

Docket No. OMB-2026-0034

Office of Management and Budget
Executive Office of the President
Washington, DC July 13, 2026

To Whom It May Concern:

I write to express my strong opposition to the OMB proposal to overhaul the federal grant management regime in 2 C.F.R., as set forth in Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026). I submit these comments as a law professor with expertise in administrative and environmental law. I urge you to withdraw this ill-advised proposed rule in its entirety for three independent legal and policy reasons. First, OMB does not have the legal authority to promulgate this policy as a binding regulation. Second, OMB's proposal to ban certain topics from receiving federal financial support unlawfully violates the express terms of multiple statutes and creates both the appearance and the reality of political interference with decisions that should be based solely on scientific merit. Finally, this proposal is a very bad idea that will compromise US research leadership and undermine the American economy. For these reasons, the proposed rule should be withdrawn in its entirety.

1. OMB Does Not Have Legal Authority to Promulgate Binding Regulations

OMB proposes to revise the language in multiple parts of the existing text to replace the term 'guidance' with 'regulation.' Through this switch of terms, OMB claims the ability to make purported 'regulations' that it claims would apply directly across the federal government, obviating the need (or ability) for individual agencies to engage in rulemaking to implement OMB policies as binding rules.¹ This is completely unauthorized and illegal power grab. OMB does not have delegated rulemaking authority. Instead, Congress has only authorized OMB to establish *policies*—not binding rules.² In fact, Congress specifically distinguished between OMB's guidance role and the rulemaking authority delegated to federal agencies.³

Recent court decisions underscore OMB's lack of authority to issue binding regulations. In *Marin Audubon Society v. FAA*, the D.C. Circuit concluded that the Council on Environmental Quality did not have the power to issue binding rules for all executive branch agencies.⁴ The court reached this conclusion even though CEQ had claimed that authority for decades based on an executive order promulgated by President Carter. The court held that the language in the

¹ 91 Fed. Reg. at 32205–07.

² See e.g., 31 U.S.C. § 503 (instructing the Deputy Director for Management to establish government-wide financial *policies*); 31 U.S.C. § 6307 (authorizing OMB to issue interpretive *guidelines*);

³ 31 U.S.C. § 7505 (directing that the OMB "Director . . . shall prescribe guidance to implement this chapter," while "each Federal agency shall promulgate such amendments to its regulations as may be necessary to conform such regulations to the requirements of this chapter and of such guidance.")

⁴ 121 F.4th 902 (D.C. Cir. 2024), *rehearing en banc denied*, 2025 WL 374897 (D.C. Cir. 2025).

National Environmental Policy Act of 1969 “contains nothing close to the sort of clear language Congress typically uses to confer rulemaking authority.”⁵ Here, not only is there a complete absence of clear statutory language conferring rulemaking authority on OMB, but OMB cannot even rely on a history or tradition of past practice. In this proposal OMB is claiming, for the very first time, that it has sweeping regulatory powers that allow it to reshape all federal financing assistance.

The mere fact that OMB publishes its grant policies in 2 C.F.R. does not elevate them from advisory to binding. As the *Marin Audubon Society* court explained, “publication in the C.F.R. is no measure of an agency’s authority to issue rules that appear there.”⁶ Moreover, the actual language already published in the C.F.R demonstrates that OMB is well-aware that it does not have the authority it claims in this proposal. The currently published version of OMB’s Uniform Guidance expressly states: “Publication of the OMB guidance in the CFR does not change its nature—it is guidance, not regulation.”⁷ Indeed, “because the OMB guidance is not regulatory,”⁸ the Uniform Guidance explicitly recognizes that it is in fact the job of each agency that awards federal financial assistance to issue relevant and appropriate regulations.

The Supreme Court’s recent Major Questions Doctrine jurisprudence further makes it clear that OMB lacks any authority to promulgate binding rules rather than guidance. That doctrine requires “clear congressional authorization” when an agency asserts novel power in an area of great economic and political significance.⁹ There is no question that OMB’s proposal is of immense economic and political significance.¹⁰ The federal government funds roughly 40 percent of basic science research in the United States.¹¹ Indeed, the amount of federal financial assistance covered by this proposed rule likely exceeds a trillion dollars per year.¹² There is also no question that OMB’s assertion of authority in this proposal is novel. In fact, OMB’s claim of authority is not only novel, but it actually contradicts nearly forty years of practice. For decades, OMB has been acting under clear statutory instructions to issue guidance not binding rules.¹³

⁵ Id. at 910, 912.

⁶ Id. at 912.

⁷ 2 C.F.R. § 1.105(b).

⁸ 2 C.F.R. § 1.105(c) (advising that federal agency regulations *may* give regulatory effect to the OMB guidance, *to the extent* that the agency regulations require compliance with all or portions of the OMB guidance.)

⁹ *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

¹⁰ *Biden v. Nebraska*, 600 U.S. 477, 502–506 (2023) (applying Major Questions Doctrine to proposed one-time government spending of more than \$400 billion, which was “nearly one-third of the Government’s \$1.7 trillion in annual discretionary spending,” and noting that “[a]mong Congress’s most important authorities is its control of the purse”).

¹¹ Nat’l College for Science and Engineering Statistics, *Analysis of Federal Funding for Research and Development in 2022: Basic Research* <https://ncses.nsf.gov/pubs/nsf24332>.

¹² In Fiscal Year 2023, the most recent year for which OMB has published final data, federal grants to state and local governments alone totaled more than one trillion dollars. Office of Mgmt. & Budget, Exec. Office of the President, Budget of the United States Government, Fiscal Year 2025.

¹³ Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 5–6 (Feb. 3, 1978) (instructing OMB to outline and develop a “comprehensive system of *guidance* for Federal assistance programs.”).

Because OMB does not have the authority to promulgate binding rules, this proposal must be withdrawn.

2. OMB's proposal to ban certain topics from receiving federal financial support unlawfully violates the express terms of multiple statutes

This OMB proposal attempts to elevate the administration's views on "Diversity, Equity, and Inclusion," "gender ideology," and "sex transition" as the equivalent of legislation. Aside from the fact that Congress did not authorize OMB to use its Uniform Grant Guidance as an ideological document for transforming major social policies for all federal grants, the substance of this proposal directly contradicts multiple statutes that specifically require federal agencies to fund studies about disparate impacts and to direct funds to research about women and racial minorities.

For example, the NIH Director is statutorily required to assemble accurate data about "progress in reducing disease disparity" and about how its grants ensure inclusion of women, minorities, and other subgroups¹⁴ in order to assess its research priorities.¹⁵ The NIH's statutory duties also include fostering collaboration to "use diverse study populations, with special consideration to the biological, social, and other determinants of health that contribute to health disparities."¹⁶ NIH funding of research activities concerning "minority health and health disparities" is one of the mandatory categories in the triennial report that NIH must submit to Congress.¹⁷

Congress required NIH to create an Office of Women's Health to promote research on women's health,¹⁸ and to establish a clearinghouse for sharing that research.¹⁹ Congress similarly required that NIH establish an Office of Minority Health and mandated that this office *shall* award grants supporting "research training for individuals who are members of minority health disparity populations or other health disparity populations."²⁰ Congress also directed that NIH *shall* "facilitat[e] increased participation of sexual and gender minorities" in clinical research.²¹

NIH is not alone in having these statutory diversity mandates. HHS is required to standardize collection of data on race, ethnicity, sex, primary language, and disability status to ensure that

¹⁴ 42 U.S.C 282(b)(4).

¹⁵ *Id.*

¹⁶ *Id.* at 282(b)(9).

¹⁷ *Id.* at 283(a)(5). The Director is required to ensure that women and minorities are included as subjects in each research project conducted or funded by NIH, and for more than 30 years, the NIH has been statutorily mandated to require that the research be structured to allow analysis of differential impacts on those subgroups. *Id.* at 289a-2.

¹⁸ 42 U.S.C 287(d).

¹⁹ *Id.* at 287d-1.

²⁰ *Id.* at 285t-1(a). In many on-line rants, this long-standing mandate aimed at reducing structural barrier to inclusion gets reduced to a burlesque of itself. See e.g., Heather Mac Donald, *Disparate Impact Thinking Is Destroying Our Civilization*, 53 IMPRIMIS 1 (2024) (mischaracterizing disparate impact analysis as "[i]f a cancer research lab, for example, does not have 13 percent black oncologists—the black share of the national population—it is by definition a racist lab that discriminates against competitively qualified black oncologists.")

²¹ *Id.* at 283p(1).

disparities “reflecting the interactive effects of multiple social, economic, behavioral, and environmental determinants of health,” can be tracked and addressed.²² Congress directed the CDC to coordinate activities related to “disease prevention, health promotion, service delivery, and research” with regard to minority populations, including increasing providing translations to improve access for linguistic minorities.²³

The proposal’s restriction on funding research relating to disparate impacts, gender, sexual, and racial minorities directly contradicts and violates the express terms of these statutes.²⁴ Moreover, DOGE’s use of similar criteria for cancelling grants has been repeatedly found to be “pervasive racial discrimination” and “an unmistakable pattern of gender discrimination.”²⁵ When OMB asserts it “is not aware of Federal laws that expressly require funding the relevant activities referenced in the proposed regulatory text,”²⁶ it is making a demonstrably false claim.

OMB does not have the authority to promulgate guidance that contradicts the express language of multiple statutes, let alone to issue binding regulations requiring political interference in grantmaking. Therefore, this proposal must be withdrawn.

3. This Proposal is Bad Policy that Will Harm American Society

Not only is this novel attempt to convert OMB’s guidance authority a power grab, and not only does the proposal directly contradict with the statutory mandates of multiple agencies, OMB’s proposal is also a very bad idea. Shifting federal research funding decisions away from peer-reviewed expert bodies to political appointees²⁷ will undermine the scientific infrastructure that drives American innovation, as will imposing political litmus tests for funding recipients,²⁸ and making research awards terminable at the discretion of political appointees,²⁹

Across the federal government, agencies like DHS, HHS, DOJ, HUD and the Veteran’s Administration require that grants be awarded in a manner that is free from political interference. Indeed, these agencies have duly promulgated regulations to that effect.³⁰ OMB’s proposal

²² 42 U.S.C. 300kk.

²³ *Id.* at 300u-6(b). One of the elements of CDC community transformation grants is “prioritizing strategies to reduce racial and ethnic disparities, including social, economic, and geographic determinants of health” as a grantmaking criteria. *Id.* at 300u-13(c)(vi).

²⁴ *Id.* at Section 200.218—Prohibition of Using Federal Awards To Promote or Support Theories of Disparate-Impact Liability. Other provisions ban recipients from collaborating with Chinese and other foreign nationals, *Id.* at Section 200.220, and require that conservative speakers be welcomed onto college campuses. *Id.* at Section 200.219.

²⁵ *Am. Pub. Health Ass’n. v. Nat’l Inst. Health*, CV-10787-WGY (D. Mass, Jul. 2, 2025) (slip op. at 7-8).

²⁶ 91 Fed. Reg. 32217.

²⁷ OMB Proposed Rule, Section 200.205—Federal Agency Review of Merit of Proposals, <https://www.regulations.gov/document/OMB-2026-0034-0001>.

²⁸ *Id.* at Section 200.206—Federal Agency Review of Risk Posed by Applicants. These political and ideological constraints would not only apply to grantees, but to the institutions at which they work.

²⁹ *Id.* at Section 200.211—Information Contained in the Federal Award.

³⁰ See 6 C.F.R. § 19.3(e) (requiring that DHS, “[d]ecisions about awards of Federal financial assistance must be free from political interference, or even the appearance of such interference. . . .”); 7 C.F.R. § 16.3(a)(2) (mandating that “decisions about awards of USDA direct assistance or USDA indirect assistance must be free from political interference. . . .”); 24 C.F.R. § 5.109(c)(4) (specifying that HUD “decisions about awards of Federal financial

would contradict these regulations by requiring both the appearance and reality of political interference in grantmaking.

This proposal would instead require political interference by establishing partisan consolidation of power over the means of producing, interpreting and disseminating information. The very notion of independent research, let alone rigorous analysis, becomes performative when forced through the ideological filter of “demonstrably advance[ing] the president’s agenda.”³¹ As such, this proposal will corrupt the culture of research science and impoverish the culture of science-based policymaking. The proposal reduces what should be communicative action through mutual deliberation into mere strategic action—science becomes a sales pitch, a tool for “winning,” rather than a genuine inquiry.

In short, this proposal would authorize the misuse and abuse of science. By funneling funding and publication decisions through an expressly ideological lens, it will stifle the process of inquiry. Because it demands that research serve partisan ends, the Administration will fund only that sliver of the scientific community investigating a narrow set of approved problems, employing only politically sanctioned methods, and proposing only politically palatable solutions. Ideological preclearance of research means that no questions can be asked that do not serve partisan ends. Ideological preclearance of publication ensures that no answers are offered that do not serve those same partisan ends. At a minimum this kind of subordination of science will drastically impair the kind of intellectual creativity upon which innovation depends, at worst it will degenerate much of the U.S. research apparatus into sterility and ossification.

This proposal is an existential threat to public knowledge and to democracy that rests on the consent of the governed. Without open inquiry and peer-based critique, science morphs into pseudoscience. It should be withdrawn; indeed, it should never have been proposed.

For these reasons, I urge OMB to withdraw this proposal in its entirety.

Sincerely,

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assistance must be free from political interference or even the appearance of such interference. . .”); 28 C.F.R. § 38.4(b) (requiring that DOJ, “[d]ecisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference. . .”); 34 C.F.R. § 75.52(a)(2)(i)(B) (same for Department of Education); 38 C.F.R. § 50.2(i) (same for Veteran’s Administration); 45 C.F.R. § 87.3(o) (same for HHS).

³¹ 91 Fed. Reg. 32249 (May 219, 2026).