposes of termination and suspension.

Sixth, the proposed discretionary termination and temporary suspension provisions would also allow federal agencies and pass-through entities to effectively "impound" federal funds outside the process established by the Congressional Budget and Impoundment Control Act of 1974, which requires congressional approval for any rescission. *See* 2 U.S.C. § 683; *In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) ("[E]ven the President does not have unilateral authority to refuse to spend the funds. Instead, the President must propose the rescission of funds, and Congress then may decide whether to approve a rescission bill."). By allowing agencies to disregard congressional directives and to take back monies that have been appropriated and awarded, the Rule effectively creates a backdoor to unlawful impoundment. This interferes with Congress's appropriations of federal funds, and agencies cannot withhold duly appropriated funds by identifying interests independent of those that Congress has fixed.

Seventh, the proposed discretionary termination and temporary suspension provisions would also allow federal agencies and pass-through entities to force States to comply or cooperate with federal priorities in contravention of the anticommandeering doctrine, which prevents the federal government from "issu[ing] direct orders to the governments of the States." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471 (2018). By allowing agencies and pass-through entities to condition States' continued receipt of awarded funds on the Executive's view as to whether those States are acting in whatever the agencies or pass-through entities deem to be the relevant "interest," these provisions enable the Executive to effectively commandeer States into administering federal priorities. Such leverage raises serious constitutional concerns because it would enable the federal government to accomplish through the threat of withholding or terminating federal dollars what is directly forbidden under the anticommandeering doctrine.

Eighth, the Rule upends decades of federal funding procedures, injecting uncertainty for funding recipients who rely on the federal funding process to provide reliable sources of funding once funds have been awarded. Fund recipients, including the States, use federal funding for long-term projects to benefit the health, safety, and welfare of their residents. Fund recipients may also develop other projects intended to complement a federally funded project. Federal funding is used to pay salaries of state and non-state employees working on the funded projects, and States rely on those funding sources when they pass budgets and allocate funds to State agencies. Federal funding is also used to purchase supplies, equipment, property, and other items to further projects, as well as enter into sub-contract agreements, leases, equipment rentals, and other contracts. OMB never analyzes the nature of the disruption to the States' (or anyone else's) reliance on funding, as it is required to under the APA. Some examples of the types of uncertainty and reliance harms created by the Rule are as follows:

> **Infrastructure Projects**: Infrastructure projects to build or repair bridges, roads, railways, locks and dams, airports, and other major transportation projects often involve multi-year federal funding. Many projects rely on federal funding to protect communities through hazard mitigation efforts, the repair or replacement of degraded infrastructure, and disaster preparedness.[56] Recipients rely on the funding—and multi-year commitment of funding—to be able to buy supplies, equipment, hire subcontractors, and take other steps to complete the project. As one example, a multi-year, $16 billion project to create a new rail tunnel between New York and New Jersey (the Hudson Tunnel Project), and to rehabilitate the existing tunnel, began in 2019.[57] In 2024, the U.S. Department of Transportation awarded over $15 billion in federal grant and loan funds for the project, to be paid out over a multi-year period.[58] Once federal funding was secured, in reliance on that funding, supplies were purchased and subcontracts were awarded. Given the complexity of the project, "tunnel boring machines had to be specially constructed" which could not occur until the federal funds were awarded.[59] Additionally, in reliance on the funding, the States purchased property specifically for the project, with New Jersey Transit acquiring at least 115 parcels and easements at a cost of approximately $24 million.[60] However, outside of the tunnel project, these parcels have "little to no economic value to the State."[61] The tunnel project is a major component of a railway project that is estimated to "sustain 90,000 jobs and $19.6 billion in economic activity generated by the construction."[62]
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> If federal agencies had more discretion to terminate and suspend grants, the entire transportation project planning process would be affected and become impracticable. Federally funded projects would become riskier investments for private partners, due to the increased probabilities of a termination or suspension. Engineering firms or construction companies may look elsewhere for work or charge state governments higher rates to account for the increased project risk. The result would be inflated project costs across infrastructure projects, increasing the costs at all levels of government to maintain safe and

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[56] *See, e.g., Washington v. FEMA*, No. 25-cv-12006 (D. Mass.), Dkt. 104-28 (As of October 2025, the Illinois Emergency Management Agency & Office of Homeland Security had 67 open projects totaling $93 million in federal funding, including flood mitigation projects); *Illinois v. Vought*, No. 26-cv-1566 (N.D. Ill.), Dkt. 57-13 at ¶¶ 10-22 (since FY 2021, the Illinois Department of Transportation has been awarded over $177 million in competitive grants from DOT, including a project to reconstruct portions of a major interstate, projects to increase public transit bus services, and a project to improve pedestrian safety with improved pedestrian crossings).
[57] *New Jersey v. U.S. Dep't of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 13-1 at ¶¶ 7-8.
[58] *Id*. at ¶¶ 15-16.
[59] *New Jersey v. U.S. Dep't of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 1 at 2-70.
[60] *New Jersey v. U.S. Dep't of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 13-1 at ¶ 41.
[61] *Id*. at ¶ 43.
[62] *New Jersey v. U.S. Dep't of Trans*., No 26-cv-939 (S.D.N.Y. 2026), Dkt. 1 at 12.

effective roads, highways, bridges, airports, and ports. Fewer investments in infrastructure improvements will negatively impact the entire American economy.

Research Grants: Many scientific research projects are funded by multi-year, federal discretionary funding. When a researcher is awarded federal funds, they rely on the stability of those funds to hire staff, purchase laboratory supplies, and set up phases of research that can take years to manifest. For example, a professor at the University of California received an eight-year long federal grant to study potential treatments for multiple sclerosis, using the funds to pay salaries for eight researchers, and spending three years developing genetically engineered mice, which could mimic a genetic modification for individuals suffering from MS.[63] The professor took these steps believing that she would continue to receive federal funding long enough to use the mice to test various treatments. Additionally, some research grants, including the one obtained for the MS study, preclude a researcher from applying for any other federal funding during the duration of their grant period, further heightening the recipients' reliance on the specific federal funding they have been awarded.[64] With the uncertainty created by the proposed amendment, researchers may be less likely or unable to conduct research, such as being unable to secure staff, resulting in a negative impact on public health.[65]

Health Care Funding: State and local health care agencies rely on federal funds to pay for a variety of critical public health services, including testing and monitoring the spread of disease, disease prevention, and health education. Health care agencies rely on the promise of federal funding to hire and pay staff, including doctors, nurses, and other skilled health care workers. Health care agencies also rely on federal funding to set up necessary health care infrastructures; for example, Illinois' HIV surveillance system is federally funded, and without the system, the state would have no reliable way to track the spread of HIV.[66]

As another example, Washington's Money Follows the Person (MFP) Program has facilitated the transition of over 2000 seniors and individuals with disabilities from institutional care to community-based living in 2025 using federal funds. Mid-stream termination of the multi-year awards funding this program would disrupt transition pipelines and leave many residents effectively stranded in institutional settings, delaying or preventing community discharge and driving already costly institutional expenditures.

Ninth, the proposed exceptions to discretionary termination and temporary suspension provisions shield certain categories of Federal awards, but fail to protect awards that discharge a binding legal obligation under a settlement agreement, consent decree, or final judgment. OMB has failed to consider an important category of awards and proposes to arm agencies with a tool to breach court orders and settlements.

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[63] *Thakur v. Trump*, No. 3:25-cv-4737 (N.D. Cal. 2025), Dkt. 113 at ¶¶ 9-12, 24.
[64] *Id*. at ¶ 24.
[65] *See* Patel, Vimal, "Decline of Ph.D. Admissions Could Imperil a 'Generation of New Talent,'" *New York Times*, July 7, 2026, available at https://www.nytimes.com/2026/07/06/us/research-universities-fewer-phds-science.html.
[66] *Illinois v. Vought*, No. 26-cv-01566 (N.D. Ill. 2026), Dkt. 57-5 at ¶ 46.

Considering these substantial and numerous statutory and constitutional defects (among others) in the proposed discretionary termination and temporary suspension provisions, OMB should withdraw them and not include them in any final rule. They are unconstitutional, contrary to law, in excess of statutory authority, as well as arbitrary, capricious, and an abuse of discretion. These provisions would place all recipients under constant threat of termination or suspension, dramatically increasing the coercive power of the Executive Branch over recipients and allowing the Executive to act contrary to the directives of Congress. In addition, they would harm the interests of American taxpayers by rendering the federal government an unreliable partner for critical programs and projects that our residents rely on, and they would reduce the return on investment of monies that Congress has appropriated for particular public purposes.

2. Notification of Termination

Notification of Termination Requirement (2 C.F.R. § 200.341). Proposed 2 C.F.R. § 200.341 creates two different sets of notification requirements: one pertaining to grant "termination[s] for noncompliance" and the other for "discretionary [grant] termination[s]." 91 Fed. Reg. at 32,259–60. For both types of terminations, federal agencies are required to instruct recipients and subrecipients "to stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts related to the terminated portion of the Federal award." *Id.* For grant terminations related to noncompliance, "consistent with § 200.342 . . . the notification must also provide the recipient with an opportunity to object and provide information challenging the action." 91 Fed. Reg. at 32,260. By comparison, and as discussed below, federal agencies are *not* required to give recipients and subrecipients any process by which to object or challenge "discretionary" grant terminations. *Id.*

New Notice Requirements (2 C.F.R. § 200.341). Proposed 2 C.F.R. § 200.341(c) discusses the notice requirements for the new category of discretionary grant terminations pursuant to § 200.340(a)(2), indicating that any notice must include: (1) a brief summary of the reasons "for finding that termination is in the interest of the Federal agency or pass-through entity;" (2) instructions "to stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts" related to the terminated award; (3) "an opportunity for the recipient or subrecipient to submit a written statement of termination costs"; and (4) a requirement that the "written statement of termination costs . . . be sufficiently detailed." 91 Fed. Reg. at 32,260. As to the written statement of termination costs, the proposed revisions detail what information must be included and what documentation is required, including, among other things, that the statement "be sufficiently detailed to permit" the Federal agency to evaluate the "allowability, allocability, and reasonableness of the claimed costs." *Id*. As to the brief summary of reasons for discretionary terminations, the Rule offers five examples of the kind of information federal agencies can offer in their termination notices:

> For example, the Federal agency may explain why it determined that a particular award or class of awards would no longer effectuate program goals, Federal agency priorities, or the national interest. Or the Federal agency may prove an explanation of why an award or class of awards no longer best serves the authorized public purposes of the relevant program. Or an agency may explain, more generally, why it determined that an award or class of awards is no longer in the public interest, or

> will no longer best serve the public interest, as it relates to relevant program objectives in statute. Or an agency may explain why reallocating funds from an award or class of awards to other existing or new awards would better serve the public purpose of the program set forth in statute. Or any agency explanation may include some combination of the above reasons or other alternative reasons, consistent with law, for why it decided that terminating the award was in the government's interest.

91 Fed. Reg. at 32,230.

In short, the proposed changes to § 200.341 largely purport to oblige federal agencies to provide recipients with "additional information" in notifications for the new category of "discretionary terminations." 91 Fed. Reg. at 32,230. As justification for these proposed revisions, OMB asserts that an agency's "authority" to terminate grants under the newly proposed discretionary termination provision "is not unlimited" and that "[e]nsuring the adequacy of the notification will help to ensure that [grantees] understand why termination decisions had been made and reduce risk to the Federal Government." *Id.* The Rule says the proposed revision "is intended to ensure that agencies provide a reasoned explanation, consistent with law for specific termination decisions." *Id*. At the same time, OMB asserts that "the requirement to provide a reason for award termination is not an exceptionally high bar" and that agencies "would not be required to provide a detailed or exhaustive analysis." *Id.* OMB also warns that "[b]y providing a reasoned explanation for the exercise of authority under the discretionary termination provision based on programmatic or policy reasons, as they exist at the time of the termination, agencies will remain accountable for review in the U.S. Court of Federal Claims, as appropriate and authorized by law, for their termination decisions." *Id*.

The current version of § 200.341 already requires Federal agencies to "provide written notice of termination" to grantees, including "reasons for termination, the effective date, and the portion of the Federal award to be terminated." 2 C.F.R. § 200.341(a). To the extent that these proposed revisions give recipients and subrecipients more information about the reasons for a termination, this may be helpful for grant recipients. But as noted below regarding proposed § 200.342, this information is most useful to recipients and subrecipients in challenging grant terminations, and the proposed 2 C.F.R. § 200.342 would now leave it totally up to federal agencies to decide whether to allow recipients and subrecipients an opportunity to object to discretionary terminations at all. The States urge OMB to require that federal agencies provide recipients and subrecipients with an objection process for all types of grant terminations.

Stop Work Requirements (2 C.F.R. § 200.341). The larger issue with the Rule's proposed revisions to § 200.341 are the new requirements that under either a noncompliance grant termination or a discretionary grant termination, federal agencies must now "instruct" recipients or subrecipients to "stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts related to the terminated portion of the Federal award." 91 Fed. Reg. at 32,259–60. OMB provides no explanation or justification for this new requirement. *See* 91 Fed. Reg. at 32,230. In some instances, this kind of action by recipients or subrecipients—in order to avoid incurring additional costs while a grant termination is being challenged—may be appropriate. But, under the Rule, all recipients and subrecipients would be required to "stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts" related to the terminated award, 91 Fed. Reg. at 32,259–60, regardless of the facts of their unique situation.

Such a bright line requirement would significantly harm recipients and subrecipients. The States are aware of instances where a recipient cannot stop work without the risk of compounding financial and reputational harms or creating public safety hazards. For example, if a recipient or subrecipient is using a federal award to fund an infrastructure project, it may not be financially feasible to immediately stop work on the project. To shut down the construction project, the recipient or subrecipient might need to expend significantly more money to secure the site and make sure it is safe to the public (as compared to spending less money to complete the project). In other instances, a recipient or subrecipient may have accepted competitive bids on contracts or is working with a local partner on the federally funded project. To stop work and terminate the contracts immediately would mean that the recipient or subrecipient risks losing that talent or negatively impacting those partnerships, whereas a more orderly winddown under appropriate circumstances would avoid those same costs.

OMB's proposed revision removes the ability for recipients or subrecipients to decide when it is pragmatic to secure alternative funding in order to mitigate harms after a grant is suddenly terminated. And read broadly, a mandate to "stop work" and "make no financial obligations" "related to the terminated portion of the Federal award" (§§ 200.341(b) and (c)(2)), could prevent a fund recipient from even doing the minimum to make a project site safe, or to secure property and/or equipment involved in the award project, causing significant harms to the funding recipient and a potential danger to the public. And the caveat that the subawards and contracts be terminated only "to the extent authorized by law," 91 Fed. Reg. at 32,259, does not cure the Rule's deficiencies as there may be situations where a recipient or subrecipient could lawfully cancel a contract related to a terminated award but still suffer unreasonable and compounding financial and reputational harms. And, regardless, Courts regularly reject such hollow attempts to rely on savings clauses. *See, e.g.*, *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018) ("Savings clauses are read in their context, and they cannot . . . override clear and specific language.")

Both the proposed termination provision in § 200.340 and the stop work provision in § 200.341 are extremely damaging to funding recipients who relied on the funding; the termination of that funding, with little to no notice, will cause a ripple effect of negative consequences to the recipients. OMB fails to analyze the disruption this Rule would have on reliance interests. Some examples of those types of harms are:

> **Termination or Stop-Work of Infrastructure Projects:** Termination of infrastructure projects before completion can be incredibly costly to funding recipients, who have purchased supplies, property, hired subcontractors, and invested a great deal of resources in the progression of the project. Abandoning a half-finished project is also incredibly costly, as often there is a worksite that needs to be secured, made safe, expensive equipment to move or repurpose, and subcontractors to pay. A failed project also does not solve the harm the project set out to resolve in the first place, leaving in place whatever hazards or risks the project sought to mitigate. For example, for part of the New York/New Jersey Hudson

Tunnel Project, in late 2025, disbursement of the previously-awarded federal funds was suspended.[67] Without federal funding, work could not continue on the project.[68] The fund recipients identified several harms they would incur if the funds were frozen, including spending "millions of dollars a week" to "secure and supervise the [work] sites," to avoid "public safety and public health risks," to secure the "tunnel boring machines and other equipment," and to pay utilities.[69] Even a pause in funding can impact funding recipients' ability to contract for goods and labor, as prices may increase during the delay.[70]

If the New York/New Jersey tunnel project had to be abandoned for lack of funding, it would devalue the numerous parcels of land purchased for the project, and permanent cleaning and restoration of the properties for safety purposes would costs "tens of millions of dollars."[71] Numerous unrecoverable costs would be lost, including the supplies and labor on the partially-completed construction, as well as all the engineering plans and designs.

Moreover, in the future, there is a legitimate risk that "[c]ontractors may look at the suspension of work and instability caused by the federal government's action" and decline to bid or "bid at a substantial increase in pricing due to the risk of instability of funding."[72] Construction companies, engineering firms, and others might exit the market for federally funded projects, and state agencies tasked with infrastructure projects may have difficulty securing qualified contractors at reasonable prices. Furthermore, transportation projects involve careful planning and coordination, all of which will be disrupted if federal partners have more discretion to stop work abruptly. In some states, transportation projects can only go forward during the summer months when the weather is amenable to construction. Even a brief pause in a project could set the project back by months or years if the pause causes the lapse of the seasonal window for construction. And a delay of months or years could involve the loss of contracts with subcontractors, the need to revise coordination with other states and local governments involved in the project, and the renegotiation of the price of materials used for the project.

Termination or Stop-Work of Research Projects: Research often entails time-sensitive steps or stages; termination of funding can upend the entire research project. For example, a study at Cornell University developing a mechanical heart for babies planned a thirty-day test placing the device in sheep that were the right size to model a baby's circulatory system.[73] When their federal funding was frozen

[67] *New Jersey v. U.S. Dep't. of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 1 at 7–8.
[68] *Id*. at 10–11.
[69] *Id*. at 20–21.
[70] *See, e.g., Illinois v. Vought*, No. 26-cv-1566 (N.D. Ill. 2026), Dkt. 57-13 at ¶ 14 (a pause in federal funding for a bus public transit program caused the estimated cost to procure the buses to rise from $2.5 million to $3 million during the delay).
[71] *New Jersey v. U.S. Dep't. of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 1 at 21–23.
[72] *New Jersey v. U.S. Dep't. of Trans.,* No. 26-cv-939 (S.D.N.Y. 2026), Dkt. 13-1 at ¶ 65.
[73] Bajaj, Simar, "How a Funding Pause Derailed an Artificial Heart for Babies," *New York Times*, May 18, 2026, available at https://www.nytimes.com/2026/05/18/well/federal-cuts-artificial-baby-heart-cornell.html.

in 2025, they had to return the sheep to local farms; when the funding resumed months later, the sheep were no longer the right size for the study, setting them back for months.[74] Similarly, a multi-year, federally funded project to develop a tuberculosis vaccine had its federal funding frozen after animal testing was completed, but before the team had an opportunity to review the data to see if the vaccine was effective—which would waste the approximately $5.3 million in taxpayer dollars already spent on data that now could not be analyzed.[75] Additionally, a loss of funding often means that the researchers working on the project cannot be retained, losing the knowledge, experience, and institutional wisdom of those researchers.[76] Terminating research funding partway through a project wastes federal funds and prevents scientific progress.

Termination or Stop-Work of Health Care Projects: Termination of long-term health federal funding is extremely damaging to state and local health care agencies who rely on federal funding for disease prevention, monitoring, and treatment. For example, if Illinois no longer received funds from the CDC for viral hepatitis prevention, it would lose "its entire dedicated infrastructure for viral hepatitis surveillance and outbreak response," which could cause Illinois to lose the ability to track a hepatitis epidemic estimated to affect over 50,000 Illinoisians.[77] In addition, workforce recruitment and retention programs rely on predictable commitments to healthcare professionals serving rural and underserved areas. If support is perceived as unstable due to the threat of midstream terminations, fewer providers will participate, worsening existing workforce shortages in critical health-related fields.

Termination or Stop-Work for Pass-Through Recipients: States also act as pass-through entities for discretionary federal funds, and the ultimate fund recipients also rely on the availability of those funds and would be harmed by an abrupt termination. For example, state agencies receive discretionary federal funding to be paid to farmers who agree to implement certain farming practices, with the funds to be paid only after the farmer has taken steps to implement those farming practices.[78] For pass-through funding, the ultimate fund recipient will bear the cost of a termination or pause; in this example, farmers who spent time and resources to implement new farming procedures believing they would receive financial assistance.

Additionally, the Rule contemplates terminations occurring even if a fund recipient is fully compliant, at the agency's discretion if the funding no longer meets the agency's priorities "at the time of termination." § 200.340(a)(2). Since applicants for federal funding often have to disclose

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[74] *Id*.
[75] *Thakur v. Trump*, No. 3:25-cv-4737 (N.D. Cal.), Dkt 115 at ¶ 11.
[76] *See, e.g.*, *id.*, Dkt 113 at ¶¶ 24(b) (estimating it would take a decade to rebuild the team that had been studying MS or Mild Cognitive Impairment treatments after a lapse in federal funding).
[77] *Illinois v. Vought*, No. 26-cv-01566 (N.D. Ill.), Dkt. 57-5 at ¶ 49.
[78] *See, e.g.,* Illinois Department of Agriculture, *CPRG—Climate Smart Agriculture Program*, https://agr.illinois.gov/resources/landwater/cprg-program.html (Illinois Department of Agriculture uses federal funds to provide financial incentives to farmers who agree to implement no-till or strip-till farming practices).

if they have ever had their federal funding terminated, this would unfairly stain the reputation of the applicant and may negatively impact their future efforts to secure funding.

The proposed revisions to § 200.341 regarding stop work orders and termination costs violate the APA because they are neither "reasonable" nor "reasonably explained." *Prometheus Radio Project*, 592 U.S. at 417. As an initial matter, OMB offers no explanation for the proposed revisions to § 200.341(c) relating to termination costs. They appear nowhere in the Rule's preamble; the revisions relating to termination costs appear only at the end under the Regulatory Text section. *Compare* 91 Fed. Reg. at 32,229–30 (explaining changes to 2 C.F.R. § 200.340), *with* 91 Fed. Reg. at 32,259–60 (text of proposed revisions). Moreover, OMB provides no explanation as to why federal agencies issuing notices of noncompliance grant terminations or discretionary grant terminations would now be required to "instruct[] the [grantee] to stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts related to the terminated portion of the Federal award." 91 Fed. Reg. at 32,230. The Rule does not acknowledge the way the stop work/terminate contracts provision would harm recipients and subrecipients both reputationally and financially. And while the Rule includes a requirement that Federal agencies provide "additional information" in notifications for the new category of "discretionary terminations," *id.* at 32,229–30, such information is minimally useful without the ability to challenge the discretionary grant termination, which the Rule now leaves up to the federal agency's discretion. The Rule fails to grapple with any of these harms or contemplate the utility of additional information without the guarantee of a process for challenging such discretionary grant terminations.

For these same reasons, the proposed revisions to § 200.341 relating to the stop work orders and termination costs are contrary to law, in excess of statutory authority, and an abuse of discretion. The proposed changes to § 200.341—along with the proposed revisions to §§ 200.342 and .343 discussed below—operationalize the unlawful revisions to § 200.340 and thus suffer from the same deficiencies. Proposed §§ 200.341–.343 further OMB's proposed grant termination regime, which would place all recipients under constant threat of termination or suspension with no opportunity to be heard and on the hook for the costs of immediately issuing stop work orders and canceling contracts. OMB's proposed revisions ignore recipients' reliance interests and serve only to increase the coercive power of the Executive Branch over recipients. OMB should withdraw its proposed requirement that agencies "instruct[] the [grantee] to stop work, make no additional financial obligations, and, to the extent authorized by law, terminate all subawards and contracts related to the terminated portion of the Federal award," 91 Fed. Reg. at 32,230, and further explain its termination costs requirements.

3. Appeals

Opportunities to Object, Hearings, and Appeals (2 C.F.R. § 200.342). Proposed 2 C.F.R. § 200.342 limits the objection, hearing, or appeal process to solely terminations based on noncompliance. *See* 91 Fed. Reg. at 32,230. Grantees subject to discretionary terminations or "temporary" suspensions under the revised 2 C.F.R § 200.340(a)(2) would be entirely cut out of the formal objection, hearing, and appeal process. Whether there is any procedural due process at all would be up to the agency's discretion to "engage" with grantees "through some form of administrative review process." 91 Fed. Reg. at 32,230.

In contrast, the current version of § 200.342 applies to all terminations in the Subpart describing Remedies for Noncompliance (§ 200.339 to § 200.343), including terminations subject to the present 2 C.F.R § 200.340(a), and requires that Federal agencies "maintain written procedures for processing objections, hearings, and appeals." 2 C.F.R. § 200.342 (2026). It also requires that Federal agencies "must provide the recipient with an opportunity to object and provide information challenging the action." *Id*. Federal agencies "must comply with any requirements for hearings, appeals, or other administrative proceedings" that the grantee is "entitled" to "under a statute or regulation." *Id*.

OMB proposes to add a few words and one sentence at the end of § 200.342 to establish that these administrative procedures apply <u>only</u> to "remedies for noncompliance." 91 Fed. Reg. at 32,260. At the end of the current regulation, OMB proposes to add: "The Federal agency is not required to allow for objections, hearings, and appeals related to any reasons for termination *except termination for noncompliance*." *Id*. (emphasis added). While the current regulations (including 2 C.F.R. § 200.340) are housed under the Subpart for Remedies for Noncompliance, the proposed changes to 2 C.F.R. § 200.340 would create two buckets of grant terminations: those for noncompliance (under the revised § 200.340(a)(1)) and those for "discretionary" reasons (under the revised § 200.340(a)(2) and (a)(5)). The proposed changes to § 200.342 would limit the objection, hearing, and appeal process to noncompliance grant terminations, while leaving administrative procedures for discretionary grant terminations up the agency's discretion. *See* 91 Fed. Reg. at 32,230.

OMB justifies the proposed revisions to § 200.342 by asserting that administrative procedures like objections and hearings "are generally intended to allow a Federal agency to make findings of fact and conclusions of law related to a [recipient's] misconduct or noncompliance," but "would have less purpose or need" in the case of discretionary terminations since grantees "would not generally be in the best position to present facts or information related to the agency's priorities as they exist at the time the termination decision is made." 91 Fed. Reg. at 32,230. OMB notes that for "discretionary terminations or suspensions," federal agencies would still be "required to follow other procedures," including procedures relating to allowable costs, but otherwise an "agency, in its discretion, may elect to engage with [grantees] through some form of administrative review process before or after a discretionary termination or suspension, but would not be required to except as necessary to provide notice, determine allowable costs, and implement other sections of the regulatory text." *Id*. OMB avers that "[i]n some cases, engaging with [grantees] on discretionary terminations or suspensions may serve to reduce risk to the Federal Government or minimize impacts to" Federal programs or awards, while "in other cases the agency may decide to limit engagement to only required procedures, such as providing appropriate notice and making a determination of allowable costs." *Id*.

The proposed revisions to § 200.342 underscore all of the shortcomings of the proposed § 200.340. With § 200.342, OMB intends to limit the requirement that agencies allow for objections, hearings, and appeals to noncompliance terminations and not discretionary grant terminations—a distinction that exists only because of the unlawful proposed revisions to § 200.340. Assuming the proposed revisions to § 200.340 are finalized, this proposal would significantly harm grantees by leaving to the agency's discretion whether the grantee can challenge a new discretionary termination on the merits, further worsening the harms of the proposed discretionary grant termination regime, including as described above. The proposed revisions to § 200.342 violate the APA and are unlawful for at least five distinct reasons.

First, OMB has offered an explanation for its proposal that "runs counter to the evidence before" it, *State Farm*, 463 U.S. at 43—recipients and subrecipients already successfully appeal grant terminations for reasons beyond "misconduct and noncompliance." Even where recent terminations have been premised on alleged misalignment with program goals or agency priorities under the current version of § 200.340(a), federal agencies have typically at least stated to recipients and subrecipients that they have an opportunity to submit objection letters challenging the grant termination.[79] The States know of several instances in which recipients or subrecipients have submitted objection letters in response to these terminations and the federal government has reversed course.[80]

In objection letters, recipients argued that their federal awards did in fact align with the federal agency's goals and priorities such that the termination was unwarranted. And that is unsurprising. Even if an agency is best positioned to understand its own priorities, it may have substantially less detailed information, or even misperceptions, about the activities of various grantees. Moreover, because the apparent premise of these terminations is that the agency's priorities have changed since the original grant award, it is entirely possible that the pre-existing materials the agency has in its possession (such as application materials) will of necessity not fully address the concerns that the agency now says are important, even though the recipient could address those concerns if given the opportunity. Thus, OMB's rationale that these "administrative procedures . . . would have less purpose or need" in discretionary terminations and that grantees "would not generally be in the best position to present facts or information related to the agency's priorities as they exist at the time the termination decision is made," 91 Fed. Reg. at 32,230, is unsupported by both logic and the States' actual experience. OMB has made no "rational connection" between the current facts and its proposal. *See Ohio v. Env't Prot. Agency*, 603 U.S. 279, 292 (2024).

Second, OMB's reasons for the proposed revisions to § 200.342 are "internally inconsistent" with its rationale for the proposed notification requirements in § 200.341. *See Nat. Res. Def. Council v. U.S. Nuclear Regulatory Comm'n*, 879 F.3d 1202, 1214 (D.C. Cir. 2018). As noted, with § 200.341, OMB intends "to expressly require [that] termination notices issued under the discretionary termination provision . . . include a brief summary of the reason or reasons why an agency decided to terminate an award or class of awards." 91 Fed. Reg. at 32,230. As

[79] *See, e.g.*, Ottobre Declaration, Exhibit A, *New Jersey v. OMB*, D. Mass. No. 25-11816 at ECF No. 66-39 (explaining that the "award [wa]s being terminated because it 'no longer effectuates the program goals or agency priorities'" as the agency "has changed its priorities" and providing instructions for the recipient to "appeal this termination in writing within 30 calendar days of the date of th[e] notice").

[80] For example, earlier this year, HHS abruptly terminated nearly $2 billion in mental health-related grants under SAMHSA, only to reinstate the funding 24 hours later after a swift bipartisan backlash. *See* Julia Ivanova, HHS Reverses Abrupt Cuts to Mental Health, Addiction Grants After Backlash, *Telehealth.org* (Jan. 26, 2026), https://telehealth.org/news/hhs-reverses-abrupt-cuts-to-mental-health-addiction-grants-after-backlash/. Similarly, the Administration defunded a landmark study of women's health, only to reverse the decision within two days following reporting on the decision. NPR, *In a reversal, the Trump administration restores funding for women's health study* (Apr. 25, 2025), https://www.npr.org/sections/shots-health-news/2025/04/24/nx-s1-5376473/hhs-restores-funding-for-womens-health-initiative.

justification, OMB explains that an agency's "authority" to terminate grants under the newly proposed discretionary termination provision "is not unlimited" and "[e]nsuring the adequacy of the notification will help to ensure that [grantees] understand why termination decisions had been made and reduce risk to the Federal Government." 91 Fed. Reg. at 32,230. Despite the stated rationale for the proposed revisions to the notification requirements in § 200.341, OMB maintains that opportunities to object, appeal, or be heard in discretionary grant terminations will "have less purpose or need." *Id*. (leaving the objection, hearing, and appeal process to agency discretion in discretionary grant terminations). It is far less useful to provide recipients with an explanation for a discretionary grant termination without ensuring that they be given an opportunity to challenge such a termination in every circumstance (rather than leave it up to the agency's discretion). The States support a requirement that agencies provide recipients with more transparency in grant termination notices, but that transparency is helpful only to the extent the States have an opportunity to challenge all grant terminations.

Third, OMB's proposed revisions to § 200.342 are unfair to recipients and contrary to longstanding policy and practice. The revisions only serve to worsen the problems created by the proposed § 200.340. The proposed changes to § 200.342 would give agencies the option of effectively unbounded discretionary terminations that require no process. The proposal would allow the federal government to circumvent its own process for noncompliance review by simply recharacterizing its objections as being discretionary (and thus freed from the requirements to provide recipients with an opportunity to object, appeal, and be heard). This proposal, in conjunction with the proposed changes to § 200.340, would give federal agencies broad authority to terminate grants for seemingly any reason at all and whether grantees can object at all is solely up to the agency's "discretion."

Moreover, under the APA, an agency must "show that there are good reasons for a new policy." *Fox*, 567 U.S. at 515. Here, OMB has disregarded the benefit that recipients incur from an opportunity to be heard in grant terminations, focusing only on how agencies are impacted by these types of administrative procedures. *See* 91 Fed. Reg. at 32,230 (asserting that "[i]n some cases, engaging with recipients on discretionary terminations or suspensions may serve to reduce risk to the Federal Government or minimize impacts to" Federal awards or programs while "in other cases the agency may decide to limit engagement to only required procedures").

Fourth, OMB not only fails to offer a "reasoned explanation" for this "change [to] their existing polic[y]," *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016), but it is clear the agency misunderstands what a merits objection or appeal on a discretionary termination would actually be challenging. OMB attempts to justify its proposed revisions to § 200.342, leaving administrative procedures for discretionary grant terminations up to agency discretion, by noting that grantees "would not generally be in the best position to present facts or information" on an agency's new priorities. 91 Fed. Reg. at 32,230. But grantees would not necessarily be challenging the agency's new priorities—they may be arguing that their grant implementation is not inconsistent with these new goals and priorities. OMB fails to offer a satisfactory explanation for its proposed changes to § 200.342 and instead offers circular logic that amounts to "we don't think an appeal would be helpful because we don't think it would be helpful." Rather than engage in reasoned decision-making, OMB hastily removes any due process requirements for discretionary grant terminations under the self-serving rationale that "administrative procedures . . . would have less purpose or need" in discretionary grant terminations. 91 Fed. Reg. at 32,230.

Finally, proposed § 200.342 denies recipients an opportunity to be heard and runs counter to general principles of fairness and due process. As part of the regime for grant terminations, OMB should require that agencies provide recipients with an opportunity to object, appeal, and be heard on both noncompliance and the newly created discretionary grant terminations to comport with requirements of due process and fairness. An objection/appeal/hearing process would be a safeguard against arbitrary decision-making, including discretionary grant terminations driven by animus and viewpoint discrimination. At minimum, recipients subject to discretionary grant terminations or suspensions should be allowed the same opportunity to object, appeal, and be heard as those subject to noncompliance grant terminations. This would require agencies to explain the basis for their discretionary grant termination in writing and provide recipients with an opportunity to contest a discretionary grant termination with evidence of their own and background information on how the federally funded project was proceeding before termination.

4. Cost Allocation

Cost Application (2 C.F.R. § 200.343). Proposed 2 C.F.R. § 200.343 proposes to revise what costs a recipient or subrecipient may recover during a suspension or after a termination in two principal ways. *First*, proposed § 200.343(a) imposes a new affirmative duty on recipients and subrecipients to "make all reasonable efforts to discontinue, cancel, mitigate, or otherwise reduce" their financial obligations following a suspension or termination, and to "provide[] documentation of those efforts to the Federal agency upon request." 91 Fed. Reg. at 23,230–31. *Second*, proposed § 200.343(c) adds a new post-termination discretionary cost-recovery provision that, in OMB's words, "would expand on the existing standard for which costs agencies may allow, in their discretion and consistent with law, following a termination notice." *Id.* at 23,231. That new provision is expressly tied to the proposed notice provision at § 200.341(c), which "instructs agencies to provide the recipient of the terminated award with an opportunity to provide information related to terminations costs." *Id.*

The new mitigation/documentation provision shifts obligations onto recipients and subrecipients after a suspension or termination. The post-termination discretionary cost-recovery provision gives the OMB broad discretion to decide whether recipients and subrecipients may recover costs resulting from discretionary terminations. The practical effect is significant: the recovery of post-termination costs legitimately incurred is converted from a matter of entitlement under the current rule into a matter of agency discretion under the Rule.

The current version of § 200.343 is a comparatively narrow, recipient-protective provision. Although costs incurred during a suspension or after a termination are generally "not allowable unless the Federal agency or pass-through entity expressly authorizes them," the current rule makes such costs allowable (1) where they "result from financial obligations which were properly incurred by the recipient or subrecipient before the effective date of suspension or termination, and not in anticipation of it," and (2) where they "would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance." 2 C.F.R. § 200.343(a)-(b) (2026). The current rule says nothing about "discretionary" terminations—because they are not permitted—and imposes no affirmative duties on recipients or subrecipients. The States urge OMB to preserve recipients' and subrecipients' entitlement to recover costs properly incurred before a termination occurs and becomes effective.

As to the mitigation/documentation provision, OMB frames proposed § 200.343(a) as merely conforming the Rule to existing closeout policy by adding "an express cross-reference" to § 200.472(a). *See* 91 Fed. Reg. at 32,231. But the cross-referenced provision in § 200.472(a) uses the same "reasonable efforts" language to protect recipients and subrecipients, *not* to burden them. Under § 200.472(a)(2), where a recipient or subrecipient "cannot discontinue certain costs immediately" despite making "all reasonable efforts," those costs are generally allowable, and only costs that continue because of the recipient's or subrecipient's "negligent or willful failure" are unallowable. 2 C.F.R. § 200.472(a)(2). The Rule, however, takes that recipient-protective standard and recasts it as an affirmative obligation that recipients and subrecipients must satisfy—and document "upon request," 91 Fed. Reg. at 32,230–31—as a condition of recovering costs. OMB provides no reasoned explanation for converting a provision that has operated as a shield to protect recipients into a sword, and its characterization of the change as a mere conforming cross-reference to § 200.472(a) obscures rather than justifies the substantive burden-shifting it accomplishes.

And as to the post-termination discretionary cost-recovery provision, proposed § 200.343(c) makes recovery of costs resulting from discretionary terminations something agencies "*may* allow, in their discretion and consistent with law." 91 Fed. Reg. at 32,231 (emphasis added). That discretion is problematic because it makes mitigation necessary but not sufficient. Even if a recipient or subrecipient properly incurred costs in reliance on a federal award, and even if it makes all reasonable efforts to discontinue, cancel, mitigate, or reduce those costs after termination like the proposed § 200.343(a) requires, the agency could still decline to reimburse them. In other words, a recipient or subrecipient could do everything the Rule asks of it and still be left to absorb unavoidable costs caused by the federal agency's discretionary termination decision. That shifts the financial consequences of changing executive policy priorities onto recipients and subrecipients, even where the termination has nothing to do with any failure by the recipient or subrecipient.

The post-termination discretionary cost-recovery provision is also internally inconsistent with OMB's own justification for the Rule. As noted above, OMB repeatedly relies on the Federal Acquisition Regulation as the model for its new discretionary-termination regime by asserting that its proposal "creates greater alignment between Federal financial assistance and long-standing termination for convenience provision applicable to Federal procurement contracts." 91 Fed. Reg. at 32,226. But where a contractor is terminated for convenience, the FAR guarantees that the Contracting Officer "shall pay" the contractor for, among other things, "[t]he costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto," the reasonable costs of settling terminated work, and a fair and reasonable profit on work performed. 48 C.F.R. § 52.249-2(g). The FAR further provides for recovery of reasonable settlement costs, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals. *Id.* OMB's post-termination discretionary cost-recovery provision, however, does not provide comparable protection. OMB, therefore, invokes the FAR model as support for expanded termination authority while discarding the reciprocal cost-recovery provisions that operate for terminations for convenience in the procurement context.

These are not abstract concerns. The States are aware of instances in which a recipient or subrecipient, by the time a termination issues, has already and properly incurred substantial non-cancellable costs. For example, a recipient using a federal award to fund an infrastructure project may have already mobilized contractors, ordered long-lead materials, and executed binding contracts with private partners and competitive bidders. If the award is terminated for shifting "programmatic or policy reasons, as they exist at the time of the termination," 91 Fed. Reg. at 32,230, and the recipient is then required—under the companion revisions to § 200.341—to immediately stop work and terminate those contracts, the recipient could be left holding the resulting termination and demobilization costs, the cost of securing and making the site safe, and the contractual liabilities owed to those partners. Under proposed § 200.343(c), the agency could decline, in its discretion, to reimburse any of those legitimately incurred costs, leaving the recipient or subrecipient to absorb them through no fault of their own.

The proposed revisions to § 200.343 are thus neither reasonable nor reasonably explained. As to the mitigation/documentation duty, OMB characterizes the change as a clarification and cross-reference to § 200.472(a), but that explanation does not account for the substantive change the Rule would make. As explained above, § 200.472(a) currently protects recipients and subrecipients that cannot immediately discontinue costs despite reasonable efforts; proposed § 200.343(a) would instead turn that standard into an affirmative burden that can be used to deny cost recovery. OMB does not provide a reasoned explanation for that dramatic shift and change from existing policy and practice, nor does it consider the reliance interests of recipients and subrecipients.

As to the post-termination discretionary cost-recovery provision, OMB does not reasonably explain why recipients and subrecipients should lose the entitlement to recover properly incurred costs after a discretionary termination unrelated to recipient performance. OMB also does not justify why it relies on the FAR's termination-for-convenience framework while abandoning the FAR's reciprocal cost-recovery protections. That internal inconsistency does not reflect the reasoned decision-making under the APA. If OMB believes federal financial assistance should be aligned with termination-for-convenience principles—which it should not be, for the reasons already explained—then at the very least, OMB must adopt meaningful cost-recovery protections, including recovery for properly incurred costs, unavoidable wind-down costs, reasonable settlement expenses, and costs associated with terminating subawards and contracts. To do otherwise is not reasonable in the slightest.

Moreover, OMB fails to acknowledge, let alone justify, the way proposed § 200.343 potentially shifts non-cancellable, sunk costs onto recipients and subrecipients terminated for reasons unrelated to any noncompliance on their part. That failure is especially indefensible given the serious reliance interests at stake. Recipients and subrecipients accept federal awards and then build budgets, hire personnel, execute contracts with private partners and competitive bidders, and commit to multi-year projects in reliance on the expectation that properly incurred costs will be recoverable. For research and academic health awards, those commitments may also include enrolling patients or research participants, maintaining protocol-required clinical and safety obligations, preserving longitudinal data, supporting trainees, coordinating multi-site studies, and managing subawards with clinical, community, or research partners. Where, as here, a "prior policy has engendered serious reliance interests," an agency "must . . . provide a more detailed justification" for changing course. *Fox*, 556 U.S. at 515–16. OMB has offered no such justification. Additionally, OMB has not adequately considered the interaction between proposed § 200.343 and the companion revisions to §§ 200.340–342. Under the Rule, recipients subject to discretionary terminations would be required to stop work and terminate related subawards and contracts but would not be guaranteed an administrative process to challenge the discretionary termination on the merits. Proposed § 200.343 would then leave recovery of many resulting costs to agency discretion. In practice, the same agency that terminates a grant based on changing priorities could also deny reimbursement for the costs caused by that termination by invoking those same priorities. A cost-submission process is not a meaningful protection if the agency remains free to deny recovery of legitimate costs based on the same discretionary policy judgment that caused the termination in the first place.

Finally, the proposed mitigation/documentation and post-termination discretionary cost-recovery provisions would undermine the principles of due process and fairness. The Rule gives agencies broad discretion to terminate awards for policy reasons unrelated to the recipient's fault, requires recipients and subrecipients to mitigate and document the resulting costs, and then leaves reimbursement of those costs to agency discretion. That structure deprives recipients of awarded funding and legitimate reliance-based cost recovery without adequate notice, meaningful standards, or a genuine opportunity to object. It also gives agencies insufficiently cabined discretion to decide both whether to terminate an award and whether to reimburse the costs caused by that termination, which seriously challenges due process and fairness principles. The States, therefore, urge OMB to withdraw the proposed revisions to § 200.343. At minimum, OMB should revise its proposed changes to § 200.343 to explicitly preserve recipients' and subrecipients' entitlement to recover costs properly incurred before a suspension or termination takes effect, costs arising from non-cancellable obligations reasonably made in reliance on the federal award, reasonable wind-down and settlement costs, and costs associated with terminating subawards and contracts. OMB should also make clear that any mitigation requirement cannot be used to deny costs properly incurred.

E. The Rule Places New Obligations or Prohibitions on Recipients and Subrecipients, Including States.

OMB proposes many new obligations or prohibitions on recipients and subrecipients, including states. OMB proposes to impose new employment eligibility checks, payment verification checks, several new information collections (including payment justifications for *each* federal payment), expanded subrecipient monitoring beyond federal funds to include monitoring *all* subrecipient activities; changes to longstanding recipient and subrecipient information security requirements; foreign collaboration limits that would require new controls, and monitoring; and new conflict of interest checks by all entities receiving federal funds. Compliance with these proposed requirements may (among other burdens) call for modifying electronic systems, as well as policies and procedures, and thus would require substantial investment of time, resources, and money by state agencies and other recipient and subrecipient entities across the country to implement.

As explained below, the Rule, in imposing these requirements, would violate the APA and the Constitution for various reasons. For example, many provisions would be arbitrary and capricious for lack of reasoned explanation, appropriately considering reasonable alternatives, or not considering important aspects of the problem. Some also are unduly coercive or their ambiguity or vagueness would not provide clear notice to states and other entities of what is required for compliance. Many exceed OMB's authority. Moreover, the woefully insufficient initial regulatory analysis, including the relevant costs and benefits, undermines informed public comment.

1. Changes to Internal controls

Internal controls (2 C.F.R. § 200.303): The Rule would change the current internal control requirements applicable to all recipients and subrecipients. Two of these changes would add new and burdensome requirements for recipient and subrecipient entities, including States. Conceding that implementing these controls across every federally funded program will impose costs, OMB requested comment on the costs associated with the changes, IRIA at 13–14, but OMB declined to provide even 60 days to develop that information.

E-Verify (2 C.F.R. § 200.303(f)): The Rule would require that recipients and subrecipients "[p]articipate in the [DHS] E-Verify program" and "comply with all [of its] requirements" and "applicable Federal law." 91 Fed. Reg. at 32,254. It also would require them to submit information received from an E-Verify Final Nonconfirmation (FNC) notice to the federal agency or pass-through entity and "confirm that the recipient or subrecipient has taken appropriate actions consistent with the E-Verify program requirements." 91 Fed. Reg. at 32,254.

The provision is vague and ambiguous. For example, it is unclear what "all requirements of the E-Verify program and applicable Federal law" would entail. The E-Verify website states that an employer who participates in E-Verify is "required to verify all newly hired employees" and "may not verify selectively and must verify all new hires while participating in E-Verify."[81] If verification of all employees is a "requirement" of the program, implementing E-Verify for *all* newly-hired employees of states and subrecipients—many of whom do not currently use E-Verify—would require a significant amount of resources for those entities. OMB does not have the authority to mandate an entire state government use the E-Verify system. A command to "the States' officers . . . to administer or enforce a federal regulatory program" is in violation of the Tenth Amendment. *Printz v. United States*, 521 U.S. 898, 935 (1997). In violation of the APA, OMB left unclear the extent of the requirement it seeks to impose and failed to analyze the burdens, costs, and benefits of the proposed requirement.

It is also unclear what federal agencies, much less pass-through entities, would be expected to do with the information submitted to them upon an FNC notice. In conflict with the Rule, the Immigration and Nationality Act, 8 U.S.C. § 1324a(d)(2)(C), prohibits any personal information utilized by the E-Verify system from being "made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien" meaning a non-citizen who does not have authorization to work in this country.[82]

[81] *See* I am an Employer: How do I use E-Verify? https://www.e-verify.gov/sites/default/files/everify/guides/E4en.pdf

[82] The INA also prohibits the E-Verify system from being used for "law enforcement purposes" other than to enforce a limited number of criminal statutes. 8 U.S.C. § 1324a(d)(2)(F).

Additionally, OMB does not have the statutory authority to impose this condition; 8 U.S.C. § 1324a does not require participation in E-Verify, and OMB's financial-management authorities do not authorize the requirement. Further, this new information collection requirement would fall outside of the existing Paperwork Reduction Act clearance for E-Verify, which generally does not cover grantee disclosures to awarding agencies.[83] This one-size-fits-all verification approach is also not appropriate for the diverse types of entities that receive and support grant projects.

The Rule would impose a significant time, operations, and cost burden on entities that do not currently use E-Verify, as several state governments do not use E-Verify, nor do all of their funding subrecipients. These new E-Verify mandates would fall on entities receiving or assisting federal financial assistance projects, burdening these entities disproportionately in comparison to other entities and discouraging participating in assistance projects. Moreover, the requirements would be *in addition to* the verification requirements federal law *already* imposes on employers in the U.S., and to what E-Verify *itself* even requires.[84] It also would impose new burdens and costs on *every* recipient, pass-through entity, and subrecipient to hire additional employees for this new work, train employees to use E-Verify (including employees at each hiring location or agency involved in federal funding), set up procedures for E-Verify usage, monitor subrecipient E-Verify participation, perform periodic E-Verify account validations,[85] participate in resolving tentative non-confirmations, and receive and handle FNC data.[86] In public university and academic health settings, federal awards may involve existing employees, students, postdoctoral scholars, clinical personnel, shared technical staff, partially funded personnel, contractors, subrecipients, and personnel working across multiple projects and funding sources. Without clear prospective limits, recipients and pass-through entities would face substantial difficulty determining who is covered and how to handle individual E-Verify case information.

Many States have already passed or will soon pass budgets and have not allotted funds to be able to update their human resources systems or to hire or train additional human resource staff to be able to use E-Verify, and these States would have difficulty implementing E-Verify in such a condensed timeframe. Also, E-Verify is not always correct,[87] exposes entities to additional reviews

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[83] *See* Agency Information Collection Activities; Revision of Currently Approved Collection: E-Verify Program, 91 Fed. Reg. 27,075 (May 13, 2026).

[84] *See* E-Verify Facts, www.e-verify.gov/facts ("What E-Verify is--and isn't – E-Verify is not a replacement for Form I-9, Employment Eligibility Verification"). For example, a small non-profit participating in a federal financial assistance award may have to sign a MOU with E-Verify, collect and enter the employee's email address, safeguard this additional PII, create a case in the electronic system for each newly hired employee on the deadline set by DHS, and possibly engage in cumbersome E-Verify systems training.

[85] https://www.e-verify.gov/about-e-verify/whats-new/new-requirement-e-verify-account-validation

[86] *See* Department of Homeland Security OIG Audit Report No 21-56 (explaining the role of employer entity to field tentative non-confirmation from E-Verify and communicate to the employee follow-up requirements).

[87] *See E-Verify Under Scrutiny: Shutdowns, State Mandates, and System Gaps Spark Compliance Debate*, https://tax.thomsonreuters.com/news/e-verify-under-scrutiny-shutdowns-state-mandates-and-system-gaps-spark-compliance-debate/; *DHS Contradictions on E-Verify Causing Uncertainty for Employers*, WoodsRogers Alert, *https://www.woodsrogers.com/insights/publications/dhs-contradictions-on-e-verify-causing-uncertainty-for-employers* (September 8, 2025) ("Studies suggest that over a 10-year period, more than 130,000 U.S. citizens and lawful residents were wrongly denied employment due to erroneous E-Verify results."); Department of Homeland Security OIG Audit Report No 21-56 (explaining the role of employer entity to field tentative non-confirmation from E-Verify and communicate to the employee follow-up requirements), https://www.oig.dhs.gov/sites/default/files/assets/2021-08/OIG-21-56-Aug21.pdf.

and audits,[88] and goes offline during federal shutdowns.[89] These added delays in time will lengthen the hiring process for funding recipients and subrecipients, which may cause them to lose the ability to hire qualified candidates who find employment elsewhere during the wait.

Do Not Pay (2 C.F.R. § 200.303(g)): The Rule would require States, "prior to the disbursement of payments made using Federal award funds subject to this part" to "review available data sources with relevant information to verify the eligibility of payees and prevent improper payments." 91 Fed. Reg. at 32,254; 2 C.F.R. § 200.303(g). States must use the Do Not Pay system or "an alternative payment screening process that provides protection against improper payments."

OMB asserts that this new requirement is "[c]onsistent with" the Payment Integrity Information Act of 2019, 31 U.S.C. §§ 3351–3356, but that law does not mandate use of Do Not Pay by States, though States do access Do Not Pay for some programs. 91 Fed. Reg. at 32,223. The Payment Integrity Information Act does not provide OMB with the authority to require States to implement a similar program. *See* 31 U.S.C. § 3354 (directing federal agencies—not States—to use Do Not Pay). Further, a requirement to use Do Not Pay would be the type of commandeering of state executive resources forbidden by the Tenth Amendment. *See Printz*, 521 U.S. at 935. OMB also fails to conduct a reasoned analysis of key considerations and costs, noting only that "pre-payment verifications[] may require updates to the payment workflows and staff training," while ignoring the costs thousands of state agencies would incur to implement these "updates." IRFA at 3. Similarly, not all federal agencies use Do Not Pay, and thus those that do not would incur implementation costs and possibly create delays in funding for recipients.

The provision is also ambiguous regarding whether verification is required at each disbursement or only upon initial disbursement, or if this would vary depending on the nature of the program, as well as in its reference to "data sources with relevant information to verify the eligibility of payees and prevent improper payments." 2 C.F.R. § 200.303(g). If OMB intends to recognize State discretion to design internal controls regarding payment integrity checks for disbursement, it should expressly say so. In the absence of such clarification, this requirement is unduly vague. In requiring that States must "review available data sources with relevant information to verify the eligibility of payees and prevent improper payments," *id.*, the rule arbitrarily and capriciously demands an unfeasible level of scrutiny; of more than 100 data sources that could be used to verify recipient eligibility, the GAO found that only 28 are in the Do Not Pay system, and even those are riddled with defects and "were not originally created to support eligibility determinations for other agencies."[90]

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[88] *The Pros and Cons of Registering for E-Verify*, Amy L. Peck and Maggie Murphy (June 10, 2019), https://www.shrm.org/topics-tools/news/talent-acquisition/pros-cons-registering-e-verify (pointing out various employer burdens from use of E-Verify).

[89] *See E-Verify Under Scrutiny: Shutdowns, State Mandates, and System Gaps Spark Compliance Debate*, https://tax.thomsonreuters.com/news/e-verify-under-scrutiny-shutdowns-state-mandates-and-system-gaps-spark-compliance-debate/.

[90] U.S. Gov't Accountability Office, GAO-26-107466, *Federal Data: Congressional Action Needed to Improve Interoperability of Award and Payment Eligibility Data* 11 (2026).

2. "Defend the spend"-type documentation requirements for non-states, including subgrantees

Payment justifications for non-state recipients and subrecipients (2 C.F.R. § 200.305(c)): The Rule, in § 200.305(c)(1), requires federal agencies to implement payment systems that can record a "brief, written justification for each payment request" and require such justifications once the capability is available. 91 Fed. Reg. at 32,254. The provision in proposed paragraph (c)(2) would require recipients *and subrecipients* other than states to provide a brief, written justification for each payment request. In contrast to the provision in paragraph (c)(1) (allowing a phase-in period for federal awarding agencies to implement in their electronic systems the capability to record justifications), the provision in (c)(2) does *not* recognize a phase-in period for States or other pass-through entities to implement the capability to accept a written justification for *each* payment. This is arbitrary and capricious, and enormously costly and disruptive, because were OMB to implement this requirement on October 1, 2026, state and federal pass-through entities could, within only a few months at most, need to procure or modify a payment system to ensure compliance. OMB has not considered the significant cost and time implications for the thousands of pass-through entities, including states, that this requirement would have.

This provision also adds new accounting burdens that OMB fails to appropriately analyze. OMB justifies the requirement as "enable[ing] agencies to better align disbursements with programmatic timelines and financial need [for] real-time risk assessment and reduces reliance on post hoc audits." IRIA at 12. OMB's one-size-fits-all approach fails to consider the diversity of federally funded projects: Pass-through entities manage programs where drawdowns and subrecipient payments are much more complex and nuanced than the Rule acknowledges. OMB recognizes certain benefits to the status quo (*e.g.*, expediting access to funding) but does not quantify or otherwise take these into account in its analysis, and specifically omits effects on pass-through and subrecipient entities. *See* IRIA at 8 (referring only to "recipients"). Like with the new termination provisions, as described above, delays in payments can be devastating to projects and will discourage individuals and entities from participating in implementing projects. Moreover, the provision is vague in its reference to a "brief, written justification," which provides no qualitative standard for such justification. This vagueness undermines the practical utility that such an information collection might have and fails to provide a meaningful standard to support OMB's stated goals. OMB also fails to sufficiently analyze the costs and benefits of the new justification requirement despite acknowledging a broad variety of real-world impacts.[91]

Further, as discussed, *supra* III.A.5.d, § 200.305(c)(2) imposes a new "collection of information" subject to the Paperwork Reduction Act (PRA) without following the required process. The brief written justification describing "the activities or aspects of the Federal award that correspond to the payment request" is a collection of information. *See* 44 U.S.C. § 3502(3); 5 C.F.R. § 1320.3(c).

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[91] OMB recognizes that the change will "necessitate the development of new monitoring systems and financial review procedures[,] . . . update voucher submission instructions, provider guidance, and internal review procedures to ensure that payment requests clearly include the required justification at the time of submission," and will "increase workload for program officers and financial analysts . . . ." IRIA at 13.

3. Requirement that pass-through entities monitor subrecipients regarding reputational damage

Pass-through entity oversight of reputational damage (2 C.F.R. § 200.332): The Rule imposes a remarkable requirement that pass-through entities monitor subrecipients to ensure the subrecipient "does not take actions that could significantly damage the reputation of the pass-through entity, the Federal agency making the award, or the Federal government." 2 C.F.R. § 200.332(i). If a pass-through entity "determines that a subrecipient has taken such actions," it must "consult with" the agency for potential termination under § 200.340. 2 C.F.R. § 200.332(i). If the Federal agency ultimately concludes that significant reputational harm has occurred, it can direct the recipient to terminate the subaward and terminate the recipient's award. OMB lacks authority to impose this requirement.

The provision adds a substantial new oversight responsibility to pass-through entities to monitor "reputational harm" to itself and other entities under this vague standard. OMB does not recognize, much less analyze or justify, the extraordinarily broad burden this would place on pass-through entities to monitor their subrecipients' activities—*all* of their activities, not just grant-funded activities—for actions that could cause reputational damage. Instead, OMB mischaracterizes the new requirement as having "[n]o perceived impacts" as a "minor clarification of existing policies." IRIA at 25.

Spending conditions must be set out so recipients can accept them cognizant of the consequences. It is unclear and standardless what "significantly damage . . . reputation" means, but the federal government has had a variety of shifting priorities that it could consider implicating such "damage." What if a federal agency decides that research it supported that studies U.S. infrastructure causes such "damage" because the research produces findings that state that U.S. infrastructure has problems. And States would have to police all subgrantees for their compliance with this vague condition. Further, conditioning funding on a recipient's avoidance of anything that could "damage the reputation of . . . the Federal Government" creates unconstitutional conditions by leveraging the spending power to police conduct beyond the funded activity, including expression, and commandeers the pass-through entity into assisting the federal government in policing all activity of subrecipients. Given these impacts, the regulation is illegal for numerous reasons. As described above, when there is no statutory authority, as here, the regulation violates the APA and the Constitution. Because States have no idea what this provision actually requires and threatens such a broad array of funding, the regulation specifically violates the Tenth Amendment and the Spending Clause. The provision also violates the Tenth Amendment by unlawfully using economic leverage to direct the States.

4. Private right of action

Private causes of action (2 C.F.R. § 200.339(b)): The Rule would allow federal agencies, upon a determination that it is in the interest of the United States, to cooperate with individuals or organizations "in their pursuit of private causes of action and civil remedies based on the failure of a recipient or subrecipient to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award" except generally not for certain cases "related to the settlement of contractual or administrative issues arising out of a recipient's or subrecipient's procurement transactions, except as necessary to comply with law or if the matter is primarily a Federal concern." 2 C.F.R. § 200.339(b).

OMB fails to sufficiently explain why this provision is needed. Moreover, OMB and the other promulgating agencies lack authority to create a private cause of action through regulation (and OMB lacks authority to vest that authority in other agencies). *See Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) ("Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not."). The provision is also vague and provides no meaningful standard describing the circumstances under which it may be invoked.[92] The provision also increases the risk of arbitrary or otherwise malicious action against recipients and subrecipients by enabling agency political leadership to leverage private legal actions to give cover to otherwise unlawful or unsupported agency actions. OMB purports to vest authority "solely" and "in the discretion" of each federal agency to "cooperate" (an undefined term), 91 Fed. Reg. at 32,225, but it has no authority to do so. To the extent that it provides *any* authority to federal agencies that they do not already possess, OMB fails to describe the problem it seeks to address with this provision, estimate how frequently the provision might be invoked, or to address other costs (*e.g.*, compliance, litigation) to the federal government or non-federal entities.

5. Specific conditions

Adjustment of specific conditions (2 C.F.R. § 200.208): The proposed changes to § 200.208 would change how federal agencies may apply, adjust, and remove specific conditions under federal awards. 91 Fed. Reg. at 32,212–13.

The proposed changes to § 200.208 create a standardless power to impose program-level conditions, suspend procedural safeguards, and authorize new recipient burdens while declaring the section to have not perceived impacts. The changes also exceed OMB's statutory authority.

First, proposed § 200.208(f) is entirely standardless. It permits a federal agency to impose "program-level specific Federal award conditions . . . in any Federal award made under a Federal program that the Federal agency determines presents elevated programmatic risk." 91 Fed. Reg. at 32,250. The Rule does not define "elevated programmatic risk," supplies no criteria or threshold for the determination, and identifies no limiting principle. By contrast, § 200.208(c) (2026) as it exists now enumerates four concrete factors—repository and risk-assessment review, compliance history, ability to meet performance goals, and inadequate financial capability. The vagueness of the proposed changes is compounded by the Rule's failure to provide a firm definition of "specific conditions," as § 200.208(f) applies "notwithstanding" the factors and examples in §§ 200.208(c) and 200.208(d). Recipients therefore cannot ascertain when program-wide conditions will attach or what would remove them. With § 200.208(e) suspended, there is no requirement that recipients be notified of the reasons for imposing a condition. But spending conditions must be set out unambiguously so that recipients may "exercise their choice knowingly, cognizant of the consequences of their participation." *Pennhurst*, 451 U.S. at 17. As drafted, the proposed

[92] *E.g.*, 2 C.F.R. § 200.339(b) (including unclear phrases such as "consistent with [unidentified] law and regulation," a "Federal agency, may, at its discretion, cooperate [undefined] with individuals . . . ."; cooperation "generally [undefined] would not include cases . . . ."; and "[a] Federal agency should only cooperate" "in the interest of the United States [undefined]").

§ 200.208(f) could authorize surprising spending conditions on a grant recipient, without clear limitations, as a result of conduct involving other program participants.

Second, § 200.208(f) *suspends* the very safeguards OMB represents its revisions as supporting. OMB claims that the changes "provide agencies with greater flexibility to manage risk during award administration while establishing safeguards related to transparency and fairness." 91 Fed. Reg. at 32,213. Yet § 200.208(f) applies "[n]otwithstanding any other provision of this section"—by its terms appearing to displace the § 200.208(c) factor analysis, the § 200.208(b)(2) requirement that conditions not based on those factors be imposed only "with the agreement of the recipient," and the § 200.208(e) notice-and-reconsideration protections. Further, § 200.208(f) applies to "any Federal award made under a Federal program" on a single program-level determination, so fully compliant recipients may be subjected to reimbursement-only payment, heightened transaction-level reporting, "financial integrity-related site visits," and additional prior approvals based on risk they did not create. *See* 2 C.F.R. § 200.208(d), (f).

Third, the Rule appears to silently eliminate an existing recipient protection: that "[a]ny specific conditions must be promptly removed once the conditions that prompted them have been satisfied." 2 C.F.R. § 200.208(e) (2026). The Rule deletes that mandatory-removal requirement entirely, substituting discretionary authority to "add or remove specific conditions throughout the period of performance," and, for program-level conditions, removal only "if [the agency] determines" the program "no longer presents elevated programmatic risk." 91 Fed. Reg. at 32,250; 2 C.F.R. § 200.208(b)(1)(ii), (f). OMB nowhere acknowledges eliminating this existing requirement to promptly remove unsupported specific conditions, and OMB has failed to display awareness that it is changing position, nor has it supplied a reasoned explanation for abandoning the policy, which has existed in the Uniform Guidance since it was first promulgated. *See* 78 Fed. Reg. 78,623. Describing the section as "establishing safeguards" while removing a decades-old protection is the opposite of reasoned decision-making. Further, § 200.208(b)(1)(ii)'s new authority to add conditions "throughout the period of performance" compounds the impact of the loss of the mandatory-removal protection, conceivably permitting an agency to impose new conditions at any point in the award and to keep them in place indefinitely through an abuse of discretion.

These defects are compounded by OMB's treatment of the changes in the section as costless. The Initial Regulatory Impact Analysis characterizes § 200.208 as a set of "minor clarifications of policy" with "[n]o perceived impacts." IRIA at 28. That characterization cannot be reconciled with a new, program-wide conditioning power or with the new monitoring tools the rule authorizes. Specific conditions requiring site visits and additional impose real and quantifiable burdens on recipients and declining to assess them is a failure to consider an important aspect of the problem. Further, OMB lacks authority to create the conditioning power that proposed § 200.208(f) establishes. OMB lacks the authority to confer on every agency a freestanding power to impose conditions across an entire program, on a single determination of undefined "elevated programmatic risk," and to do so "notwithstanding" § 200.208's own factors and safeguards.

6. Personally identifiable information

Protected Personally Identifiable Information (2 C.F.R. § 200.001, referencing §§ 200.303, 200.338, 200.507, 200.512): OMB proposes to remove the definition of Protected PII, which has been a concept in Part 200 since 2013. *See* 78 Fed. Reg. 78,590 (2013).

The removal of the definition of Protected PII would affect § 200.303 (Internal controls, "take reasonable cybersecurity and other measures to safeguard information including protected [PII]"), § 200.338 (Restrictions on public access to records "except for protected [PII]"), §§ 200.507(c)(1) and 200.512(a)(2) (both relating to audits, requirement to exclude protected PII from audit reporting package that is made public). The removal of the concept of "protected PII" as a more limited set of "PII" broadens the scope of these privacy protections in internal controls and audit reports, seemingly requiring States and other recipient and subrecipient entities to protect information that is not otherwise required to be protected under applicable law. Protected PII has long been defined as all PII *except* for PII that must be disclosed by law, and the definition provided some examples of protected PII.

OMB fails to conduct an analysis of the legal and practical effects of this heightened standard. Those effects are significant, affecting all recipient and subrecipient entities' internal controls for cybersecurity and PII. At a minimum, OMB must thoroughly analyze the costs and benefits of this proposed change. OMB asserts that "[t]he existing definition of Protected PII is not necessarily consistent with other OMB guidance, which does not distinguish between PII and Protected PII," but OMB does not reference this other guidance nor does it explain how that guidance pertains to federal financial assistance. 91 Fed. Reg. at 32,209. Thousands of entities have adopted and now rely on the current definition in their internal controls, cybersecurity, and PII policies. A change that would affect internal controls for *every* federal financial assistance recipient and subrecipient demands a more fully reasoned explanation and justification.

Confidential Business Information (2 C.F.R. §§ 200.303, 200.338): Similarly, the related proposal to add to §§ 200.303 and 200.338 language requiring recipients and subrecipients to have internal controls and records access protections that protect "confidential business information" would add a new category of protected information. OMB should conduct a more robust cost-benefit analysis of this requirement (and allow supplemental public comment) prior to broadly imposing this as proposed. At a minimum, it presumably could require policy and procedure changes, and system updates, by many entities.

7. Foreign collaboration

Foreign collaboration (2 C.F.R. § 200.220): OMB proposes to add an entirely new provision that prohibits the use of Federal funds to "support a bilateral or multilateral collaboration, agreement, program, or activity with a covered foreign country or covered foreign entity," specifically applying to any use of federal funds and reaching research, technical assistance, travel, and indirect costs. *See* 91 Fed. Reg. at 32,214–15; 2 C.F.R. § 200.220(a), (b). Proposed § 200.220 offers a limited waiver if "expressly authorized by Federal statute" or on a case-by-case basis from the agency-head finding no national-security risk and that the waiver would be in the national interest.

The provision should be omitted from the final rule. At the threshold, imposing use-of-funds limits for national security reasons exceeds OMB's authority. OMB's rulemaking authority under 31 U.S.C. § 503, relates to financial management. A national-security-related research collaboration bar exceeds that authority. OMB cites to the Wolf Amendment,[93] a 15-year-old continuously-included appropriations rider that implements a narrow collaboration bar between China and NASA or the Office of Science and Technology Policy, and explains that it is extending this collaboration bar to more countries and nearly all federal agencies for uniformity. 91 Fed. Reg. at 32,214. The enduring narrowness of the rider emphasizes OMB's overreach.

The scope of proposed § 200.220 is vague and would cause substantial compliance costs and disruption for recipients, particularly institutions of higher education (IHEs), receiving federal funding. The list of "covered countries" is not clearly defined, could be subject to sudden change, or is a poor match to the national security, defense, or intelligence purposes of proposed § 200.220. For example, the list of "covered countries" includes countries that are a "country of particular concern." There is no definition within § 200.220 or accompanying text for the term. The only example of a "country of particular concern" designation in federal statutes or regulations comes from the International Religious Freedom Act of 1998, which designates states engaging in internal violations of religious freedom—not conduct related to national security, defense, or intelligence. 22 U.S.C. § 6442(b). Therefore, the use of "country of particular concern" is arbitrary and vague. The designation of covered countries via executive order means that the list of countries could change weekly or daily as new and different executive orders are issued, thereby putting recipient and subrecipient entities at greater risk for termination during a project previously approved. The provision leaves unclear whether even individuals from covered countries could be excluded from enrolling in federally funded academic programs or participating in grant research.

OMB proposed § 200.220 without considering a significant aspect of the problem and without considering reliance interests or the substantial benefits from the affected collaborations. The provision would result in substantial harm to research institutions. State IHEs currently collaborate with entities in designated "covered" countries, use federal funding to support research with subaward recipients in covered countries, employ faculty that collaborate with researchers in covered countries, have academic programs that involve travel to covered countries, and bring in foreign students and professors to work in IHE institutions or on grant-funded projects. Proposed 200.220 could affect all of these activities. These collaboration bars may, in turn, *undermine* national security—for many areas of research, a collaborative, unrestricted environment is necessary for the United States to maintain an advantage in access to top scientific talent and new ideas.[94]

OMB does not grapple with the impact this rule would have on these reliance interests in ongoing collaborations or the costs to research universities. The discretionary waiver may blunt some of this impact but itself is likely to impose additional costs and burdens that OMB has not

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[93] Department of Defense and Full-Year Continuing Appropriations Act, 2011, Pub. L. No. 112-10, § 130(a), 125 Stat. 38 (2011) ("Wolf Amendment") (barring NASA and OSTP from using appropriate funds to "participate, collaborate, or coordinate bilaterally . . . with China or any Chinese-owned company" absent specific statutory authorization), subsequently reenacted as an appropriations rider in materially unchanged form, *see, e.g.*, Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, § 539, 125. Stat. 552; Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 526, 136 Stat. 49; Consolidated Appropriations Act, 2024, Pub. L. No. 118-42, § 526, 138 Stat. 25.

[94] *See Federal Research Security Policies: Background and Issues for Congress*, Congressional Research Service Report 48541 (May 20, 2025) (describing the potential benefits of international collaboration), https://www.congress.gov/crs-product/R48541.

sufficiently addressed. OMB's own data show that IHEs received 356,712 grants from 2015 to 2024. IRIA at 7. OMB does not even attempt to quantify the costs or benefits of its proposed change across these hundreds of thousands of awards. Instead, in assessing costs OMB offers only that "[t]he proposed changes to § 200.220 are expected to increase time costs for staff" and punts to the public—under a shortened comment period—to provide it with data on costs. IRIA at 14.[95]

8. Collective Bargaining Agreements

Collective Bargaining Agreements (2 C.F.R. § 200.318): The Rule substantially modifies § 200.318(*l*), which currently provides examples of labor and employment practices that the Part 200 procurement standards do not prohibit, and which recipients and subrecipients may use, in their procurement under federal awards, if consistent with the Constitution, federal law, Part 200, and the objectives and purposes of the applicable grant program. The current examples include using pre-hire Collective Bargaining Agreements ("CBAs"), including Project Labor Agreements ("PLAs"); construction contractor hiring preferences for certain high-poverty, disadvantaged, or high-unemployment areas or communities; and contractor hiring preferences for individuals with barriers to employment; using agreements intended to ensure uninterrupted delivery of services or to ensure community benefits; and offering employees of a predecessor contractor rights of first refusal under a new contract. 2 C.F.R. § 200.318 (*l*) (2026).

The proposed changes eliminate the current examples except the first, using CBAs, which would be conditioned on "advanc[ing] the interests of the Federal Government associated with the applicable Federal financial assistance program, including consideration of practicability and cost effectiveness." 91 Fed. Reg. at 32,255–56; 2 C.F.R. § 200.318(*l*)(ii). The changes would add one permissible practice—communicating federal law work authorization requirements: "Communicating a requirement that individuals hired or employed under the Federal award must be authorized to work in the United States under applicable Federal laws." *Id.* at § 200.318(*l*)(i).

The proposal—in changing "Recipients and subrecipients may use the practices" to "Federal agencies may allow recipients to use such practices"—seems to imply that federal agency approval would be required for *recipients*, but not subrecipients, to use CBAs or communicate work authorization requirements. The provision adds two other vague requirements: That recipients and subrecipients are responsible for ensuring consistency with applicable law in using CBAs or communicating work authorization requirements, and that these practices should be consistent with "foundational principles of recognizing merit and the ability of employees to fulfill the requirements of the contract."

OMB deletes the various example practices because its asserts that they "do not reflect common procurement approaches or otherwise do not align with administration policy or Federal agency priorities." 91 Fed. Reg. at 32,223. No explanation is offered as to which practices OMB asserts do not reflect common procurement approaches versus which do not align with the current Administration's policy or priorities. For example, OMB does not explain why a recipient or subrecipient could not require construction contractors to use hiring goals for a high-unemployment census tract. The change, without a reasoned explanation, is arbitrary and

[95] OMB, in its IRIA, notes thinly that "restrictions on certain foreign collaborations[] may require additional compliance reviews, particularly for research-intensive entities." IRFA at 3.

capricious. The provision is also ambiguous as to whether these changes reflect requirements or merely examples. The removal of the examples implies that the practices may be disallowed, though that is ambiguous. And if it is intended as a restriction, it exceeds OMB's authority.

In fact, the States have already seen the Federal Government use purported national security interests to exclude civilian federal workers from the Federal Service Labor-Management Relations Statute, which resulted in a million federal workers, including dual-status technicians in the States' National Guards, losing longstanding union protections and benefits that they had enjoyed during wartime and peacetime for over fifty years across multiple presidential administrations. *See, e.g., Am. Fed'n of Gov't Employees v. United States Dep't of Defense*, No. 26-CV-02653, Complaint (D. Md. July 2, 2026) (detailing chaos and harms from CBA termination); The Trump Administration Ended Collective Bargaining for 1 Million Federal Workers, Center for American Progress, (last updated Oct. 1, 2025), https://www.americanprogress.org/article/the-trump-administration-ended-collective-bargaining-for-1-million-federal-workers/. By creating a discretionary loophole for any federal interest in procurement, not just national security, the rule generates uncertainty around whether PLAs and CBAs will be honored and could undermine labor-management stability in procurement for critical large construction projects, like highways, in the States. At a minimum, OMB should clarify whether PLAs and pre-hire CBAs are favored or disfavored, identify with specificity federal agency interests that could preclude pre-hire CBAs and PLAs, and address the States' interests in economy and efficiency in procurement, labor-management stability, safety and health, equal employment opportunity, labor and employment standards, and consistency with the law.

9. Grant Reporting Burden

The Rule would impose a significant reporting burden on recipients and subrecipients, including States.

Disclosure of former federal employee participation (2 C.F.R. § 200.112): The Rule creates a new information disclosure by requiring *all* recipients and subrecipients to disclose whether any of their employees who worked on applications, proposals, or awards were employed by the awarding agency during the two years prior to application submission. 91 Fed. Reg. at 32,246. This would require entities to request disclosures from each person who works on an application for a federal award or would work on the award, thus imposing a time burden on a vast number of U.S. persons. This new, mandatory, and identical collection of information on every recipient is subject to the Paperwork Reduction Act. See 44 U.S.C. § 3502(3); 5 C.F.R. § 1320.3(c). The IRIA's contrary conclusion is wrong; there, OMB states that this change will have "[n]o perceived impacts; the disclosure is for informational purposes." IRIA at 20. OMB downplays the burden of this provision, asserting that it requires only disclosure but not approval or review, but the collection would not have any practical utility without federal agency review. Both the disclosure itself and the review would impose time and cost burdens across federal agencies and awards. Also, the provision is impermissibly ambiguous as to the disclosure timing, monitoring, and how subrecipients would determine at the time of application whether the pass-through entity will make the subaward from federal funds.

Reporting subawards (2 C.F.R. § 200.329(b)): The Rule adds language in § 200.329(b) requiring the recipient to "confirm" that it has reported subawards on SAM.gov. 91 Fed. Reg. at

32,256. Subaward reporting on SAM.gov is *already* required by a standard term applied by federal agencies per 2 C.F.R. part 170; additional reporting in the performance reporting to "confirm" this could be duplicative and the potential burden is unclear. At a minimum, OMB should clarify in the regulatory text (and permit additional comment on) whether it intends this provision to require additional data collection or merely to serve as a reminder of existing requirements.

Categorizing scientific research (2 C.F.R. §§ 200.202(g) and 200.329(e)): In (e), for performance reports for scientific research, OMB would require recipients to include the category of scientific research (basic, applied, or experimental) that the federal agency provided in the terms and conditions of the award (per the proposed 200.202(g)). A requirement to report back to the federal agency information that it already knows may be an unnecessary burden on recipients, though the practical utility of a recipient including such information in the performance report may depend on how award information interacts with performance reporting in each federal agency's grants system. Also, at a minimum, OMB should clarify (and allow comment on) how it intends to use the categorization, what effects categorization would have on recipient and subrecipient entities, and how recipient and subrecipient entities may challenge perceived erroneous categorizations by the federal agency.[96]

Subrecipient and contractor determinations for affiliates and subsidiaries (2 C.F.R. § 200.331): The Rule purports to add a requirement that pass-through entities determine whether related, but legally separate, entities like affiliates or subsidiaries are subrecipients or contractors. The provision is vague and possibly duplicates the requirement that already exist in this section. OMB nowhere explains or describes with any detail or with any concrete examples the concern it aims to address. Presumably, it could affect university-affiliated research foundations and certain organizational subsidiary entities, possibly requiring immediate changes in how these entities characterize affiliates and subsidiaries, and imposing potentially significant disruption and new costs associated with changing existing characterizations of the entity legal relationships. Again, OMB fails to even attempt to quantify the costs or benefits of this change.

NOFO reports (2 C.F.R. § 200.204): Among various changes proposed in this section, OMB proposes to require federal agencies to submit periodic reports to OMB "detailing specific recipients or types of recipients" receiving federal awards over a time period. OMB does not specify why it seeks to impose this burden on federal agencies when the data should be readily available on USASpending.gov. OMB, at a minimum, should explain why it seeks to make this change and allow supplemental comments.

F. Other Changes Would Further Upend Federal Grantmaking.

In addition to the myriad problems described above, the Rule would upend federal grantmaking by making certain changes to the way that costs for federal awards are reimbursed and making additional technical changes to grantmaking that will harm States and other recipients and subrecipients.

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[96] *See* Congressional Research Service Report No. 48694: *Federal Research and Development (R&D) Funding: FY2026* https://www.congress.gov/crs-product/R48694 (describing certain changes in categorization, inconsistencies between agencies in terminology, and budget implications).

1. Indirect Costs

Preference for lower indirect cost rates (2 C.F.R. § 200.205(b)(3)): The Rule's new funding preference for discretionary awards with a lower indirect cost rate—directing that "[a]ll else being equal, preference for discretionary awards should be given to institutions with lower indirect cost rates," 2 C.F.R. § 200.205(b)(3)—is unreasoned, vague, arbitrary, contrary to Congressional intent, and in conflict with other provisions of 2 C.F.R. part 200 that are unchanged by the Rule.

This change is wholly unreasoned. The Rule does not offer any explanation for this change *at all*. *See* 91 Fed. Reg. at 32,212 (describing changes to § 200.205 without any mention of the new indirect cost preference). And the text itself is vague: it is unclear how federal agencies are supposed to determine whether "[a]ll else" in two federal grant applications is "equal." Further, the term "institution," used here, is not otherwise used throughout 2 C.F.R. part 200, and so it is unclear whether this is intended to apply to all recipients or only to a subset of recipients. This preference is also arbitrary. Indirect costs are costs that are shared among multiple projects, whereas direct costs are attributable to only one project. It is often much more efficient—and less costly for the government—to fund projects that reduce overall costs by sharing resources. For that reason, the premise "that indirect costs are less worthy of funding than direct costs" is "conceptionally irrational." *Ass'n of Am. Universities v. Dep't of Def.*, 806 F. Supp. 3d 79, 115 (D. Mass. 2025) (quotations omitted). The Rule fails to weigh the costs of this change and fails to acknowledge its change in position.

As the Rule acknowledges, Congress has countered this Administration's efforts to cut indirect cost rates by passing appropriations riders prohibiting its policies. *See, e.g.*, Pub. L. 119-75 §§ 224, 8146. On that basis, the Rule does not make any changes to 2 C.F.R. § 200.414, the substantive provision governing the reimbursement of indirect costs. *See* 91 Fed. Reg. at 32,235 ("In consideration of this legislative . . . language, OMB is not proposing updates to the indirect cost rate negotiation system through this document"). But the proposed preference for lower indirect cost rates contravenes Congress's intent that this Administration not use blunt tools to lower indirect cost rates. Moreover, the proposed preference for institutions with lower indirect costs is in conflict with 2 C.F.R. § 200.414(c)(1), which is crystal clear: "Negotiated indirect cost rates *must* be accepted by all Federal agencies" (emphasis added). The purpose of the federal negotiated indirect cost rate is to reflect a recipient's true indirect costs, which are verified by regular audits. Imposing a preference for recipients with lower indirect costs upends this specific scheme and could be used to justify an otherwise pretextual denial of a grant application.

Allocability of Indirect Cost (2 C.F.R. § 200.402): The Rule proposes to remove the term "allocable" from 2 C.F.R. § 200.402, so that it reads: "The total cost of a Federal award is the sum of the allowable direct and ~~allocable~~ indirect costs minus any applicable credits." This change is completely unreasoned. While it appears in the list of changes to the Rule's text, there is no discussion of revisions to § 200.402 anywhere in the explanation of the Rule. *See* 91 Fed. Reg. at 32,231, 32,261. Further, with the revision it is unclear whether the term "allowable" is intended to modify only direct costs or intended to modify both direct and indirect costs. Further, it is unclear how this change is intended to interact with the current § 200.405(b), unchanged by the Rule, which provides that "*[a]ll* activities which benefit from the recipient's or subrecipient's indirect cost . . . will receive an appropriate *allocation* of indirect costs." (emphasis added). To the extent this change would affect the mechanisms by which indirect costs are awarded for federal awards, it would also suffer the same problems detailed above for the preference for indirect cost rates, in that it would conflict both with Congressional intent and with 2 C.F.R. § 200.414.

2. Allowability of Particular Cost Categories

Allowability of Costs Based on Adequate Documentation (2 C.F.R. § 200.403(g)): While the Rule maintains a cross-reference to sections §§ 200.300 through 200.309 that exist in the current guidance, the proposed changes to those sections described above make the maintenance of this language also unlawful, as those sections impose obligations far beyond any requirement that costs be "adequately documented."

Particular Cost Categories (2 C.F.R. §§ 200.421, 200.429, 200.432, 200.442, 200.454, 200.455, 200.461, 200.467, part 200 Appendix IX): The Rule makes significant changes to many categories of currently-allowable costs to restrict reimbursement for particular types of expenses pursuant to federal grant awards. These include:

- The Rule makes advertising and public relations costs unallowable with a few limited exceptions. 2 C.F.R. § 200.421;
- The Rule makes all commencement and convocation costs unallowable. 2 C.F.R. § 200.429;
- The Rule makes costs of attending conferences unallowable unless participation in the conference is approved by the federal agency and included in the terms and conditions of the award. 2 C.F.R. § 200.432(b);
- The Rule makes certain fundraising and investment management costs allowable only with the prior written approval of the agency. 2 C.F.R. § 200.442(b), (c);
- The Rule makes costs for membership in professional, civic, business, and professional organizations allowable only if they are necessary to fulfil the award's requirements and receive prior written approval of the agency. 2 C.F.R. § 200.454(a);
- The Rule makes the costs of periodical subscriptions unallowable. 2 C.F.R. § 200.454(b);
- The Rule states that data costs "should" align with the federal standards, notwithstanding that it states that costs relating to data and evaluation are allowable. 2 C.F.R. § 200.455(c);
- The Rule makes publication costs unallowable except where required by statute or approved in advance by the agency on a case-by-case basis. 2 C.F.R. § 200.461; and
- The Rule limits the allowable costs of selling and marketing. 2 C.F.R. § 200.467.

These changes are not reasonable or reasonably explained. The Rule provides minimal reasoning for most of these changes and generally fails to acknowledge that it is changing the status quo. For example, the entire explanation for the change to render advertising and public relations costs unallowable is that this "would clarify that advertising and public relations costs that do not benefit the Federal award are not allowable." 91 Fed. Reg. at 32,231. For commencement and convocation costs, the Rule simply says "[t]his proposed change is intended to ensure that the cost principles are streamlined and apply fairly to all entity types." *Id.* The explanations for conferences, for membership associations, and for selling and marketing costs each suggest that the Rule is merely "clarify[ing]" current practice, *id.* at 32,231–32, rather than overhauling the way such costs are reimbursed. The only section for which the Rule provides anything other than a cursory explanation is publication costs, which the Rule asserts, without explanation or citation, "are not inherently necessary to carry out the core programmatic objectives of most Federal awards" and, [i]n many cases . . . are discretionary . . . and may serve institutional, professional, or reputational interests." *Id.* at 32,232.

For the most part, the Rule fails to articulate purported benefits of these changes, let alone weigh those benefits against the Rule's costs, or to consider reliance interests. The negative effects from these changes are likely to particularly be felt in the scientific community, as federal funding for subscriptions to scientific journals, attendance at scientific and medical conferences, and dissemination of research is critical to support cutting-edge science and medicine. But the harms span other sectors as well: the prohibition on reimbursement for conferences, for example, could mean that local school districts would be unable to attend training or professional development provided by a State, impacting the quality of education and teacher and administrator effectiveness.

State and other government entities that administer vital federally funded programs, such as the unemployment insurance and workforce development systems, rely on the invaluable expertise and peer learning opportunities provided by established membership organizations, such as the National Association of State Workforce Agencies. Without the ability to participate in national convenings and or maintain membership in professional organizations, the states risk falling out of alignment with federal expectations and best practices. Workforce and unemployment insurance programs are especially technical, constantly evolving, and dependent on coordinated federal-state communication. Limiting these forms of engagement undermines the very goals of program integrity, efficiency, and accountability.

Further, these changes are arbitrary and place significant burden on recipients and subrecipients, increasing the costs of compliance, by articulating standards for allowable costs that vary in only minor ways between the different cost categories. *See, e.g.*, 2 C.F.R. §§ 200.432(b) ("allowable only if . . . expressly approved by the Federal agency and included in the terms and conditions of the Federal award"); 200.438(b) ("allowable if they have a specific and direct programmatic purpose and are included in the Federal award"); 200.442(b) ("allowable with the prior written approval of the Federal agency"); 200.454(a) ("allowable if necessary to fulfill the award requirements" and "must receive prior written approval of the Federal agency"); 200.461(b) (allowable if "specifically required by Federal statute or approved in advance by the Federal agency on a case-by-case basis"). Further, this list does not appear to align with 2 C.F.R. § 200.407's list of cost categories for which prior approval is required.

3. Elimination and Discouragement of Certain Types of Awards

Elimination of Fixed Amount Awards (2 C.F.R. §§ 200.201(b), 200.333; see also 2 C.F.R. §§ 200.1, 200.101(b)(4), 200.400(g), 200.401(a)(3), 200.407(d)): The Rule's proposal to "eliminate the use of fixed amount awards and subawards" reflects an about-face by this

Administration that is exceedingly arbitrary. *See* 91 Fed. Reg. at 32,204.[97] OMB's 2024 proposed guidance provided additional specificity regarding the use of fixed amount awards. *See* 91 Fed. Reg. at 32,211. The Rule takes the exact opposite position in its proposed change that "[f]ixed amount awards are not permitted unless otherwise authorized by Federal statute." 91 Fed. Reg. at 32,246–47; 2 C.F.R. § 200.201(b). According to OMB, fixed amount awards "limit transparency and hinder effective oversight," have "no expected routine monitoring of actual costs incurred," and "no financial reporting." 91 Fed. Reg. at 32,204. OMB proposes to eliminate them to "help to ensure that Federal dollars are not wasted on activities that may not fully support the achievement of program outcome" and to "promote greater transparency and oversight." 91 Fed. Reg. at 32,204, 32,211. It is wholly arbitrary for OMB to offer to eliminate this type of award without a reasonable explanation of its change in position. Further, fixed amount awards can reduce administrative burdens, create good incentives for achieving outcomes efficiently, tend to be more evidence-focused, and can be a useful tool for attracting other sources of capital.[98] The Rule fails to explain why the concerns that it identified outweigh the potential benefits of such awards. Nor does the Rule consider alternatives that would increase transparency and oversight of such awards without eliminating their use entirely, such as performing more audits of such awards. The Rule also fails to consider the reliance interests of agencies and grantees in sectors where fixed amount awards are used frequently. The proposal may also create uncertainty for fixed-rate clinical trial and human-subjects research arrangements, including per-patient, per-participant, capitation, or per-milestone payment models tied to verified units of performance rather than a fixed total award amount. Such arrangements are important where enrollment, completed visits, or other units of performance are not known when the agreement is created.

Moreover, the Rule fails to explain how its reasoning can be squared with a recent Executive Order *favoring* fixed price contracts for federal procurement. On April 30, 2026, President Trump signed an Executive Order providing that "it is the policy of my Administration that fixed-price contracts with performance-based considerations should serve as the default and preferred method of procurement" and should be used by all agencies "[t]o the maximum extent consistent with law" because they offer "clearly defined outcomes and deliverables on predictable timelines . . . and often tie profit to the contractors' performance, rewarding work that exceeds expectations and penalizing subpar performance," which "encourages contractors to control costs and expeditiously meet deliverables to maximize profits." Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting, 91 Fed. Reg. 24,325–26 (April 30, 2026). The Rule does not consider whether these "clearly defined outcomes" and "predictable timelines" would also provide benefits in the grantmaking context or meaningfully distinguish any applicable reasoning between grantmaking and procurement.

[97] Specific affected provisions include: 2 C.F.R. § 200.1 (removes definition of "fixed amount awards"); 2 C.F.R. § 200.101(b)(4) (removes reference to fixed amount awards); 2 C.F.R. § 200.102(c) (removes reference to fixed amount awards); 2 C.F.R. § 200.201(b) (substantive provision eliminating fixed amount awards); 2 C.F.R. § 200.333 (substantive provision eliminating fixed amount subawards); 2 C.F.R. § 200.400(g) (removes reference to fixed amount awards); 2 C.F.R. § 200.401(a)(3) (removes reference to fixed amount awards); 2 C.F.R. § 200.407(d) (removes reference to fixed amount awards).
[98] *See, e.g.*, Jonathan Ng & Samuel Jack, Rediscovering Fixed Amount Awards, Stanford Social Innovation Review (Oct. 2020), https://ssir.org/articles/entry/rediscovering_fixed_amount_awards.

Here, too, OMB exceeds its authority. OMB has it backward: it seeks to bar fixed amount awards "unless otherwise authorized by Federal statute," 91 Fed. Reg. at 32,246; 2 C.F.R. § 200.201(b). But in the absence of a specific statute that empowers OMB to ban these awards, OMB has no authority to do so. Proposed 2 C.F.R. § 200.333 lacks even that basic legal limitation, providing that "[f]ixed amount subawards are not permitted," apparently without regard to any statutorily-provided authority.

Strong Discouragement for Cost Reimbursement Contracts (2 C.F.R. § 200.320): Proposed § 200.320 would add new language stating that grant "[r]ecipients are strongly discouraged from issuing cost-reimbursement contracts"; providing that when using cost reimbursement contracts, the recipient "must notify the awarding Federal agency of its use of this mechanism and maintain a written justification in its records"; and giving federal agencies discretion to "require prior approval of cost-reimbursement contracts in the terms and conditions of the Federal award." 91 Fed. Reg. at 32,256. OMB claims that this change is justified because "cost-reimbursement contracts are inherently higher risk, as they reduce incentives for contractors to control costs, require more intensive oversight, and present greater risk of improper or excessive payments of Federal funds." *Id.* at 32,223. The strong discouragement of these contracts across the board, without consideration of the circumstances of the individual agency or individual grant, is arbitrary. Even President Trump has acknowledged that such contracts are "appropriate" in certain circumstances, "such as research and the pre-production developmental phase of major systems acquisition." 91 Fed. Reg. at 24,325. OMB has failed to account for the front-loaded compliance burden of a seemingly effective-date obligation to review entire programs for affected cost-reimbursement contracts, flag them to the awarding agency, and create and maintain the required written justifications. Further, the discouragement of these contracts is in tension with the Rule's removal of fixed price contracts: OMB appears to be taking the position that *both* contracts that tie payment to completion of a specific job without taking into account actual expenses *and* contracts that take into account actual expenses without tying payment to completion of a specific job present an unacceptable risk of improper payments. The Rule fails to consider less drastic alternatives and fails to provide any evidence or justification for the significant administrative burden it imposes on recipients to maintain a written justification. And, as above, OMB lacks legal authority to require grant recipients to notify agencies and maintain a written justification for the use of such contracts.

4. Additional Issues

Peer Review (2 C.F.R. § 200.205(d)): The Rule states that it should not be "construed to discourage or prevent the use of peer review"—but only "provided that peer review recommendations remain advisory and are not ministerially ratified, routinely deferred to, or otherwise treated as de facto binding by senior appointees or their designees." 91 Fed. Reg. at 32,249; 2 C.F.R. § 200.205(d). This provision is vague, arbitrary, and lacks any explanation. The terms "ministerially ratified, routinely deferred to, or otherwise treated as de facto binding" are not explained and it is not clear what, in practice, these are intended to prohibit. The stated purpose of the provision sheds no light on the issue: the Rule's entire explanation is that this revision "clarif[ies] that peer review remains advisory and does not replace agency discretion." 91 Fed. Reg. at 32,212. The purpose of this section appears to be to impose a chilling effect on the use of peer review in awarding discretionary grants. But the Rule does not consider the value of peer review in identifying promising cutting-edge scientific and medical research. Nor does the Rule consider whether any agencies' statutes provide specific substantive or procedural requirements for peer review that may conflict with this provision. *See, e.g.*, 42 U.S.C. § 289a(a) (NIH "shall require that the review of applications made for grants . . . be conducted . . . in a manner consistent with the system for technical and scientific peer review"); *id.* § 289a(b) ("The Director of NIH"—*not* OMB— "shall establish procedures for periodic technical and scientific peer review of research at the National Institutes of Health."); 42 U.S.C. § 299c-1; 42 U.S.C. § 295o-1; 42 U.S.C. § 15064.

Audit Compliance Supplement (2 C.F.R. §§ 200.1, 200.513(c)): The Rule "proposes to revise the definition of 'compliance supplement' to delete the words 'annually updated'" on the basis that "OMB is in the process of reevaluating the appropriate frequency for issuing the compliance supplement." 91 Fed. Reg. at 32,209. A compliance supplement is an "authoritative source of information for auditors that identifies existing important compliance requirements that the Federal Government expects to be considered as part of an Audit," which is used for determining a recipient's "compliance with the relevant Federal program." Removing the requirement that federal agencies "[p]rovide OMB with *annual* updates to the compliance supplement," *see* 2 C.F.R. § 200.513(c)(4), raises risks of arbitrariness for recipients and subrecipients. Reliability in the timing of audits is essential to recipients and their planning. This is particularly important in light of OMB and HHS's effort to review the single audit process. *See* 91 Fed. Reg. at 32,210.

Public Posting of Notice of Funding Opportunity Not Required (2 C.F.R. § 200.204(a)(1)): Proposed 2 C.F.R. § 200.204(a)(1) contains an exception that threatens to swallow the rule: under this subsection, a Notice of Funding Opportunity need *not* be publicly posted if the agency head or their designee "determines that publicly announcing an opportunity would pose a risk to national security or is in the national interest of the United States." 91 Fed. Reg. at 32,247–48. The Rule offers no justification for this "in the national interest of the United States" exception, nor any explanation for its use here.

Mandatory Disclosures (2 C.F.R. § 200.113): The Rule adds a new requirement related to the existing "mandatory disclosures" requirement in § 200.113. In the status quo, grant applicants or recipients are required to disclose to the relevant agency any credible evidence of criminal violations of fraud, conflict of interest, bribery, or related laws that occur in connection with a federal award. The Rule requires those disclosures to be transmitted to the U.S. Attorney's Office for the District of Columbia within ten days of receipt. This provision is ambiguous because it does not clarify whether that transmission is the responsibility of the disclosing applicant or recipient, or whether it is the responsibility of the agency. Moreover, OMB does not have the authority to channel review of these mandatory disclosures towards a single U.S. Attorney's Office. And OMB's proffered explanation—that the change would "strengthen enforcement and accountability" and reducing delays in prosecutorial awareness of such disclosures—does not explain why such review needs to happen in D.C., rather than in the district where the alleged violations occur.

Severability (2 C.F.R. § 1.231): OMB maintains the existing severability provision in 2 C.F.R, which states that the provisions of 2 C.F.R. subtitle A are "separate and severable from one another." 2 C.F.R. § 1.231 (2026). In the preamble, OMB reaffirms its "intent" to "preserve the 2

CFR regulatory text to the fullest extent possible" "[i]n the event of a stay or invalidation of any provision, or any provision as it applies to a particular person or circumstance." 91 Fed. Reg. at 32,234. OMB asserts, without further elaboration, that "the benefits of the guidance related to coordination across the Federal Government and improved transparency, accountability, and oversight do not hinge on any single provision." *Id.*

OMB's conclusory severability analysis does not adequately explain how provisions of the Rule would actually function in practice if major parts of the Rule were held to be unlawful, as required. *See MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001) ("Whether the offending portion of a regulation is severable depends upon the intent of the agency *and* upon whether the remainder of the regulation could function sensibly without the stricken provision."). To the contrary, OMB describes this Rule as "a unified regulatory scheme" intended to promote governmentwide uniformity in federal grantmaking, thereby acknowledging that the Rule would not operate sensibly without key provisions. 91 Fed. Reg. at 32,234. In order to even attempt to justify severability here, OMB must, at a minimum, further explain, provision by provision, how the remainder of the Rule would operate if its central portions were found to be unlawful, which would be likely if the Rule is promulgated as is for the myriad reasons set forth above.

IV. The Rule Will Harm the States and Their Residents.

Federal financial assistance to States surpasses $1 trillion annually. That money addresses vital needs of State residents. Federal funds help combat violent crime and protect public safety, equip law enforcement, educate students, safeguard public health, protect clean drinking water, conduct life-saving medical and scientific research, address food insecurity, ensure access to unemployment benefits, protect against severe flooding, mitigate the spread of invasive species, provide emergency mental health and overdose services, protect against and prevent acts of terrorism, and maintain and rebuild our roads and bridges. Each federal funding stream exists because Congress has created it.

The Rule will have devastating short- and long-term impacts on States and the individuals and communities their programs serve. Federal funding recipients require transparency, predictability, and fairness in order to administer the programs that the funding supports. The Rule undermines all of these goals. The Rule would grant unprecedented power to federal agencies to supplant Congress's express policies and intent with their own ideologically-driven priorities.

These harms are not merely speculative. This Administration has already engaged in repeated unlawful attempts to slash federal funding, both across the board and targeted toward jurisdictions with disfavored political affiliations, and federal courts have time and again found that States face significant harms. Although the scale of the impacts that the Rule would have on the States is difficult to capture, some of the most dramatic impacts are identified below.

A. The Rule will cause recipients to experience greater uncertainty and higher costs, undermining critical programs.

The Rule will create uncertainty regarding the continuity of federal funding, causing difficulties in budgeting and other program planning for grant recipients. Both the Rule's provision that all federal grants may be terminated or suspended unilaterally and without cause, and the

Rule's provisions allowing the government to condition funds for any ideological or political purpose at any time through grant agreements or modifications, create significant uncertainty. Moreover, the Rule's proposed restrictions on allowable costs, additional reporting requirements, and enhanced monitoring expectations will impose significant administrative burdens and expose federal funding recipients to untenable compliance risk across all federal funding programs. In this way, the Rule will make federal grants more costly and less effective, benefitting no one and harming the States and their residents.

Under the Rule at § 200.340, grant recipients risk termination or suspension for misalignment with future federal agency interests and priorities of which they are not—and could not be—aware. This forces grant recipients into a constant state of uncertainty, subject only to the arbitrary whims of the administering federal agency. With each change in federal administration and each new unforeseeable disruption, the entire federal funding landscape would be destabilized. This would create additional significant uncertainties that would limit the ability of federal funding recipients, as well as federal agencies, to plan and budget, possibly leading potential funding recipients to have to forego funding altogether.

The codification of pre-issuance political review at § 200.205 will also cause major disruptions to the timely and efficient administration of federal funding, with the potential for a cascading set of harms to both recipients and the federal funding process. Given the tens of thousands of grants issued annually by each federal agency, the bottleneck created by senior political officials administering the pre-issuance review threatens to introduce significant delays and uncertainty to the approval process for federal financial assistance.[99] And the Rule allows agencies to re-evaluate their priorities continuously, creating further uncertainty.

If grantees do not know whether their federal awards will last four years, one year, or two weeks, and if they do not know what conditions they will face from one day to the next, it will be more difficult for them to budget and plan. Many state agencies rely on federal grants to pay staff, purchase supplies and equipment, conduct community outreach, and fund other activities critical to their mission. When state agencies decide whether to hire a new staff member or prioritize an outreach campaign, they do so based on the amount of federal funds they have been awarded. If those awards could be terminated at any time for any reason and with no advance warning, and with little recourse to explain or appeal, state agencies would have to factor that uncertainty into their budgets, with cascading effects. State agencies might resort to conditioning employment offers on the availability of federal funding, which shifts risk onto potential employees and hinders recruitment. Ultimately, the risk and uncertainty might prove a deterrent to highly qualified applicants whose work could significantly benefit the public.

Because the Rule would apply across OMB and 41 other federal agencies, these uncertainties would extend to nearly every federal grant recipient—rural hospitals and community health centers, housing authorities, schools and universities, transportation and infrastructure

[99] For example, in Fiscal Years 2025 and 2026, NIH has been significantly delayed in the obligation of federal appropriations, due in no small part to political review. Max Kozlov, "Inside the new political screening that's stalling NIH grants," Nature (Jun. 27, 2026), https://www.nature.com/articles/d41586-026-01924-8; *see also* "Tracking NIH Awards in FY 2026 (Oct. 1 – March 20)," AAMC (Mar. 24, 2026), https://www.aamc.org/media/89376/download.

projects, research institutions, and cities and towns across America. States that rely on federal funding programs would be impaired in their ability to govern. For instance, if the Department of Transportation can pull funding supporting the construction of a vital highway, States will have difficulty balancing a yearly budget. Moreover, each interruption in funding creates costs—the need to reallocate funding, cut programs, cut staff, redesign projects, and mitigate harms—wasting dollars that could instead support programs.

The administrative chaos caused by this Administration's prior attempts to suddenly terminate grants to vital programs has been abundantly clear. For example, on September 27, 2025, the Department of Homeland Security ("DHS") reallocated hundreds of millions of dollars under the Homeland Security Grant Program ("HSGP") from twelve states identified by the Administration as "sanctuary jurisdictions," leaving States scrambling to either bridge the funding gaps with other state funds or terminate the programs—an action that the District Court of Rhode Island described as "unconscionable and . . . unlawful." *Illinois v. Noem*, 813 F. Supp. 3d 282, 312 (D.R.I. 2025).

Not only does the Rule destabilize program budgets by reducing predictability and long-term funding stability, several provisions also restrict the activities that may be covered by federal grants. Section 200.450(c)(iv) of the Rule, for example, prohibits the use of federal funds by non-profit organizations and institutes of higher education for "[e]ngaging in issue advocacy or public messaging that promotes or opposes a particular social, political, or public policy position." This includes activities like advertising and public messaging that are critical to the ability of many funding recipients to interface with the communities they—and the federal programs themselves—are designed to serve. Additionally, the Rule increases monitoring and compliance burdens, which results in increased expenses due to the associated time and labor costs. *See infra* III.E. Together, these provisions significantly increase the costs of executing a federal grant—and federal funding recipients will foot the bill.

Reliability of federal funding is critical to the programs it funds—programs that increase the health, prosperity, and security of all our residents. The Rule will create budgetary uncertainty and increase administrative costs, and make it difficult to maintain key staff necessary to carry out the missions of federal funding programs. Applied across the federal government, the Rule's disruption to recruiting and retaining essential staff will touch every aspect of American life—from the rural physician to the Head Start administrator to the civil engineers designing our bridges and roads.

Furthermore, OMB intends the Rule to go into effect by October 1, 2026. That implementation timeline disregards State's and municipalities' budgetary cycles, existing statutory requirements, financial planning, and long-term structural commitments, which include federal partnerships. Operationally, it creates an impossible 90-day window to re-engineer, update, and reset core state financial systems or potentially forfeit billions in active federal funding, threatening the fiscal health of the State and its localities. The Rule fails to recognize this operational and fiscal discord much less detail a rigorous cost-benefit analysis weighing the heightened implementation costs against any potential, non-speculative savings.

In sum, the Rule makes federal grants a bad deal for grant recipients, and a great deal for shifting federal administrations.

B. The Rule will have adverse economic consequences.

The Rule will adversely affect the economy. By creating greater uncertainty in and the risk of disruptions to federal funding streams, thereby threatening the regular provision of critical public services related to health, education, social services, nutrition, infrastructure, and disaster relief (among others), the Rule will chill economic activity in these areas.

For more than a year, this Administration has attempted to unlawfully cut or cancel federal funding using methods—adding conditions unrelated to the underlying purpose of the grant, permitting arbitrary suspension or termination, and others—that the Rule would purportedly legitimize. The economic consequences of these efforts have been severe, and would be more so if the Rule were to go into effect, given the Rule's intended scope and governmentwide application. For example, federally funded programming safeguards State economies by enabling the development of infrastructure and response protocols to respond to and mitigate against unforeseeable destabilizing events, such as natural disasters. In March 2025, FEMA attempted to terminate the Building Resilient Infrastructure and Communities ("BRIC") program—blocking access to the major source of funding for pre-disaster mitigation efforts that protect billions of dollars in economic activity by maintaining access to public roads, clean water, and supplies of fresh produce and food following natural disasters. *See Washington v. FEMA*, No. 1:25-cv-12006 D. Mass. July 16, 2025), ECF No. 8 (Pls.' Mem. in Supp. of Motion for Preliminary Injunction).

The Rule would also put at risk critical research at state institutions, which threatens States' economies. States depend on funding from the National Institutes of Health ("NIH") for critical public health research. In Fiscal Year 2024 alone, NIH spent over $36 billion on grants to non-federal research institutions.[100] This research impacts equipment and supply procurement decisions across the healthcare industry, facilitates industry expansion and new business generation, and sustains thousands of jobs across the United States. NIH is the primary source of federal funding for biomedical research in the United States. States also depend on research grants for agricultural research from the U.S. Department of Agriculture ("USDA"), which promote the development of more efficient and higher-yield staple crop farming and stimulate the development of technological innovation and intellectual property, as well as from the U.S. Department of Energy, which support the research and development of alternative, cleaner energy sources, stimulate intellectual property creation, and mitigate against rising energy costs that depress local economic activity.

Beyond these direct funding losses, the Rule would also threaten the stimulation of the economy and the promotion of businesses that come from the delivery of essential services to individual beneficiaries that federal funds support. Essential programs for federal entitlements involving nutrition assistance—programs which would not exist without federal funding—support local businesses that participate as vendors and leave program beneficiaries with more financial bandwidth to engage in non-essential economic activity. Downstream economic benefits resulting from these and other programs total in the billions of dollars. *See Massachusetts v. U.S. Dep't of Agric.*, No. 26-cv-11396-MJJ, 2026 WL 1815807, at *9–*11 (D. Mass. June 24, 2026). When the continuing vitality of these essential programs is threatened, there is a chilling effect on this downstream economic activity; when funding and programming are actually terminated, the harms

[100] *See* United for Med. Rsch., *NIH's Role in Sustaining the U.S. Economy*, at 5 (March 2025), https://bit.ly/3Xz6Wry.

are even greater. Individuals and families who depend on the resources and support afforded by these programs must decrease or suspend their non-essential economic engagement and may suffer adverse health consequences or lose access to a critical economic lifeline.

C. The Rule harms the communities and individuals who receive services within the States.

State and local governments administer social programs and other resource distribution initiatives across essentially every industry and business sector; a vast number of these programs depend primarily, and at times exclusively, on federal funding to operate. These programs assist individuals and communities in accessing critical healthcare, public health services, and safety resources, and also assist people in meeting other essential needs like education, employment, housing, and food. The people and communities that depend on these programs could face critical and life-threatening risks if federal funding for the programs were terminated. The Rule's revised termination and suspension criteria will allow federal agencies to utilize the threat of federal grant termination or disruption to force grant recipients to adopt and implement federal policies that exist outside and beyond the scope of the congressional authorizations for critical social programs that should remain accessible to all who reside within our States and this nation.

The immediate consequences of terminating federal grants based on a federal agency's fluctuating priorities are not speculative. In March 2025, the U.S. Department of Health and Human Services ("HHS") abruptly terminated $11 billion of public health grants appropriated by Congress to fund health programs and services. The terminations impacted a wide range of state programs and services, including programs addressing infectious disease outbreaks; ensuring access to immunizations among vulnerable populations; fortifying emergency preparedness for future public health threats; providing mental health and substance abuse services; and modernizing critical public health infrastructure. *Colorado v. U.S. Dep't. of Health and Hum. Servs.*, No. 1:25-cv-00121 (D.R.I. May 16, 2025), ECF No. 84 at 32 (Order of Preliminary Injunction). Disruptions to critical public health services occurred again in January 2026 when HHS notified thousands of organizations across the country that their substance use recovery and mental health grants were being terminated because of a change in "agency priorities." The cuts targeted discretionary grants from the Substance Abuse and Mental Health Services Administration ("SAMHSA") and included youth overdose prevention and medication-assisted treatment for substance use disorder, among other things.[101] The grant terminations raised concerns of immediate threats to life, as the SAMHSA grants fund emergency-based responses to overdose and mental health crisis reports.[102]

Similarly, on November 13, 2025, the U.S. Department of Housing and Urban Development made sudden, dramatic changes to its Continuum of Care grant program mid-stream

[101] Carmen Paun & Amanda Friedman, HHS Terminates, Then Reinstates, Thousands of Grants for Substance Use, Mental Health, *Politico* (Jan. 14, 2026), https://www.politico.com/news/2026/01/14/hhs-terminates-grants-substance-use-mental-health-00729433.
[102] Brian Mann, *Trump Administration Sends Letter Wiping Out Addiction, Mental Health Grants*, NPR (Jan. 14, 2026), https://www.npr.org/2026/01/14/nx-s1-5677104/trump-administration-letter-terminating-addiction-mental-health-grants.

in order to effectuate new priorities set forth in Executive Orders concerning homelessness and gender ideology. The change ignored the McKinney-Vento Homeless Assistance Act, and the consequences were both immediate and severe. As the First Circuit explained, "[t]hose changes put hundreds of housing projects at risk of losing funding within just weeks, leaving the thousands of individuals and families who rely on that funding to once again face homelessness during the coming winter." *Washington v. U.S. Dept. of Housing and Urban Dev.*, 171 F.4th 473, 479 (1st Cir. 2026).

D. The Rule will empower the federal government to punish States for their sovereign choices.

The Rule's requirement that grants undergo an ideologically motivated, pre-issuance review process by senior appointees, combined with revised risk assessment criteria, will result in fewer funding opportunities for States and other grant applicants who advance policies that are disfavored by the administration in office at the time, even if those policies are fully consistent with the federal program at issue. These review processes will correspondingly frustrate Congress's intent to implement much of its federal policy via state implementation of its programs and is directly contrary to the cooperative federalism upon which Congress relied in enacting and funding federal programs.

Among other purposes, OMB has designed the pre-issuance review to screen out discretionary awards deemed contrary to "the President's policy priorities;" believed to employ "[r]acial preferences;" deemed to touch upon denial "of the sex binary in humans," or believed to promote "[i]llegal immigration" or "anti-American values." These terms are vague and lend themselves to arbitrary enforcement. For example, any institution applying for a grant that has policies inclusive of any vulnerable, disfavored classes of people could risk having its federal funding blocked. Concurrently, the Rule amends the federal risk assessment process to allow agencies to consider applicants' organizational affiliations.

In combination, the pre-issuance review by senior appointees and the amended risk assessment criteria impose a series of ambiguous ideological barriers to jurisdictions and groups seeking federal funds, granting political appointees and agency officials implementing the pre-issuance review and risk assessment total authority to engage in arbitrary and subjective decision-making. These new procedures place otherwise meritorious and competitive funding applicants at risk of losing access to funds if a grant proposal or the applicant is deemed "anti-American," if a project is affiliated with a disfavored political group, or if an applicant trespasses on any number of other arbitrary and unfixed agency priorities. And as written, the Rule denies applicants any opportunity to appeal the decision or any right to transparency about the rationale behind a funding denial.

Funding disruptions imposed on recipients based on ideological or policy disagreements inflict vast harms, as shown in numerous instances over the past year and a half. For example:

Following an October 1, 2025, social media post by OMB Director Russell Vought, the U.S. Department of Energy ("DOE") cancelled nearly $8 billion in grants to sixteen states "primarily—if not exclusively—based on whether the awardee resided in a state whose citizens voted for President Trump in 2024." *City of Saint Paul v. Wright*, 816 F. Supp. 3d 65, 74 (D.D.C. 2026).

In September 2025, DOT suspended funding for a $16 billion critical infrastructure project designed to serve hundreds of thousands of transit riders, following presidential social media posts targeting the project. *New Jersey v. U.S. Dept. of Transportation*, 824 F. Supp. 3d 416, 418–19, (S.D.N.Y. 2026). When enjoining DOT's decision, a federal court found the suspension to have "an immediate and severe impact on the region's economic interests[,]" including the potential for the loss of up to 95,000 jobs and the loss of $7.3 billion in annual GDP associated with completion of the project. *New Jersey v. U.S. Dep't of Transp.*, No. 26-cv-939, 2026 WL 360098, at *2 (Feb. 9, 2026).

In April 2025, DOT attempted to impose immigration enforcement requirements on grant funding used to support and maintain the roads, highways, railways, airways, and bridges that connect our communities and carry our residents to their workplaces and their homes. These grants were in no way connected to immigration enforcement. The federal district court in the District of Rhode Island found that these conditions were also contrary to and beyond the statutory authorization for those federal programs, and permanently enjoined their implementation. *California v. U.S. Dep't. of Transp.*, No. 1:25-cv-00208 (D.R.I. Nov. 4, 2025), ECF No. 74.

And, in December 2025, USDA issued revised general terms and conditions intended to require, among other things, compliance with Executive Order 14168, "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government." 90. Fed. Reg. 8,615 (Jan. 30, 2025). In enjoining the Administration from doing so, a district court detailed the "devastation" that would befall States if these conditions were to go into effect and USDA terminated funding for purported noncompliance as a result. *Massachusetts*, 2026 WL 1815807, at *24. The court described USDA's actions as "part of an ongoing effort by the current Administration to leverage federal funding to compel states to acquiesce to the Administration's policies and preferences about social issues that have little to do with the aims of the Department." *Id.* at *1.

Severe harms also follow from federal agency decisions designed to penalize funding recipients who run afoul of the Administration's priorities, particularly regarding immigration policy. As discussed above, in January 2026, following an announcement by the President that there would be no money for "states having sanctuary cities," *Illinois v. Vought*, 825 F. Supp. 3d 721, 726 (N.D. Ill. 2026), OMB "pushed out" a list of four states to federal agencies, resulting in abrupt funding cuts by HHS. *Id.* at 725. A court found that federal agency action undermined "established system[s] of governance" and jeopardized the States' "capacity to fund and maintain public health infrastructure" and health of state residents, including by creating a risk of "generational harm" flowing from "halting lead poisoning prevention programs." *Id.* at 730.

E. The Rule harms scientific and academic research.

The United States has led the world in academic research and innovation for decades, a feat only made possible through federal programs. In recent years, those federal programs account for 40 percent of basic research funding.[103] These programs bolster the health, economy, and security of the nation by providing essential support to research institutions across the country and by investing in the development of the scientists of the future. The Rule threatens to undermine that progress.

First, belying its emphasis on so-called "Gold Standard Science," the Rule will reduce the quality of research conducted in America by restricting the use of tools fundamental to the scientific method. These tools ensure that the United States remains a hub of technological innovation, biomedical breakthroughs, and productive invention. The Rule would weaken peer review, require senior appointee review, undermine the objectivity and independence of researchers, and restrict researchers' ability to collaborate. For example, the Rule's adoption of a "merit review" of discretionary grants to be conducted by a senior appointee and reduction of peer review to merely advisory status would facilitate senior appointees—who may or may not be experts in the field of study—to disregard the opinions of the scientific community.

The Rule further undermines the objectivity and independence of researchers by limiting the ways in which researchers can disseminate their findings to the public and the broader scientific community. The prohibition at § 200.450(c)(iv) of activities by institutions of higher education that "promote[] or oppose[] a particular social, political, or public policy position," for example, could discourage dissemination of research findings that contradict the bases for an administration's policy positions. Moreover, the Rule's enabling of federal agencies to unilaterally terminate grants hangs above any researcher who publishes a finding that contradicts the policies of a given federal administration. The Rule's implication that federal awards should only support the production of studies and findings that adhere to the federal administration's policies and priorities will either chill researchers' efforts to publish and disseminate study findings altogether, or worse, incentivize inaccurate or incomplete publications.

The Rule will reduce researchers' ability to collaborate by limiting grant recipients' ability to use federal funds to cover the costs of attending conferences (§ 200.432(b)), publishing research findings and articles (§ 200.461), subscribing to academic periodicals (§ 200.454(b)), and otherwise disseminating research (§§ 200.421, 200.450), which are all essential components of scientific inquiry. Researchers do not work in a vacuum; collaboration and the free exchange of ideas are the bedrock of discovery. Without federal financial support, researchers and their institutions may not be able to bear the costs of these activities alone, and American science will be all the poorer for it.

The Rule's expansive termination provisions will chill investment into critical infrastructure that is necessary to conduct cutting edge research. As discussed, in the face of uncertainty and the accompanying financial risk, research institutions will likely reduce investments into larger-scale infrastructure—such as laboratories and specialized equipment. Without that infrastructure, scientific advancement will inevitably slow and decline. Moreover, academic research institutions may decide to reduce or eliminate research programs most at risk of funding disruptions, depriving students of opportunities and depriving the scientific community

[103] Christopher V. Pece & Gary W. Anderson, *Analysis of Federal Funding for Research and Development in 2022: Basic Research*, Nat'l Ctr. for Sci. & Eng. Stat. Rep. NSF 24-332 (2024), https://ncses.nsf.gov/pubs/nsf24332 (last visited June 22, 2026).

of the next generation of scientists. The Rule's proposed limitations on indirect costs will also undercut investments in research infrastructure and the development and maintenance of training pipelines, harms which were expressly acknowledged by the District of Massachusetts in *Massachusetts v. National Institutes of Health*. 770 F. Supp. 3d 277, 306–07 (D. Mass. 2025), *judgment entered*, No. 1:25-CV-10338, 2025 WL 1063760 (D. Mass. Apr. 4, 2025), and *aff'd*, 164 F.4th 1 (1st Cir. 2026) ("In cutting indirect costs without identifying a countervailing funding stream for such costs of research, the only reasonable outcome will be the discontinuing of research supported by the slashed F&A rates, including ongoing clinical trials."). Well-trained scientists are as much—if not more of—a national resource as the physical infrastructure developed by research institutions.[104] The Rule will significantly hamper the training and development of future scientists.

Additionally, with the prospect of a senior appointee's review based on the Rule's priorities provisions and precursor actions such as the NIH terminations as a deterrent, important academic research into marginalized communities could diminish, contributing to a lack of knowledge and understanding about health disparities.

Finally, the Rule undermines the ability of research institutions to attract the world's top scientists. For example, at § 200.220, the proposed rule prohibits the expenditure of federal funds "to support a bilateral or multilateral collaboration, agreement, program, or activity with a covered foreign country or covered foreign entity." The Rule is replete with provisions adopting a "domestic-first" framework that isolates American research from the global scientific community. International research partnerships can produce some of the greatest achievements of human innovation, such as the creation of the International Space Station, studying the roots of disease through the Human Genome Project, exploring the galaxy with the Gemini telescope, and even fixing the hole in the ozone layer. Restricting researchers' ability to engage with the global scientific community will risk putting American researchers and research institutions on the sidelines of major discoveries.

V. Conclusion

If finalized, the Rule would cause significant, direct harm to the States, our public institutions, and our residents by upending the federal grantmaking process, leaving to the Executive Branch's political whim vital decisions to fund federal programs supporting scientific research, social services, health, education, and public safety—decisions that are reserved for Congress. The Rule is unlawful for the many reasons stated. Thus, the States urge OMB and the other promulgating agencies to withdraw the Rule.

[104] Vannevar Bush, Science: The Endless Frontier 3 (75th anniv. ed. 2025), https://nsf-gov-resources.nsf.gov/2023-04/EndlessFrontier75th_w.pdf ("The real ceiling on our productivity of new scientific knowledge and its application in the war against disease, and the development of new products and industries, is the number of trained scientists available.").

Sincerely,

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