LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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July 13, 2026

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

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

Dear Mr. Reisig and Mr. Savary:

The Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) submits this comment opposing the proposed rule, *Regulation for Federal Financial Assistance*, 91 Fed. Reg. 32198 (May 29, 2026), issued by Office of Management and Budget (OMB) alongside 41 other federal agencies and grantmaking entities. If finalized, the proposed rule would overhaul OMB's longstanding "Uniform Guidance" for federal grantmaking, converting it from nonbinding guidance to a new binding regulation—and, in the process, impose sweeping, government-wide changes to how federal agencies award and terminate grants. Among other things, the rule would replace merit-based review processes with vague pre-award reviews by political appointees, impose ill-defined restrictions on the use of federal funds for certain disfavored activities, and confer unfettered discretion to terminate awards that do not align with administration priorities.

Never before has OMB attempted to upend federal grantmaking in such a sweeping and dramatic fashion. As we explain below, OMB lacks the statutory authority to remake government-wide grantmaking in this way, and neither OMB nor any of the 41 participating agencies provide a reasoned basis for doing so. The proposed rule's substantive provisions, moreover, conflict with agency-specific statutory mandates; are so vague that they leave recipients to guess at which activities are permissible and which are prohibited; and would, by design and effect, impermissibly suppress ideas, projects, and organizations that the current administration disfavors. If implemented, the rule would burden and harm recipients and the broader public, including researchers working to identify and address racial disparities across critical sectors and services, equity-driven organizations, and the communities that those organizations serve. Like this administration's other efforts to impose its ideological preferences—including its largely unsupported interpretations as to what is and is not lawful with respect to diversity, equity, and inclusion (DEI), the burdens and harms of this rule would fall with particular weight on Black communities and other communities of color. The Lawyers' Committee urges OMB and the other agencies proposing the rule to withdraw it in its entirety.

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I. The Lawyers' Committee's Background and Interest

The Lawyers' Committee is a nonpartisan, nonprofit civil rights organization founded in 1963 by the leaders of the American bar at the request of President John F. Kennedy to secure equal justice for all through the rule of law by targeting the inequities confronting Black Americans and other people of color. The Lawyers' Committee uses legal advocacy to achieve racial justice and ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. As part of this work, the Lawyers' Committee has participated as counsel or amicus curiae in cases addressing race, ethnicity, and national origin discrimination in a wide range of subjects, including education, employment, health care and fair housing.

The Lawyers' Committee is committed to defending principles of diversity, equity, and inclusion. To that end, Lawyers' Committee has represented parties in litigation challenging the current administration's wide-ranging assault on lawful programs advancing equal opportunity. *See*, *e.g.*, *Chi. Women in Trades v. Trump*, 778 F. Supp. 3d 959 (N.D. Ill. 2025) ("CWIT") (granting preliminary injunction barring U.S. Department of Labor from "requiring any grantee or contractor to make a certification pursuant to section 3(b)(iv) of Executive Order 14173"); *Freedom Network USA v. Trump*, No. 1:25-cv-12419, Dkt. No. 18 (N.D. Ill. Oct. 2, 2025) (granting preliminary injunction barring U.S. Department of Justice from requiring any grantee or contractor to make a certification pursuant to Executive Order 14173 and enjoining the termination of any grant funded under the Trafficking Victims Protection Act ("TVPA") pursuant to section 2(b)(i) of Executive Order 14151); *Nat'l Dig. Inclusion All. v. Trump*, No. 1:25-cv-03606, Dkt. No. 1 (D.D.C. 2025).

II. Summary of Selected Proposed Rule Provisions Addressed in this Comment

Given the brief 45-day window for review, this comment focuses on the proposed rule's overarching legal deficiencies and on certain selected provisions identified below. Many provisions not referenced here also raise serious concerns for the Lawyers' Committee, which the Lawyers' Committee would address if given more time.

- Replacing guidance with regulation (codified throughout 2 C.F.R. subtitle A): The proposed rule proposes to replace "guidance" with binding "regulation" implementing OMB's announced policies throughout 2 CFR subtitle. OMB proposes that the new regulation bind the participating agencies and that future rulemaking by OMB automatically becomes binding on the agencies without separate action.

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- 2 C.F.R. § 200.205 (pre-selection review for political alignment): The proposed rule would require a review by senior political appointees or their designees to ensure that discretionary grants, "where applicable, demonstrably advance the President's policy priorities"; and prohibit them from funding "[r]acial preferences or other forms of racial discrimination by the recipient," "[d]enial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic," "[i]llegal immigration," or "[a]ny other initiatives that compromise public safety or promote anti-American values."

- 2 C.F.R. § 200.206 (agency risk assessment of applicants): The proposed rule would require agencies to evaluate applicants for "[h]istory of questionable practices" to assess risk of participation in "activities or initiatives that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination" or "membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government."

- 2 C.F.R. § 200.218 (restrictions targeting use of disparate impact): The proposed rule would require agencies to "ensure that awards are administered in a manner that does not promote or support theories of disparate-impact liability, including by not issuing terms, conditions, or guidance that would advance theories of disparate-impact liability." The proposal defines disparate impact 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."

- 2 C.F.R. § 200.300 (restrictions targeting DEI): The proposed rule would bar, "to the maximum extent permitted by law, awards "to fund, promote, encourage, subsidize, or facilitate: 'Diversity, equity, and inclusion' (DEI) or 'diversity, equity, inclusion, and accessibility' (DEIA) policies, principles, or practices, that violate any applicable Federal anti-discrimination laws." The proposed rule cites as examples "racial preferences or other forms of racial discrimination . . . including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation." While the proposed rule states that the restriction applies only to practices that violate applicable laws, it also cites DOJ's July 2025 Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination as "illustrative examples of practices that may violate underlying anti-discrimination statutes." That memo, along with other administration directives, guidance, and enforcement, characterizes many lawful practices as "illegal DEI."

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- 2 C.F.R. § 200.340 (termination and suspension): The proposed rule empowers agencies to terminate or suspend awards that the agency determines do not "effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination."

III. OMB Lacks Authority to Issue Binding Grant Regulations

As a threshold matter, the entire proposed rule is unlawful for multiple independent but mutually reinforcing reasons. Since its inception, OMB's Uniform Guidance has operated as precisely what its name suggests: guidance. The Uniform Guidance currently states at 2 C.F.R. § 1.105 that publication in the Code of Federal Regulations "does not change its nature—it is guidance, not regulation." Individual grantmaking agencies have retained the independent authority—and the obligation—to issue their own regulations implementing the guidance pursuant to their organic statutes and programmatic mandates. The proposed rule would fundamentally alter this longstanding structure by transforming OMB's guidance into binding regulation with "regulatory effect in [its] own right." 91 Fed. Reg. 32204.

But OMB lacks statutory authority to impose the types of limits and conditions on the outlay of federal funds that the rule proposes. And the 41 individual agencies that are participating in this single joint rulemaking may cede neither their Congressionally delegated authority nor their individual decision-making responsibility to OMB. Rather, *each* of those agencies must independently identify their source of authority to impose these types of conditions and explain why doing so is consistent with their overall program goals and purposes—something none of the agencies even attempt to do.

A. OMB lacks authority to impose mandatory conditions on federal grants.

OMB is not itself a grant-making agency: it coordinates internal government functions but does not issue grants to private parties. And the proposed rule identifies no statute authorizing OMB to impose mandatory conditions on federal grants that would bind or regulate the conduct of entities outside the federal government.

The main statutory provision OMB cites, titled "Functions of Deputy Director for Management," grants authority to "establish governmentwide financial management policies for executive agencies" and perform specified "financial management functions," including "monitoring the establishment and operation of Federal Government financial management systems." 31 U.S.C. § 503(a), (a)(2). On its face, this language enables the Deputy Director to impose *internal* governmental procedures and standards—such as reporting or accounting requirements for agencies to follow. This exclusively-internal focus is confirmed by the other

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provisions of section 503, which authorize the Deputy Director to, among other things, review "budget and legislative proposals of agencies," "[m]onitor the financial execution of the budget in relation to actual expenditures, including timely performance reports," and to establish "qualification standards for agency Chief Financial Officers." *Id.* § 503(a)(4), (5), (7). Simply put, the text, context, and structure of section 503 are solely oriented towards managing internal agency operations. *See Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 437 (2019) (statutes should be interpreted based on their "text and structure"); *see also Ass'n of Am. Univs. v. Dep't of Def.*, 792 F. Supp. 3d 143, 165 (D. Mass. 2025) (characterizing § 503(a)(2) as "essentially as an accounting manual"); *Am. Fed'n of State, Cnty., & Mun. Emps., AFL-CIO v. OMB*, 807 F. Supp. 3d 1004, 1018 (N.D. Cal. 2025) (the "structure" of § 503 "strongly suggests that OMB occupies an oversight role," not one imbued with direct regulatory authority) (quoting *Nat'l Council of Nonprofits v. OMB*, 775 F. Supp. 3d 100, 126 (D.D.C. 2025)).

By extension, nothing in section 503's text or structure authorizes OMB to impose substantive conditions on entities *outside* the government or to regulate their conduct. Nor can the statute be read as doing so implicitly. As the Supreme Court has repeatedly emphasized, "Congress must clearly and unambiguously alert a grant recipient to any condition on federal funds." *Landor v. La. Dep't of Corr. & Pub. Safety*, No. 23-1197, 2026 WL 1791277, at *6 (U.S. June 23, 2026) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). Where Congress has not unambiguously given entities or individuals notice that they may be subject to specified types of requirements, the government may not "surpris[e]" recipients "with post acceptance or 'retroactive' conditions." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 584-585 (2012); *see also Landor*, 2026 WL 1791277, at *6 (recipients must "voluntarily and knowingly consent[]" to conditions on money).

The proposed rule flouts these principles by purporting to directly regulate the conduct of entities receiving government funds. Among other things, the rule seeks to prohibit the use of money for whole categories of ill-defined ends such as diversity, equity, and inclusion ("DEI"), "gender ideology," and other work that does not match the administration's "priorities." 91 Fed. Reg. 32203-204. Tellingly, the rule does not even attempt to characterize these restrictions as internal "financial management policies"—and rightly so. These substantive limits and restrictions plainly purport to regulate conduct of entities outside the government by conditioning federal funds. Indeed, recipients face a range of potential penalties, including False Claims Act liability, for noncompliance. Under established precedent, Congress must provide clear notice that grants may be subject to such conditions—by, at the very least, clearly delegating power to OMB to impose such requirements. Congress did not. Nothing in the text or structure of section 503 suggests that the Deputy Director for Management has authority to attach limits and restrictions to the receipt of federal money.

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OMB's other cited authorities fare no better. For example, OMB cites 31 U.S.C. § 6307, which authorizes OMB to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant[s] . . . and cooperative agreements." Like section 503, this authorization is explicitly inward facing: it does not authorize imposing conditions on entities outside the government. Further, the proposed rule explicitly *abandons* the interpretive-guidance model that § 6307 authorizes. In place of the current Uniform Guidance—which is explicitly identified as "guidance, not regulation," 2 C.F.R. § 1.105—the proposed rule would create "legally binding . . . policy related to financial assistance for all agencies" with "regulatory effect," 91 Fed. Reg. at 32204. A provision with binding "regulatory effect," especially where no regulation has previously been promulgated, is not a "supplementary interpretative guideline[]" within the plain meaning of section 6307. The proposed rule's reliance on this provision thus contradicts the very text of the statute.

The remainder of the authorities OMB invokes, which are only mentioned in passing, address disparate issues such as audits or internal agency matters such as information sharing—and are thus even further afield. *See* 91 Fed. Reg. at 32202-203 (citing authorities). OMB does not even attempt to explain how those authorities justify the provisions of the rule it proposes. *Id.* at 32217 (noting that OMB is principally relying on 31 U.S.C. § 503 and § 6307). It has therefore failed to identify a valid source of authority for the proposed rule, contrary to the requirements of 5 U.S.C. § 553(b).

B. Agencies cannot cede their independent authority to OMB.

OMB plainly lacks the kind of clear Congressional authorization that is required for this type of rulemaking. Nor does OMB even reference, much less attempt to show, that the proposed rule is consistent with the underlying statutory authority of each of the participating agencies. Instead, OMB proposes to have the agencies *cede* their independent rulemaking authority to OMB, such that future OMB amendments would "automatically apply government-wide" and carry "regulatory effect in their own right." 91 Fed. Reg. at 32204. This prospective delegation is plainly unlawful.

"Administrative agencies are creatures of statute." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., et. al.*, 595 U.S. 109, 117 (2022) (*NFIB*). They may not exceed the limited authority Congress provided nor "exercise [their] authority in a manner that is inconsistent with the administrative structure that Congress enacted." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125 (2000) (citation omitted). An agency's regulatory authority is delegated to it by Congress, and an agency cannot re-delegate that authority to another entity absent *express* congressional authorization to do so. *See* U.S. Const. art. I, § 1 (vesting legislative power in Congress); *see generally Pittston Co. v. United States*, 368 F.3d 385, 394

(4th Cir. 2004) ("[A] core governmental power must be exercised by the Department on which it is conferred and must not be delegated to others in a manner that frustrates the constitutional design.").

OMB has not identified any authorization from Congress that would allow it to seize other agencies' power to issue and attach conditions to federal grants. As explained above, the only statutory authorities OMB invokes merely permit OMB to set internal requirements and 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) (emphasis added). But establishing "financial management policies and requirements" does not come close to authorizing cross-delegation of authority. To the contrary, section 503's repeated references to OMB establishing "direction" and "policies" plainly presumes that agencies will *continue* to exercise their independent powers, subject to whatever internal demands OMB might make. No statutory provision that OMB references comes close to permitting individual agencies to abdicate the power Congress expressly granted them—nor contemplates OMB consolidating all such powers in itself.

As a flip side of this same problem, agencies also cannot rely on OMB's asserted statutory authority as a substitute for their *own* Congressionally delegated rulemaking authority because statutory powers assigned to specified agencies or officials may not be exercised by others absent Congressional authorization. *See United States v. Giordano*, 416 U.S. 505, 512–14, 523 (1974); *Touby v. United States*, 500 U.S. 160, 169 (1991). So even if OMB's statutes permitted the agency to impose substantive conditions on grants—which they do not—that still would not relieve the individual agencies of identifying *in their own* statutes the authority to impose the types of conditions that OMB demands. Simply put, agencies cannot cross-delegate and piggyback on each others' claimed authority: the U.S. Code is not a scrapbook that OMB and agencies can cut and paste at will.

Voluntary participation in a single joint rulemaking by the agencies does not cure these fundamental limitations. An agency "has no power to 'tailor' legislation to bureaucratic policy goals by rewriting unambiguous statutory terms," *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 325 (2014), and are entitled to no special deference in construing the scope of their authority, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 401 (2024). To the contrary, as the Supreme Court has recently emphasized "the scope of an agency's own power" is "perhaps the occasion on which abdication in favor of the agency is *least* appropriate." *Loper Bright*, 603 U.S. at 401. Here, this principle squarely forecloses any claim that agencies may voluntarily cede the Congressionally delegated authority granted them and bind themselves to future OMB rules.

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C. Each agency must independently justify adoption of the rule under its own statutory framework.

Separate from multiple statutory problems, the proposed rule is unlawful because it fails to satisfy the Administrative Procedure Act's (APA's) basic requirements for reasoned agency decision-making.

Under the APA, agencies must show that a rule "is rational, based on consideration of the relevant factors and within the scope of the authority delegated to the agency by the statute." *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). This is an affirmative obligation: a reviewing court "may not supply a reasoned basis for the agency's action that the agency itself has not given." *Id.* (citing *SEC v. Chenery Corp.,* 332 U.S. 194, 196 (1947)). Thus, agencies proposing the rule bear the burden of showing, on the basis of the record before them, that they have analyzed the factors Congress intended them to consider; did not disregard "an important aspect of the problem;" and offered a reasonable explanation for their choices. *Id.* at 43.

These foundational administrative law principles demand that *each* of the 41 federal grantmaking entities participating in this rulemaking—entities which range from cabinet departments to independent regulatory agencies—do the work of analyzing and explaining *why* adopting OMB's regulations is appropriate under their individual underlying statutes and delegated authorities. *See* 91 Fed. Reg. 32198. The proposed rule is thus arbitrary and capricious absent sufficient explanation by each agency of: (a) the particular statutory authority under which it acts; (b) the specific funding schemes it administers and how the proposed regulation interacts with each; (c) which parts of the proposed regulation, if any, are overridden by or conflict with its authorizing statute; (d) the factual and policy basis for concluding that the proposed regulation is appropriate given the various programmatic objectives Congress assigned to that agency; and (e) why it is appropriate for the agencies to defer to OMB on future rulemaking in this area.

The proposed rule offers none of this analysis. In fact, none of the separate agencies even *reference* their statutory authorities, much less explain why the proposed rule is appropriate given the unique features of the programs they administer. Instead, the rule merely offers repeated assertions that agencies will apply the rule "to the extent permitted by law," 91 Fed. Reg. at 32219, and instructs agencies to subsequently evaluate "practicability and the legal authorities that apply" and "identify statutory authority" before imposing certain grant conditions, 91 Fed. Reg. 32224. This gets it exactly backwards. As explained above, what agencies understand to be permitted under their enabling statutes is a threshold inquiry in their analysis of whether the rule is lawful and whether it is good policy. That inquiry must therefore

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inform each agency's decision on whether to adopt this rule now; it cannot be put off to some uncertain point in the future. This is especially true given that the agencies are proposing to cede their future rulemaking authority for all subsequent amendments, which would "automatically apply government-wide" without any separate agency-level evaluation. 91 Fed. Reg. at 32204.

Further, to give the public meaningful notice of what is being proposed, the agencies must fully consider and explain how and when they would make determinations on whether some individual grant or program is exempt from the new rule's requirements—and how they will ensure that the public has an appropriate opportunity to participate in those subsequent decisions. The agencies' complete failure to engage with these issues renders the proposal to adopt the OMB proposal facially unlawful and neither "reasonable [nor] reasonably explained." *FCC v. Prometheus Radio Project,* 592 U.S. 414, 423 (2021); *see also City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1239 (9th Cir. 2018) (noting that saving clauses cannot insulate agency action from review where "there is more than a mere possibility that some agency might make a legally suspect action") (quotes and citations omitted).

This fundamental problem is fatal—and cannot be remedied in the final rulemaking. Courts have repeatedly made clear that the public must be afforded "a meaningful opportunity" to comment on an agency's proposed rulemaking. *Gerber v. Norton*, 294 F.3d 173, 179 (D.C. Cir. 2002). For this reason, "a proposed rule must include sufficient detail on its content and basis in law and evidence to allow for meaningful and informed comment." *Am. Med. Ass'n v. Reno*, 57 F.3d 1129, 1132–33 (D.C. Cir. 1995); *see also Conn. Light & Power Co. v. NRC,* 673 F.2d 525, 530–31 (D.C. Cir. 1982) ("An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary."). Here, the agencies have provided no detail—and thus no notice to the public—about how they understand the proposed rule to comply with and further their statutory authorities and implementing programs. This lack of notice deprives the public from fully and meaningfully participating in the rulemaking process.

IV. The Proposed Rule Contravenes Agency-Specific Statutory Mandates

Even a cursory examination of individual agencies' statutory grants and programs also reveals that many provisions of the proposed rule are inconsistent with agencies' organic statutes and programmatic functions. We highlight some of these fundamental incompatibilities below. These examples are far from exhaustive, given the inadequate 45-day window for public comment. But even these limited examples highlight the overarching structural flaws with the

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proposed rule's "one-size-fits-all" approach, and the lack of adequate reasoning by the individual participating agencies.

A. Agencies generally lack authority to terminate grants for mere inconsistency with agency priorities.

OMB proposes that every agency grant incorporate terms permitting the agency to terminate it for purported inconsistency with agency priorities. 91 Fed. Reg. 32205. But agencies' organic statutes and Congressional appropriations generally do not confer such authority.

The statutes authorizing agencies to award federal funds consistently provide only that they may "grant" federal monies. For example, the Public Health Service Act provides that the Secretary of the National Institutes of Health (NIH) may "make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions," but is devoid of any reference to termination. *See* 42 U.S.C. § 241(a)(3). That is also the case for the National Science Foundation (NSF) and the Biomedical Advanced Research and Development Authority (BARDA). The NSF is allowed "to initiate and support basic research programs . . . by making contracts or other arrangements (including grants, loans, and other forms of assistance) to support such scientific . . . activities." 42 U.S.C. § 1862(a)(1). BARDA, likewise, authorizes the Secretary of the Department of Health and Human Services to "award contracts, grants, cooperative agreements, and enter into other transactions, for countermeasure and product advanced research and development." 42 U.S.C. § 247d-7e(c)(4)(B)(iv). None of these statutory provisions make any mention of termination.

Nor can any such authority be reasonably inferred. The ordinary meaning of "grant" in no way incorporates the ability to revoke; to the contrary, it ordinarily means an irrevocable transfer. *See, e.g. Grant*, Meriam-Webster, available at https://www.merriam-webster.com/dictionary/grant ("to bestow or transfer formally"); *Grant*, Cambridge Dictionary, available at https://dictionary.cambridge.org/dictionary/english/grant ("[A]n amount of money given especially by the government to a person or organization for a special purpose."). Indeed, "grant" is synonymous with "gift," "donation," and "contribution," all of which are understood as being irrevocable. *See id.* Consistent with this ordinary usage, the Federal Grant and Cooperative Agreement Act provides that an "executive agency shall use a grant agreement" when "the principal purpose . . . is to *transfer* a thing of value" without further "substantial involvement" by the agency. 31 U.S.C. § 6304 (emphasis added). This fundamentally contrasts with other financial relationships, such as procurement contracts, where the agency is actively involved after awards—and where Congress has created reticulated administration and dispute schemes that account for the government adjusting its requirements or demands throughout the

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course of the relationship. *Id.* § 6303; *see generally* 71 U.S.C. §§ 7101-7109 (providing scheme for resolving contract disputes).

That federal laws fail to explicitly authorize the discretionary revocation of (or disputes over) grant awards is consistent with the overarching purpose of federal grants: to provide certainty and continuity of funding over defined periods of time. Such consistency is a necessity given the large-scale and long-term nature of the projects supported by federal grants. For example, in fiscal year 2023 alone, the NIH obligated over $35 billion in grants and cooperative agreement to support, among other things, clinical research. U.S. Gov't Accountability Off., GAO-25-107362, National Institutes of Health: Monitoring of External Research Can Be Improved (Apr. 2025), https://www.gao.gov/assets/gao-25-107362.pdf. Phase 3 clinical trials—which typically generate the data necessary to support drug and device approvals—takes one to four years, on average. *Step 3: Clinical Research*, FDA (Jan. 4, 2018), available at https://www.fda.gov/patients/drug-development-process/step-3-clinical-research. On top of that, patient recruitment can take months, and sometimes even years, before initiation of a trial. *Understanding Clinical Trial Recruitment: A Step-by-Step Guide for Participants*, EU Clinical Trials, available at https://clinicaltrials.eu/patient-resources/recruitment-for-research/. Prematurely stopping a clinical trial due to the shifting policy priorities of the Executive Branch lays waste to all the work that goes into a clinical trial and destroys the value of already-expended funds. Further, the mere possibility of such cancellations will make researchers far more hesitant to embark on clinical research.

Consistent with this reality, the Executive Branch has historically treated grants as predictable and settled commitments. Prior to 2025, the termination of grants was "exceedingly rare." *NIH Grants Termination*, Cntr. for Sci. in the Pub. Interest (Dec. 15, 2025), available at https://www.cspi.org/case/nih-grants-termination; *US Science After a Year of Trump*, Nature (Jan. 20, 2026), available at US science after a year of Trump: what has been lost and what remains. Congress consistently legislated against this backdrop, updating and expanding the NIH's, NSF's, and other agencies' grantmaking functions with the understanding that federal grants—unlike, for example, Pentagon procurement contracts—are not subject to cancellation at will.

OMB has no statutory authority to upend this longstanding framework. Nowhere in its organic statute is OMB permitted to impose a requirement that agencies cancel grants at its whim. *See* 21 USC §§ 501–07, 521–22. Indeed, the statute is entirely devoid of reference to OMB having authority to cancel any grants. *Id.* And, even if OMB itself had such authority, agencies could not borrow it to align themselves with the policy priorities of the Executive Branch for all the reasons explained above. *See supra* Section II.B.

B. OMB's approach to DEI is incompatible with multiple agencies' statutory mandates.

The inherent conflict between the proposed rule and individual agency authorities is thrown into relief by considering just a few appropriations enacted by Congress in the Consolidated Appropriations Act, 2026, Pub. L. 119-75, 140 Stat. 173 (2026 Appropriations Act). These appropriations reflect Congress's affirmative policy judgments that federal funds should be made available to certain activities that OMB has, in other contexts, associated with what it wrongly perceives as impermissible "DEI." Though the proposed rule states that it restricts only DEI that violates the law, the administration has persisted in advancing incorrect legal interpretations of what DEI is impermissible, despite repeated correction by federal courts. *See e.g., Am. Fed'n of Tchrs. v. Dep't of Educ.*, No. CV SAG-25-628, 2025 WL 2374697, at *21, *23-27 (D. Md. Aug. 14, 2025) (holding that guidance issued by the Department of Education regarding diversity, equity, and inclusion practices in schools was textbook viewpoint discrimination, and indicating that the agency's interpretations of law lack factual bases, conflict with regulations and caselaw, exceed the agency's authority, and are contrary to constitutional rights.).

This limited sample from just one year's appropriations underscores the extent to which the proposed rule's provisions restricting DEI could be read by agencies to conflict with explicit Congressional direction, and reinforces the need for agencies to examine the specific legal authorities and programmatic responsibilities before adopting the rule:

- Congress appropriated $19 million to the Department of Education for grants to support disadvantaged students, strengthen school improvement efforts, and advance educational equity nationwide, all aimed at improving outcomes for K–12 students. *See* 140 Stat. at 294; *see also* Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 *et seq.*; Higher Education Act of 1965 § 418A, 20 U.S.C. § 1070d-2. Yet the proposed rule explicitly, and wrongly, characterizes efforts to support historically disadvantaged or underserved communities as unlawful discrimination and potential "proxies for race." 91 Fed. Reg. at 32221. Further, proposed 2 C.F.R. § 200.218 would eliminate the use of disparate-impact analysis, potentially deterring agencies from relying on the data to show inequitable outcomes that justify targeted investment in disadvantaged communities. *Id.* at 32252.

- Congress appropriated $538.4 million to NIH's National Institute on Minority Health and Health Disparities. 140 Stat. at 268; *see* also section 301 and title IV of the Public Health Service Act, 42 U.S.C. § 241 and 42 U.S.C. ch. 6A. Grants that fund research into health disparities were among the first targeted by the administration, with one study estimating that almost 30% of the Institute's active grants being terminated.

- Congress appropriated $106.5 million to NIH's Office of Research on Women's Health for "grants [that] serve and promote the interests of women in research." 140 Stat. at

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269; *see also* National Institutes of Health Revitalization Act of 1993, 42 U.S.C. § 289a-2. The Administration has swept women's health programs into its anti-DEI efforts. *See, e.g.*, Executive Order 14148 (Jan. 20, 2025) (rescinding Biden Administration EO 14020, "Establishment of the White House Gender Policy Council," that included a government-wide focus improving women's health outcomes and addressing maternal health and other health disparities).

- Congress appropriated $529 million for the Department of Housing and Urban Development (HUD) to award grants to States, local governments, and nonprofit organizations to improve housing opportunities for low-income people living with HIV and AIDS. 140 Stat. at 395-396; *see also* AIDS Housing Opportunity Act, 2 U.S.C. § 12901 et seq. This administration has cancelled numerous other grants targeting populations with HIV and AIDS on the theory that they reflect impermissible DEI. *See* ABC News, *Trump Administration Cuts $600 Million in HIV, STD Prevention and Surveillance Grants* (Feb. 11, 2026), available at https://abcnews.com/Health/trump-administration-cuts-600-million-hiv-std-prevention/story?id=130060405; Roll Call, *Trump Cancels NIH Grants on Equity Research* (Mar. 24, 2025), available at https://rollcall.com/2025/03/24/trump-cancels-nih-grants-on-equity-research/.

- Congress appropriated $1.35 billion to HUD for grants to Native American tribes to expand housing activities. 140 Stat. at 393; *see also* Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4111 et seq. This Administration has characterized programs for Native Americans as DEI initiatives. For example, the Trump Administration rescinded a Biden Administration Executive that directed federal agencies to support Native American educational opportunity and Tribal Colleges and Universities. Executive Order 14148 (Jan. 20, 2025).

- Congress appropriated $145 million for the Department of Transportation to fund grants to states, localities, transit agencies, and other entities. Congress directed that at least 5 percent of this funding directed to historically disadvantaged or poor communities. 140 Stat. at 325; *see also* 49 U.S.C. § 6702. Yet, as noted above, the proposed rule explicitly, and wrongly, characterizes efforts to support historically disadvantaged or underserved communities as unlawful discrimination and potential "proxies for race." 91 Fed. Reg. at 32221. Further, proposed 2 C.F.R. § 200.218 would eliminate the use of disparate-impact analysis, potentially deterring agencies from relying on the data to show inequitable outcomes that justify targeted investment in disadvantaged communities. 91 Fed. Reg. at 32252.

- Congress appropriated $42 million for the Department of Labor's Office of Disability Employment Policy to fund programs that eliminate barriers to training and employing people with disabilities. Of this appropriation, the agency must direct $9 million for research to test mechanisms for increasing work force participation for people with disabilities. 140 Stat. at 250. Yet this Administration's policy considers accessibility for people with disabilities as a core component of impermissible DEI. *See, e.g.*, OMB,

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Memorandum to Heads and Acting Heads of Departments and Agencies: Further Guidance Regarding Ending DEIA Offices, Programs and Initiatives (Feb. 5, 2025), https://www.opm.gov/chcoc/transmittals/2025/OPM%20Memo%20Further%20Guidance%20Regarding%20Ending%20DEIA%20Offices%20Programs%20and%20Initiatives%202-5-2025%20FINAL.pdf.

V. OMB's Proposed Rule is Impermissibly Vague and Contrary to Law

Throughout the proposed rule, vague and ambiguous provisions leave recipients to guess at what activities an agency might perceive to be prohibited. These vague provisions will unconstitutionally chill recipients' protected speech and lawful conduct, especially given the administration's growing record of arbitrary enforcement and retaliatory action against recipients that express disfavored views or conduct disfavored activities.

A. The proposed rule would impose unconstitutional conditions on grantees' First Amendment rights.

The Supreme Court has long recognized that funding conditions must not "result in an unconstitutional burden on First Amendment Rights." *Agency for Int'l Dev. v. All. For Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) (*AID*); *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 59 (2006) (First Amendment sets "a limit on Congress' ability to place conditions on the receipt of funds"). For this reason, the Court has consistently drawn a "distinction" between conditions that merely "specify the activities Congress wants to subsidize" and "conditions that seek to leverage funding to regulate speech outside the contours of" the federal program. *AID*, 570 U.S. at 214. As the Court has explained, the government cannot use conditions to "prohibit[ ] the recipient from engaging in [] protected conduct outside the scope of the federally funded program," nor require "recipients to profess a specific belief" because both of those go "beyond defining the limits of the federally funded program to defining the recipient." *Id.* at 217-218. Nor may the government use subsidies to "ai[m] at the suppression of dangerous ideas," *Regan v. Taxation With Representation of Wash.,* 461 U.S. 540, 550 (1983), or "manipulate[] [funding] to have a coercive effect," *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998) (quotes and citations omitted) (*NEA*).

OMB's rule trammels over these principles in multiple ways. For example, OMB articulates a new "pre-award requirement" that agencies conduct a "risk assessment to evaluate the risks posed by applicants before issuing federal awards." 91 Fed. Reg. at 32249-50 (proposed 2 C.F.R. § 200.206(b)(1)). But the risk criteria to be considered include an applicant's "[h]istory of questionable practices"—such as "activities . . . that are inconsistent with Federal civil rights laws"—as well as "the applicant's membership in or affiliation with organizations engaged in activities that . . . undermine public safety or national security, or advocate for the overthrow of the" government. *Id*. On their face, these conditions do not regulate the purposes

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for which federal grant money is spent. Instead, they target the recipients themselves and their activities outside the scope of the program. This runs afoul of the Supreme Court's "'unconstitutional conditions' cases" that prohibit the government from "plac[ing] a condition on the *recipient* of the subsidy rather than on a particular program or service, thus effectively prohibiting the recipient from engaging in the protected conduct outside the scope of the federally funded program." *Rust v. Sullivan*, 500 U.S. 173, 197 (1991). By extending the reach of the proposed rule beyond the "contours" of the relevant funding program itself, the rule imposes an unconstitutional burden on speech outside the scope of the funding program and impermissibly seeks to "compel[]" recipients to adopt or hold "a particular belief as a condition of funding." *AID*, 570 U.S. at 218.

Compounding this problem is the fact that the rule does not clearly define the relevant terms, leaving applicants to guess what the government might deem "questionable practices" or "affiliation with organizations" engaged in impermissible advocacy. 91 Fed. Reg. at 32249-50. Such vagueness is problematic in any circumstance. *See F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (explaining that a law must not be unduly vague to ensure "that regulated parties [] know what is required of them" and "so that those enforcing the law do not act in an arbitrary or discriminatory way"). But it is especially intolerable in the context of protected First Amendment speech and association. *Id.* at 254; *Reno v. American Civil Liberties Union,* 521 U.S. 844, 870–871 (1997) ("The vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect"). Indeed, the terms OMB uses are so subjective and "so standardless that [they] authorize[] or encourage[] seriously discriminatory enforcement." *Fox*, 567 U.S. at 253. The rule's requirements thus raises the serious specter that they will be used—and are designed to be used—for "the suppression of" ideas the administration deems "dangerous" as well as those with which it simply disagrees. *Regan*, 461 U.S. at 550.

This vagueness problem is endemic throughout the proposed rule. For example, OMB seeks to allow an agency to terminate an award if the agency merely determines that "significant reputational harm has occurred"—without defining what such harm could entail. 91 Fed. Reg. at 32257. But, as further explained below, the concern is most dramatically apparent in the rule's emphatic insistence that agencies and "pass-through entit[ies] must ensure that the Federal award is not used to fund, promote, encourage subside, or facilitate" DEI "policies, principles or practices" or "[g]ender ideology." 91 Fed. Reg. at 32215. As courts have observed—including in cases brought by the Lawyers' Committee and partners—these terms are inherently vague and indeterminate, and vest enormous discretionary power in agencies to penalize and terminate funding for disfavored causes. *See, e.g.*, *Chicago Women in Trades v. Trump*, 778 F. Supp. 3d 959, 984 (N.D. Ill. 2025) (explaining that the meaning of DEI "is left entirely to the grantee's imagination"); *Freedom Network USA v. Trump*, No. 1:25-cv-12419, Dkt. No. 89 (N.D. Ill. March 23, 2026) (explaining that federal grantees are put in a "difficult and perhaps impossible

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position" without any guidance on what programs may "promote DEI.")By singling out these particular ideas and practices for disfavored treatment, OMB is impermissibly imposing a "disproportionate burden calculated to drive 'certain ideas or viewpoints from the marketplace.'" *NEA*, 524 U.S. at 587 (quoting *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.,* 502 U.S. 105, 116 (1991)). By combining vague pre-award requirements with virtually unfettered discretion for agencies to terminate awards that do not align with agency "priorities," 91 Fed. Reg. 32205, the proposed rule makes it both possible and likely that the government will employ the rule to suppress ideas, projects, and organizations that it disfavors. Given its broad application and government-wide scope, the rule thus becomes an impermissible "means of coercion . . . to achieve the suppression" of disfavored speech. *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 189 (2024).

B. The proposed rule's definition of "disparate-impact liability" and directive to eliminate its use are unclear and contrary to law.

The proposed rule directs agencies to "eliminate the use of disparate-impact liability in all contexts relevant to Federal awards." 91 Fed. Reg. at 32252 (proposed 2 C.F.R. § 200.218). Agencies must ensure that, to "the maximum extent permitted by law," federal awards do not "promote or support the use of disparate impact liability" and that "award activities based on the assumed risk of disparate-impact liability are not allowed" unless required by law. *Id.*

Section 200.218(e) of the proposed rule describes disparate impact 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. … Disparate-impact liability effectively mandates consideration of federally protected characteristics, such as race or sex, and incentivizes racial balancing, contrary to principles of equal treatment and merit-based opportunity." 91 Fed. Reg. at 32252.

This novel definition of disparate impact does not track any statute, regulation, or case law. Indeed, it is inconsistent with Supreme Court case law developed in multiple contexts. The Supreme Court upheld disparate impact liability in the employment context in *Griggs v. Duke Power Co*., 401 U.S. 424 (1971), where plaintiffs challenged the defendant company's policy of requiring employees to complete high school and take a general intelligence test for employment. The Court determined that Title VII of the Civil Rights Act of 1964 allows for the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification. *Id*. at 431. Title VII thus "proscribes not only overt discrimination but also practices that are fair in form,

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but discriminatory in operation" *Id*. at 431. Ultimately, the Court did not impose "an automatic or near-insurmountable presumption of the existence of unlawful discrimination;" instead it established a burden-shifting test to determine whether a neutral practice constituted illegal discrimination. *Id* at 431; *see also Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989).

The Supreme Court incorporated principles from these employment doctrines when it recognized the importance of the disparate-impact framework to fair housing enforcement. The Civil Rights Act of 1968 (more commonly known as the "Fair Housing Act" or "FHA") prohibits discrimination in the sale, rental and financing of housing based on race, color, national origin, religion, sex, familial status, and disability.[1] In the years following passage of the FHA, all federal appellate courts that considered disparate impact held that violations of the FHA can be established through a disparate impact standard of proof.[2] By 1988, courts in nine federal circuits had concluded that the disparate impact standard is necessary to enforce the FHA. That same year, the Fair Housing Amendments Act of 1988 expanded the scope of the Fair Housing Act to, among other things, codify disparate impact under the FHA.[3] Both Congress and the courts understood the covert nature of racial discrimination necessitated the use of disparate impact theories to effectively enforce the FHA. The Supreme Court later affirmed that disparate impact theory is cognizable under the FHA in *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc*., 576 U.S. 519 (2015) ("The Court holds that disparate-impact claims are cognizable under the Fair Housing Act upon considering its results-oriented language, the Court's interpretation of similar language in Title VII and the ADEA, Congress' ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals, and the statutory purpose.")

OMB's proposed rule ignores this case law and instead proffers a definition of disparate impact that is wholly inconsistent with it. The disparate-impact approach endorsed by the Supreme Court and Congress does not "presume" discrimination; rather it places the ultimate burden of persuasion on plaintiffs through the burden-shifting framework. Nor is disparate impact "contrary to the principles of equal treatment;" far from it, Congress and the courts recognize that disparate-impact analysis provides an important tool for "uncovering discriminatory intent: It permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment." *Inclusive Communities*, 576 U.S. at 540. By incorporating an ambiguous definition that departs from Supreme Court case law on disparate impact, OMB leaves recipients unable to assess what is prohibited. As we explain

[1] CIVIL RIGHTS ACT OF 1968, Pub. L. 90–284, tit. VIII, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C § 3619), https://www.govinfo.gov/content/pkg/COMPS-343/pdf/COMPS-343.pdf.
[2] Nat'l Low Income Hous. Coal., *U.S. Supreme Court Upholds Fair Housing Disparate Impact Principle* (June 29, 2015), https://nlihc.org/resource/us-supreme-court-upholds-fair-housing-disparate-impact-principle.
[3] David H. Carpenter, Cong, Rsch. Serv., *Disparate Impact Claims Under the Fair Housing Act* (2015), https://www.congress.gov/crs-product/R44203

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below, this would deter or prevent lawful practices and important research to address racial disparities in such contexts as health, education, housing, and access to critical services.

VI. OMB's Rule Would Burden and Harm Recipients and the Broader Public

If implemented, the proposed rule would impose widespread harm on recipients engaging in lawful activities. In particular, the disparate impact liability and DEI restrictions are so broad and vague that they threaten to chill lawful practices and discourage the critical research federal recipients conduct to address racial discrimination and reduce disparities deeply entrenched in American systems. It further threatens to shut out mission-driven organizations and institutions, or to derail their work by creating intolerable risk and uncertainty. These burdens will weigh heavily on Black communities and other communities of color, and the recipients that serve them.

A. The proposed rule would chill recipients' lawful practices and critically important research to address racial disparities in areas like health, housing, employment, and education.

The proposed rule places broad restrictions on use of federal awards to "fund, promote, encourage, subsidize, or facilitate" DEI or DEIA policies, principles, or practices. 91 Fed. Reg. at 32215 (proposed 2 C.F.R. § 200.300). It would also forbid funds from being "administered in a manner that" would "promote or support theories of disparate impact liability," which includes conducting "statistical or demographic analysis" even for purposes of internal program evaluation. 91 Fed. Reg. at 32213 (proposed 2 C.F.R. § 200.218).

As described above, the proposed rule's "disparate impact liability" language is vague and untethered to any formulation in existing statute, regulation, or case law. And while the proposed rule's DEI language may be limited to practices that "violate any applicable Federal anti-discrimination laws," the administration has repeatedly sought to impose an interpretation of "illegal DEI" that is "rife with vagueness and ambiguity, leaving grantees to speculate what is proscribed and what is permitted." *City of Chi v. United States Dep't of Just*., 822 F. Supp. 3d 873, 890 (N.D. Ill. Jan. 15, 2026) (citing*, e.g.*, *Santa Clara*, 815 F. Supp. 3d at 1034 (citations omitted). Because what the Administration considers illegal with respect to "promoting or encouraging" diversity, equity, and inclusion or disparate impact liability theories is "anything but obvious" since the Administration's "view of what is illegal . . . has changed significantly . . . even though the government . . . has been unwilling to . . . define how it has changed," the Administration's refusal to define what is "illegal" under the proposed rule leaves its meaning "entirely to . . . imagination." *See Chi. Women in Trades v. Trump*, 778 F. Supp. 3d 959, 984-85 (N.D. Ill. 2025).

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Freedom Network USA's experience demonstrates how the Administration's vague and undefined language on DEI has already chilled speech, enabled arbitrary government censorship, and hindered anti-trafficking organizations from effectuating Congress's intent under the TVPA to serve all trafficking survivors, regardless of race, gender, or identity. On January 31, 2025, the U.S. Department of Justice instructed Office for Victims of Crime grantees, including Freedom Network USA, that approximately 50 words "cannot appear in any Office for Victims of Crime materials (i.e. web pages, training content, presentations, etc.)" because of the Executive Orders. The prohibited terms include everyday words such as “fair,” “fairness,” “pronouns,” “identity,” “equitable,” “gender,” and “culture,” as well as terms Congress itself used in the TVPA, including “discrimination,” “race,” and “sexual orientation.” *Freedom Network USA*, Dkt. No. 1-3 (Oct. 10, 2025); *id*., Dkt. No 64-1 (Dec. 19, 2025). The government censorship also reached Freedom Network USA’s privately funded work, which prohibited survivor leaders from using the term “oppression” in a presentation funded entirely with private money. *Id*., Dkt. No. 1 ¶ 108 (Oct. 10, 2025).

Censoring language that is essential to trafficking survivor experiences has nationwide consequences. Federally funded housing providers, case managers, hospital workers, law enforcement agencies, teachers, criminal defense attorneys, and other direct service providers will not have the tools they need to identify survivors and effectively address their needs. Trafficking survivors will, in turn, not receive the most critical services they need to break the cycle of vulnerability and trafficking. In light of the Administration’s shifting positions and its reliance on unsupported legal interpretations in public statements, guidance, and enforcement actions, federal grantees and applicants will struggle to know what activities OMB and funding agencies deem to run afoul of the rule’s restrictions. Predictably, they will “steer far wider of the unlawful zone than if the boundaries of that forbidden area were clearly marked,” hampering efforts aimed at reducing racial health disparities and advancing health equity. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972). Researchers’ ability to obtain, analyze, and report data impacts the government and private actors’ ability to identify where racial disparities exist and the resources needed to address them. Indeed, much of what we know with respect to disparities is because of federal grants spearheading breakthrough research and innovation.

Racial and ethnic disparities in health, for example, have been extensively documented. In 1985, the Department of Health and Human Services published the first comprehensive study of racial health disparities in the United States, commonly referred to as the Heckler Report.[4] That report concluded, among other things, that racial health disparities accounted for nearly 60,000 excess deaths each year.[5] Following up on this report, Congress charged the National

[4] U.S. Dep't of Health & Hum. Servs., *Report of the Secretary's Task Force on Black & Minority Health* (1985).
[5] U.S. Dep't of Health & Hum. Servs., *Report of the Secretary's Task Force on Black & Minority Health* vol. 1, at 4-5 (1985).

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Academy of Medicine[6] with conducting its own report of disparities in America.[7] The resulting report, *Unequal Treatment*, illustrated the persistence of racial disparities in medicine and further identified causes, including the influence of implicit bias in healthcare decisions, as the basis for these disparities.[8] These landmark studies inspired further research and the development of subsequent policy strategies to aid in the mitigation of racial health inequities.[9]

Federally funded research has yielded interventions that have been implemented in both the government and the private sector. In 2021, the Center for Medicare and Medicaid promulgated the Anti-racism Rule, which asked clinicians to look for racial disparities among their patient populations and take practical, concrete steps to measurably reduce those disparities. This rule was developed in response to a wide range of sources, including input from stakeholders, internal research and review, and comments received in response to rulemakings.[10] Federal funding from the Health Resources and Services Administration (HRSA) has provided millions of dollars in research grants to Minority-Serving Institutions to study maternal health disparities and improve care for communities of color.[11] Collection of racial and ethnicity data

[6] The National Academy of Medicine was formerly the Institute of Medicine.
[7] *See* H.R. Rep. No. 106-370, at 241–42 (1999) (encouraging the Office of Minority Health to enter into an agreement with the Institute of Medicine to study racial and ethnic disparities in health care not attributable to known factors such as access to care); *see also* Inst. of Med., *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care* xvii (Brian D. Smedley et al. eds., Nat'l Acad. Press 2003) (acknowledging federal support from the Office of Minority Health, U.S. Department of Health and Human Services, for the Institute of Medicine's comprehensive investigation of racial and ethnic disparities in health care); *Eliminating Racial and Ethnic Disparities in Health Care: Hearing Before the Subcomm. on Health of the H. Comm. on Energy & Commerce*, 107th Cong. (2002) (statement of Rep. Elijah E. Cummings) (explaining that congressional efforts through the appropriations process secured funding that was critical to supporting the Institute of Medicine's landmark studies on racial and ethnic disparities in health care).
[8] *See* Nat'l Acads. of Scis., Eng'g & Med., *Ending Unequal Treatment: Strategies to Achieve Equitable Health Care and Optimal Health for All*, 17-23 (2024).
[9] *See* Nat'l Acads. of Scis., Eng'g & Med., *Ending Unequal Treatment: Strategies to Achieve Equitable Health Care and Optimal Health for All*, 17-23 (2024) (explaining that the 2003 Unequal Treatment report transformed understanding of racial and ethnic disparities in health care, stimulated additional research into the causes and interventions addressing inequities, and informed federal efforts to develop strategies for advancing health equity).
[10] *See Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Policy Changes and Fiscal Year 2022 Rates*, 86 Fed. Reg. 25,040 (May 10, 2021) (requesting information regarding health equity, disparities measurement, demographic data collection, and approaches to addressing inequities; considering stakeholder input received through notice-and-comment procedures); *Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies*, 86 Fed. Reg. 39,004 (July 23, 2021) (proposed rule) (soliciting stakeholder comments on policies designed to improve health equity and address disparities in healthcare delivery); Ctrs. for Medicare & Medicaid Servs., *Calendar Year (CY) 2023 Medicare Physician Fee Schedule Final Rule* (Nov. 1, 2022), https://www.cms.gov/newsroom/fact-sheets/calendar-year-cy-2023-medicare-physician-fee-schedule-final-rule (summarizing stakeholder comments and CMS's consideration of feedback in developing subsequent health equity policies).
[11] *See* Health Res. & Servs. Admin., *Maternal Health Research Collaborative for Minority-Serving Institutions (MSIs)*, Maternal & Child Health Bureau, https://mchb.hrsa.gov/data-research/research-investments/maternal-health-research-colloborative-minority-serving-institutions (last visited July 8, 2026) (explaining how HRSA created the

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has also been vital to evaluate the effectiveness of government programs and policies, as well as to evaluate compliance with anti-discrimination laws.[12] The ability to collect, analyze, and *actually use* robust data is critical to identify racial disparities, develop and refine strategies, and allocate resources to address them. Preventing or deterring collection of this information may obscure existing inequities, making it harder to meet the diverse needs of different populations and communities. It can also lead to the perpetuation of discrimination, in violation of existing law.

In the fair housing context, disparate impact analysis has been a critical tool for challenging policies that unnecessarily exclude people from housing opportunities, including zoning requirements, lending and property insurance policies, and criminal records policies. Having a workable discriminatory effects standard is vital for creating a housing market that is free from discrimination. The HUD Office of Fair Housing and Equal Opportunity (FHEO), along with Fair Housing Initiative Program (FHIP) and Fair Housing Assistance Program (FHAP) partners, have historically used this standard to affirmatively further fair housing for decades through investigations and enforcement. FHEO's work, along with that of FHIP and FHAP grantees, is essential to combating housing discrimination. For example, empirical data generated through fair housing testing carried out by FHIP grantees is essential to recognizing housing trends and generating relevant statistical data that can be used to enforce fair housing law. The investigations and enforcement actions conducted by FHAP grantees are essential pillars of FHA enforcement and have expanded housing options to countless Americans.

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program to support MSIs conducting research on maternal health disparities, including maternal mortality, severe maternal morbidity, and maternal health outcomes); Health Res. & Servs. Admin., Maternal Health Research Collaborative for Minority-Serving Institutions (MSIs) Research Centers, Funding Opportunity No. HRSA-23-112 (2023), https://www.hrsa.gov/node/5941 (stating the purpose of the MH-RC-MSI Research Centers program was to establish a research network supporting MSIs "to build their capacity to conduct research addressing disparities in maternal mortality, severe maternal morbidity, and maternal health outcomes and to find community-based solutions to address these disparities and advance health equity."); *see, e.g.*, Health Res. & Servs. Admin., U.S. Dep't of Health & Hum. Servs., *HRSA Invests Nearly $90 Million to Address Maternal Health Crisis* (Sept. 27, 2023), https://www.hrsa.gov/about/news/press-releases/hrsa-address-maternal-health-crisis (announcing nearly $90 million in grants to improve maternal health, including funding for maternal health task forces, Minority-Serving Institutions, rural maternal health, and behavioral health initiatives); Health Res. & Servs. Admin., U.S. Dep't of Health & Hum. Servs., *HRSA Awards Nearly $19 Million to Help States Improve Maternal Health* (Oct. 9, 2024), https://www.hrsa.gov/about/news/press-releases/maternal-health-innovation-awards-oct-2024 (announcing nearly $19 million in awards to 15 states through the State Maternal Health Innovation Program to implement evidence-based strategies to reduce maternal mortality and improve maternal health outcomes).

[12] *See, e.g.,* U.S. Census Bureau, *Why We Ask Questions About Race*, Am. Cmty. Survey (2024), https://www.census.gov/acs/www/about/why-we-ask-each-question/race/ (explaining that race data are used by federal, state, and local governments to evaluate government programs and policies, ensure that programs fairly and equitably serve racial groups, and monitor compliance with antidiscrimination laws, regulations, and policies); Office of Mgmt. & Budget, *Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58,782 (Oct. 30, 1997) (explaining that federal agencies collect and maintain racial and ethnic data to support policy development, program evaluation, and civil rights monitoring and enforcement).

The proposed rule wrongly characterizes such work as "unlawful discrimination" that is "contrary to principles of equal treatment and merit-based opportunity." 91 Fed. Reg. at 32252 (proposed 2 C.F.R. § 200.218(e)). As explained above, the legislative intent and legal precedent supporting disparate impact is well established. Interrupting work that could be perceived as promoting disparate-impact liability would not only permit existing discrimination to go unaddressed, but also encourage and perpetuate unlawful practices by others.

B. Qualified, mission-driven nonprofits could be shut out of federal programs, harming the communities those programs were designed to serve.

The DEI and disparate impact liability prohibitions, if implemented, threaten to undermine federal programs that address racial disparities. The proposed rule would further implement provisions that sideline peer review of grant proposals and replace that merit-based process with one informed primarily by the political preferences of the current administration. As part of this proposed change, the rule would allow agencies to consider an applicant's history of unspecified "questionable practices," which is not defined and which would be ascertained in part through publicly available information. Additionally, senior political appointees would conduct pre-award reviews that consider whether discretionary awards advance the President's policy priorities.

The lack of clarity and guardrails around these terms gives funding agencies carte blanche discretion to pick and choose which mission-driven nonprofits to fund, even if those nonprofits are qualified in all other respects. If permitted, this supercharged politicization of the grantmaking process would shut out many mission driven and qualified nonprofits, simply because the current administration disagrees with their work. Based on the administration's record, there is reason to believe that the administration will similarly weaponize this rule to limit eligibility of funds to ideologically aligned groups, shutting out groups engaged in lawful programs that espouse DEI principles and racial equity—and the disadvantaged and marginalized communities they serve.

Indeed, the proposed rule would prohibit support for what the administration views as improper DEI, notwithstanding the goals and intended beneficiaries of the underlying grant programs and their authorizing statutes. Nonprofits that seek to apply for funding to pursue the intended goals of these programs, but that describe their work using prohibited terms or suggesting support for prohibited principles, may be denied funds under the program altogether. The rule would thus reduce the number of qualified organizations available to effectively serve these programs' intended beneficiaries and may dilute the quality of efforts by the nonprofits that do receive federal funds.

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Discriminatory application of the rule to equity-driven organizations and institutions lawfully advancing their missions would have devastating consequences for those entities and for vulnerable communities. In some cases, federal grants make up a substantial portion of a nonprofit's revenue, rendering the nonprofit reliant on those funds to continue operations. Some mission-driven nonprofits—especially those in rural and underserved areas—would be unable to weather the loss of federal support, forcing them to abandon projects mid-stream or to shutter altogether.

C. Termination provisions would create unpredictable financial, legal, and reputational risks that increase the costs of accepting federal awards while decreasing the benefits.

The proposed rule's termination provisions would expand discretionary termination authority, potentially throwing active projects into chaos and creating confusion for future applicants. Indeed, the termination provisions permit agencies to terminate awards for "discretionary reasons" such as when an award "no longer effectuates goals, Federal agency priorities, or the national interest as they exist at the time of the termination." In short, an agency can terminate funding based on evolving political and ideological conditions unrelated to project goals rather than fixed criteria put in place when the award was approved.

If adopted, recipients would experience increased uncertain financial risk, especially for multi-year projects that are currently underway, causing immediate harm to their programmatic operations. These provisions would permit agencies to terminate funding without adequate explanation and without offering the recipient an opportunity to appeal. Consequently, recipients would face higher risks of entering into agreements with the federal government and relying on federal funds to finance their projects. Loss of federal funding could force a recipient to lay off and furlough staff, cancel or default on contractual obligations with subgrantees, halt programs and work streams, and eliminate services. It could also create legal risk, given the vague and ambiguous provisions throughout the proposed rule and the current administration's record of unlawful, arbitrary, and retaliatory action against anyone that expresses views disfavored by the administration.

Were the proposed rule to go into effect, reliance on the word of the federal government would also make federal recipients riskier to outside funders, putting their non-federally funded projects at risk. Uncertainty and confusion around what activities are legally permissible, and whether a recipient will be stable enough to perform under the terms of a grant, could chill funders and other stakeholders from collaborating with recipients that engage in work the administration could deem illegal, risking loss of partnerships and opportunities for other sources of funding. Likewise, the prospect of losing federal funds could lead to mistrust among the broader communities the recipients serve if a recipient is unable to perform the intended work.

This is especially true for mission-driven recipients that spend years building trusting relationships within impacted communities. Given the uncertainty around continued funding, what activities are permissible, and the prospect of retaliation from the federal government, recipients or potential recipients may decide that the risk of reliance on federal grants is simply too high—to the detriment of communities that would benefit from their work.

VII. Conclusion

OMB's proposal represents a sweeping overhaul of federal grantmaking processes, an overhaul that OMB lacks authority to undertake. As explained above, OMB and the participating agencies have failed to provide a reasoned basis for enacting the proposed rule, which raises serious and substantial concerns. If finalized, the rule would burden and harm all recipients, and these burdens would fall with particular weight on Black communities and other communities of color. The Lawyers' Committee urges OMB to withdraw the rule in its entirety.

Thank you for the opportunity to comment. If you have any questions or need additional information, please contact Shatorah Roberson, Senior Policy Counsel, at sroberson@lawyerscommittee.org.

Sincerely,

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