July 13, 2026

Office of Federal Financial Management
Office of Management and Budget
Washington, DC

Re: Regulatory Comment in Response to Proposed Rule "Regulation for Federal Financial Assistance" Docket No. OMB-2026-0034, 2026-10817 (91 FR 32198) [200.202, 200.218, 200.219, 200.300, 200.322, 200.323, 200.305, 200.329-200.332, 200.201, 200.333, 200.340,]

Dear Sir or Madam:

Introduction and General Support

I write in strong support of the proposed rule, Regulation for Federal Financial Assistance, which would revise 2 CFR Subtitle A and conforming agency regulations in Subtitle B. This comment focuses on some of the economic impacts of the proposed rule. Federal financial assistance now exceeds one trillion dollars annually, yet the Government Accountability Office estimates that the federal government loses between $233 billion and $521 billion each year to fraud (GAO-24-105833, 2024) and reported roughly $236 billion in improper payments in FY2023 alone (GAO-24-106927). A grants framework of this scale that lacks rigorous payment integrity controls, transparency requirements, and alignment with lawful Executive Branch policy imposes real and measurable costs on American taxpayers and often results in executive actions, and therefore government expenditures, that are at loggerheads with one another and particularly wasteful. The proposed rule addresses these deficiencies directly, and its principal provisions are each likely to produce net economic benefits. I address some of those key provisions in the following, referencing each relevant section as requested in the "ADDRESSES" section of the notice. Additionally, all relevant sections are also listed in the brackets above in the order they appear in this comment.

[200.202] Planning Program and Design

The proposed revisions to program planning and design, requiring that discretionary award programs be designed to achieve their underlying statutory purposes and align with administration priorities, are both logically and economically sound. When grant programs accumulate add-on conditions unrelated to their core statutory purpose, taxpayer dollars are diverted from the public goods Congress actually funded and the expenditures become inherently wasteful. The preamble's example of the $42.5 billion broadband program that connected no households over three years while agencies administered ancillary policy conditions illustrates the deadweight loss created when program design drifts from program purpose. Requiring agencies to design programs around statutory purposes, and empowering OMB to enforce consistency with presidential executive orders and policies, restores a discipline that channels scarce funds toward measurable outcomes, not just vague outputs. The economics literature on procurement supports the general principle that non-merit-based conditions and preferences raise the cost of delivering public projects: Marion (2007), in a peer-reviewed study of highway procurement auctions, found that bid preference programs raised state procurement costs by 3.8 percent on affected contracts ("Are bid preferences benign? The effect of small business subsidies in highway procurement auctions," Journal of Public Economics, 91(7–8): 1591–1610). The same logic applies government-wide: stripping extraneous conditions from awards lowers the effective cost of every federally funded project. Vague outputs with ill-defined terms (diversity, fairness, equity, etc.) should not trump measurable outcomes of achieving statutory purposes.

[200.218] Prohibition on Using Federal Awards to Promote or Support Theories of Disparate-Impact Liability

I support the proposed prohibition on using federal award funds to fund, promote, or facilitate disparate-impact liability theories. Beyond the legal considerations articulated in the preamble and in the Department of Justice's July 29, 2025 guidance, this prohibition has a sound economic rationale. Liability regimes that expose institutions to litigation risk based on statistical outcomes rather than intentional conduct create defensive compliance costs and distort hiring, contracting, and program-design decisions. The peer-reviewed literature demonstrates that expansive litigation exposure carries real employment costs: Autor, Donohue, and Schwab (2006) found that the adoption of wrongful-discharge protections reduced state employment rates by 0.8 to 1.7 percent, as employers responded to litigation risk by curtailing hiring ("The Costs of Wrongful-Discharge Laws," *Review of Economics and Statistics*, 88(2): 211–231). Ensuring that federal grant dollars do not subsidize the expansion of analogous outcome-based liability theories protects grantees, subrecipients, and the businesses they contract with from these distortions, and keeps award funds focused on program delivery.

[200.219, 200.300] Prohibition of Discriminatory Event Services, Statutory and National Policy Requirements

I support the proposed prohibition on discriminatory practices in federally funded activities and the related national policy requirements ensuring that recipients do not discriminate on the basis of race, sex, or other immutable characteristics. Merit-based allocation of grant funds and grant-funded opportunities is not only required by the equal-protection principles discussed in the preamble and the December 2, 2025 Office of Legal Counsel opinion; it is also allocatively efficient, and the peer-reviewed empirical literature quantifies the cost of departing from it.

The most direct evidence comes from the natural experiment created by California's Proposition 209, which prohibited consideration of race and sex in state-funded contracting. In a peer-reviewed study published in the *Review of Economics and Statistics*, Marion (2009) found that after the race- and sex-based subcontracting preferences were eliminated, winning prices on state-funded highway contracts fell by 5.6 percent relative to otherwise-similar federally funded contracts on which the preferences still applied—direct evidence that awarding public funds on the basis of immutable characteristics rather than merit raised the cost to taxpayers of delivering identical public projects ("How Costly Is Affirmative Action? Government Contracting and California's Proposition 209," *Review of Economics and Statistics*, 91(3): 503–522). In companion structural work on California procurement auctions, Marion (2007) estimated that preference programs also generate pure efficiency losses by distorting which firms win contracts and by depressing participation of non-preferred firms, with total efficiency losses reaching as much as 6.5 percent of procurement costs once reduced competition is accounted for. Because 2 CFR governs procurement and subawards under the entire federal assistance portfolio, even a small fraction of these documented cost premia, applied across more than a trillion dollars of annual assistance, represents billions of dollars in avoidable taxpayer cost that the proposed nondiscrimination provisions would eliminate. Since all marginal federal spending is borrowed, this also represents a reduction in government spending and growth rate of the national debt.

The empirical literature also indicates that selection on immutable characteristics can produce suboptimal outcomes for the intended beneficiaries themselves. The foundational study of this "mismatch" effect is Sander's systemic analysis of racial preferences in American law schools, published in the *Stanford Law Review* (2004). Using comprehensive national data on law students and bar outcomes, Sander found that admissions preferences based on race, rather than academic preparation, placed most beneficiaries in institutions where they clustered at the bottom of their classes—the median first-year grade point average of black students fell between the fifth and tenth percentile of white grades—producing elevated attrition and substantially depressed bar-passage rates. Critically, the study found that black and white students at the same school with the same grades passed the bar at identical rates, isolating preference-driven placement, not any deficiency in the students, as the mechanism of harm. Sander's simulation concluded that a race-blind admissions system would have produced approximately eight percent more new black lawyers each year than the preference system it would replace ("A Systemic Analysis of Affirmative Action in American Law Schools," *Stanford Law Review*, 57(2): 367–483). In other words, allocating educational opportunity by immutable characteristics did not merely impose costs on non-preferred applicants; it produced fewer successful professionals from the very group the preferences were designed to help.

The subsequent peer-reviewed economics literature has reinforced this conclusion. In a comprehensive review published in the *Journal of Economic Literature*, Arcidiacono and Lovenheim (2016)—engaging directly with the Sander evidence and the decade of research it prompted—document the "quality-fit trade-off." When selection preferences place candidates into programs based on group identity rather than preparation and fit, the evidence shows measurable harms to outcomes such as degree completion in intended fields and professional licensure ("Affirmative Action and the Quality-Fit Trade-off," *Journal of Economic Literature*, 54(1): 3–51). Related peer-reviewed work by Arcidiacono, Aucejo, and Hotz (2016) in the *American Economic Review* found that identity-preference-driven placement significantly reduced minority students' likelihood of completing STEM degrees relative to merit-matched placement ("University Differences in the Graduation of Minorities in STEM Fields: Evidence from California," *American Economic Review*, 106(3): 525–562). The implication for federal assistance is direct: grant and fellowship programs that select recipients on the basis of race or sex rather than merit and fit risk producing fewer completed projects, fewer trained scientists, and lower returns per appropriated dollar than merit-based selection of the same populations.

The same pattern holds when selection of personnel, rather than students, is constrained by immutable characteristics. In a peer-reviewed study published in the *Quarterly Journal of Economics*, Ahern and Dittmar (2012) examined Norway's 2003 law mandating that 40 percent of public firms' directors be women at a time when women held only 9 percent of board seats. Because compliance forced firms to select directors to satisfy a demographic criterion rather than solely on qualifications, the mandate operated as a controlled test of what happens when an immutable characteristic overrides merit in appointment decisions. The results were unambiguous: the announcement of the quota caused a significant drop in affected firms' stock prices, and the quota produced a large, persistent decline in firm value—a forced ten-percentage-point increase in female representation reduced Tobin's Q by approximately 0.19 against a sample mean of 1.53, a decline of roughly twelve percent. Due to the government-imposed constraint, complying firms ended up with younger, less experienced boards and suffered deteriorating operating performance. Firms also fled the mandate—by 2009, Norway had fewer than 70 percent as many public limited companies as in 2001, as firms reorganized into legal forms exempt from the quota ("The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation," *Quarterly Journal of Economics*, 127(1): 137–197). The lesson generalizes directly to federal assistance: when grant conditions or selection criteria require recipients to hire, appoint, contract, or allocate opportunities by sex or race rather than capability, the predictable results are less qualified personnel, degraded performance of the funded activity, and the exit of capable participants from federal programs altogether—each a direct economic loss to the taxpayer.

Taken together, this literature supports the economic core of §§ 200.219 and 200.300: awarding funds, contracts, and grant-funded opportunities on the basis of immutable characteristics raises delivery costs, distorts competition, destroys organizational value, and can degrade outcomes even for favored groups, while merit-based selection maximizes the public return on each grant dollar. The Senate Commerce Committee's 2024 finding that more than $2 billion in NSF funding flowed to questionable DEI-focused projects, growing from 0.29 percent of new grants in 2021 to 27 percent by 2024, indicates the scale of resources that merit-based selection can redirect to core scientific and public purposes.

[200.322, 200.323, Subpart D] Domestic Preferences for Procurements, Procurement of Recovered Materials

I support the proposed revisions that pare back environmental and labor-related conditions layered onto awards as extraneous requirements, including changes to procurement standards and the recovered-materials provisions. Energy-sourcing mandates attached to funding demonstrably raise project costs. In a peer-reviewed analysis, Upton and Snyder (2017) found that state renewable portfolio standards raised retail electricity prices without commensurate near-term benefits ("Funding renewable energy: An analysis of renewable portfolio standards," *Energy Economics*, 66: 205–216). When comparable sourcing or workforce conditions are attached to federal grants, every dollar of mandated compliance is a dollar unavailable for the road, laboratory, clinic, or water system the grant was made to build. Removing these conditions where they are not statutorily required allows grant dollars to purchase more of the underlying public good per appropriated dollar—a direct, measurable economic benefit that accrues to every American community receiving federal assistance and a reduced cost to taxpayers everywhere.

[200.305] Federal Payment

The proposed requirement that federal agencies and pass-through entities exercise due diligence before issuing payments—including verification against the Department of the Treasury's Do Not Pay system and justification for payment requests—may be the single most consequential economic provision in this rule. GAO's estimate of $233 billion to $521 billion in annual fraud losses (GAO-24-105833) and the roughly $2.7 trillion in cumulative improper payments reported since FY2003 demonstrate that payment-integrity failures are not a rounding error but a structural drain on the Treasury. The Minnesota assistance-program fraud cases cited in the preamble, including the Feeding Our Future scheme in which hundreds of millions of dollars in federal child-nutrition funds were stolen, show precisely the fact pattern that pre-payment screening is designed to interrupt. Front-end verification is far cheaper than back-end recovery: recovery audits historically recapture only a small fraction of improper outlays. Mandating Do Not Pay adherence across agencies, departments, and pass-through entities converts payment integrity from an aspirational goal into an enforceable regulatory duty, and even a modest reduction in the improper-payment rate would yield savings in the tens of billions of dollars annually, dwarfing the rule's compliance costs as described in the Regulatory Impact Analysis (Docket Document OMB-2026-0034-0038).

[Appendix II; Award Terms] Tighter E-Verify Requirements

I support the proposed requirement that recipients and their contractors use E-Verify to confirm employment eligibility of individuals working under federal awards. This provision has direct support in the peer-reviewed economics literature. Orrenius and Zavodny (2015), studying state E-Verify mandates, found that mandates reduced employment among likely unauthorized workers while *raising* wages and employment among legal workers in affected labor markets, including a measurable wage increase for U.S.-born Hispanic men ("The Impact of E-Verify Mandates on Labor Market Outcomes," *Southern Economic Journal*, 81(4): 947–959). Similarly, Amuedo-Dorantes and Bansak (2012) documented that employment-verification mandates shift labor demand toward work-authorized individuals ("The Labor Market Impact of Mandated Employment Verification Systems," *American Economic Review Papers & Proceedings*, 102(3): 543–548). Applying E-Verify to the federal assistance workforce ensures that taxpayer-funded jobs go to Americans and legal workers, improves wage outcomes for lawful workers, and protects the integrity of grant-funded payrolls. The 2023 DHS Office of Inspector General finding that FEMA award recipients potentially misused funds on services for illegal immigrants underscores that immigration-related controls on assistance funds address a documented, not hypothetical, problem.

[200.329–200.332; Part 170] Monitoring and Reporting Program Performance, Requirements for Pass-Through Entities

I support the proposed strengthening of subaward reporting on SAM.gov, the requirement that transfers to affiliates and related organizations be tracked as subawards, and the enhanced monitoring duties placed on pass-through entities. Nongovernmental organizations now intermediate an enormous share of federal assistance, and, as the House Foreign Affairs Committee findings cited in the preamble indicate, billions of dollars in overhead and program charges have flowed to Washington-based NGOs and contractors rather than to direct program delivery. GAO's 2023 review likewise identified persistent gaps in the completeness and accuracy of subaward data on USAspending.gov. Sunlight is an inexpensive control with a high return: complete, regular, and accurate filings by grantees allow agencies, Inspectors General, Congress, and the public to detect anomalous overhead ratios, related-party transfers, and duplicative funding before losses compound. The transparency provisions of this rule operationalize the Federal Funding Accountability and Transparency Act and DATA Act at the subaward level where oversight has historically been weakest, and their compliance burden—largely electronic filing of information that grantees already possess—is trivial relative to the fraud- and waste-deterrence benefits.

[200.201, 200.333] Use of Grants, Cooperative Agreements, and Contracts, Fixed Amount Subawards

I also support the proposed elimination of fixed amount awards and subawards. As the preamble notes, these instruments require no routine monitoring of actual costs and no financial reporting, making them an oversight blind spot. Bringing all awards under cost-based monitoring closes a channel through which funds can be spent without visibility, complementing the Do Not Pay and subaward-reporting provisions discussed above.

[200.340] Termination and Suspension

The proposed clarification that agencies may terminate discretionary awards that no longer effectuate program goals, agency priorities, or the national interest parallels the long-standing termination-for-convenience authority in federal contracting (48 CFR 49.502). Economically, this provision ends the perverse dynamic in which underperforming or misaligned awards must be funded to completion simply because they were made, somewhat similar to the sunk cost fallacy. The option value of terminating low-return awards and redeploying funds to higher-return uses is itself a fiscal benefit, and the credible prospect of termination sharpens recipient performance incentives across the entire portfolio.

[Subpart E] Cost Principles

Finally, I support the proposed tightening of allowable-cost rules in Subpart E, including prior-approval requirements for advertising, public relations, conference, and similar costs. These categories are chronically difficult to police and are frequent vehicles for spending remote from program purposes. Requiring affirmative agency approval converts a default of allowability into a default of scrutiny, at minimal administrative cost.

Conclusion

Taken together, the proposed rule's payment-integrity mandates, E-Verify requirements, transparency and filing obligations, merit-based and nondiscrimination provisions, removal of extraneous energy and labor conditions, and strengthened termination authority form a coherent economic package. They reduce fraud and improper payments on the front end, increase the share of each grant dollar reaching its statutory purpose, and give agencies the tools to redirect funds from low-value to high-value uses. Against annual fraud losses that GAO places in the hundreds of billions of dollars, the rule's compliance costs are modest and its expected net benefits substantial. I urge OMB and the participating agencies to finalize the rule as proposed by the October 1, 2026 target date so that a single, accountable set of government-wide requirements governs fiscal year 2027 awards.

Respectfully submitted,

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References

Ahern, K. R., & Dittmar, A. K. (2012). The Changing of the Boards: The Impact on Firm Valuation of Mandated Female Board Representation. *Quarterly Journal of Economics*, 127(1), 137–197.

Amuedo-Dorantes, C., & Bansak, C. (2012). The Labor Market Impact of Mandated Employment Verification Systems. *American Economic Review: Papers & Proceedings*, 102(3), 543–548.

Arcidiacono, P., Aucejo, E. M., & Hotz, V. J. (2016). University Differences in the Graduation of Minorities in STEM Fields: Evidence from California. *American Economic Review*, 106(3), 525–562.

Arcidiacono, P., & Lovenheim, M. (2016). Affirmative Action and the Quality-Fit Trade-off. *Journal of Economic Literature*, 54(1), 3–51.

Autor, D. H., Donohue, J. J., & Schwab, S. J. (2006). The Costs of Wrongful-Discharge Laws. *Review of Economics and Statistics*, 88(2), 211–231.

Marion, J. (2007). Are bid preferences benign? The effect of small business subsidies in highway procurement auctions. *Journal of Public Economics*, 91(7–8), 1591–1610.

Marion, J. (2009). How Costly Is Affirmative Action? Government Contracting and California's Proposition 209. *Review of Economics and Statistics*, 91(3), 503–522.

Orrenius, P. M., & Zavodny, M. (2015). The Impact of E-Verify Mandates on Labor Market Outcomes. *Southern Economic Journal*, 81(4), 947–959.

Sander, R. H. (2004). A Systemic Analysis of Affirmative Action in American Law Schools. *Stanford Law Review*, 57(2), 367–483.

Upton, G. B., & Snyder, B. F. (2017). Funding renewable energy: An analysis of renewable portfolio standards. *Energy Economics*, 66, 205–216.

U.S. Government Accountability Office (2024). *Fraud Risk Management: 2018–2022 Data Show Federal Government Loses an Estimated $233 Billion to $521 Billion Annually to Fraud* (GAO-24-105833).

U.S. Government Accountability Office (2024). *Improper Payments: Information on Agencies' Fiscal Year 2023 Estimates* (GAO-24-106927).