ROPES & GRAY

OMB PROPOSED REVISIONS TO THE UNIFORM GUIDANCE FOR FEDERAL GRANTS: GUIDE TO PREPARING AND SUBMITTING PUBLIC COMMENTS

June 22, 2026

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I. Introduction

On May 29, 2026, the Office of Management and Budget (OMB), joined by nearly 50 federal award-making agencies published a proposed rule entitled "Regulation for Federal Financial Assistance" (the "Proposed Rule"), which would comprehensively revise 2 C.F.R. Part 200—the "Uniform Guidance"—the government-wide framework governing federal grants, cooperative agreements, and other forms of federal financial assistance. If finalized, the Proposed Rule would take effect on **October 1, 2026**.

The changes in the Proposed Rule carry substantial operational, compliance, and financial implications for institutions that depend on federal funding to support research, education, health care delivery, and public service missions. For some institutions, overhauling the research administration framework in response to the Proposed Rule, if adopted as proposed, would require substantial reorientation of compliance systems, with limited transition time.

Key themes of the Proposed Rule include:

- **Structural overhaul**—reclassifying Part 200 as binding "regulation."
- **Political review mechanisms**—embedding senior political appointees throughout the award administration process and inserting vague and subjective funding criteria into the merit review process, including evaluation of whether an award advances "the President's policy priorities" and does not promote "anti-American values."
- **Expanded enforcement discretion**—granting funding agencies broad authority to terminate or suspend discretionary awards.
- **Executive order codification**—incorporating DEI restrictions, "gender ideology" prohibitions, "Gold Standard Science" mandates, and "domestic-first" requirements.
- **Foreign collaboration restrictions**—prohibiting collaborations with covered foreign entities unless a compelling interest to support.
- **Subrecipient monitoring**—expanding pass-through entity obligations and creating new termination rights for noncompliance with such requirements.
- **Cost restrictions**—narrowing allowable costs for publications, conferences, memberships, and other cost categories.

Individuals and institutions may submit comments on the Proposed Rule through **July 13, 2026**, identifying implementation challenges, operational burdens, legal concerns, reliance interests, or unintended consequences for OMB's consideration before the rule is finalized. We know that many potential commenters requested an extension of the comment period, as the extensive proposed revisions arguably warrant a longer comment period, such as 180 days; however, to our knowledge, OMB has denied those requests for extension. Nonetheless, commenters may consider requesting an extension of the effective date of any finalized revisions, as the three-and-a-half month period between close of comments and the proposed October 1, 2026 effective date would seem insufficient to allow OMB to review carefully all comments received (over 37,000 as of the publication date of this Comment Guide) and for the awardee community to prepare itself for compliance with the finalized revisions.

This Comment Guide provides a framework for colleges and universities, academic medical centers, other research institutions, as well as their respective faculty and staff, preparing comments to the Proposed Rule. It is designed to help institutions develop effective, substantive comments that will become part of the administrative record that OMB must consider in finalizing the rule.

While this Comment Guide focuses on the interests of those conducting federally funded *research*, we acknowledge that the Proposed Rule has implications for any entity or individual carrying out projects supported by federal grants, cooperative agreements, or other agreements that are subject to the Uniform Guidance—including activities that are *not research*, such as demonstration projects. Those non-grant awardees may find the issues flagged herein to be of use in forming their own comments to the Proposed Rule.

II. Instructions

Step 1: Assemble a Cross-Functional Team

Given the breadth of the Proposed Rule, institutional commenters should, as possible, convene a cross-functional team—including representatives from research administration, sponsored programs, general counsel, compliance, government relations, and finance—to assess operational, compliance, and financial implications, thereby ensuring a coordinated institutional response.

Step 2: Identify Priority Provisions and Draft Your Comment

OMB requests comments on all aspects of the Proposed Rule, but institutions need not address every proposed revision. Instead, we suggest focusing on provisions most consequential to your institution's operations, research enterprise, and mission.

Effective institutional comments should:

- **Reference specific provisions.** Begin each comment with the relevant section number in brackets (*e.g.*, "[§ 200.340]" for comments on 2 C.F.R. § 200.340).
- **Provide concrete evidence.** Where possible, quantify and provide examples of the operational, financial, and administrative effects of each provision on which you comment.
- **Describe reliance interests.** Describe investments, staffing decisions, infrastructure, or compliance systems developed in reliance on current requirements that would be affected by the Proposed Rule.
- **Offer constructive alternatives and agree where/if you can.** Where you voice opposition to concerns about a provision, it is fine to suggest its wholesale deletion; however, if possible, it is useful to suggest specific modifications that would address your concerns (even if only in part) in the event that provision is not removed from the final rule. There may be proposed revisions with which you or your institution agree in whole or in part, and it is useful for OMB to hear those perspectives as well.

Step 3: Submit Your Comment

Deadline is 11:59 p.m. ET on July 13, 2026. Late comments will be considered "only to the extent practicable."

Comments must be submitted electronically through www.regulations.gov (docket number OMB-2026-0034). Comments exceeding 5,000 characters (including spaces) should be uploaded as an attachment. Confidential business information should not be included, as all comments become part of the public record.

You should retain a copy of your submission for your records, as well as confirmation that your comments were received.

III. Key Provisions and Issues for Comment[1]

a. Guidance to Regulation

[§§ 200.101(d)(2), 200.106, 200.110(a)] Regulatory Status	
OMB Proposal	OMB would reclassify 2 C.F.R. Part 200 from OMB "guidance" to a **binding OMB "regulation" with direct regulatory effect**. Once finalized, future OMB amendments would apply government-wide on the effective date without requiring each federal agency to adopt the amendments through its own separate rulemaking process.[2]
OMB Rationale	Current classification as "guidance, not regulation" has caused "questions and uncertainty in the Federal grants community" and is "generally inconsistent with the history of agency implementation."[3] OMB notes that secondary agency rulemakings generally have not occurred or are not timely and are redundant, create long administrative delays, drain agency resources, and undermine the goal of government-wide uniformity.[4] "Agencies will remain partners with OMB in the process for future amendments by participating in OMB's development of proposed policy changes."[5]
Issues	▪ **STATUTORY AUTHORITY QUESTIONS:** The statutes to which OMB cites historically have authorized OMB to direct federal agencies on financial management matters, not to regulate award recipients directly.[6] Absent express congressional authorization, the reclassification likely exceeds OMB's delegated authority. This concern is particularly strong for future amendments, which will apply even if federal agencies do not adopt rules conforming to OMB's amendments. Further, there is a question of whether it is permissible for agencies to revise their respective provisions at Subpart B so that they functionally are delegating their own rulemaking power to OMB. ▪ **AGENCY CONTRIBUTIONS UNCLEAR:** OMB does not explain how agency-level expertise or recipient feedback will be meaningfully considered in future OMB rulemakings, after rulemaking authority has been centralized within OMB as proposed. OMB's notice-and-comment process is necessarily high level and may not address or accommodate granular, agency-specific issues that only emerge when an agency translates requirements into operational practice for its particular awardee community and elects to modify or supplement the Uniform Guidance. The proposal eliminates this layered feedback opportunity without explaining whether OMB's existing or planned rulemaking procedures are adequate to substitute for it.

[1] The tables are not intended to be exhaustive. Some proposed provisions are not addressed here, but they may still raise important issues that clients should consider commenting on depending on their particular circumstances.
[2] 91 Fed. Reg. at 32,205-07.
[3] 91 Fed. Reg. at 32,205-06.
[4] *Id.*
[5] 91 Fed. Reg. at 32,206.
[6] *See, e.g.*, 31 U.S.C. § 503(a)(2) (the Deputy Director for Management shall "[p]rovide overall direction and leadership to the executive branch on financial management matters"); 31 U.S.C. § 6307 (providing that "the Director of the [OMB] may . . . issue supplementary interpretative *guidelines* to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements") (emphasis added).

b. New Application Review Processes; Flexibility in Applying Specific Conditions

[§ 200.205(b)] Pre-Issuance Review by Senior Appointees[7]	
OMB Proposal	Federal agencies would designate **senior political appointees** to conduct a pre-issuance review of all discretionary awards and, in doing so, **apply certain principles**, including, without limitation, ensuring that awarded projects advance "the President's policy priorities"; do not promote "anti-American values"; and comply with "Gold Standard Science" policies, procedures, and guidance.[8] Preference also would be given to institutions with lower indirect cost (IDC) rates, and an institution's commitment to "rigorous, reproducible scholarship" would be prioritized over "reputation or perceived prestige." "**Peer review recommendations [would] remain advisory**" and senior political appointees would not "ministerially ratify" or "routinely defer to" peer review."[9]
OMB Rationale	"These proposed updates are intended to enhance **consistency** across agencies, **accountability**, and **alignment** of Federal awards **with administration priorities**, while also reducing the risk of award being made contrary to statutory or policy requirements."[10]
Issues	▪ **SUBORDINATION OF SCIENTIFIC MERIT:** Senior political appointees would be allowed to override peer review processes by employing "independent judgment" based on certain non-scientific priorities. This subordinates scientific merit to political and ideological goals, conflicting with Congress's intent that federal research programs advance scientific knowledge based on merit.[11] The Proposed Rule also includes no requirement that agencies document the application of their independent judgment to funding decisions, thereby decreasing transparency in the merit review process. ▪ **POTENTIAL ADMINISTRATIVE DELAY:** The additional layer of senior political appointee review may significantly slow award funding approvals. The Proposed Rule does not address how agencies will staff these review functions, what timelines will apply, how this review will interact with existing merit review timelines, or how the process will affect time-sensitive research. ▪ **UNDEFINED, SUBJECTIVE CRITERIA:** Senior political appointees would be asked to apply regulatory language with no objective or fixed meaning—*e.g.*, "the President's policy priorities" and "anti-American values." Such undefined, subjective terminology does not provide a clear standard on which appointees could reasonably judge award applications, and would introduce variation in agency review, both within and across agencies and specific reviewers. Without further description, these terms undermine OMB's stated goals of improving transparency and consistency across agencies. Although favoring institutions that enforce research integrity standards is a legitimate objective, OMB provides no metrics or standards for measuring such compliance, and relying on publicly available information about an institution's compliance (*e.g.*, publicized research misconduct cases) is not a reliable indicator of the institution's internal processes to deal with and promote research integrity. ▪ **INSTABILITY ACROSS ADMINISTRATIONS; POTENTIAL WASTE OF TAXPAYER FUNDS:** With potentially drastic shifts in senior political appointees and priorities from

[7] 91 Fed. Reg. at 32,249.
[8] Exec. Order No. 14,303, 90 Fed. Reg. 22,601 (May 29, 2025), *available at* https://www.federalregister.gov/documents/2025/05/29/2025-09802/restoring-gold-standard-science.
[9] 91 Fed. Reg. at 32,249.
[10] 91 Fed. Reg. at 32,212.
[11] *See* 42 U.S.C. § 1862s (requiring NSF to maintain intellectual merit criteria as the basis for evaluating proposals); 42 U.S.C. § 282(m)(2), (b)(5)-(6) (requiring scientifically based strategic planning to support research priorities).

[§ 200.205(b)] Pre-Issuance Review by Senior Appointees[7]	
	administration to administration, aligning federal awards with "administration priorities" would hinder awardees' ability to engage in meaningful planning. Coupled with other proposed changes (*e.g.*, discretionary agency termination), this framework likely would result in projects championed by the current administration being overturned by a future administration with differing priorities, resulting in mid-project terminations and waste of taxpayer funds on incomplete projects. ▪ **DISREGARD FOR FEDERALLY NEGOTIATED IDC RATES:** Preference for lower IDC rates disregards federally negotiated rates and their underlying agreements, which rates and agreements reflect actual, documented costs. Such preference penalizes institutions for factors unrelated to research quality or efficiency. If maintained, OMB should clarify how "lower" will be assessed given that IDC rates may vary widely across different applicant pools.

[§ 200.206(b)] Expanded Risk Assessment Factors	
OMB Proposal	OMB would significantly expand the factors agencies may consider when evaluating applicant risk, including, without limitation: a "**history of questionable practices**" based on "**publicly available and verifiable information**" (including plagiarism, discredited studies, and activities "inconsistent with Federal civil rights laws" or "religious liberty laws"); "**membership in or affiliation with**" organizations that violate federal law, **undermine public safety or national security, or advocate for U.S. government's overthrow**; and for higher education institutions, **compliance with Section 117** foreign gift and contract disclosure requirements.[12]
OMB Rationale	Revisions are "intended to provide agencies with clearer authority to evaluate financial and organizational capacity, integrity, and institutional affiliations in order to mitigate risks and protect the integrity of Federal programs."[13]
Issues	▪ **RELIANCE ON PUBLICLY AVAILABLE INFORMATION:** Use of "publicly available and verifiable information" to assess "questionable practices" has the potential to introduce unreliable evidence into the risk assessment process.[14] Media reports, advocacy materials, social media posts, and other publicly available materials often lack context or may reflect contested characterizations, or are just calling attention to cases that came to light due to appropriate institutional scrutiny. This in effect could penalize institutions that have robust compliance infrastructures that regularly detect research misconduct. OMB should clarify what sources may be accessed by agencies and how agencies will assess the veracity of those sources. Agencies also should be required to notify applicants when their submissions are rejected due to "questionable practices," specifically stating what those practices are and what information OMB used to reach its decision, thereby promoting OMB's goal of transparency and allowing institutions to defend themselves against any unwarranted or inaccurate perceptions of reviewers. ▪ **UNSETTLED LEGAL STANDARDS:** Inclusion of activities "inconsistent with Federal civil rights laws" and "religious liberty laws" as risk factors is problematic because these legal standards are unsettled and subject to active litigation. Applying risk-based consequences based on unresolved legal standards denies institutions fair notice.

[12] 91 Fed. Reg. at 32,212, 32,250.
[13] 91 Fed. Reg. at 32,212.
[14] *Id*.

[§ 200.206(b)] Expanded Risk Assessment Factors	
	Furthermore, such legal standards are subject to changes in interpretation from administration to administration, which ultimately results in the unfair punishment of institutions that took actions required or encouraged by a prior administration. ▪ **Unconstitutionally Vague Use of Terms—"Memberships and Affiliations," "History of Questionable Practices," and "Undermining" Public Safety**: Research institutions maintain extensive networks of affiliations with professional societies, international consortia, collaborative networks, and research institutions in many countries that may or may not be "countries of concern." OMB should define what constitutes an "affiliation," and clarify whether individual faculty member affiliations are imputed to the institution and what level of connection or affiliation triggers the risk factor**.** OMB's standard is unworkable for institutions and their faculty/staff who are engaged in thousands of collaborative relationships. Similarly, the term "history of questionable practices" is unconstitutionally vague even though OMB provides some examples of such practices, giving federal agencies unfettered discretion to determine that an applicant should be disadvantaged on that basis. The standard for "discrediting" a study based on publicly available information is equally unclear, as OMB does not specify what sources or level of criticism would suffice to deem a study discredited. Further, the concept of research "undermining" public safety or national security is susceptible to arbitrary application. Research examining law enforcement practices, for example, could be characterized as undermining public safety depending on the reviewer's perspective. These vague standards violate the Fifth Amendment's due process requirement that regulated parties have fair notice of prohibited conduct. ▪ **Lookback Period Undefined for "History of Questionable Practices":** OMB should define a lookback period for the risk factor "history of questionable practices." As currently proposed, any questionable practice (which, as noted above, is a vague term) for any prior period of time could be used to assess risk posed by an applicant, even if it occurred in the remote past, does not reflect current institutional culture or compliance, and is unrelated to the goals of the federal award program. ▪ **Lookback Period and Scope of Noncompliance Undefined for Section 117 Compliance:** OMB should define a lookback period for assessing Section 117 compliance history. Without temporal limits, an institution's compliance record from any prior period—regardless of how dated or unrepresentative of current practices—could be used to elevate its risk profile. OMB also should clarify what level of noncompliance triggers the risk factor; technical noncompliance—such as minor misidentification of a foreign source when the gift or contract was timely disclosed—should be distinguished from substantive reporting failures.

[§ 200.208] Specific Conditions Authority	
OMB Proposal	OMB would expand agency authority to impose, adjust, and remove specific conditions throughout the project period of performance. Key changes include, without limitation: express authorization to **add or remove conditions** mid-award based on enumerated risk factors **within 15 calendar days**; **expanded examples of conditions**, including payment information requirements and "financial integrity-related site visits"; new "**program-level specific conditions**" when agencies determine "elevated programmatic risk"; and

[§ 200.208] Specific Conditions Authority	
	deletion of the existing requirement that conditions be "promptly removed once the conditions that prompted them have been satisfied."[15]
OMB Rationale	Revisions "provide agencies with greater flexibility to manage risk during award administration while establishing safeguards related to transparency and fairness" and give agencies "more practical tools to address risk identified during the administration of Federal awards."[16]
Issues	▪ **REMOVAL OF CONDITION SUNSET REQUIREMENT:** Eliminating the requirement that conditions be promptly removed once triggering factors are satisfied creates a one-way ratchet; conditions can be imposed within 15 days but need never be removed.[17] This asymmetry undermines the fundamental purpose of specific conditions as targeted remediation tools. OMB should not eliminate this existing safeguard, or in the alternative, should implement a process by which recipients may petition for the removal of the specific conditions after addressing the triggering factors. ▪ **PROGRAM-LEVEL CONDITIONS:** New authority to impose "program-level specific conditions" when "elevated programmatic risk" is identified allows agencies to apply additional burdens across entire programs based on general risk assessments.[18] OMB should define "elevated programmatic risk," explain what triggers would justify program-wide conditions, and institute a process by which recipients can challenge the imposition of such program-level conditions. ▪ **EXPANDED MONITORING AND ADMINISTRATIVE BURDEN:** Expanded condition examples may significantly increase administrative burden and compliance costs. OMB should require that any mid-award conditions added by an agency are proportionate to the identified risks, and should take into consideration the financial resources institutions will need to implement such expanded conditions. Fifteen calendar days to implement a new specific condition mid-award may not be sufficient time for recipients, depending on the condition and whether the awardee has the immediately available resources to comply at the time of imposition. Federal agencies should have flexibility to implement their own timeframes appropriate for their own award communities, although OMB could provide a floor (*e.g.*, 30 days).

c. Enhanced Discretionary Termination Authority; New Suspension Authority

[§§ 200.340, 200.342] Expanded Termination Authority	
OMB Proposal	Agencies or pass-through entities would be able to terminate a federal award, in part or in full, if the agency determines termination is **in the interest of the federal agency or pass-through entity**, including where the award "does not effectuate program goals, Federal agency priorities, or **the national interest** as they exist **at the time of the termination**."[19] Agencies would not be required to allow awardees the rights to **object, request hearings, or appeal** except in the case of termination for noncompliance. However, if the awardee believes the termination was unlawful, it could raise the concern

[15] 91 Fed. Reg. at 32,213, 32,250.
[16] 91 Fed. Reg. at 32,213.
[17] *Id.*
[18] *Id.*
[19] 91 Fed. Reg. at 32,226, 32,230, 32,358.

[§§ 200.340, 200.342] Expanded Termination Authority	
	in the U.S. Court of Federal Claims.[20] Termination notices must be provided for discretionary terminations, but may be brief, and the reasons provided for termination may apply to "**a class of awards**," rather than the specific award being terminated, and agencies **need not provide "a detailed or exhaustive analysis**."[21]
OMB Rationale	Revisions "clarify the existing regulatory text" and "ensure that Federal agencies retain ongoing programmatic discretion after an award is made, consistent with law, to terminate a discretionary award that is not effective at achieving program goals or Federal agency priorities, or that an agency otherwise determines is no longer in the Federal Government's interest."[22] OMB has indicated its intent to align the administration of grants and cooperative agreements more closely with federal contracts, drawing on principles from the Federal Acquisition Regulation (the "FAR").[23]
Issues	▪ **LACK OF ANALYTICAL FRAMEWORK; UNDEFINED STANDARDS:** The Proposed Rule provides no objective criteria or structured procedures for determining that an award "does not effectuate program goals, Federal agency priorities, or the national interest."[24] Accordingly, the authority is effectively unreviewable and replicates the deficiency that previously led a federal court to find NIH's mass grant terminations "breathtakingly arbitrary and capricious."[25] ▪ **GRANTS/COOPERATIVE AGREEMENTS ARE NOT CONTRACTS:** The Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. § 6301 *et seq.*) establishes a statutory distinction between assistance instruments (grants and cooperative agreements) and procurement contracts, mandating that agencies use the appropriate instrument based on the principal purpose of the relationship.[26] The roles of a subawardee and a vendor are fundamentally different. OMB's proposal to import FAR-style termination authority into the Uniform Guidance framework conflates these legally distinct instruments and ignores the different legal regimes Congress established to govern each. This proposal would effectively turn grants, which respect the independent judgment of scientists and their institutions, into service contracts, which together with the agency powers created under the Proposed Rule could obviate independent science. ▪ **CONGRESSIONAL MANDATES AND IMPOUNDMENT CONTROL ACT QUESTIONS:** Federal awards are granted in furtherance of congressionally mandated agency strategic plans. Terminating awards mid-performance based on shifting policy preferences "at the time of the termination"—unrelated to the statutory priorities under which awards were made—raises questions about consistency with the separation of powers and the Impoundment Control Act, which limits executive authority to withhold congressionally appropriated funds, assuming that the terminations occur on a mass scale and the withheld funds otherwise are not used for other purposes.

[20] 91 Fed. Reg. at 32,228.
[21] 91 Fed. Reg. at 32,260.
[22] 91 Fed. Reg. at 32,204-05.
[23] 91 Fed. Reg. at 32,225, 32,227.
[24] 91 Fed. Reg. at 32,226, 32,230, 32,358.
[25] *American Public Health Association v. National Institutes of Health*, 1:25-cv-10787 (D. Mass. 2025).
[26] The principal purpose of procurement contracts is "to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government," while the principal purpose of grant agreements is "to transfer a thing of value to the . . . recipient to carry out a public purpose of support or stimulation authorized by the 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." 42 U.S.C. §§ 6303, 6304.

[§§ 200.340, 200.342] Expanded Termination Authority	
	▪ **DISCRETIONARY APPLICATION OF PROCEDURAL PROTECTIONS:** The potentially sole remedy of litigation in the U.S. Court of Federal Claims is expensive, time-consuming, and beyond the practical capacity of many institutions. Monetary damages cannot restore a terminated research program, its personnel, or its scientific progress, and do not account for an awardee's reliance interest on a long-term award. ▪ **CHILLING EFFECT ON PROTECTED ACTIVITY; INSTABILITY ACROSS ADMINISTRATIONS:** The breadth and vagueness of these termination standards—particularly the undefined "national interest" criterion—may deter institutions from engaging in legitimate but politically sensitive research. With priorities shifting from administration to administration, institutions practically cannot design projects guaranteed to remain aligned with agency policy preferences, especially in a highly polarized political environment, which also creates a significant possibility of a waste of taxpayer funds. ▪ **CRITICAL AMBIGUITY REGARDING EXISTING AWARDS:** The proposal applies to "new awards and amendments" after the effective date, but the term "amendments" is undefined.[27] Routine administrative modifications—budget changes, no-cost extensions, carryover requests—should not be construed as "amendments" triggering the new termination authority for existing multi-year awards.

[§ 200.340] New Suspension Authority	
OMB Proposal	Agencies and pass-through entities would have authority to issue written orders **temporarily suspending** a federal award, in part or in in full, for **up to 90 days** (or longer by mutual agreement) if they determine suspension is "**in [their] interest**."[28] During suspension, recipients must minimize costs allocable to suspended activities, and the agency may proceed to terminate. If resumed, **the agency "should [not must] consider and attempt to resolve" budgetary or schedule impacts**.[29]
OMB Rationale	Revisions are modeled on "parallel procedures for procurement contracts under the FAR" and are "intended to ensure that Federal agencies and pass-through entities have all the necessary resources available to provide effective monitoring and oversight of Federal awards."[30] Temporary suspensions are "sometimes necessary to protect the Federal interest."[31]
Issues	▪ **SEVERE OPERATIONAL DISRUPTION:** A 90-day suspension can cause significant disruption to research timelines, personnel retention (*e.g.*, graduate students and postdoctoral researchers), and procurement schedules. Equipment orders may be canceled, animal colonies sacrificed, and clinical trial participants may be lost to follow-up or continued for safety reasons while continuing to incur costs without immediate reimbursement—disruptions that can set programs back by years, far exceeding the suspension period itself. ▪ **COST MITIGATION WITHOUT RECOVERY GUARANTEE:** Recipients must minimize costs during suspension but have no guarantee of reimbursement for unavoidable

[27] 91 Fed. Reg. at 32,235.
[28] 91 Fed. Reg. at 32,259.
[29] *Id.*
[30] 91 Fed. Reg. at 32,225, 32,227.
[31] 91 Fed. Reg. at 32,227.

[§ 200.340] New Suspension Authority	
	expenses such as personnel costs for key employees, lease obligations, and maintenance of specialized equipment. The proposal leaves recipients to bear costs without certainty of recovery. ▪ **ABSENCE OF PROCEDURAL PROTECTIONS:** Any suspension process should require written notice to recipients identifying the specific basis for suspension, an opportunity to respond, and a timeline for agency action. If finalized, OMB should address what happens to reporting deadlines, deliverable schedules, or period-of-performance clocks during suspension. ▪ **INAPT FAR ANALOGY**: The analogous FAR stop-work order provisions were designed for procurement contracts involving a bilateral contracting relationship established with equitable adjustment and termination-for-convenience cost recovery mechanisms.[32] Federal awards subject to the Uniform Guidance lack these features, and borrowing the suspension mechanism without the corresponding cost-protection framework is inappropriate and leaves recipients in a materially worse position than government contractors facing a comparable stop-work order under the FAR.

d. Domestic-First Framework; Foreign Collaboration Restrictions

[§ 200.202(e)] Eligibility of Entities for Research and Development (R&D) Awards	
OMB Proposal	OMB would establish a "domestic-first framework" requiring R&D awards be made only to entities organized under U.S., state, or tribal law. R&D awards to foreign entities are **prohibited except where authorized by statute or** where the senior political appointee determines that **a "compelling interest"** exists in support of the agency's mission and interests, the administration's priorities, and the U.S. "International elements" **may not be included unless** the agency determines they are justified, consistent with program objectives, and in the national interest.[33]
OMB Rationale	Seeks to "strengthen alignment between Federal research and development funding and national priorities, enhance consistency across grant-making agencies, and clarify expectations for applicants, while preserving appropriate flexibility to support international engagement that demonstrably advances the interests of the United States."[34]
Issues	▪ **IMPEDIMENT TO LEGITIMATE INTERNATIONAL COLLABORATION:** Significant scientific challenges require international collaboration. The requirement that "international elements" be justified and approved by a senior political appointee may delay or discourage legitimate partnerships that would otherwise provide access to unique expertise, facilities, data, or study populations that could invigorate the U.S. scientific enterprise. ▪ **UNDEFINED STANDARDS:** The terminology to be applied by senior political appointee reviewers—"compelling interest," "national interest," and "justified"—lack objective criteria, creating uncertainty for institutions planning research programs with international components and raising concerns about arbitrary or inconsistent application across and within agencies.

[32] *See, e.g.*, FAR §§ 52.242-14, 52.242-15.
[33] 91 Fed. Reg. at 32,211, 32,247. Under the Proposed Rule, "international elements may include performance of activities under the Federal award outside of the United States or by a foreign entity." 91 Fed. Reg. at 32,247.
[34] 91 Fed. Reg. at 32,211.

[§ 200.220] Prohibition of Using Federal Funds for Covered Foreign Collaborations	
OMB Proposal	OMB would expand **Wolf Amendment-type restrictions beyond NASA to all federal agencies** by prohibiting direct and indirect federal funding in support of a bilateral or multilateral collaboration or activity with a "covered foreign country" or "covered foreign entity"—not just China. Agencies may authorize an exception if the activity "does not pose a risk to national security and is in the national interest."[35]
OMB Rationale	States "that a uniform regulatory standard that provides consistent application of these restrictions across Federal assistance programs would reduce risk related to national security and program integrity."[36]
Issues	▪ **UNDEFINED STANDARDS:** "Collaboration" and "activity" are undefined. Institutions need to understand whether co-authorship, data- or material-sharing, conference participation, or informal scholarly exchanges are considered prohibited collaborations or activities. ▪ **SCOPE EXPANSION:** The Wolf Amendment permits *multilateral* collaborations with entities in China, even though prohibiting bilateral collaborations with China-based entities; the Proposed Rule eliminates this multilateral exception without explanation, and covers *all* "covered" foreign countries and entities, not just those in China. For U.S. researchers to participate in international scientific organizations in which a covered foreign country also participates might be viewed as a prohibited multilateral collaboration, thus discouraging U.S. researchers and institutions from engaging in valuable scientific dialogue with peers outside the U.S. that would be valuable to the U.S. researchers. Also, the proposed prohibition applies to indirect costs allocable to such collaborations meaning a collaboration may be prohibited even if the activity receives no direct federal funding. ▪ **DUE DILIGENCE CHALLENGES:** "Covered foreign entity" includes an entity "owned or controlled by" or "affiliated with the military, intelligence or security services" of a covered foreign country. Yet in these countries of concern, most significant scientific entities could have some degree of government connection, and due to lack of transparency, it is often nearly impossible to discern degree of connection between an entity, such as a business corporation, to the foreign government. There are also many instances in which a China-based corporation, for example, has an independent or quasi-independent E.U. or U.S. affiliate, and it is impossible under the proposal to understand the limits of what entities may be regarded as "covered." ▪ **NO TRANSITION PERIOD:** Provides no transition period for existing international collaboration. Abrupt termination of joint projects could disrupt scientific progress, harm research subjects, and waste federal investments.

[35] *Id.*
[36] 91 Fed. Reg. at 32,253.

e. Subaward Management

[§§ 200.331(c), 200.332(h)] Transfers to Related Entities	
OMB Proposal	Pass-through entities would no longer be able to treat payments to "**affiliates, subsidiaries, or other related entities that are separate legal persons**" as **internal transfers**. Pass-through entities would be required to evaluate whether all such parties are **subawardees or contractors**.[37] Misclassification of a transfer to a related entity could trigger SAM.gov reporting deficiencies and provide a basis for award termination.[38]
OMB Rationale	The purpose is to "ensure accountability and transparency in circumstances involving related parties and prevent circumvention of Federal reporting requirements."[39]
Issues	▪ **RECLASSIFICATION BURDEN:** Requiring pass-through entities to evaluate all separate legal entities involved in their award activities represents a substantial administrative burden for pass-through entities, particularly in relation to subsidiaries that are wholly owned (and, therefore, controlled) by those pass-through entities. For example, many prime award recipients have created legally separate research foundations that are wholly owned subsidiaries of those recipients, with the foundations managing research finance and similar administrative functions in support of the prime recipients' research activities; such research foundations do not operate in a typical subrecipient or contractor role, under the oversight and control of the prime awardee, yet the Proposed Rule would require their classification as such and that such classification be reported to SAM.gov. As presently drafted, this proposed change would increase, not decrease, administrative burden on award recipients, with unclear effect on award transparency given that pass-through entities already are required to report on the activities of and payments to separate legal persons that function in typical subrecipient and contractor roles. To the extent OMB retains this requirements, OMB should define "affiliates," "subsidiaries," or "related entities" with sufficient specificity, taking into account the diversity of organizational structures amongst and within award recipients, including the above-noted wholly owned subsidiary example, and should note how these terms may sweep in entities that historically would not have been evaluated as a subrecipient or contractor. Also, sufficient transition time would be needed to reclassify internal transfers to separate legal entities that are not currently classified as subawards or contracts. ▪ **ELEVATED MISCLASSIFICATION CONSEQUENCES:** Award termination because of a misclassification of a transfer to a related entity is a consequence disproportionate to an administrative categorization question. Good-faith classification errors should not create False Claims Act exposure.

[37] 91 Fed. Reg. at 32,257.
[38] 91 Fed. Reg. at 32,258.
[39] 91 Fed. Reg. at 32,225.

[§ 200.331(i)] Subrecipient Damage to Reputation	
OMB Proposal	Pass-through entities would be required to "**ensure**" that subrecipients do not take "**actions that could significantly damage the reputation**" of the pass-through entity, the federal agency, or the federal government.[40] If such actions occur, the pass-through entity would be required to consult with the federal agency about possible subaward termination. The agency may then direct the pass-through to **terminate the subaward** or the agency may **terminate the prime award**.[41]
OMB Rationale	This provision "would ensure accountability for reputational risk that may undermine public trust in Federal award programs." 91 Fed. Reg. at 32,225.
Issues	▪ **UNCONSTITUTIONALLY VAGUE STANDARD:** "Actions that could significantly damage the reputation" is undefined, entirely subjective, and unconstitutionally vague under the Fifth Amendment. This standard provides no objective criteria by which institutions can conform their conduct, and federal funding agencies are given unbounded discretion to penalize disfavored speech or research. The standard conflicts with First Amendment protections for speech and academic freedom by imposing consequences for research findings, public statements, or academic publications that are politically disfavored, regardless of whether they have any direct relation to the federally funded project. This provision appears designed to chill legitimate academic inquiry and protected speech by subjecting institutions to viewpoint-based punishment for engaging in constitutionally protected activities. Furthermore, because the standard does not include a defined lookback period, it is unclear whether subrecipient actions from decades prior could negatively impact the subaward or the prime award itself, creating an impermissibly retroactive standard that compounds the constitutional infirmities. ▪ **GUARANTOR LIABILITY AND CASCADING TERMINATION RISK:** The word "ensure" imposes guarantor liability on pass-through entities for subrecipient actions beyond their control. A subrecipient's conduct or even one faculty or staff member at a subrecipient could jeopardize the pass-through entity's entire federal award. If this provision is retained in the final rule, it should be narrowed to require a direct connection between the objectionable conduct and the federal funds received, and should preclude termination where the pass-through entity demonstrates reasonable compliance with existing subrecipient monitoring requirements. Absent such limitations, the provision is unreasonably broad, could be used to penalize institutions for isolated incidents that are out of a pass-through entity's control and/or are unrelated to award performance. Further, this would incentivize agencies to terminate funding without regard to the prime awardee's own level of diligence, and without regard to the scope of the underlying subrecipient misconduct or the nexus of that misconduct to subaward activities.

[40] 91 Fed. Reg. at 32,257.
[41] *Id.*

f. Nondiscrimination and DEI Restrictions

[§ 200.218] Prohibition of Promotion or Support of Disparate-Impact Liability Theories	
OMB Proposal	Agencies and pass-through entities would be directed, "to the maximum extent permitted by law," to ensure awards are administered in a manner that **does not "promote or support theories of disparate-impact liability."**[42] Recipients would be required to avoid using federal award funds for this purpose "**unless expressly required by law**." A narrow exception would exist for "statistical or demographic analysis for internal program evaluation, research, or other purposes" if **not funded** by the award and "**not used in connection with activities under the award**."[43]
OMB Rationale	The proposed provision is "based on the obligation of every Federal grant recipient to comply with federal antidiscrimination laws as a condition of receiving Federal funds."[44] "Government-wide coordination is need to ensure that recipients of Federal awards do not continue to engage in unlawful discrimination."[45] "OMB anticipates that some commenters . . . may contend that the Unlawful DEI provision is excessively vague or open to misinterpretation," but "[c]ommenters should focus their attention on the regulatory text proposed in this document," which "does not expand the scope of applicable statutes" but instead "classifies how those requirements apply in the context of Federal awards and the responsibilities of agencies and recipients under part 200."[46]
Issues	▪ **CHILLING EFFECT ON LEGITIMATE COMPLIANCE ACTIVITIES:** Institutions conduct disparate-impact analyses because other federal laws—Title VI, Title IX, the ADA, and the Age Discrimination Act—require or encourage them. OMB has not explained how institutions should reconcile these directly conflicting obligations. Here, as well as in other proposed provisions, institutions are placed in a "catch-22" situation in which compliance with the proposed provisions mean that the institutions may be in violation of its other legal obligations. For example, this may occur where a state agency or private payor imposes reporting requirements on an institution that would meet the definition of a disparate-impact liability theory and also relates to the federally funded activity, and the activity otherwise does not meet the criteria for an exempted activity (*e.g.*, internal research). ▪ **AMBIGUITY OF "PROMOTE OR SUPPORT":** The proposal does not delineate where permissible internal analysis ends and impermissible "promotion" begins. This is unworkable for research universities, where federal funding is deeply commingled with institutional operations through indirect cost allocations, shared facilities, and faculty with both federally funded and institutional responsibilities. The narrow "internal use" exception is impractical, given how institutional support funds are handled and not budgeted and spent by any accounting of source of funds. ▪ **HEALTH DISPARITIES RESEARCH AT RISK: Institutions** use federal awards to study disproportionate disease burdens in specific populations—research that is

[42] 91 Fed. Reg. at 32,213.
[43] *Id.*
[44] 91 Fed. Reg. at 32,220. OMB cites to Executive Order 14281, "Restoring Equality of Opportunity and Meritocracy," DOJ's December 2025 rulemaking amending its Title VI implementing regulations to remove disparate-impact provisions as further support, and the July 2025 DOJ Memorandum on the application of antidiscrimination laws and the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023). 91 Fed. Reg at 32,213-14, 32,220.
[45] 91 Fed. Reg. at 32,220.
[46] *Id.*

[§ 200.218] Prohibition of Promotion or Support of Disparate-Impact Liability Theories	
	congressionally mandated through statutes directing NIH to support minority health and health disparities research. Moreover, certain federal award programs specifically require funding for underrepresented populations. Such research and programming could be characterized as "promoting" theories of disparate impact, placing OMB regulation in direct conflict with existing statutory mandates and creating irreconcilable compliance obligations for institutions.[47] ▪ **ACCREDITATION, STATE LAW, AND STANDARD OF CARE TENSIONS:** Many institutions are subject to state anti-discrimination laws, accreditation standards, and contractual terms imposed by health care payors that require disparate-impact monitoring. The Proposed Rule creates multiple direct conflicts between federal award conditions and state, accreditation, or professional requirements with which institutions must comply—placing institutions in an untenable position where compliance with one set of obligations creates noncompliance with another.

[§ 200.219] Prohibition of Discriminatory Event Services	
OMB Proposal	Public entities receiving federal financial assistance would be required **not to "discriminate on the basis of the viewpoint, content, or subject matter of speech"** in providing services for events, **regardless of whether the event is directly funded** by a federal award, so long as it occurs on property under the entity's control. For non-public entities, the prohibition applies to activities "within the scope of a Federal program."[48] OMB specifically **targets the practice of charging differential security fees** ("heckler's fees") for speakers.[49]
OMB Rationale	The provision is intended to ensure that federal funds are not used, directly or indirectly, to suppress free speech—specifically targeting the practice of public universities charging additional security fees for conservative speakers.[50] Because public entities are already subject to the First Amendment, this broad application is constitutionally permissible.[51]
Issues	▪ **SECURITY FEE CONCERNS:** The proposal would effectively require public universities to absorb all security costs equally, regardless of actual, content-neutral threat level and security needs assessments conducted by law enforcement professionals that are not based on any viewpoint preferences. The proposal would compromise institutional ability to protect campus safety and create an unfunded mandate. ▪ **SCOPE OF APPLICATION TO NON-PUBLIC ENTITIES:** The standard of "within the scope of a Federal program" is unworkable for non-public entities because federal funding often permeates virtually every academic department. Determining which activities fall within or outside the scope of a federal program is arguably impossible, exposing institutions to compliance risk for their full range of programming activities.

[47] NIH Director Jay Bhattacharya has previously affirmed the agency's continued commitment to health equity, including through guidance issued to staff in late 2025 addressing health equity programming and related initiatives. These actions underscore the tension between the Proposed Rule and recent agency direction.
[48] 91 Fed. Reg. at 32,214.
[49] *Id.*
[50] *Id*.
[51] *Id.*

[§ 200.219] Prohibition of Discriminatory Event Services	
	▪ **Chilling Effect on Academic Programming:** This requirement threatens to chill core academic functions—selecting research topics, curating speakers, prioritizing methodologies, and organizing curricula—all of which inherently involve content-based judgments long protected under academic freedom precedent. Universities routinely make content-based decisions about speakers to invite, conferences to host, and how to allocate limited resources among competing programming priorities. The proposal's blanket, undefined prohibition creates uncertainty about whether content-based resource allocation will be characterized as impermissible viewpoint discrimination, and effectively requires institutions to surrender First Amendment rights as a condition of receiving federal awards

g. Agency Cooperation with Private Actions against Awardees

[§ 200.339(b)] Private Causes of Action	
OMB Proposal	If in the national interest, an agency may cooperate with individuals or organizations pursuing a private cause of action based on a recipient's or subrecipient's failure to comply with law, regulation, or award terms and conditions.[52]
OMB Rationale	Provision "is only intended to affirm that agencies may, at their discretion, cooperate with persons in pursuit of private remedies in circumstances consistent with law" and only if the agency determines it is in the national interest to cooperate. It is "not intended to . . . create any right or benefit, substantive or procedural, enforceable at law or in equity by any party" against the federal government.[53]
Issues	▪ **Commingling of Government Oversight Authority with Private Litigation:** Federal funding agencies already possess independent oversight authority of awards, making such cooperation with private third parties unnecessary and creating a perverse incentive for agencies to ally with private plaintiffs against the very entities the agencies have decided to fund and are charged with overseeing. This mechanism risks enabling agencies to mask their own inaction or oversight failure by leveraging private litigation as a substitute for fulfilling their supervisory obligations, effectively permitting the government to play favorites among private parties. The provision fundamentally distorts the cooperative relationship between federal agencies and their awardees, substituting an adversarial dynamic that undermines the foundational principles of federal research funding. ▪ **Chilling Effect:** If funding agencies assist private parties in challenging award recipients, the agency itself may deter institutions from engaging in lawful but politically sensitive activities and may cause reputational harm, including due to the fact that the government's intervention in any such action would immediately raise the level of public attention, even if the matter were ultimately resolved in the award recipient's favor. ▪ **Undefined Standard:** "Cooperate" is undefined and could include sharing nonpublic information and/or providing technical assistance to private litigants, thereby transforming the government-recipient relationship from one of historical collaboration to an adversarial one.

[52] 91 Fed. Reg. at 32,225.
[53] *Id*.

IV. Other Proposed Revisions that Merit Consideration for Comment

The below table lists proposed provisions of the Proposed Rule that are not covered in the above tables but that nevertheless merit consideration for comments.

Proposed Provision
[§ 200.112] Conflict of Interest
[§ 200.113] Mandatory Disclosures
[§ 200.204(c)] Statement of Interest
[§ 200.300(b)] Limitations on Authorized Use of Federal Award Funds
[§ 200.300(c)] Non-discrimination Against Faith-Based Organizations
[§ 200.305(c)] Payment Justifications for Recipients and Subrecipients other than States
[§ 200.329(b) & (h), 200.332(g), 200.340(a)(1)] Reporting Program Performance, Reviewing Subrecipient Reporting in SAM.gov, Requirements for Pass-Through Entities, Termination for Noncompliance by Recipient or Subrecipient
[§§ 200.420 - 200.477] Changes to Allowable Costs