Public Rights Project

July 13, 2026

Submitted via www.regulations.gov

Office of Management and Budget
725 17th St., NW
Washington, DC 20503

[Additional addressees listed in Appendix A]

Re: Notice of Proposed Rulemaking, *Regulation for Federal Financial Assistance* (May 29, 2026), OMB Docket No. OMB-2026-0034

[200.201(b), 200.205(b), 200.206(b)(2), 200.218, 200.219, 200.300, 200.303(f), 200.305(c), 200.322(a), 200.332(i), 200.333, 200.340(a)(2), 200.340(a)(5), 200.340(e), entirety of the regulation]

The undersigned coalition of local governments submits this comment in opposition to the May 29, 2026, Notice of Proposed Rulemaking. *See* Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026) (OMB Docket No. OMB-2026-0034) ("Proposed Rule"). This comment is submitted to the Office of Management and Budget ("OMB") and the additional agencies listed in Appendix A[1] (collectively, the "Regulating Agencies").

Though cloaked in a veneer of technical language, the Proposed Rule would amount to an unlawful sea change in the historically reliable federal grantmaking system.[2] The Proposed Rule would inject partisan politics into all phases of the federal funding process. It would enable agencies' political appointees to conduct pre-issuance reviews of all discretionary grants for alignment with the "President's policy priorities" without regard to the underlying congressional directives. It would allow agencies to terminate existing grants for misalignment with undefined "agency priorities or the national interest" if political appointees deem those to have changed since the grant award. And it would codify this Administration's policy preferences via vague and ambiguous requirements related to diversity measures, "gender ideology," "disparate impact," illegal immigration, and "anti-American values," despite reviewing courts repeatedly finding similar requirements by the Administration to be unlawful. Further, the Proposed Rule exceeds the scope of authority for both OMB and the Regulating Agencies to impose such requirements.

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[1] The Regulating Agencies are agencies that provide grant funding to local governments, either directly, or as pass-through funding through their states, or both.

[2] Any references to federal grants or grantmaking herein are intended to encompass all forms of federal financial assistance, as defined in 2 C.F.R. § 200.1, that are impacted by the identified provisions of the Proposed Rule.

The overhaul of the federal grantmaking apparatus contemplated by the Proposed Rule would harm local governments in numerous ways. The Proposed Rule would expose funds that local governments rely upon, for example, to safeguard public health, construct critical infrastructure, and ensure food safety, to the whims of political decisionmakers. The constant threat of termination would erode localities' decades of reliance on federal grants as stable sources of funding for necessary projects and services. The imposition of vague and ambiguous requirements would leave local governments with the untenable choice of accepting these unlawful conditions or forgoing federal funds. In short, the Proposed Rule would jeopardize the hundreds of billions of dollars that localities receive in federal grant funding and would have massive ripple effects beyond the federally funded programs that these grants support.

Further, the Proposed Rule is unconstitutional and unlawfully seeks to circumvent Congress's statutory directives. The rule also violates the Administrative Procedure Act (APA) by failing to follow any semblance of required process for rulemaking; to examine relevant data; to account for reliance interests by local governments; and to articulate clear, unambiguous, and reasonable explanations for overhauling longstanding governmentwide guidance that governs almost every form and aspect of federal grantmaking.

For these reasons, and as explained below, the undersigned urge OMB and the Regulating Agencies to withdraw the Proposed Rule in full.

I. Background

A. The Proposed Rule Fails to Consider Local Governments' Reliance on Billions in Congressionally Appropriated Funding for Critical Programs

Federal funding is a cornerstone of local government operations across the United States. Local governments receive hundreds of billions of dollars in grants from the federal government, directly and as pass-through funding from their states. As the front lines for critical emergency response services and safety net services for vulnerable populations, local governments use federal funding for services ranging from health care to housing to transportation to food safety to public safety. They oversee vaccine programs; manage and improve airports; make roadways safer and more efficient; provide food, care, and transportation for seniors; and prepare and respond to natural disasters such as earthquakes, floods, and fires, and man-made disasters such as terrorist attacks.

Local governments depend on federal grants to support these services. In turn, the federal government depends on local governments to carry out the programs that Congress authorizes and directs federal agencies to administer. Those federal agencies rely on local experts within city and county agencies to understand their communities' needs and respond to those needs using funding directed by Congress for particular purposes.

Federal funding constitutes significant portions of local governments' budgets. For example, for some local agencies, federal funding represents as much as 60% of their annual budget.[3] These budgets are typically planned a year or more in advance, in reliance on existing federal awards and with the expectation of ongoing funding. Unlike the federal government, local governments must generally balance their operating budgets, rather than carrying deficits forward.

Many federal grants to local governments support multi-year capital and infrastructure projects that require extensive planning and approvals at the federal, state, and local levels; complicated subcontracting arrangements; and dependable funding sources over the life of the project. For example, one county's transit agency that receives hundreds of millions in federal funding for capital projects must conduct substantive project planning "years in advance of spending" to "satisfy federal capital project planning requirements." This planning occurs "based on past experience and prior funding."[4] One city meets regularly with federal airport authorities to forecast grant applications and receives feedback on those applications, to allow it to plan for long-term, capital-intensive projects such as airfield and taxiway rehabilitation.[5] That city must typically run a procurement process for contractors, and bear the costs of that process, before signing the grant agreement.[6] Local governments have borne the costs and risks of applying for federal funds due to the historic stability of federal funding over the long term.

Cities and counties apply for, and receive, many federal grants on a regular basis. This includes formula grants where a set allocation is made to states and distributed to local governments on a set schedule.[7] It also includes discretionary programs where local governments regularly apply in response to each Notice of Funding Opportunity, often yearly, and receive funding year after year.[8] Local budgets account for this funding to provide essential public services. Local agencies hire staff, buy equipment, authorize subcontracts, run subaward processes, and make other long-term plans that are critical to effectively administering the wide range of programs for which they are responsible in reliance on approved funding.

Much of this federal funding is irreplaceable. When a federal award is arbitrarily denied, limited, terminated midstream, or subject to impossible requirements, local governments often cannot find other sources of funding to compensate, especially in recent times as many local

[3] Dkt. No. 76, *City & Cnty.* of *San Francisco. v. Trump*, 3:25-cv-01350 (N.D. Cal.), ¶ 45 (federal funding constituted 60% of county Office of Emergency Management in fiscal year 2025); Dkt. No. 207, *King Cnty. v. Turner,* 2:25-cv-00814 (W.D. Wash.), ¶ 6 (HHS grants constituted more than 60% of city health agency's FY 2025 budget).

[4] Dkt. No. 6, *King Cnty.*, 2:25-cv-00814, ¶¶ 15-17.

[5] Dkt. No. 82, *King Cnty.*, 2:25-cv-00814, ¶¶ 7-10.

[6] *Id.* ¶ 8.

[7] *See, e.g.*, Dkt. No. 19-17, *Cnty. of Santa Clara v. Mullin*, 3:25-cv-08330 (N.D. Cal.), ¶¶ 15-16 (describing city's decades-long use of DHS block grants to run emergency operations and protect against terrorism).

[8] *See, e.g.*, *id.*; Dkt. No. 12, *King Cnty.,* 1:25-cv-00814, ¶¶ 17-18, 23 (HUD grant to county renewed for 14 consecutive years); Dkt. No. 51, *Chicago v. Mullin*, 1:25-cv-12765 (N.D. Ill.), ¶ 8 (city has applied for and received competitive DHS grants for firefighter staffing for many years).

budgets are facing significant strain.[9] As a result, they have to fire staff, stop work on half-completed infrastructure projects, cancel contracts, and most importantly, cut or reduce life-saving services that their communities rely on.[10] Without critical federal funds, they would have to close bridges;[11] stop providing food, medical care, childcare, and housing to their residents;[12] sacrifice critical public safety upgrades intended to protect the community and first responders;[13] place additional burdens on police officers and other emergency personnel;[14] and slash programs designed to improve the environment, public health, and quality of life for their residents.[15] Where they are able to preserve programs with their own funds, local governments are forced to divert resources from other public services.[16] These necessary changes in turn undermine trust and goodwill among these localities' residents and community-based organizations that partner with local governments on federally-funded projects and services.[17]

These impacts would have far-reaching consequences well beyond the federally funded programs at hand. For example, loss of one Housing and Urban Development (HUD) program funding grant for homelessness services "would ripple through [one county's] entire system and undermine decades of efforts to end homelessness in [its] community."[18] Loss of Health and Human Services (HHS) public health funding would undermine another county's ability to

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[9] *See, e.g.*, Dkt. No. 48, *Chicago*, 1:25-cv-12765, ¶¶ 45, 48.

[10] *See, e.g.*, Dkt. No. 66, *City & Cnty. of San Francisco*, 3:25-cv-01350, ¶¶ 45-46 (loss of federal funding would force the city to lay off thousands of workers and cancel contracts); *id.* (city's reserves would not cover the shortfall of federal funds for even a year); Dkt. No. 7-5, *Nat'l Alliance to End Homelessness v. U.S. Dep't of Housing & Urban Development*, 1:25-cv-00636 (D.R.I.), ¶ 40 (city's loss of HUD homelessness funds would result in over 1,000 people losing housing); Dkt. No. 14-10, *Harris Cnty. v. Kennedy*, 1:25-cv-01275 (D.D.C.), ¶ 31 (loss of HHS funding would lead to sudden layoffs, decreased preventative health care, and cancellation of funding to trusted community partners); Dkt. No 24-18, *Sustainability Inst. v. Trump*, 2:25-cv-02152 (D.S.C.), ¶¶ 11-13 (without certainty of DOT funds, city could not move forward with selected vendors, many of whom would have hired local residents to work on planned projects).

[11] Dkt. No. 87, *King Cnty.*, 2:25-cv-00814, ¶¶ 19, 24.

[12] Dkt. No. 214, *King Cnty.*, 2:25-cv-00814, ¶ 9 (loss of HHS funding meant thousands of county residents "would lose access to meals, medical care, housing and lifesaving social safety net services"); Dkt. No. 262, *King Cnty.*, 2:25-cv-00814, ¶ 4 (two HHS grants support city child care services for nearly 1000 children).

[13] *See, e.g.*, Dkt. No. 19-41, *Cnty. of Santa Clara*, 3:25-cv-08330, ¶ 13 (loss of DHS funding would "risk … infrastructure failure due to deferred maintenance and lack of preparedness for future disasters"); Dkt. No 19-48, *Cnty. of Santa Clara*, 3:25-cv-08330, ¶ 19 (DHS funding "essential" to fire department's ability to protect life, property, and the well-being of city residents).

[14] *See, e.g.*, Dkt. No. 12-2, *City of Chicago v. Dep't of Justice*, 1:25-cv-13863 (N.D. Ill.), ¶ 21 (lapse in hiring funding from DOJ would force local police department to make difficult budgetary choices and likely require already strained police officers to take on additional responsibilities).

[15] *See, e.g.*, Dkt. No. 24-16, *Sustainability Inst.*, 25-cv-02152, ¶ 22.

[16] *See, e.g.*, Dkt. No. 90, *King Cnty.*, 2:25-cv-00814, ¶ 26.

[17] *See, e.g.*, Dkt. No. 14-10, *Harris Cnty.*, 1:25-cv-01275, ¶ 31; Dkt. No. 7-5, *Nat'l Alliance to End Homelessness*, 1:25-cv-00636, ¶¶ 41, 43.

[18] Dkt. No. 12, *King Cnty.*, 2:25-cv-00814, ¶¶ 29-31.

prevent, detect, and respond to disease outbreaks, which threaten public health well beyond its borders given its status as a hub for trade and travel.[19] Many local government services are provided in close coordination with state and regional entities to achieve federal goals. For example, local governments use federal disaster preparedness funding to work with regional partners to improve resilience and response to meet national preparedness goals.[20] If one partner's funding is destabilized, that threatens the entire region's ability to prepare for terrorist attacks or natural disasters of national impact.[21]

As set forth further in this comment, the Proposed Rule does not account for local governments' reliance on the historic stability of federal funding nor the significance of this funding to their functioning. The Proposed Rule would destabilize federal funding issued by all Regulating Agencies to the detriment of local governments that rely on these funds to provide essential public services.

B. Federal Procurement Contracting Procedures Are Incompatible with the Distinct Objectives of Federal Grantmaking

The Proposed Rule's sweeping changes purport to align aspects of federal grantmaking with federal procurement contracting procedures, including those codified in the Federal Acquisition Regulation (FAR). For example, OMB cites the FAR as justification for various aspects of the Proposed Rule and its implementation, including the omission of secondary rulemaking processes at the Regulating Agencies, as well as substantive changes to the provisions of Title 2 of the Code of Federal Regulations. *See* 91 Fed. Reg. at 32206. As an initial matter, federal contracting requirements, such as the Federal Property and Administrative Services Act and the FAR, do not impose all of the sweeping new conditions that the Proposed Rule would impose on grants. Second, grants are materially different from the type of purchases and relationships governed by the FAR, including because their purpose is to serve the public's needs and advance the policy objectives laid out by Congress. Thus, for good reason, the FAR governs federal contracts only and does not provide support for the sweeping changes the Proposed Rule would effect.

The distinction between federal grants and contracts is codified in the Federal Grant and Cooperative Agreements Act of 1977 (FGCAA), Pub. L. No. 95-224, 92 Stat. 3 (Feb. 3, 1978) (codified at 31 U.S.C. § 6301 *et seq.*). Section 6303 states that "[a]n executive agency shall use a procurement contract" when "the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services *for the direct benefit or use of the United States Government*." 31 U.S.C. § 6303 (emphasis added). Section 6304 states that "[a]n executive agency shall use a grant agreement" when "the principal purpose of the relationship is to transfer a thing of value to

[19] Dkt. No. 14-3, *Harris Cnty.*, 1:25-cv-01275, ¶ 19.

[20] *See* Dkt. No. 19-24, *Cnty. of Santa Clara*, 3:25-cv-08330, ¶ 24.

[21] *Id.*; Dkt. No. 19-15, *Cnty. of Santa Clara,* 3:25-cv-08330, ¶ 20.

the State or local government or other recipient *to carry out a public purpose of support or stimulation* authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government." 31 U.S.C. § 6304 (emphasis added). This statutory language effectuates Congress's express purpose "to distinguish Federal assistance relationships from Federal procurement relationships" due to "uncertainty as to the meaning of such terms as 'contract', 'grant', and 'cooperative agreement' and the relationships they reflect," which had led to "operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies." Pub. L. No. 95-224 § 2(a)(1)-(2), 92 Stat. at 3.

As Congress noted, the "relationships" reflected by federal grants and contracts are distinct because the purposes underlying federal contracts and federal financial assistance fundamentally differ. Distinct from buying goods and services for the "direct benefit or use" of the federal government, federal grants fund programs directly for the public good. Grants, unlike federal acquisitions contracts, fund "ideas and projects to provide public services."[22]

Courts have similarly recognized that federal contracts and federal assistance agreements, such as grant programs, are governed by distinct rules and serve distinct purposes. *See Bennett v. Ky. Dep't of Educ.*, 470 U.S. 656, 669 (1985) (concluding that grant agreements "cannot be viewed in the same manner as a bilateral contract governing a discrete transaction," because "[u]nlike normal contractual undertakings, federal grant programs originate in and remain governed by statutory provisions expressing the judgment of Congress concerning desirable public policy").

The Proposed Rule's claimed efforts to align grantmaking with federal contracting fundamentally misunderstand the purpose of federal grants, viewing them as a tool of the Executive Branch, rather than as a reflection of congressional policymaking and in service of the public good. This misunderstanding is reflected in the provisions discussed below, which aim to turn grantmaking into a tool to enforce the Executive's political priorities to the great detriment of local governments and the communities they serve.

II. New Termination and Suspension Provisions Are Political, Unlawful, and Invite Arbitrary Decision-making

Under the Proposed Rule, local governments would be forced to live under constant threat of funding loss for reasons unrelated to considerations such as the congressionally authorized purpose of a grant program or the performance of the grant recipient. The Proposed Rule works these harms in two primary ways. First, it proposes new termination and suspension provisions that would permit agencies to terminate or freeze funding mid-stream for political, unlawful, and arbitrary reasons. Second, the Proposed Rule incorporates a new pre-issuance review and risk assessment process that would give political appointees unchecked discretion over whether to

[22] Grants.gov, *A Short Summary of Federal Grants*, https://www.grants.gov/learn-grants/grants-101/ (last visited July 9, 2026).

award a grant at all. These provisions would make it significantly more difficult for local governments—which, as described above, depend deeply on federal grant programs—to secure the stable, predictable, and reliable funding that American communities need. While OMB claims that "improving transparency, accountability, and use of Federal funds" is a primary objective of the Proposed Rule, *see* 91 Fed. Reg. at 32202, these provisions propel the opposite result: they undermine oversight of grantmaking by turning grant award decisions into a black box that is impenetrable to Congress, grantees, or the public.

A. The Proposed Rule's Vague and Undefined Discretionary Termination Provisions Would Allow Regulating Agencies to Cancel or Suspend Grants and Unilaterally Change Terms at Any Time and for Almost Any Reason with No Meaningful Notice

The Proposed Rule rewrites the existing guidance on terminating federal grants to allow terminations on a whim, at any time, including for political reasons. Specifically, the Proposed Rule seeks to rescind the existing Section 200.340(a)(4), which permits termination "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." The new discretionary termination provision would authorize, "to the extent permitted by law," termination by an agency "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*." § 200.340(a)(2) (emphasis added).

Pursuant to Section 200.340(b)(2) of the Proposed Rule, this 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." However, this carve-out fails to provide greater clarity or stability for recipients of non-discretionary awards like block grants or formula grants. In part, that is because Section 200.208(b) of the Proposed Rule permits agencies to change "specific conditions" to any federal award, whether discretionary or not, both when the federal award is made and throughout the period of performance, all without the agreement of the grantee. Agencies may use Section 200.208(b) to unilaterally add onerous new conditions to an individual award that a grantee has already accepted (or under proposed Section 200.208(f), to all awards under an entire grant program), and in doing so, increase a grantee's risk of termination for noncompliance with grant conditions that are potentially legally dubious or that the grantee could not reasonably have contemplated at the time of acceptance. The Proposed Rule further states that an agency may, "to the extent permitted by law, … terminate a Federal award … pursuant to any additional termination provisions included in the terms and conditions of the Federal award." § 200.340(a)(5).

These provisions allow the Regulating Agencies to terminate a grant mid-stream for reasons entirely unrelated to the performance of the grantee or the public interest. Instead, they permit termination whenever an agency determines that termination is "in the interests of the Federal agency," with no meaningful notice regarding what interests an agency may consider nor whether those interests are within the authority delegated by Congress. The term "national interest" is similarly utterly undefined and vague, making it likely that agencies could invoke this provision for *post hoc* rationalizations of unjustified terminations. The ambiguity of these terms leaves grantees guessing at what facts or circumstances may lead to termination throughout the entire lifetime of their grants, because agencies may invoke different "interests" at the time a grant is awarded and later, "at the time of the termination." There are effectively no limitations or boundaries on this termination power, and grantees have no real notice as to how to avoid termination, even if they are successfully meeting the lawful goals and requirements of a grant program as established at the time of the award.[23]

In addition, the Proposed Rule permits agencies to suspend an award "at any time" if an agency "determines that a suspension is in the interest of the Federal agency." § 200.340(e). This new suspension provision, like the termination provision, is not only vague and ambiguous, but would also expose local governments to the risk of losing promised funds after entering into contracts in reliance on the reimbursements guaranteed under grant agreements. The potential for volatility is exacerbated by the Proposed Rule's authorization of agencies to "consider making adjustments to the project schedule, project budget, or both," § 200.340(e)(3)—"adjustments" that could be used to unlawfully modify the scope and terms of a federal grant after it has been awarded.

In short, these provisions, which permit agencies to temporarily or permanently interrupt a grant for undefined and thus a potentially boundless set of reasons, upend the entire federal grantmaking process. They transform a system intended to provide stable sources of funding for critical services that Congress has required into one that allows for politicized, punitive, retaliatory, or arbitrary decisions to terminate federal grant awards on a whim of the Executive Branch. They create an environment of uncertainty and place grantees under a permanent threat of cancellation.

[23] Compounding the problem, the Proposed Rule seeks to strip agency-level appeal rights for terminations for discretionary reasons like the ones discussed in this paragraph. *See* § 200.342 (proposing 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"). Without even this limited check on agencies' power to terminate grants on a whim, it will be even more difficult for grantees like local governments to rely on the stability of their federal funding and make the necessary plans and long-term investments to meet the congressional goals underlying their federal grants. OMB further concedes that instead of pursuing appeal rights, a grantee seeking to challenge the legality of a particular termination would have to raise "award-specific, agency-specific, and other considerations that can only be decided by a court at a more granular level." 91 Fed. Reg. at 32228. OMB asserts that those challenges must be raised in the U.S. Court of Federal Claims, a court of limited jurisdiction that is authorized to hear primarily money claims. *Id.* The DOJ has taken a similar position in ongoing litigation. *See, e.g.*, *Harris Cnty. v. Kennedy*, 786 F. Supp. 3d 194, 204-07 (D.D.C. 2025) (rejecting federal government's argument that court lacked jurisdiction over plaintiffs' constitutional claims arising from grant terminations).

1. The Proposed Rule Seeks to Codify Politicized, Arbitrary, or Otherwise Unlawful Grant Terminations

Politicized, arbitrary, or otherwise unlawful terminations under the guise of "changed agency priorities" are a real threat rather than a mere possibility. This Administration has repeatedly terminated or threatened to terminate federal funds to "punish residents of states President Trump considers political enemies or who disagree with the President."[24] Federal agencies have played a critical role in the Administration's efforts to weaponize federal funding—for example, by choosing to retain funding for "red" states while terminating funding for "blue" states.[25] Over and over again, agencies have terminated state and local government grants for reasons that are politicized, arbitrary, or otherwise not legal. *See, e.g.*, *City of Saint Paul v. Wright*, 816 F. Supp. 3d 65, 74 (D.D.C. 2026) (finding a Fifth Amendment violation where "Defendants freely admit that they made grant-termination decisions primarily—if not exclusively—based on whether the awardee resided in a state whose citizens voted for President Trump in 2024");[26] *City of Chicago v. U.S. Dep't of Homeland Sec.*, 815 F. Supp. 3d 727, 761 (N.D. Ill. 2025) (Department of Homeland Security's (DHS) decision to withhold and eliminate Shelter and Services program funding to Chicago, Denver, and others based on purported noncompliance with changed agency priorities likely arbitrary and capricious under the APA); *Washington v. U.S. Dep't of Com.*, 812 F. Supp. 3d 1169, 1184, 1186 (W.D. Wash. 2025) (termination of National Oceanic and Atmospheric Administration's cooperative agreements for changed agency priorities likely arbitrary and capricious and violation of Spending Clause); *Washington v. U.S. Dep't of Homeland Sec.*, No. 2:25-cv-1401, 2026 WL 1469538, at *8-10 (W.D. Wash. May 26, 2026) (Federal Emergency Management Agency's (FEMA) termination of Shelter and Services Program based on alleged inconsistency with DHS's current enforcement priorities was contrary to law and arbitrary and capricious); *California v. U.S. Dep't of Educ.*, 769 F. Supp. 3d 72, 77-78 (D. Mass. 2025) (Department of Education's termination of grant based on allegations that grant was inconsistent with agency priorities likely arbitrary and capricious); *Illinois v. Vought*, 820 F. Supp.

[24] *See* Sam Berger & Devin O'Connor, *The Trump Administration Is Engaging in Increasingly Blatant Efforts to Misuse Federal Funds to Coerce and Punish*, Ctr. on Budget & Pol'y Priorities (Jan. 27, 2026), https://www.cbpp.org/blog/the-trump-administration-is-engaging-in-increasingly-blatant-efforts-to-misuse-federal-funds.

[25] For example, the Department of Energy (DOE) has engaged in a "pattern … of partisanship in the projects that were retained versus not retained" as part of its evaluation of federally funded projects. The pattern is borne out by data showing that while DOE has chosen to retain 86% of the projects it reviewed, "of the remaining 14% that remain denied, nearly all of them are in blue states. Looking at the data another way, 95% of the blue state awards which were terminated on October 1st were not restored." By contrast, "95%[] of projects in red states are being retained." *See* Tarik Shah et al., *The DOE's Partial Grant Retention: What's In, What's Not, What Questions Remain*, DOE Alumni Network (Apr. 17, 2026), https://doealumninetwork.substack.com/p/the-does-partial-grant-retention.

[26] In another case challenging the termination of funding by DOE, the government agreed to stipulate to judgment in favor of plaintiffs based on a concession that "[a] primary reason for the selection of which DOE grant termination decisions were included in the October 2025 notice tranche was whether the grantee was located in a 'Blue State.'" *See Am. Inst. of Chemical Engineers v. Wright*, No. 1:26-cv-1063, 2026 WL 1752326, at *2 (D.D.C. June 11, 2026).

3d 727, 731-32 (N.D. Ill. 2026) (OMB decision to "target plaintiffs and direct (or guide) the agencies to terminate public-health grants" likely arbitrary and capricious); *Sustainability Inst. v. Trump*, No. 2:25-cv-2152, 2026 WL 1694522, at *4-5 (D.S.C. June 11, 2026) (Environmental Protection Agency (EPA) decision to terminate Environmental and Climate Justice block grant arbitrary and capricious and unlawful). Arbitrary terminations have been a key tool of this Administration to weaponize federal funding to politicized ends.[27] The Proposed Rule seeks to codify and give regulatory authority to these efforts.

2. The New Termination and Suspension Provisions Would Destabilize Local Government Budgets and Planning

Arbitrary, unexpected, and baseless terminations cause immense harms to local governments that rely on the stability and certainty of federal funding for planning and implementing long-term investments in their communities. Because the Proposed Rule would permit terminations and suspensions based on vague, ambiguous, and undefined considerations, it would not provide proper notice of the terms and conditions of the grants. Thus, at the planning stages, local governments will know only that there is greater uncertainty throughout the life of their grant award. They will not know what they can or should do to avoid *post hoc* termination based on agency interests that are determined at the time of termination rather than at the time of the award.

If funding were to be terminated during a grant's performance period, local governments would have to abandon many projects undertaken in reliance on federal funding, or would be discouraged from applying for federal funds in the first place or from undertaking certain projects at all.[28] Contracts entered into by local governments in reliance on receiving federal funding would

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[27] The trend of weaponized, improper, or unjustified terminations reaches far beyond just state and local governments, as demonstrated by the large volume of cases challenging the federal government on those bases. *See, e.g.*, *Am. Acad. of Pediatrics v. U.S. Dep't of Health & Hum. Servs.*, 816 F. Supp. 3d 27 (D.D.C. 2026); *Inst. for Applied Ecology v. Burgum*, No. 6:25-cv-02364, 2026 WL 1470638 (D. Or. Mar. 12, 2026); *Pres. & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs.*, 798 F. Supp. 3d 77 (D. Mass. 2025); *Am. Ass'n of Univ. Professors v. Trump*, 815 F. Supp. 3d 907 (N.D. Cal. 2025); *Am. Ass'n of Physicians for Hum. Rts., Inc. v. Nat'l Insts. of Health*, 795 F. Supp. 3d 678 (D. Md. 2025); *Metro. Transp. Auth. v. Duffy*, No. 1:25-cv-1413, 2026 WL 588117 (S.D.N.Y. Mar. 3, 2026); *Or. Council for Humans. v. U.S. DOGE Serv.*, 794 F. Supp. 3d 840 (D. Or. 2025); *Green & Healthy Homes Initiative, Inc. v. Env't Prot. Agency*, 788 F. Supp. 3d 676 (D. Md. 2025); *Am. Bar Ass'n v. U.S. Dep't of Just.*, 783 F. Supp. 3d 236 (D.D.C. 2025); *Thakur v. Trump*, 176 F.4th 1187 (9th Cir. 2026); *Pacito v. Trump*, 169 F.4th 895 (9th Cir. 2026); *Mid-Atl. Equity Consortium v. U.S. Dep't of Educ.*, 793 F. Supp. 3d 166 (D.D.C. 2025); *New Jersey v. U.S. Dep't of Transp.*, No. 1:26-cv-939, 2026 WL 1863847 (S.D.N.Y. June 29, 2026) (holding that DOT's suspension of federal funding to bi-state entity for a rail corridor initiative, ostensibly to conduct a review of grantee's compliance with federal nondiscrimination laws, was contrary to law).

[28] *See, e.g.*, Dkt. No. 69, *City & Cnty. of San Francisco*, 3:25-cv-1350, ¶ 9 ("There are no alternate sources of funding in the Housing Department for these programs. Loss of any of the grant funding … would result in the suspension or termination of the program(s) supported by those funds."); Dkt. No. 57, *Chicago*, 1:25-cv-12765, ¶ 52 (attesting that without Federal Emergency Management Agency (FEMA) funding, "the City would be unable to make planned investments in emergency communications and public safety infrastructure").

be in jeopardy,[29] making future contracting more costly or difficult. Local governments would face significant budgetary problems[30] and be forced to choose whether to divert funding from other city needs.[31] Layoffs would be unavoidable.[32] Fiscal planning would be interrupted.[33] Budget-constrained local governments may be left with unreimbursed expenditures that they had planned and expected to be reimbursed for.[34]

At bottom, these harms resulting from the uncertainty of federal funding will be felt by community members for whose sake Congress authorized federal grant programs.[35] It is a foregone conclusion that services and planned improvements for residents will have to be cut following discretionary terminations.[36] For example, when EPA terminated funds from the Inflation Reduction Act that one local government grantee had been awarded to fund almost half of its Equitable and Resilient Urban Forest project, the grantee had "no alternative funding source available … to perform the Project's critical work." Without the federal funding, the city "cannot

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[29] *See, e.g.*, Dkt. No. 12, *King Cnty.*, 2:25-cv-814, ¶¶ 20, 24-25 (one county had already entered into subcontracts obligating more than $1.1M in FY 2024 Continuum of Care (CoC) funds "[i]n reliance on HUD's CoC grant award announcement"); Dkt. No. 8-19, *City of Saint Paul v. Wright*, 1:25-cv-3899 (D.D.C.), ¶ 12 ("[U]nless DOE funding is restored, [the City] will be at risk of breaching … contracts and associated financial loss."); Dkt. No. 24-18, *Sustainability Inst.*, 2:25-cv-02152, ¶ 11 ("With the uncertainty caused by [DOT] funding freezes, we have not been able to even plan with our new vendors to start" planned electric vehicle charger project).

[30] *See, e.g.*, Dkt. No. 65, *City and Cnty. of San Francisco*, 3:25-cv-1350, ¶ 12 (without DOJ funding, police department would need to divert city funds "away from other important … public safety services" to cover officer salaries); Dkt. No. 66-1, *Urban Sustainability Directors Network v. USDA*, 1:25-cv-1775 (D.D.C.), ¶ 19 (termination of United States Department of Agriculture's (USDA) Increasing Land, Capital, and Market Access Program could force county to cancel contracts, layoff staff, and scale back programs).

[31] *See, e.g.*, Dkt. No. 14-10, *Harris Cnty.*, 1:25-cv-1275, ¶¶ 19-20 (after termination of an Immunization and Vaccines for Children grant, a city continued to fund its public health campaigns "at a price," by diverting other funds).

[32] *See, e.g.*, Dkt. No. 66, *City and Cnty. of San Francisco*, 3:25-cv-1350, ¶¶ 33, 45-46; Dkt. No. 29-11, *Appalachian Voices v. EPA*, 1:25-cv-1982 (D.D.C.), ¶ 16.

[33] *See, e.g.*, Dkt. No. 65, *City and Cnty. of San Francisco*, 3:25-cv-1350, ¶ 14 (describing uncertainty generated by threats to federal funding and urgent need for clarity for fiscal planning purposes); Dkt. No. 29-29, *Appalachian Voices*, 1:25-cv-1982, ¶ 26 (attesting to "significant administrative, financial, and management impacts," including unexpected financial strain, disrupted staffing plans, and uncertainty around future resource planning, as a result of sudden termination of grant).

[34] *See, e.g.*, Dkt. No. 7, *King Cnty.*, 2:25-cv-814, ¶¶ 20-21 ("The loss of CoC funding will quite [literally mean people losing their housing]."); Dkt. No. 76, *City and Cnty. of San Francisco*, 3:25-cv-01350, ¶ 46 ("FEMA funds are granted on a reimbursement basis after qualifying projects are completed. In the meantime, the projects are funded by the County and by the cities, towns, and special districts that are carrying them out. The County currently has more than $1 million in outstanding FEMA grant funding that has been expended, but not yet reimbursed, for fiscal year 2025."); Dkt. No. 24-19, *Sustainability Inst.*, 2:25-cv-2152, ¶ 31 (because local government grantee receives federal funding on reimbursement basis, "the funding freezes, even where intermittent, are grinding the programs to a halt, creating a risk that they will never be completed, and jeopardizing all the associated benefits to our community").

[35] *See, e.g.*, Dkt. No. 56-7, *City of Chicago v. DHS*, 1:25-cv-5462 (N.D. Ill.), ¶ 26 (freezes in DHS funding and prohibition against certain uses of funding would stall local government "from expanding or even maintaining the current level of operation to the detriment of public safety and national security").

[36] *See, e.g.*, Dkt. No. 7, *King Cnty.*, 2:25-cv-814, ¶ 21 (attesting that losing HUD funding "will impact King County's ability to sustain existing [permanent supportive housing] and create additional supportive housing").

move forward with the Project. It cannot plant trees to expand its urban tree canopy in under-resourced neighborhoods. Nor can it install air filters and purifiers in [] over forty (40) low-income homes. Every day that goes by without access to these grant funds is one less day of tree growth and tree canopy – the impacts of which will be felt for generations to come."[37]

As another example, when the EPA terminated a city's Community Change Grants Program award in July 2025—after funding had been frozen and restored several times that year—the city was forced to abandon projects it had undertaken to improve access to affordable, healthy, and energy-efficient homes for community members. The termination had an immediate and detrimental impact on community members: "[C]onstruction for home upgrades was underway, and some homes were under construction when the stop work order in July arrived. … For example, people's windows had been removed and thus the houses were open to the elements the moment we received the EPA's termination."[38]

In another example, HHS and the Centers for Disease Control and Prevention (CDC) terminated millions of dollars in various health-related grants on which a county had relied.[39] The terminations "undercut [the county's] ability to rapidly detect emerging diseases and outbreaks and develop timely public health interventions to safeguard the health and well-being of residents."[40] As yet another example, the Department of Transportation and Federal Highway Administration (FHWA) abruptly withdrew and cancelled a city's RAISE Grant award in September 2025; the city is challenging this action in litigation. The city had been awarded the grant to fund a multi-use urban trail project through the city's downtown area and "expended considerable resources in making the Rail Trail project federally compliant in accordance with FHWA's directives."[41] The federal government cited a supposed change in agency priorities and provided no notice, prior to termination, that funding might be terminated. The termination "eliminat[ed] approximately 80% of the necessary funding—funding that the city had been counting on receiving for three years—for critical multimodal infrastructure that would enhance pedestrian and cyclist safety."[42] Congress authorized these grant programs to fulfill Congress's policy preference for urban forests, climate-resilient housing, disease prevention, and pedestrian safety, yet the Proposed Rule would usurp congressional authority to set policy.

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[37] Dkt. No. 29-28, *Appalachian Voices*, 1:25-cv-1982, ¶ 17.

[38] Dkt. No. 189-6, *Sustainability Inst.*, 2:25-cv-2152, ¶ 12 (describing effects of terminating EPA block grant).

[39] Dkt. No. 14-3, *Harris Cnty.*, 1:25-cv-1275, ¶ 14.

[40] Dkt. No. 14-4, *Harris Cnty.*, 1:25-cv-1275, ¶ 11; Dkt. No. 14-6, *Harris Cnty.*, 1:25-cv-1275, ¶ 19 ("The terminations associated with the CDC grant terminations have weakened our disease surveillance and outbreak response efforts and increased burdens on our nursing staff, all of which destabilizes our community's health and safety."); *see also* Dkt. No. 4-8, *Colorado v. HHS*, 1:25-cv-0121 (D.R.I.), ¶ 25 (termination of HHS grants hampered county's ability to prepare for and respond to future public health emergencies).

[41] Dkt. No. 1, *City of Albuquerque v. Duffy*, 1:25-cv-1072 (D.N.M.), ¶¶ 38-39.

[42] *Id.* ¶ 38.

3. The Termination and Suspension Provisions Violate the Separation of Powers Doctrine and the Spending Clause

Separate and apart from the significant harms to local government grantees' reliance interests, the new termination provisions, including those in Sections 200.340(a)(2), (a)(5), and (e), also violate constitutional principles. First, the new Section 200.340 violates the separation of powers doctrine. An agency cannot substitute its own policy objectives or its own interests for those of Congress—replacing Congress's decisions to appropriate funds and directing that they be spent on particular objectives—by terminating already-awarded grants. Put simply, "[a]bsent congressional authorization, the Administration may not . . . withhold properly appropriated funds in order to effectuate its own policy goals." *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018). Terminations under the sweeping authority added by the new Section 200.340 may also violate Congress's statutory regime under the Congressional Budget and Impoundment Control Act. Where Congress has appropriated funds and directed that they be spent on particular grant programs, terminating those grants based on an agency's own interests—even if those grants otherwise satisfy program purposes authorized by Congress—without re-obligating those funds has the effect of unlawfully impounding and refusing to spend congressionally appropriated funds. *See In re Aiken Cnty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.) (explaining that the Executive "does not have unilateral authority to refuse to spend [congressionally appropriated] funds").

Second, the new termination provision violates the Spending Clause. Under the Spending Clause, the "threshold requirement—that Congress speak clearly as to a condition it imposes—at least provides assurance that, before a state gives up some of its power in exchange for federal grant money, the state's eyes are wide open: it knows what the consequences are." *Kentucky v. Yellen*, 67 F.4th 322, 324 (6th Cir. 2023) (statement of Bush, J., regarding denial of rehearing en banc). The funding conditions must be set out "unambiguously" in the relevant statute. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)). The proposed discretionary termination and suspension provisions in Section 200.340 violate the Spending Clause mandate because they do not provide notice of, or, on their face, set any limits on the reasons for which an agency may terminate or suspend a recipient's grants.

B. The Proposed Rule's New Provisions Governing Pre-Award and Risk Assessment Review Politicize the Grant Award Process and Threaten Funding Stability

1. Vague and Ambiguous Pre-Issuance Review Process by Political Appointees Required to Advance the President's Policy Priorities Rather than Congress's Directives

The Proposed Rule also seeks to implement a new "pre-issuance review" process in Section 200.205. Section 200.205(b) requires federal agency heads to "designate one or more senior appointees to conduct a pre-issuance review of all discretionary awards" in order "to ensure that Federal award proposals selected for funding are consistent with applicable law, Federal agency priorities, and the national interest." Like the new termination provisions, this pre-issuance review provision is vague and ambiguous, leaving undefined key terms like "senior appointee" or "national interest." It is also likely to lead to delays in processing grant applications by local governments—exposing applicants to harms[43] including inflation and increases to planned project costs—both because of the likelihood of delays in presidential appointments and senior appointee confirmations, and also because it would be burdensome and impractical to require senior appointees to review every single grant proposal.[44] Moreover, this new provision politicizes the process of awarding grants and converts the competition to one based not on quality or alignment with statutory purposes of a program, but on political favors and alliances. For example, Section 200.205(b)(1) specifically states that "[d]iscretionary awards must, where applicable, demonstrably advance the President's policy priorities."[45]

This remaking of the federal grantmaking system is fundamentally incongruous with the separation of powers because it undermines the prerogative of Congress. As discussed in the previous section, Congress appropriates funds for various federal programs to be administered by agencies. Requiring "senior appointees" to make award decisions based on "Federal agency priorities[] and the national interest" undermines that balance of powers. There are many good reasons for career non-partisan civil servants to have responsibility over a merits review, including their subject-matter expertise and the preservation of institutional consistency so that grantees may know from year to year how to develop projects that may be approved for funding.[46] OMB does not offer any explanation, let alone one sufficient to overcome grantees' reliance interests, as to

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[43] Delays that already exist in the grant selection and administration process would multiply under the new political review process. By way of example, HUD requires counties to submit by mid-year an Annual Action Plan for funding that would start in July. However, HUD generally does not execute grant agreements for those funds until September, or potentially even later in the year, leaving grantees with limited time to utilize their grant funds and ensure that they are meeting other HUD requirements. Even greater delays could ensue if a political appointee review process were required, thus impeding grantees' ability to meet critical funding requirements established by agencies themselves.

[44] When Former DHS Secretary Kristi Noem allegedly implemented a policy to personally review expenditures of more than $100,000, more than one thousand contracts, grants, or disaster assistance awards were delayed or left pending. *See* Rachel Frazin, *Noem's spending review has help up more than 1,000 FEMA contracts, grants and awards, Dems say*, The Hill (Mar. 4, 2026), https://thehill.com/policy/energy-environment/5765866-noem-dhs-fema/. DOE similarly undertook a months-long review process to determine whether to finalize certain grant awards. As a consequence of its stalled review, the budgetary performance period for the awards under review expired, and "DOE … effectively abandoned the … program and r[a]n out the clock." Dkt. No. 203, *Sustainability Institute*, 2:25-cv-2152, ¶¶ 282-288.

[45] Section 200.205(b) enshrines additional policy preferences that are ripe for abuse, as explained in Part III, *infra*.

[46] *See* David E. Lewis, *The Number of Political Appointees,* Democracy Reform Primer Series 14 (2024), https://blockyapp.s3.eu-west-2.amazonaws.com/store/09d23ca4a9d65e4efcebc696b78ced9a.pdf (estimating that there are close to 4,000 political appointees in the United States and that "[a]ppointee-run programs and agencies experience more turnover, longer vacancies, and leaders with less subject and public management experience than programs and agencies run by career professionals").

how making political appointees responsible for award selection achieves its purported goals of improving transparency, accountability, and oversight of federal awards.

Moreover, the political review process in Section 200.205 upends local governments' significant reliance interests in receiving and using federal funds based on the terms and conditions to which they agreed upon receiving the award. As discussed above, local governments plan with the expectation that regularly-received funding will continue. They also make plans to develop and carry out projects with the understanding that discretionary awards will be made on the merits of the applications and not the political priorities of the particular administration in place.[47] The Proposed Rule would undermine this stability and create opportunities for abuse, allowing political actors to select or reject applicants based on their own subjective political views that may deviate from the policy priorities for which Congress delegated authority.

2. New Vague, Ambiguous, and Undefined Pre-Award Risk Assessment Considerations Unrelated to the Purpose and Intended Use of Federal Funds

The Proposed Rule further bolsters agencies' ability to infuse the pre-award process with political and other improper preferences by adding new risk assessment considerations in Section 200.206. The existing provision directs agencies to assess the risk posed by grant applicants based on factors such as an applicant's financial stability, quality of management systems and standards, history of performance, audit reports and findings, and ability to effectively implement requirements imposed on grantees. *See* § 200.206(b)(2). These are measurable, objective standards that can be readily satisfied by grantees like local governments, many of which typically have extensive experience applying for, receiving, and managing federal funds in accordance with the congressionally authorized purposes of grant programs.

By contrast, the proposed considerations are vague, ambiguous, and virtually unbounded. Under the proposed Section 200.206(b)(2)(vii), agencies "should consider" a grantee's "[h]istory of questionable practices," including its "record of" "[e]ngaging in activities or initiatives" that are "inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination," or "inconsistent with religious liberty laws." This provision would permit agencies to conduct evaluations based on factors unrelated to the purpose and intended use of federal funds, transforming the pre-award review process into a cudgel to force applicants like local governments to conform to whatever interpretation of "unlawful discrimination" or "religious liberty laws" the Executive Branch espouses. Though terms such as these are undefined in the new Section 200.206(b), courts that have considered similar terms have repeatedly found that this Administration's attempt to impose such terms is inconsistent with the law. *See infra* Part III. Moreover, an assessment based on a

[47] *See, e.g.*, Dkt. No. 24-18, *Sustainability Inst.*, 2:25-cv-02152, ¶ 11 (in anticipation of receiving a discretionary federal grant award, city "started its procurement process with several vendors," and "entered into a contract").

"[h]istory of questionable practices" necessarily looks to past events, and the Proposed Rule does not include any temporal limitations on the searching review an agency would have to undertake as part of a risk assessment. For all of these reasons, the new Section 200.206(b)(2)(vii) deprives applicants of adequate notice as to how their applications will be assessed, increases the risk of arbitrary and capricious grant denials, and thus decreases the stability in funding on which local government applicants rely for important investments and services, as discussed above in Sections I.A and II.A.

The new Section 200.206(b)(2)(viii) is similarly problematic. It requires agencies conducting risk assessments to consider "the applicant's membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government." § 200.206(b)(2)(viii). Similar to the previous provision, this new consideration relies on utterly undefined terms, such as "public safety or national security." Nor does OMB provide any definition or explanation of what it means for a grantee to be "affiliat[ed]" with an organization—a problem greatly multiplied for applicants like local governments, which have a multitude of relationships of different kinds with third parties. Section 200.206(b)(2)(viii) thus seeks to hold applicants responsible for conduct or viewpoints held by third parties—regardless of whether the applicant is even aware of such conduct or viewpoints. The Proposed Rule would therefore increase the risk that a grant applicant like a local government may not be selected for an award that it has relied on or received in prior years, all due to an ill-defined, politicized consideration outside of its control. And because the Proposed Rule would not require agencies to provide notice to applicants denied under Section 200.206 of the basis of those denials, applicants would not know if their awards were denied on spurious grounds in order to be able to contest those denials.

For the reasons described above, the termination and suspension provisions in Sections 200.340(a)(2), (a)(5), and (e), and the pre-award review and risk assessment provisions in Sections 200.205(b) and 200.206(b)(2) should be stricken from the Proposed Rule.

III. The Proposed Rule's Prohibitions and Limits on Funding Would Require Local Governments to Choose Between Complying with Vague, Ambiguous, and Unlawful Requirements or Forgoing Billions of Dollars for Critical Programs

The Proposed Rule purports to impose a series of partisan prohibitions and limits on the use of federal grant funds that are vague and ambiguous, undefined, unrelated to the underlying grant programs, in excess of authority granted to OMB or any of the Regulating Agencies, in violation of the separation of powers, and in contradiction to many existing agency regulations for grants.

Imposing pre- and post-award requirements that are vague, ambiguous, contradictory to statute and regulation, and with no analysis of the relationship to underlying programs, puts local governments in an impossible position of having to decide between accepting these conditions and forgoing billions of dollars of funding. As discussed in detail above, loss of federal funding would be devastating to local governments and their communities. As one court summarized, the litany of potential harms include: "destabilization of immediate and future budgets, termination of multi-year transportation projects, upheaval of low-to-moderate income individuals and families, loss of access to health care services to vulnerable populations, and the risk to public safety." *City of Seattle v. Trump*, 808 F. Supp. 3d 1204, 1221 (W.D. Wash. 2025). Numerous courts have blocked similar efforts as to specific programs, finding the "administration's attempt to compel [local governments'] compliance with unrelated policy objectives by leveraging the needs of our most vulnerable fellow human beings" to be "breathtaking in its callousness." *Martin Luther King, Jr. Cnty. v. Turner*, 798 F. Supp. 3d 1224, 1254 (W.D. Wash. 2025). The Proposed Rule only amplifies these efforts exponentially, across all federal grants. And as discussed below, even where grantees attempt to comply, they face risk of termination and civil and criminal penalties because the terms are so vague. And in many cases, these requirements contradict existing federal statutes, agency regulations, and state law, and leave it to grantees to try to sort through the mess.

A. Partisan Requirements in the Proposed Rule Seek to Force Local Governments to Adopt the Executive's Policy Priorities

In addition to those already discussed, the Proposed Rule imposes a series of limits on the use of federal funds in an effort to force grantees, including local governments, to comply with this Administration's policy preferences that are untethered to the myriad array of impacted programs. First, Section 200.300 modifies existing prohibitions on unlawful exclusion or discrimination under federally funded programs by additionally prohibiting use of all federal funds to "fund, promote, encourage, subsidize, or facilitate": DEI or DEIA "policies, principles, or practices that violate any applicable Federal anti-discrimination laws," defined to include "activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation"; "[g]ender ideology," defined to include "theories or ideologies that deny the biological reality of sex or the sex binary in humans, or endorse or advocate for the notion that sex is a chosen or mutable characteristic"; or gender transition for individuals under age 19. New Section 200.218 requires that federal funds not be used "in support of disparate-impact studies, disparate-impact litigation, or other related activities" and that "[f]ederal award activities based on the assumed risk of disparate-impact liability are not allowed."

Additionally, as part of an agency's pre-issuance review, agencies must newly confirm that discretionary awards "demonstrably advance the President's policy priorities" and do not "fund, promote, encourage, subsidize, or facilitate" the following: (i) racial preferences including through proxies; (ii) denial of "the sex binary in humans or the notion that sex is a chosen or mutable characteristic"; (iii) illegal immigration; or (iv) any initiatives that "compromise public safety or promote anti-American values." § 200.205(b)(1)-(2).

B. The Ambiguity of These New Requirements Provides No Lawful Standard for Compliance

First, many of these requirements are so vague, ambiguous, and open-ended that it is impossible for local governments to know the full range of activities the Executive Branch might consider prohibited. This Administration's use of terms like DEI and "gender ideology" to condition federal funding has been repeatedly found to be unlawfully vague in violation of the Spending Clause and other constitutional protections. *See, e.g.*, *City of Chicago v. U.S. Dep't of Just.*, 822 F. Supp. 3d 873, 890 (N.D. Ill. 2026) (Department of Justice (DOJ) "failed to shed light on what it might mean for any given program or component of a program to relate to diversity, equity, and inclusion"); *R.I. Coal. Against Domestic Violence v. Kennedy*, 812 F. Supp. 3d 180, 197 (D.R.I. 2025) (the phrase "promote gender ideology" in HUD grants "obscure[s] meaning like Russian dolls stacked inside each other"); *S.F. Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 746 (N.D. Cal. 2025) (anti-DEI language in AmeriCorps grants was "rife with vagueness and ambiguity, leaving grantees to speculate what is proscribed and what is permitted"). Indeed, just last week, Department of Transportation (DOT) Secretary Sean Duffy posted on social media that bike lanes were a "DEI pet project[]."[48]

Similarly, broad agency prohibitions on operating programs that benefit or incentivize illegal immigrants are "hopelessly vague" and "provide[] no meaningful standards," in violation of the Spending Clause. *Illinois v. Fed. Emergency Mgmt. Agency*, 801 F. Supp. 3d 75, 96 (D.R.I. 2025) (discussing DHS grants); *see also City of Fresno v. Turner*, No. 3:25-cv-07070, 2025 WL 2469330, at *6 (N.D. Cal. Aug. 27, 2025) (HUD, DOT, and HHS grant conditions that incorporated executive order prohibiting use of grants to "fund, promote, encourage, subsidize, or facilitate" "racial preferences," "denial … of the sex binary," "illegal immigration," or "any other initiatives that compromise public safety or promote anti-American values" likely violated Fifth Amendment). What does it mean, for example, for a fire department with federally-funded staff to "facilitate" illegal immigration? Does it require firefighters to check the immigration status of people in a burning building before saving their lives? Nothing in the Proposed Rule provides guidance on this or other real-world circumstances that local governments would be forced to grapple with on a daily basis.

The anti-disparate impact provisions create similar uncertainty for local governments' ability to evaluate whether services are being provided equitably and appropriately within their communities. Local governments do important work to assess whether any communities, particularly vulnerable communities or those that have previously experienced discrimination in public services, face particular challenges and whether local services can be designed to ensure better outcomes for everyone.[49] Some federal programs *require* such analysis. For example, HHS's

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[48] Secretary Sean Duffy (@SecDuffy), X (July 7, 2026, at 10:49 PM), https://x.com/SecDuffy/status/2074626934966034751 [https://perma.cc/2Q2Q-JCKL].

[49] *See, e.g.*, Dkt. No. 24-16, *Sustainability Inst.*, 2:25-cv-02152, ¶ 4.

Ryan White HIV/AIDS Program requires that recipients develop Integrated Plans for the delivery of HIV prevention and care services, based on (among other things) a needs assessment and understanding of communities disproportionately impacted by HIV.[50] HUD requires recipients of certain block grants to submit a consolidated plan that assesses housing needs across a variety of demographic factors. *See* 24 C.F.R. § 91.205. The Comprehensive Coordinated Early Intervening Services (CCEIS) framework under the Individuals with Disabilities Education Act requires race and ethnicity-based proportionality analysis and remedies. *See* 34 C.F.R. § 300.646. And while the Proposed Rule appears to permit disparate impact studies so long as they do not use federal funding, it is unclear if creating such a study could "facilitate" disparate impact liability. Nor is it clear whether reliance on such a study when using federal funds would trigger this provision. Given the confusion and associated risk, the Proposed Rule is likely to chill efforts to assess disparate impact and disparate distribution of local services, regardless of whether those assessments are federally funded and regardless of whether they comply with federal law.

And the term "anti-American values" is so unmoored to any kind of boundary, baseline, or standard that its use would almost be laughable were it not for the fact that this Administration appears to consider factual information about slavery, climate change, and women's rights as false and antithetical to America. *See Nat'l Parks Conservation Ass'n v. U. S. Dep't of the Interior*, No. 1:26-CVcv-10877, 2026 WL 1706963, at *7-8 (D. Mass. June 12, 2026). The scope of these conditions is made even less clear by the terms "promote," "encourage," or "facilitate," which leaves these agencies free rein to determine what policies and activities related to these topics conflict with the current Executive's policy agenda. *See, e.g.*, *Cnty. of Santa Clara v. Noem*, 815 F. Supp. 3d 979, 1034 (N.D. Cal. 2025) (DHS failed to explain how grantees could "advance or promote" DEI).

The lip service to "applicable" anti-discrimination law in Section 200.300, to "applicable law" in Section 200.205, and to "the maximum extent permitted by law" in Section 200.218, does little to mitigate these concerns. This Administration has staked out views on DEI, the rights of trans individuals, and immigration that are untethered to and often in direct conflict with the law, rendering these types of savings clauses essentially meaningless. *See infra* Section III.C; *see also Chicago Women in Trades v. Trump*, 778 F. Supp. 3d 959, 984 (N.D. Ill. 2025) ("[A]lthough the government emphasized" that executive order prohibiting DEI "implicates only *illegal* DEI programs, it has studiously declined to shed any light on what this means. The answer is anything but obvious.").

For example, the Proposed Rule's prohibition on DEI or "racial preferences including through proxies" is inconsistent with Supreme Court precedent that has "consistently declined to find constitutionally suspect" the use of race-neutral measures—even where the decision-maker

[50] Integrated HIV Prevention and Care Plan Guidance, including the Statewide Coordinated Statement of Need, CY 2027-2031, at 6, *available at* https://ryanwhite.hrsa.gov/sites/default/files/ryanwhite/grants/integrated-hiv-prevention-care-plan-guidance-2027-2031.pdf.

had a desire to increase racial diversity and was "well aware" the race-neutral criteria "correlated with race" and could result in promoting diversity. *Coal. for TJ v. Fairfax Cnty. Sch. Bd*., 68 F.4th 864, 885-86 (4th Cir. 2023) (citing *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc*., 576 U.S. 519, 545 (2015)); *Parents Involved in Cmty. Schs*. *v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J., concurring in part); *Pers. Adm'r of Mass. v. Feeney,* 442 U.S. 256, 277-78 (1979). Indeed, this Administration's view is that race-neutral measures are illegal, in contradiction to this established precedent.[51] *See City of Chicago*, 822 F. Supp. 3d at 887 ("Put simply, the Anti-DE Condition appears contrary to established federal anti-discrimination law."); *Martin Luther King Jr. Cnty.*, 798 F. Supp. 3d at 1248 ("[T]he evidence in the record [] demonstrates that Defendants interpret federal antidiscrimination laws in a manner that is inconsistent with well-established legal precedent."); *see also, e.g.*, *Cnty. of Santa Clara*, 815 F. Supp. 3d at 1029-30 (same); *City of Seattle*, 808 F. Supp. 3d at 1218 (same). And the prohibitions on promotion of "gender ideology" and "denial of sex binary" are contrary to Supreme Court precedent applying Title VII sex-based protections to trans people. *See Bostock v. Clayton Cnty*., 590 U.S. 644, 662, 670 (2020).

With the Proposed Rule, grantees like local governments will be "at the mercy of [this Administration's] interpretation of federal antidiscrimination laws, regardless of how those laws are interpreted by the courts." *Martin Luther King, Jr. Cnty.*, 798 F. Supp. 3d at 1249; *see also, e.g.*, *Hous. Auth. of City & Cnty. of S.F. v. Turner*, No. 4:25-cv-08859, 2025 WL 3187761, at *12 (N.D. Cal. Nov. 14, 2025) ("Given these self-professedly radical departures from a longstanding status quo, the Court cannot credit Defendants' position that the executive orders and other challenged grant conditions do no more than reiterate the importance of complying with the law.").

This preservation of "unlimited discretion" to interpret these vague terms at the agency's will, during the pre-award review or during the life of the award, "expose[s] [grantees] to potentially arbitrary discrimination and enforcement." *Rhode Island Coal. Against Domestic Violence*, 812 F. Supp. 3d at 197. Cities and counties "cannot predict" how agencies will interpret these terms, yet "risk losing billions in federal funding for any perceived violation." *Illinois*, 801 F. Supp. 3d at 96. "Such ambiguity deprives the [grantees] of the ability to make informed decisions, rendering the conditions constitutionally invalid." *Id.* Where grantees "attempt compliance with the conditions, they risk liability under the False Claims Act and more importantly the possibility that their grants will be withdrawn or blocked." *City of Fresno*, 2025 WL 2469330, at *7. They also risk violating state or local law, which may impose anti-discrimination requirements or constitutionally permitted limits on cooperation with federal

[51] For example, then-Attorney General Pam Bondi released a memo titled *Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination* on July 29, 2025, https://www.justice.gov/ag/media/1409486/dl. That memo asserts that the use of "[f]acially neutral criteria (e.g., 'cultural competence,' 'lived experience,' geographic targeting) that function as proxies for protected characteristics violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics." *Id.* at 2.

immigration authorities that could conflict with these conditions.[52] *See, e.g.*, Minn. Stat. ch. 363A (2023) (prohibiting discrimination across a myriad of sectors); Cal. Health & Safety Code § 120440(c) (requiring certain providers of immunization services to collect demographic information including gender identity); Or. Rev. Stat. § 659A.006 (precluding discrimination based on gender identity). As discussed in further detail herein, the resulting uncertainty "interfere[s] with [grantees'] ability to budget, plan for the future, and properly serve their residents," and requires "placing funds in reserve and making cuts to services." *City of Fresno*, 2025 WL 2469330, at *7 (citation omitted).

C. Unauthorized and Unrelated Pre- and Post-Award Requirements for Federal Funding Conflict with Congressional Directives and Agency Regulations

Compounding these harms, the Proposed Rule purports to impose pre- and post-award requirements that are not authorized by Congress in the myriad grant programs that will be impacted, and that in many cases directly contradict directives of Congress and agency regulations. The Constitution "exclusively grants the power of the purse to Congress, not the President." *City & Cnty. of San Francisco*, 897 F.3d at 1231 (citing the Appropriations Clause, U.S. Const. art. I, § 9, cl. 7). "The [Appropriations] Clause has a 'fundamental and comprehensive purpose … to assure that public funds will be spent according to the letter of the difficult judgments reached by Congress as to the common good and not according to the individual favor of Government agents.'" *United States v. McIntosh*, 833 F.3d 1163, 1175 (9th Cir. 2016) (quoting *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 427-28 (1990)). By contrast, an Executive agency "literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 374 (1986). When an agency is charged with administering a statute, "both [its] power to act and how [it is] to act [are] authoritatively prescribed by Congress." *City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013). For grants expressly appropriated by Congress, the Executive does not have the inherent authority "to condition the payment of such federal funds on adherence to its political priorities." *City of Chicago v. Sessions*, 888 F.3d 272, 283 (7th Cir. 2018).

The Proposed Rule identifies no congressionally-authorized basis for imposing these pre- and post-award requirements on vast swaths of federal funding, across all agencies, and without any attempt to tie these conditions to the contours of the particular programs. In fact, to date, this Administration has not successfully been able to identify *any* authorizing statute that permits its efforts to tie federal funding to similar anti-diversity, anti-"gender ideology," and anti-immigrant conditions that agencies have tried to impose and been blocked from imposing, over and over again. *See, e.g.*, *City of Seattle*, 808 F. Supp. 3d at 1209, 1222-23 (blocking numerous agencies, including DHS, DOJ, DOT, OMB, and HUD from imposing anti-DEI and anti-"gender ideology" conditions for infringing on separation of powers); *City of Chicago v. Noem*, No. 1:25-cv-12765,

[52] *See* Dkt. No. 86, *King Cnty.*, 2:25-cv-00814, ¶ 18 (not possible to know what DOT means by "illegal" DEI when proposed terms appear to conflict with federal, state, and local laws).

2025 WL 3251222, at *7 (N.D. Ill. Nov. 21, 2025) ("There is simply no statutory authority for DHS or FEMA to impose general anti-discrimination conditions on these grants.").

In many cases, Congress was not silent but instead expressly incorporated specific requirements that directly conflict with the Proposed Rule's requirements. For example,

- Congress required the HUD Secretary to set aside funds appropriated for the Community Development Block Grant (CDBG) program for "[s]pecial purpose grants," including grants to "historically Black colleges." 42 U.S.C. § 5307(b)(2); *see also id*. § 5307(c) (requiring CDBG funds be allocated to "providing assistance to economically disadvantaged and minority students").
- In authorizing HUD's HOME and HOPWA programs, Congress acted to "improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis." 42 U.S.C. § 12702(3).
- Congress requires HOME recipients "to establish and oversee a minority outreach program … to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women … in all contracts[] entered into by the participating jurisdiction." 42 U.S.C. § 12831(a).
- FEMA's pre-hazard mitigation grants require consideration of whether a recipient community is "economically disadvantaged." 42 U.S.C. §§ 5133(a), (g)(9).
- Congress instructed that the EPA Administrator "shall" use Inflation Reduction Act funds "to award grants … [to] benefit disadvantaged communities." 42 U.S.C. § 7438(b)(1).
- The American Rescue Plan directed the Secretary of Agriculture to use funds on programs which would benefit "socially disadvantaged farmers, ranchers, or forest landowners, or other members of socially disadvantaged groups." Pub. L. No. 117-2, 135 Stat. 4, 13–14 (2021). Congress later appropriated additional funds and directed the Secretary to use funds to, among other initiatives, "address racial equity issues within the Department of Agriculture and the programs of the Department of Agriculture." Inflation Reduction Act, Pub. L. No. 117-169, § 22007, 136 Stat. 1818, 2022–23 (2022).
- The prohibition related to "illegal immigration" directly conflicts with section 214 of the Housing and Community Development Act of 1980, which specifically provides public housing eligibility for mixed-status households. *See* 42 U.S.C. § 1436a(b)(2); *Hous. Auth. of City & Cnty. of San Francisco*, 2025 WL 3187761, at *11 (recognizing conflict between anti-immigrant funding conditions and statute).
- The prohibitions on "gender ideology" and gender-affirming care for minors conflict with Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Americans with

Disabilities Act, both of which prohibit discrimination on the basis of disabilities including gender dysphoria. *See* 29 U.S.C. § 705(9); 42 U.S.C. § 12102(1)(A); *Williams v. Kincaid*, 45 F.4th 759, 766 (4th Cir. 2022) (no dispute that gender dysphoria may qualify as a disability under § 12102(1)(A)), *cert. denied*, 143 S. Ct. 2414 (2023); *Kozak v. CSX Transp., Inc.*, No. 1:20-cv-184, 2023 WL 4906148, at *3-4 (W.D.N.Y. Aug. 1, 2023) (same).

- As referenced above, the law creating the Ryan White HIV/AIDS Program requires HHS grantees to consider disparate impacts and racial identity, including by directing local government grantees to establish a council that "reflect[s] in its composition the demographics" of the local population with HIV/AIDS "with particular consideration given to disproportionately affected and historically underserved groups and subpopulations," 42 U.S.C. § 300ff-12(b)(1); *see generally* 42 U.S.C. §§ 300ff-1 to -140.

Other programs specifically require consideration of population disparities, which the Proposed Rule appears to prohibit. For example, HHS's Health Center Program funds grants to support qualified outpatient facilities that provide primary care to low-income individuals and other underserved communities, as specified in the statute. In reviewing proposals to plan or develop new health centers, the HHS Secretary must consider the relative need of the population to be served by the proposed project, the health center's potential for developing new and effective methods for providing services, and the distribution of resources across the country. *See* 42 C.F.R. § 51c.204(a).

Federal agencies' own regulations regarding these grants often conflict with the Proposed Rule's new conditions. *See, e.g.*, 49 C.F.R. Part 23 (requiring disadvantaged businesses receive equitable access to airport concession contracts); 24 C.F.R. § 5.106(b)-(c) (requiring "[e]qual access to Community Planning and Development programs, shelters, other buildings and facilities, benefits, services, and accommodations [be] provided to an individual in accordance with the individual's gender identity, and in a manner that affords equal access to the individual's family," including facilities with "shared sleeping quarters or shared bathing facilities").

Local governments, of course, rely on what Congress has said through its legislation about how particular grant funds should be used, and devise and execute their programs accordingly. They also rely on and comply with established agency regulations that are promulgated within the confines of the powers delegated by Congress to the agency to administer these programs. What the Proposed Rule aims to do is upend this stable architecture of laws and rules, on which the infrastructure of local services is built, and replace it with a politicized process that pays no heed to the separation of powers nor to grantees' reliance on established law and regulation. And as discussed below, *see infra* Part VI, the Proposed Rule sets up a mechanism so that these conditions, which are not grounded in the law as passed by Congress or interpreted by the courts, can be discarded or changed at any time, at the whim of the Executive who is in place at the time. Indeed, the Proposed Rule specifically requires agencies to ensure discretionary awards advance the "President's policy priorities," whatever they may be at the moment, rather than the policies enshrined by Congress in the authorizing legislation. § 200.205(b)(1).

Local governments have already experienced how impossible it is to administer grants in such an unstable environment. As just one example, as of 2024, DOT required airports to incorporate a prohibition against discrimination based on sexual orientation and gender identity into their subcontracts. Airports that followed that directive now had to consider how to reconcile these prior subcontracts with DOT's new anti-DEI directives or potentially forgo reimbursement for those pre-existing subcontracts.[53] The Proposed Rule seeks to inject this degree of whiplash and uncertainty across the board, in perpetuity.

For these reasons, OMB and the Regulating Agencies should remove the amendments to Section 200.300 discussed herein, the added Section 200.218, and Section 205(b)(1)-(2).

IV. Additional Compliance Burdens Undermine Local Governments' Ability to Rely on Stable Federal Funding

OMB claims that "reducing recipient burden" and "improving transparency" are primary objectives of the Proposed Rule. *See* 91 Fed. Reg. at 32202. But numerous other provisions of the Proposed Rule only serve to exacerbate the burdens on, and uncertainty faced by, local governments. For example, Section 200.303(f) requires that grantees "[p]articipate in the Department of Homeland Security's E-verify program to confirm the employment eligibility of all employees *and contractors* hired in or performing work in the United States under a Federal award." (emphasis added). In addition, the section requires that "[i]f a recipient or subrecipient receives a Final Nonconfirmation (FNC) notice through E-verify, the recipient or subrecipient must submit this information to the Federal agency or pass-through entity." § 200.303(f). Failing to do so "may result in the termination of the Federal award." *Id.*

Under current Section 200.1, a contractor is defined as "an entity that receives a contract." It is unclear whether this means that local governments will be required to verify the work eligibility of each of their vendors' employees. Local governments do not generally exercise control over their vendors' hiring processes. Requiring local governments to do so rather than leaving it to the vendors to verify employee work eligibility would impose a new and significant administrative burden on local governments. In addition, the burdens and delays associated with using the E-verify system may make it more difficult for local governments and their contractors and subrecipients to hire qualified staff, particularly in emergency situations where rapid staffing is essential. This is particularly true given the unreliability of the system—indeed, the Department of Homeland Security recently described relying on E-verify as "reckless."[54] Some grants also cap

[53] *See* Dkt. No. 85, *King Cnty.*, 2:25-cv-00814, ¶ 22.

[54] Andy Rose, *E-Verify was supposed to make it easy for companies to follow immigration law. Now even the feds say it can't be trusted*, CNN (Aug 27, 2025), https://www.cnn.com/2025/08/27/us/e-verify-immigration-law.

administrative funding at low levels, meaning that additional administrative work to comply with the E-verify requirement would be uncompensated. The Congressional Budget Office estimated in 2013 that the cost for all public entities to implement E-verify would be about $90 million.[55]

By requiring grantees not only to use the E-verify system, but also to report FNCs, including those of contractors, the rule essentially seeks to conscript local governments into assisting with immigration enforcement. Local governments are careful to ensure that the employees they hire are eligible for employment, but many have made a strategic decision to limit unnecessary inquiries into immigration status to, among other reasons, preserve the trust of immigrant communities. Courts have soundly rejected previous efforts to condition grant funding on assistance with federal immigration enforcement. *See, e.g.*, *City & Cnty. of San Francisco*, 897 F.3d at 1234-35; *California v. U.S. Dep't of Transp.,* 808 F. Supp. 3d 291, 312 (D.R.I. 2025). They have also soundly rejected any notion that state or local government limits on collection of information about immigration status somehow conflict with federal law. *See, e.g.*, *United States v. City of Los Angeles*, No. 2:25-cv-5917, 2026 WL 1790971, at *2 (C.D. Cal. June 20, 2026). The Proposed Rule violates both of these principles in that it ties unrelated immigration cooperation requirements to federal funding and undermines legal and valid local laws by forcing the collection of immigration information that then must be provided to the federal government.

Finally, given recent efforts to weaponize Immigration and Customs Enforcement, Customs and Border Protection, and other components of DHS, including against American citizens, legal permanent residents, and those with valid work visas, many organizations that serve as subrecipients or contractors for local governments and their employees are likely to balk at new requirements that require local governments to collect and turn over to federal agencies any information about immigration status. If Section 200.303(f) goes into effect, these organizations may be chilled from contracting with local governments, limiting local governments' pool of potential subrecipients and contractors and thus likely resulting in greater costs to local governments for these projects and reduced access to individuals and entities with the local knowledge, experience, cultural competency, language ability, public trust, and other skills to serve local communities. Given the myriad ways that Section 200.303(f) will harm local governments, it should be removed from the Proposed Rule.

Similarly, Section 200.332(i) creates substantial uncertainty for local governments. The provision requires grantees to "[e]nsure that each subrecipient … does not take actions that could significantly damage the reputation of … the Federal agency making the award, or the Federal Government." § 200.332(i). It further provides that "[i]f the Federal agency determines that such significant reputational harm has occurred, it may … terminate the Federal award … ." *Id.* The Proposed Rule does not elaborate on what would amount to significant reputational damage, instead leaving the agency with complete discretion to decide. Local governments, whose direct

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[55] Cong. Budget Off., *Cost Estimate for H.R. 1772, the Legal Workforce Act* (Dec. 17, 2013), https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/hr17721.pdf.

federal grants often involve subawards, are left to speculate as to what actions by their subrecipients could jeopardize funding. Moreover, because grantees do not exercise complete control over their subrecipients, this provision creates an additional risk that local government grantees will have their grants terminated through no fault of their own. In short, this provision gives agencies the ability to arbitrarily punish grantees based on nearly any action by a subgrantee that the agency finds objectionable, further undermining local governments' ability to rely on stable federal grant funding. This provision should be removed from the Proposed Rule.

Section 200.305(c) requires that recipients must submit a written justification with every payment request. This too imposes an increased burden on many local governments and will necessitate additional city- or county-wide procedures, staff training, documentation standards, and compliance guidance. For local governments with numerous agencies that all together receive dozens of federal grants, such a requirement could become unworkable and should be withdrawn.[56]

Section 200.322(a) would significantly expand Buy America requirements, imposing substantial new costs on grantees with no analysis of any benefit. Indeed, OMB and the Regulating Agencies have failed to provide any estimate of the costs and benefits of the requirement at all—and the costs will be significant.[57] For example, when, in 2025, the Department of Transportation issued a rule amending the Federal Highway Administration's Buy America regulation to establish Buy America requirements for manufactured products with respect to Federal-aid highway projects, the agency estimated the total cost associated with the rule over ten years would be between $545 million and $8.466 billion.[58] The impact of applying Buy America requirements to all federal grants may be even larger, and this section should be removed from the Proposed Rule.

Finally, the new Section 200.219[59] purports to require public entities to take a lock-step approach to handling First Amendment protections at "events, meetings, or other expressive activities" with no carve-out for legitimate threat-assessment factors that may require different service levels to protect public safety. For example, a rally of violence-espousing firebrands may

[56] Similarly, the elimination of fixed amount awards and subawards under the Proposed Rule, *see, e.g.*, §§ 200.201, 200.333, means that entities currently receiving funding under this simplified mechanism will need to implement routine cost documentation, financial tracking, and reporting systems. This is a major operational shift—rather than receiving a flat amount and managing within that envelope, such entities will need to justify actual costs incurred and prove alignment with program goals for every payment request.

[57] The lack of a cost-benefit analysis appears to violate Executive Order 12866, which requires agencies to assess costs and benefits of regulations, and OMB's own guidance implementing that requirement, *see* Off. of Mgmt. & Budget, Circular A-4, *Regulatory Analysis* (Sept. 17, 2003), https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf.

[58] U.S. Gov't Accountability Off., *Department of Transportation, Federal Highway Administration: Buy America Requirements for Manufactured Products* (Jan, 29, 2025), https://www.gao.gov/assets/880/875017.pdf.

[59] Proposed Section 200.219(a) requires federally-funded public entities to "not discriminate on the basis of the viewpoint, content, or subject matter of speech" when "providing services for events, meetings, or other expressive activities." This prohibition applies to "events sponsored, hosted, or permitted by" such an entity "on property or facilities it owns, leases, or otherwise controls." § 200.219(c)(1).

call for a greater police presence than a similarly-sized rally of elementary school children due to risks of counter-protesters and real safety threats. The Proposed Rule threatens to place a straitjacket on local governments, for whom protecting public safety and welfare is core to their mission, by treating as "discriminatory" reasonable variations in public staffing. Section 200.219 is unsupported by the First Amendment, which allows reasonably-differential, viewpoint-neutral treatment of expressive activities. *See Seattle Mideast Awareness Campaign v. King County*, 781 F.3d 489, 499-503 (9th Cir. 2015) (allowing prohibition of bus ads in light of protestors' threats to disrupt bus routes). The provision would also impose these viewpoint-neutrality requirements for event services on property under a local government's control, regardless of whether any federal funds support the event itself. It would require local governments to monitor, regulate, and potentially restrict constitutionally protected activities on public property, creating significant additional costs and burdens. This provision should be withdrawn.

V. Potential Retroactive Application of the Proposed Rule

Nothing in the text of the Proposed Rule suggests that it applies retroactively to grants for which a grant agreement is signed prior to finalization of the Proposed Rule. Indeed, "[r]etroactivity is not favored in the law. Thus, … administrative rules will not be construed to have retroactive effect unless their language requires this result." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Moreover, even if OMB and the Regulating Agencies had the statutory authority to promulgate the Proposed Rule, they would lack the authority to do so retroactively. *See id.* ("[A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.").

Any effort to retroactively apply the Proposed Rule or to retroactively incorporate it into existing grant agreements without the consent of the grantees will amplify many of the other harms identified above.[60] Local governments are relying on the terms of their existing agreements to provide certainty about their compliance requirements going forward, and to know what circumstances might trigger a termination or suspension. Any attempt to apply or incorporate the Proposed Rule retroactively would cause substantial harm to grantees by upsetting their expectations and reasonable reliance regarding existing grants. It also would create due process concerns with respect to past services provided and activities performed in anticipation of future reimbursement without any notice of these retroactive provisions. As such, the Rule should make clear that it does not apply to grant agreements signed before its effective date.

[60] In anticipation of the Proposed Rule taking effect, at least one agency, HUD, has started including a term in certain grant agreement that reads, "If any previous or future amendments to 2 C.F.R. part 200 replace or renumber any part 200 section cited in HUD's regulations in Title 24 of the Code of Federal Regulations, the amended part 200 requirements will govern award activities carried out after the amendments' effective date." While this term limits applicability of the Proposed Rule to activities after the effective date, grantees must decide now whether to accept that term without knowing what the final version of the rule will look like.

VI. The Rule is Illegal *Ab Initio*: Neither OMB nor the Regulating Agencies Have Authority to Promulgate the Proposed Rule, nor To Circumvent the APA in Future

Despite the far-reaching and drastic changes that the Proposed Rule attempts to impose on longstanding, stable sources of public funding for the common good, OMB and the Regulating Agencies have failed to follow any semblance of the required process for rulemaking.[61] "Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab.*, 595 U.S. 109, 117 (2022). OMB primarily relies upon 31 U.S.C. § 503(a)(2) as its statutory authority for the Proposed Rule. *See* 91 Fed. Reg. at 32200-02. OMB dramatically overreads the authority granted by that statute. Section 503(a)(2) authorizes the Deputy Director for Management of OMB to "[p]rovide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements." Courts have previously rejected an expansive reading of this section, describing OMB's role as one of mere "oversight." *Nat'l Council of Nonprofits v. Off. of Mgmt. & Budget*, 775 F. Supp. 3d 100, 126 (D.D.C. 2025), *appeal filed*, No. 25-5148 (D.C. Cir. Apr. 25, 2025).

As described in more detail above, the Proposed Rule works a sea change in the policy of federal grantmaking, giving unprecedented control over award and termination decisions to the Executive Branch and codifying this Administration's substantive political preferences about gender, diversity, immigration, and so-called "anti-American values." It cannot plausibly be framed as "financial management policies." *Cf.* 31 U.S.C. § 503(a)(2). The plain text, legislative history, and context of Section 503 all make clear that the statute is designed merely to provide authority over financial reporting and management and similar internal controls.[62] It does not provide a blank check for OMB to set government-wide substantive policy simply because federal grantmaking is at issue. Nor does OMB make any serious attempt to explain how the sweeping nature of the Proposed Rule constitutes mere financial management policies.

The other statutes OMB relies on for authority likewise do not support OMB's position. 31 U.S.C. § 6307, by its terms, only allows OMB to issue "supplementary interpretive *guidelines*," not binding regulations (emphasis added). And none of the other statutes cited in the Proposed Rule provide the broad substantive authority OMB claims here. *See* 91 Fed. Reg. at 32201-02. The Proposed Rule should therefore be rescinded in its entirety, for OMB's and the Regulating

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[61] This Proposed Rule likely qualifies as a major rule under the Congressional Review Act (CRA), *see generally* 5 U.S.C. §§ 801-808: it is estimated to impact more than $1 trillion in federal grant funding, creates significant additional costs and compliance burdens on grantees across the spectrum, and represents a complete rework of the federal grantmaking apparatus. *See id.* § 804(2) (defining "major rule" based on similar factors). Under the CRA, OMB and the Regulating Agencies must follow heightened procedures, including cost-benefit reports, reporting to Congress, and a delayed effective date. The Proposed Rule appears to anticipate none of these added procedures, nor does it reflect any real analysis of the costs to both grantees and the economy from its effects.

[62] *See* H.R. Rep. No. 101-818, at 18 (1990); U.S. Gov't Accountability Off., GAO-20-566, *Federal Financial Management: Substantial Progress Made since Enactment of the 1990 CFO Act* (Aug. 2020), https://www.gao.gov/assets/gao-20-566.pdf.

Agencies' coordinated failure to follow appropriate rulemaking procedure, which would require each agency to independently set forth relevant and applicable statutory authorities for the Proposed Rule.

Although the Proposed Rule is captioned as a joint interagency rulemaking, the Regulating Agencies that purport to join the rulemaking do not address their own statutory authority to impose these changes. *See* 5 U.S.C. § 553(b)(2) ("[T]he notice [of proposed rulemaking] shall include … reference to the legal authority under which the rule is proposed."). Compounding this flaw, the Regulating Agencies also failed to consider or explain whether the policies embodied in the Proposed Rule are consistent with or contrary to congressional directives in each of their own grantmaking statutes. This omission is significant. As explained in Section III.C, many of the conditions set forth in the Proposed Rule conflict with express statutory requirements.

In addition to the Proposed Rule's failure to comply with basic administrative law requirements, it also attempts to evade future application of the APA. Proposed Section 200.110 provides that "once Federal agencies have issued regulations … adopting the OMB regulations in this part, the process for future updates of regulations in [this subtitle] will be complete each time OMB issues a final rule amending this part." This purports to remove the requirement under the APA that the Regulating Agencies engage in notice and comment rulemaking. *See* 5 U.S.C. § 553. Under the APA, however, only "interpretive rules, general statements of policy, and rules of agency organization" are exempt from notice and comment procedures. *Id.* § 553(b)(A). OMB has no authority to modify the APA's requirements prospectively. Nor does the guise of "efficiency" provide a rational basis for this change: local governments use federal funding for long-term projects, such as affordable housing construction and rehabilitation, with affordability covenants of as long as 55 years. Constantly changing administrative requirements at a whim, without seeking input from impacted partners, will increase the cost and complexity of managing projects that require stability. Proposed Section 200.110 should be eliminated.

VII. The Proposed Rule Fails to Reasonably Justify or Explain its Overhaul of Federal Grantmaking in Violation of the APA

Lastly, and in addition to the issues discussed above, the Proposed Rule violates the APA because OMB and the Regulating Agencies fail to provide reasoned decision-making or consider the far-reaching economic and public health and safety impacts on local governments and their residents, and local governments' substantial reliance interests on the stability of the federal grantmaking process. The unlawful, undefined, and vague terms littered throughout the Proposed Rule make it difficult, if not impossible, for local governments to reasonably comprehend or comply. Using the guise of "transparency, accountability, and proper oversight," *see* 91 Fed. Reg. at 32199, the Proposed Rule tries to skirt Congress's directives for federal funding and substitute the Administration's political and policy agenda instead. OMB and the Regulating Agencies contrive to do this without any reasonable attempt to adequately justify the consequences of this radical revamp of federal grantmaking, examine contrary evidence, or meaningfully consider narrower alternatives to meet their purported goals.

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For the foregoing reasons, the Proposed Rule should be rescinded in its entirety.

Sincerely,

Public Rights Project

The United States Conference of Mayors

The County of Alameda, California

The City of Albany, New York

The City of Albuquerque, New Mexico

Allegheny County, Pennsylvania

The City of Ann Arbor, Michigan

The City of Baltimore, Maryland

The City of Beaverton, Oregon

The City of Bellingham, Washington

The City of Bend, Oregon

The City of Berkeley, California

The City of Bloomington, Minnesota

The City of Boston, Massachusetts

The City and County of Broomfield, Colorado

The County of Bucks, Pennsylvania

The City of Burlington, Vermont

The City of Chicago, Illinois

The City of Cincinnati, Ohio

The City of Cleveland, Ohio

The City of Columbus, Ohio

Cuyahoga County, Ohio

The County of Dane, Wisconsin

The City and County of Denver, Colorado

Hennepin County, Minnesota

The City of Los Angeles, California

The County of Los Angeles, California

The City of Madison, Wisconsin

The County of Marin, California

Martin Luther King, Jr. County, Washington

The City of Minneapolis, Minnesota

The County of Monroe, New York

The Metropolitan Government of Nashville and Davidson County, Tennessee

The City of New Haven, Connecticut

The City of New York, New York

The City of Pasadena, California

Pierce County, Washington

The Pima County Board of Supervisors, Arizona

The City of Pittsburgh, Pennsylvania

The City of Portland, Oregon

Port of Seattle, Washington

Ramsey County, Minnesota

The City of Rawlins, Wyoming

The City of Rochester, New York

The City of Sacramento, California

The City of San Diego, California

The City and County of San Francisco, California

The City of Saint Paul, Minnesota

The City of San José, California

The County of San Mateo, California

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The County of Santa Clara, California

The City of Santa Monica, California

The City of Seattle, Washington

The County of Snohomish, Washington

The County of Sonoma, California

The City of Tucson, Arizona

Mark Levine
New York City Comptroller, New York

Neil Makhija
Commissioner, Board of Commissioners of Montgomery County, Pennsylvania

Ryan Richardson
City Attorney, City of Oakland, California

Jamila Winder
Chair, Board of Commissioners of Montgomery County, Pennsylvania

ATTACHMENT D

Appendix A - Regulating Agencies

Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814

Corporation for National and Community Service (AmeriCorps)
250 E Street SW
Washington, DC 20525

Department of Agriculture
1400 Independence Ave., SW
Washington, DC 20250

Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

Department of Housing and Urban Development
Robert C. Weaver Federal Building
451 7th Street, SW
Washington, DC 20410

Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Department of the Interior
1849 C Street, NW
Washington DC 20240

Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

National Endowment for the Humanities
400 7th Street, SW
Washington, DC 20506

Department of Labor
Frances Perkins Building
200 Constitution Ave NW
Washington, DC 20210

National Science Foundation
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Delta Regional Authority
236 Sharkey Avenue, Suite 400
Clarksdale, MS 38614

Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Department of Defense
1400 Defense Pentagon
Washington, DC 20301-1