July 12, 2026

Director Russell Vought
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Director Vought:

On behalf of the Association of American Universities (AAU), which represents 69 leading public and private research universities across the United States, please find attached AAU's comments regarding the Office of Management and Budget's proposed revised regulation for federal financial assistance, also commonly referred to as "Uniform Guidance." Our member institutions are deeply committed to ensuring that taxpayer funds are spent responsibly, transparently, and in a manner that advances the public interest. Because the proposed revisions would significantly reshape the entire ecosystem for federal grants and other financial assistance, we appreciate the opportunity to provide feedback.

However, as we explain in detail in the attached comment memorandum, we are concerned both by the content of the proposed changes and by the extraordinarily compressed timeline provided for public comment and implementation. The proposal would affect virtually every stage of the federal financial assistance lifecycle and would have substantial implications for federal agencies, research institutions, other non-profit organizations, state and local governments, and other grant recipients across the country. Changes of this magnitude warrant a deliberate and extensive process that allows affected stakeholders sufficient time to evaluate the practical, legal, and policy consequences of the revisions and to provide meaningful input.

In addition to our concerns about changes of this magnitude being considered and implemented on an unprecedentedly short timeline, we also detail multiple significant substantive and procedural concerns with the proposed changes, including:

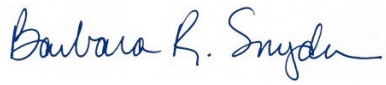
- Multiple provisions that conflict with statutory responsibilities that Congress has assigned to federal agencies.
- Many provisions that rely upon executive orders that remain the subject of ongoing litigation.
- Proposals that exceed the authority delegated to OMB under federal law.

- Fundamental alterations to long-standing balance between government-wide guidance and agency-specific implementation
- Provisions that would inject political and ideological considerations into decisions that have historically been based on scientific merit, programmatic objectives established by Congress, and agency expertise.
- Provisions that would make it much easier for political appointees to suspend or terminate awards based on vague and undefined standards.
- Sections that would seriously undermine the domestic and international scientific collaborations that are essential to sustaining American leadership in research and innovation.

Together, these changes risk undermining the predictability, stability, impartiality, and collaboration upon which America's entire research-and-innovation system depends. At a time of increasing global competition in science and technology, policies that reduce certainty and impede collaboration threaten the nation's capacity for discovery, economic competitiveness, and national security.

For these reasons, we respectfully urge OMB to carefully consider the concerns raised not only by AAU, but also by the many organizations, institutions, and stakeholders that have submitted comments. Given the breadth and significance of the proposed revisions, we believe OMB should substantially revise the proposal and issue a new draft for public review before proceeding. In addition, any final guidance should provide a significantly longer implementation period of at least one year following the publication of the final rule to allow agencies and recipients adequate time to understand and comply with any changes. Such an approach would result in a more durable and effective framework for federal financial assistance.

Sincerely,



Barbara R. Snyder
President
Association of American Universities

July 12, 2026

To: Andrew Reisig
Joel Savary
Office of Federal Financial Management
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

cc: Russell Vought
Director
Office of Management and Budget

From: Tobin Smith
Senior Vice President for Government Relations and Public Policy
Association of American Universities

Kate Hudson
Deputy Vice President and Counsel for Government Relations and Public Policy
Association of American Universities

Meredith Asbury
Associate Vice President for Government Relations and Public Policy
Association of American Universities

Re: **Regulation for Federal Financial Assistance**
Docket: OMB-2026-0034

The Association of American Universities (AAU) respectfully submits these comments in response to the Office of Management and Budget's (OMB) proposed rule, "Regulation for Federal Financial Assistance" (the "proposed rule"), published in the *Federal Register* on May 29, 2026.[1] AAU represents 69 leading research universities in the United States that collectively conduct a significant amount of federally funded university research; train the next generation of scientists, engineers, and scholars; and operate medical centers and clinical research programs of national and international significance. As major recipients of federal grants and cooperative agreements, AAU member institutions are directly affected by the proposed revisions.

[1] 91 Fed. Reg. 32198 (May 29, 2026).

For more than 70 years, the federal government and America's research universities have partnered to advance scientific discovery, improve public health, strengthen national security, and enhance the United States' economic and global competitiveness. This extraordinarily successful partnership has been guided by congressional statutes establishing federal research programs and agencies, implemented through agency-specific regulations and policies, and supported by government-wide management guidance issued by OMB. Together, this framework has enabled the United States to build the most productive and innovative research enterprise in the world while maintaining appropriate accountability for the expenditure of taxpayer funds.

AAU shares OMB's commitment to responsible stewardship and accountability in the administration and management of federal grants and agrees that federal financial assistance should be administered in a manner that promotes transparency, ensures appropriate oversight, protects taxpayer resources, and minimizes unnecessary administrative burdens on recipients. AAU supports grants-management requirements that are clearly defined, grounded in statutory authority, consistently applied across agencies, and informed by the realities of how federally funded research is conducted. AAU does not oppose reforms to the grants-management framework that advance these objectives while preserving the fundamental principles that have made the federal-university research partnership so successful.

AAU, however, has serious concerns that this is not the case with the newly proposed OMB rule. At its core, the proposed rule departs from the longstanding framework that has governed federal financial assistance for decades. Many of the proposed revisions go far beyond grants management, stewardship, and accountability. Indeed, portions of the proposed guidance would expand executive discretion over scientific funding decisions; create conflicts with statutory programs enacted by Congress; introduce significant new uncertainty into the administration of federal awards; and impair the ability of universities to carry out the research, training, and public-service missions that federal funding to America's colleges and universities is intended to support.

The proposed rule would affect virtually every stage of the federal financial assistance lifecycle and would significantly alter the relationships among Congress, federal agencies, grant recipients, and the OMB. Because the proposed rule raises a wide range of interrelated issues, AAU has organized its comments into four thematic sections addressing both overarching legal concerns and provisions of greatest significance and concern to AAU. A brief summary highlighting the specific sections, concerns, and provisions we address in our comments follows.

Summary of AAU Comments on OMB's Revised Regulations for Federal Financial Assistance

Section I – Procedural Objections

AAU objects to both the abbreviated 45-day comment period and the proposed compressed implementation timeline for a rule of this magnitude. The proposed rule would require extensive changes to grants administration, compliance systems, financial-management processes, and institutional policies. As a result, the rulemaking process falls short of the level of stakeholder engagement and preparation time traditionally associated with government-wide revisions of this scale.

Section II – Overarching Legal and Structural Concerns
AAU believes several foundational aspects of the proposed rule are legally flawed. Key provisions rely upon executive orders currently being challenged in federal courts; conflict with statutory programs Congress has directed agencies to administer; exceed OMB's delegated authority under federal law; and would fundamentally alter the federal grants framework by converting guidance into binding government-wide regulation without preserving traditional agency-level rulemaking processes.

Section III – Priority Concerns Affecting Scientific Research, Innovation, and America's Global Competitiveness and National Security
AAU's most significant substantive concerns regarding the new rule involve specific provisions that would undermine merit-based grantmaking; expand political influence over scientific funding decisions; permit the sudden, unpredictable suspension or termination of grants based on vague and undefined standards; impose restrictions on communicating scientific findings; and discourage the domestic and international scientific collaborations that are essential to maintaining U.S. research leadership, economic competitiveness, and national security.

Section IV – Additional Operational and Administrative Concerns
AAU also raises concerns regarding several additional provisions that would impose substantial administrative burdens or impede research operations. These include new payment justification requirements, limitations on publication and subscription costs, elimination of fixed-amount awards, and requirements that would increase compliance burdens without materially improving accountability or stewardship of federal funds.

I. Procedural Objections to OMB's New Rule

While the sections that follow focus on AAU's legal, statutory, and policy concerns with specific aspects of the proposed rule, we begin with several fundamental concerns regarding the process through which OMB has developed and proposed to implement a regulation of this magnitude. The procedural deficiencies discussed below have direct implications for the quality of stakeholder input, the feasibility of implementation, and -- ultimately -- the effectiveness of the final rule.

A. The Abbreviated Comment Period Undermines Meaningful Stakeholder Participation

At the outset, the proposed timeline for comment and implementation of this rule is significantly out of proportion to the scale of the proposed changes. AAU renews its objection to the 45-day comment period, as it is wholly inadequate for a rule of this scope, complexity, and consequence. AAU, along with several other organizations, previously requested an extension of at least 90 days, but OMB rejected that request. It is inconsistent with the Administrative Procedure Act's requirement of meaningful notice and opportunity to comment, and it impairs OMB's ability to receive the full range of factual and legal input necessary to develop a well-founded final rule.

Unlike prior major Uniform Guidance revisions, OMB has provided only a 45-day comment period despite proposing sweeping changes that will affect nearly every aspect of federal research administration, compliance, award management, and grantmaking discretion. This abbreviated timeline is inconsistent with the process used for prior such government-wide revisions. For example, the 2024 Uniform Guidance revision was accompanied by a 60-day comment period and an implementation timeline that provided agencies and recipients with substantial time to prepare for compliance.[2] Here, OMB proposes a shorter 45-day comment period for this rule, which poses more consequential changes for the legal and operational foundations of federal financial assistance.

B. The Proposed Effective Date Does Not Allow Sufficient Time for Implementation

In addition, the proposed October 1, 2026, effective date is wholly inadequate given the breadth and significance of the proposed changes. Universities would need to restructure institutional operations, update grants-management systems, retrain compliance personnel, and modify thousands of active awards. Requirements such as new national policy certifications, expanded subrecipient oversight, additional payment justification procedures, and the elimination of fixed-amount awards cannot be implemented responsibly in less than three months. Far from facilitating an orderly transition, the proposed timeline would create substantial operational disruption, increase compliance risk, and undermine the very accountability and efficiency objectives the rule purports to advance. We question even federal agencies' ability to be in a position to be able to meet this incredibly ambitious implementation date.

When OMB first established the Uniform Guidance framework in 2013, it provided recipients a full year to prepare for implementation, publishing the final guidance in December 26, 2013 with an effective date of December 26, 2014.[3] Even the 2024 revision, published on April 22, 2024, was given an effective date of October 1, 2024, providing approximately five and a half months for implementation.[4] The proposed October 1, 2026, effective date would provide less than three months from the close of the comment period for institutions to implement changes that are categorically more sweeping in scope than either prior revision, involving conversion from guidance to binding regulation, new national policy compliance certifications, revised payment and subrecipient oversight obligations, and expanded termination authority (among others).

The procedural protections traditionally accompanying Uniform Guidance revisions have included not only a notice-and-comment process at OMB, but also subsequent agency implementation processes. By making future OMB amendments directly binding government-wide, the proposed rule removes a longstanding opportunity for agency-specific review, public participation, and implementation refinement. OMB's compressed approach simultaneously reduces opportunities for stakeholder input before issuance and reduces recipient preparation time after issuance, creating a process that is both

[2] 88 Fed. Reg. 69390 (Oct. 5, 2023); 89 Fed. Reg. 30046 (Apr. 22, 2024).
[3] 78 Fed. Reg. 78590 (Dec. 26, 2013).
[4] 89 Fed. Reg. 30046 (Apr. 22, 2024).

procedurally deficient and operationally unrealistic for institutions managing thousands of active federal awards.

Recommendation: *AAU requests a minimum 12-month implementation period following issuance of a final rule, along with explicit exemption of all currently active awards through the remainder of their performance periods.*

II. Overarching Legal and Structural Concerns

A. The Proposed Rule Improperly Relies on Executive Orders Currently Being Challenged in Litigation

Before turning to the proposed rule's specific provisions, AAU must raise a threshold problem that runs through the proposed rulemaking and that OMB has not addressed: many of the most consequential provisions do not rest on independent statutory authority. They rest on executive orders that are currently being challenged in federal courts, with preliminary injunctions already issued in several cases. Embedding the policy positions of actively litigated executive orders into permanent, binding federal regulation before the courts rule on their legality is premature, procedurally improper, and inconsistent with the requirement that agency rulemaking reflect reasoned decision-making.[5]

The executive orders at issue are not peripherally referenced in the proposed rule's preamble. They supply the operative definitions, legal rationale, and substantive content for significant new requirements proposed in the rule. Executive Orders 14151[6] and 14173,[7] which underlie the proposed DEI prohibition at § 200.300, have been enjoined in multiple federal courts as applied to grant recipients and contractors, with courts raising serious questions about whether they conflict with Title VI, Title IX, and other civil rights statutes. Executive Order 14168,[8] from which the proposed rule in § 200.300 takes its definition of "gender ideology" verbatim, has likewise been subject to injunctions on equal protection and First Amendment grounds. The problem with borrowing a definition from an enjoined executive order is not merely a legal hypothetical; it is practical. If Executive Order 14168 is ultimately invalidated,

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[5] The requirement that agency rulemaking reflect a reasoned examination of all relevant considerations, including active judicial proceedings bearing on the legal foundation of proposed regulatory provisions, is grounded in the APA's arbitrary-and-capricious standard. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

[6] *Chicago Women in Trades v. Donald J. Trump*, No. 1:25-cv-02005 (N.D. Ill. 2025), No. 25-2144 (7th Cir. 2025); *San Francisco A.I.D.S. Foundation v. Trump*, No. 4:25-cv-01824 (N.D. Cal. 2025), No. 25-4988 (9th Cir. 2025); *King County v. Turner,* No. 2:25-cv-00814, (W.D. Wash. 2025), No. 25-3664, (9th Cir. 2025).

[7] *Chicago Women in Trades v. Donald J. Trump*, No. 1:25-cv-02005 (N.D. Ill.), No. 25-2144 (7th Cir); *San Francisco A.I.D.S. Foundation v. Trump*, No. 4:25-cv-01824 (N.D. Cal. 2025), No. 25-4988 (9th Cir. 2025); *City of Seattle v. Trump,* No. 2:25-cv-01435 (W.D. Wash. 2025), No. 25-8096 (9th Cir. 2025) ; *King County v. Turner,* No. 2:25-cv-00814, (W.D. Wash. 2025), No. 25-3664, (9th Cir. 2025).

[8] *State of Washington v. Trump*, No. 2:25-cv-00244 (W.D. Wash 2025), No. 25-1922 (9th Cir. 2025); *PFLAG, Inc. v. Trump*, No. 8:25-cv-00337 (D. Md. 2025), No. 25-1279 (4th Cir. 2025); *Rhode Island Coalition Against Domestic Violence v. Kennedy*, No. 1:25-cv-00342 (D.R.I. 2025)*; American Association of Physicians for Human Rights v. National Institutes of Health,* No. 8:25-cv-01620 (D. Md. 2025)*; San Francisco A.I.D.S. Foundation v. Trump*, No. 4:25-cv-01824 (N.D. Cal. 2025), No. 25-4988 (9th Cir. 2025*).*

the regulatory definition it supplied becomes legally unmoored while remaining on the books as federal regulation. That would only proliferate confusion and uncertainty.

Executive Order 14187,[9] which supplies the definitional framework for the proposed rule's "Protecting Children Provision" in § 200.300, faces the same problem. OMB cites a recent U.S. Supreme Court decision as support for this provision, but that citation does not withstand scrutiny. The case addressed a state law, reviewed under the most deferential standard courts apply to legislative judgments. The Supreme Court held only that the specific state law at issue does not discriminate on the basis of sex. It said nothing about the scope of OMB's grants-management authority, nothing about federal agencies' power to prohibit funding of clinical research, and nothing that could reasonably be interpreted as judicial approval of Executive Order 14187. The gap between what that decision actually held and what the proposed rule asks it to authorize is substantial, and the proposed rule makes no effort to bridge it.[10]

Finally, Executive Order 14281 (the basis for § 200.218's prohibition on disparate-impact liability) reflects an executive directive to abandon a legal framework the Supreme Court has separately recognized as a valid interpretation of federal civil rights law. An executive order cannot override a statutory interpretation the Supreme Court has upheld, and a regulation implementing such a directive faces the same legal infirmity.[11]

Rigorous application of administrative law requires that an agency examine all relevant data and articulate a satisfactory explanation for its actions; relying on enjoined or vacated legal interpretations or terms from EOs successfully challenged in litigation without addressing the courts' findings (whether preliminary or otherwise) does not satisfy this standard.[12] An agency that writes significant regulatory provisions based on executive orders that are currently under judicial challenge without acknowledging those proceedings, without explaining whether the provisions could stand on their own, and without addressing what recipients are supposed to do if they face conflicting obligations also does not meet this standard.

Recommendation: *Before finalizing any provision whose operative text or legal justification derives from a currently litigated executive order, AAU respectfully requests that OMB identify the independent statutory basis for that provision and explain how it would function if the relevant executive order were enjoined or invalidated. Without that analysis, those provisions cannot fairly be characterized as the product of reasoned rulemaking.*

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[9] State of *Washington v. Trump*, No. 2:25-cv-00244 (W.D. Wash 2025), No. 25-1922 (9th Cir. 2025); *PFLAG, Inc. v. Trump*, No. 8:25-cv-00337 (D. Md. 2025), No. 25-1279 (4th Cir. 2025); Commonwealth *of Massachusetts v. Trump*, No. 1:25-cv-12162, (D. Mass. 2025).

[10] *United States v. Skrmetti*, 605 U.S. 495 (2025).

[11] *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519 (2015) (upholding disparate-impact liability under the Fair Housing Act as a valid interpretation of federal civil rights law).

[12] *Motor Vehicle Manufacturers Ass'n v. State Farm Automobile Insurance Co.*, 463 U.S. 29 (1983).

B. The Proposed Rule's National Policy Conditions Directly Contradict Mandatory Congressional Directives That Agencies Cannot Lawfully Abandon

A foundational principle of federal administrative law is that agencies exist to carry out what Congress has directed, not to override it. The proposed rule directly crosses that line.

The annual appropriations riders that Congress has attached to federal spending bills since FY18 present a direct conflict. Since FY18, Congress has explicitly prohibited NIH from developing or implementing any modified approach to indirect-cost (IDC) rates.[13] That prohibition was replicated in other FY26 appropriations bills to also cover DOD, NSF, DOE, Department of Commerce, and NASA.[14] These are not aspirational policy statements — they are specific, binding congressionally mandated requirements. A federal court permanently enjoined NIH's attempt to impose a unilateral cap on IDC reimbursement on exactly these grounds, finding that such action violated the appropriations riders, was arbitrary and capricious, and bypassed required rulemaking procedures; that decision was affirmed on appeal in January 2026.[15] The principle applied there -- that executive action cannot functionally withdraw congressionally appropriated funds by overriding statutory program requirements -- applies with equal force to provisions of the proposed rule that would prohibit agencies from administering programs Congress has mandated.

The proposed rule conflicts with these congressional prohibitions in at least two respects. First, by reclassifying library subscriptions as categorically unallowable, the rule effectively alters the operation of negotiated IDC rates. These are costs that institutions have historically recovered in part through the library and administrative components of their negotiated indirect cost rates; making them categorically unallowable represents a clear modification to what can and can't be included in the rates, regardless of how OMB characterizes the change. OMB's statement in the supplementary information that it "is not proposing updates to the indirect cost rate negotiation system" cannot be reconciled with provisions that selectively exclude cost categories historically recovered through that system. Second, the proposed rule's explicit preference for awarding grants to applicants with lower negotiated IDC rates introduces

[13] Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, § 226, 132 Stat. 348, 740 (2018); Department of Health and Human Services Appropriations Act, 2019, Pub. L. No. 115-245, § 224, 132 Stat. 2981, 3094 (2018); Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, § 224, 133 Stat. 2534, 2582 (2019); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 224, 134 Stat. 1182, 1594 (2020); Consolidated Appropriations Act, 2022, Pub. L. No. 117-103, § 224, 136 Stat. 49, 470-71 (2022); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 224, 136 Stat. 4459, 4883-84 (2022); Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, § 224, 138 Stat. 460, 677 (2024); Full-Year Continuing Appropriations and Extensions Act, 2025, Pub. L. No. 119-4, §§ 1101(8), 1105-06, 139 Stat. 9, 11-12 (2025); Continuing Appropriations, Agriculture, Legislative Branch, Military Construction and Veterans Affairs, and Extensions Act, 2026, Pub. L. No. 119-37, § 101, 139 Stat. 495, 496 (2025); Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, § 224, 140 Stat. 173, 288 (2026).

[14] Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Act, 2026, Pub. L. No. 119-74, §§ 313, 542, 140 Stat. 5, 61, 89 (2026); Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, §§ 224, 8146, 140 Stat. 173, 234, 288 (2026).

[15] *Commonwealth of Massachusetts v. NIH*, No. 1:25-cv-10338 (D. Mass. 2025), *aff'd* (1st Cir. Jan. 2026).

IDC levels as a merit-review factor, using the funding decision itself as a lever to pressure institutions toward lower rates. This too is inconsistent with the existing requirement that agencies continue to apply negotiated indirect cost rates "in the same manner" as they were previously applied. Preferring lower rates, when that has never been done before, applies those rates in a different manner. It is also inconsistent with the fundamental distinction between research grants and procurement contracts: the purpose of a federal research grant is to fund the best science, not to purchase research services at the lowest administrative overhead.

The proposed rule's expanded discretionary termination authority amplifies this concern. Using termination authority to defund programs Congress has specifically directed and funded raises serious questions under the Impoundment Control Act of 1974, which prohibits the executive branch from withholding or delaying the use of appropriated funds without following specific statutory procedures.[16] A grants management regulation is not a substitute for those procedures. AAU requests that OMB identify, in the final rule, each mandatory statutory program whose administration the proposed rule would affect and provide a clear and definitive statement of which obligation governs when they conflict. The absence of that analysis leaves agencies, universities, and researchers navigating an irresolvable compliance dilemma, leaving the final rule vulnerable to the same legal challenges that have already succeeded in analogous circumstances.

Similarly, the national policy conditions at § 200.300 and the disparate-impact prohibition at § 200.218 present a separate and equally direct conflict. These provisions would effectively prohibit agencies from administering programs that Congress has specifically mandated, using some of the clearest and most categorical language in the statute books. The proposed rule does not acknowledge these conflicts, much less resolve them.

Congress has repeatedly directed federal agencies to fund university research in ways that explicitly require the kind of demographic-conscious program design the proposed rule would prohibit. Specific examples of congressionally mandated directives with which the new OMB rule directly conflicts include:

- **NIH Revitalization Act of 1993**[17]
    - Requires that the NIH Director "shall" ensure that women and members of racial and ethnic minority groups are included as subjects in every NIH-funded clinical research project, a requirement in effect since fiscal year 1995.
    - Requires that the Secretary of Health and Human Services "shall…provide for an increase" in the number of women and underrepresented minorities participating in biomedical and behavioral research.

[16] Impoundment Control Act of 1974, 2 U.S.C. §§ 681-688.
[17] NIH Revitalization Act of 1993, Pub. L. 103-43, §§ 131, 206; 42 U.S.C. §§ 282, 288, 289a-2.

- **CHIPS and Science Act of 2022**[18]
    - Directs that the NSF Director "shall make awards" to increase the participation of women and underrepresented minorities in STEM fields.
    - Directs NSF to build research capacity at Historically Black Colleges and Universities (HBCUs), Minority-Serving Institutions (MSIs), and Tribal Colleges and Universities (TCUs).
    - Authorized and funded both programs through FY27.

- **America COMPETES Reauthorization Act of 2010**[19]
    - Requires that NSF "shall continue to support" as distinct programs:
        - The HBCU Undergraduate Program.
        - The Louis Stokes Alliances for Minority Participation (LSAMP).
        - The Tribal Colleges and Universities Program.
        - Programs serving Hispanic-Serving Institutions (HSIs).

- **American Innovation and Competitiveness Act of 2017**[20]
    - Amends § 526(a) of the America COMPETES Reauthorization Act of 2010 to require NSF to consider the statutorily mandated "Broader Impacts Review Criterion" when making final decisions on research awards.
    - Included among the specified criteria is the goal of "expanding participation of women and individuals from underrepresented groups in STEM."

- **Public Health Service Act (Centers of Excellence Program)** [21]
    - Requires that the Secretary of Health and Human Services "shall make grants to" designated health professions schools for Centers of Excellence programs serving underrepresented minority individuals.
    - Supports programs designed to enhance the academic performance of underrepresented minority students in the health professions.
    - Supports faculty recruitment, development, and other educational activities aimed at improving health professions workforce diversity.
    - Authorizes faculty and student research addressing health issues that disproportionately affect underserved and underrepresented communities.
    - Directs federal funding toward institutions and programs specifically focused on expanding participation of underrepresented populations in health professions education and research.

[18] CHIPS and Science Act of 2022, Pub. L. 117-167, §§ 10328, 10524; 42 U.S.C. §§ 19017, 19183
[19] America COMPETES Reauthorization Act of 2010, Pub. L. 111-358; 42 U.S.C. § 1862p-4.
[20] American Innovation and Competitiveness Act, Pub. L. 114–329, 42 U.S.C. §1862p–14.
[21] Public Health Service Act, 42 U.S.C. § 293.

Each of these statutes uses mandatory language directing agencies to do things the proposed rule would prohibit and against which punishment would be enforced. The proposed rule's response is to repeatedly state that its requirements apply "to the maximum extent permitted by law." But that qualifier resolves nothing. It simply passes the problem to individual agencies, asking them to reconcile irreconcilable obligations on a program-by-program basis without any guidance from OMB on how to do so. That approach is not a solution; it combines an acknowledgment that a conflict exists with a refusal to address it. Federal law requires that conditions placed on grant recipients be stated clearly enough that they can understand what is expected of them before they accept funding.[22] The proposed rule fails that basic requirement.

Recommendation: *AAU requests that OMB identify, in the final rule, each mandatory statutory program affected by the proposed rule and provide a clear and definitive statement of which obligation governs when they conflict. The absence of that analysis leaves agencies, universities, and researchers navigating an irresolvable compliance dilemma, leaving the final rule vulnerable to the same legal challenges that have already succeeded in analogous circumstances.*

C. The Proposed Rule Exceeds OMB's Statutory Authority and Encroaches on Powers Reserved to Congress and Federal Agencies

OMB derives its authority to issue government-wide grants management requirements from two statutory provisions: one directing OMB to provide leadership on financial management matters by establishing government-wide financial management policies, and another authorizing OMB to issue interpretive guidelines to promote consistent and efficient use of grants and cooperative agreements.[23] These are the specific authorities of OMB's financial management office. They exist to ensure that federal funds are administered consistently, accounted for accurately, audited appropriately, and overseen responsibly. They do not authorize OMB to define which categories of scientific research may be federally funded; to restrict the international scholarly collaborations that Congress has elsewhere specifically authorized, or to make the receipt of federal research funding contingent on an institution's adherence to contested positions about civil rights law, scientific inquiry, and arbitrary and political decisions about what is and is not in the national interest.

The provisions of the proposed rule that raise these concerns — including the national policy conditions at § 200.300, the disparate-impact prohibition at § 200.218, and the foreign-collaboration restrictions at § 200.202(e) and § 200.220 — represent a significant departure from the limited financial management and grants administration authorities Congress delegated to OMB. In effect, the proposed rule would transform OMB from a coordinator of government-wide grants administration into a maker of substantive grantmaking policy. Decisions regarding the objectives, evaluative criteria, and funding priorities of particular grant programs are authorities Congress has generally vested in program agencies and their Senate-confirmed leadership. Rather than establishing requirements governing the

[22] *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981).
[23] 31 U.S.C. §§ 503, 6307.

stewardship, accountability, and administration of federal funds, these provisions seek to determine the substantive content of federally funded research, regulate permissible scholarly collaborations, define acceptable approaches to civil rights compliance, and empower executive officials to make inherently policy-driven judgments regarding what constitutes the "national interest." They are therefore substantive policy determinations of considerable scope, using OMB's regulatory vehicle to achieve outcomes that would otherwise require either congressional action or agency-specific rulemaking under the relevant program statutes.

Whether OMB possesses authority to impose such requirements is ultimately a question for the courts, not OMB itself. Following the Supreme Court's decision in *Loper Bright*, courts no longer defer to an agency's interpretation of its own statutory authority; they determine the scope of that authority independently.[24] Moreover, neither OMB nor the affected grantmaking agencies have provided a reasoned explanation for why these substantive standards advance the purposes of the agencies' own statutory programs. The proposed rule largely assumes that OMB may prescribe these requirements government-wide, without demonstrating why they further the missions Congress assigned to agencies such as NIH, NSF, DOD, DOE, or NASA.

The proposed rule's combined effect also implicates a separate and significant legal constraint. The Supreme Court has held that when a regulatory action claims the power to resolve questions of major economic and political significance, an agency cannot rely on a general grant of regulatory authority; it must point to a clear statement from Congress specifically authorizing that result.[25] This body of law is known as the major-questions doctrine. Under this standard, the proposed OMB rule rests on exceptionally weak legal footing.

At the same time, it would affect hundreds of billions of dollars in annual financial assistance for university research and education programs, for other non-profit organizations, for states and localities, and for tribal and native American organizations; reshape the grant-making practices of every federal agency; embed contested legal and ideological positions into permanent binding regulation; and vest in the executive branch sweeping discretion over whether and how congressionally appropriated research funds are used. These are not adjustments at the margin of OMB's financial-management mission. They represent a fundamental restructuring of the federal research enterprise, precisely the kind of consequential policy determination that should prompt hesitation and consideration of whether there is explicit legislative authorization.

The proposed rule's expansion of discretionary termination authority makes the point vividly. Permitting agencies to cancel grants whenever they decide an award no longer serves current "administration priorities" or an undefined "national interest" effectively nullifies specific congressionally appropriated research funds and converts those funds into a discretionary executive policy tool. Congress appropriates

[24] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).
[25] *West Virginia v. EPA*, 597 U.S. 697 (2022).

those funds for specific purposes through a legislative process that includes explicit program mandates and authorization windows.

Indeed, by permitting agencies to terminate awards based on shifting administration priorities or the undefined national interest, the proposed rule effectively gives OMB and other executive branch officials authority to nullify specific funding decisions after Congress has appropriated funds and agencies have made award selections. This creates a *de facto* line-item veto over individual grants and research projects, allowing congressionally approved investments to be withdrawn without any further act of Congress. Such authority raises significant separation-of-powers concerns and exceeds the financial management authority Congress has delegated to OMB. The proposed rule also improperly intrudes upon authorities vested elsewhere. Congress conveyed to particular agencies, and their Senate-confirmed heads, authority over the grants that are subject to this rulemaking.

Recommendation: *AAU respectfully requests that OMB identify the specific statutory basis for each substantive policy provision, explain how each provision falls within OMB's delated grants-management authority, and directly address whether Congress has provided the clear authorization required by the major questions doctrine for actions of this scope and significance.*

D. The Proposed Regulatory Structure Removes a Legally Required Layer of Public Participation Without Congressional Authorization

Alongside its substantive changes, the proposed rule advances a significant structural objective: converting the Uniform Guidance from nonbinding guidance, adopted individually by agencies into their own regulations, into directly binding federal regulation. It also eliminates the requirement that future OMB amendments go through individual agency rulemaking before taking effect government-wide.

Under this proposed framework, any future change to government-wide grants management requirements would automatically bind all agencies and all grant recipients without any additional public comment process. This structural change is neither authorized by OMB's governing statutes nor consistent with the Administrative Procedure Act.

The APA requires notice and an opportunity for public comment before an agency imposes new binding legal obligations on regulated parties.[26] That requirement attaches at each regulatory layer where binding obligations are imposed on regulated parties. OMB's proposal to waive that requirement for all future revisions – through a structural provision announced in this rulemaking – does not satisfy the APA.

The APA's procedural protections cannot be prospectively waived in bulk. As the U.S. Court of Appeals for the D.C. Circuit recently held, "an agency cannot simply rulemake its way out of the APA's requirement for rulemaking."[27] The fact that notice-and-comment rulemaking can be a slow process is

[26] Administrative Procedure Act, 5 U.S.C. § 553.
[27] *City of Billings v. TSA*, 153 F.4th 46, 53 (D.C. Cir. 2025).

neither good cause not to undertake those statutorily mandated procedures nor otherwise a valid basis for avoiding them. Each future substantive amendment that imposes new compliance obligations on grant recipients would itself require notice and comment, regardless of what the 2026 rulemaking says about future procedure. What OMB is proposing is, in effect, a mechanism to issue future grants-management requirements without meaningful public participation and to do so for an indefinite series of amendments affecting hundreds of billions of dollars in annual federal funding. That is not a streamlining measure; it is an attempt to insulate future regulatory changes from scrutiny.

OMB compares its proposed structure to the Federal Acquisition Regulation, which governs government procurement under government-wide rules that agencies must follow without conducting their own separate rulemakings. The comparison does not hold. The FAR Council operates under specific statutory authority that Congress enacted precisely to establish government-wide procurement regulation. OMB has no equivalent statutory mandate for grants management.[28] The existence of that specific procurement authority, rather than supporting OMB's analogy, actually undermines it: Congress knows how to give a central regulatory body the authority to issue binding government-wide rules without requiring individual agency rulemaking, and it has done so for procurement. It has not done so for grants and other forms of financial assistance. That is a deliberate legislative choice, not an oversight to be guided by mere administrative analogy.

The consequences of this structural change would extend beyond future amendment procedures. Under the current framework, individual agencies implement OMB's guidance through their own regulations, allowing them to include program-specific accommodations, clarifications, and carve-outs that reflect the particular circumstances of their programs and the statutory frameworks governing them. That flexibility provides an important protection for grant recipients, who can point to agency-specific regulatory commitments in the event of a dispute. The proposed structure would eliminate much of that flexibility without congressional authorization.

OMB is also incorrect in asserting that this system would be more efficient; secondary rulemaking procedures are still required under this rule to codify exceptions to future OMB amendments.

Recommendation: *AAU requests that the final rule preserve agency-level notice-and-comment rulemaking for all future substantive revisions and commit to a public comment period of at least 60 days for any such amendment.*

III. Priority Concerns Affecting Scientific Research, Innovation, and America's Global Competitiveness and National Security

The following sections share AAU's principal concerns and recommendations regarding specific proposed provisions in the revised guidance that have serious implications for the integrity and stability of the

[28] 41 U.S.C. § 1303 (establishing FAR Council statutory authority).

entire U.S scientific, research and innovation enterprise and, as a result, for America's global competitiveness and national security.

A. Keeping Research Funding Decisions Grounded in Scientific Expertise

Several proposed revisions introduce new mechanisms that shift discretionary research funding decisions away from the use of scientific merit to award grants and other research awards and toward politically and ideologically driven assessments and award decisions, risking the erosion of the scientific rigor and independence that have long underpinned the success of the U.S. research enterprise. This section highlights concerns that inserting political considerations into award determinations may undermine merit-based evaluation grounded in scientific quality, reduce efficiency and predictability in funding, and weaken the nation's capacity for innovation and global scientific leadership — which will, in turn, adversely impact America's ability to fund the best scientific research to support our national interest ensuring the health, well-being, and economic and national security of the American people.

1. [§ 200.205] Pre-Issuance Political Review and Reduced Reliance on Scientific Merit in Granting Awards

The proposed regulation introduces a new "pre-issuance review" process in § 200.205(b) that would profoundly alter how agencies make discretionary grant funding decisions in ways that risk undermining U.S. global scientific leadership, economic competitiveness, and national security. Under this process, individual grant awards would be subject to review by politically appointed officials to assess whether proposals are ideologically consistent with the "President's policy priorities." This would slow funding decisions, inject uncertainty into the research pipeline, and weaken the merit-based system that has long been a cornerstone of U.S. innovation.

In an era of intensifying strategic competition, particularly with China, this shift would place the United States at a structural disadvantage to our competitors by delaying discovery, discouraging high-risk, high-reward research, and reducing the overall efficiency of federal R&D investments that drive economic growth and technological leadership. In fact, grant terminations already being made based on politically and ideologically driven interpretations of the national interest are negatively affecting the work of early-career, post-doctoral, and graduate student researchers, forcing the closure of research laboratories conducting important work and reducing STEM Ph.D. enrollment opportunities at U.S. universities.[29] The proposed rule would further disrupt the development of early-career scientists by reducing the value of the peer-review process itself. Agencies such as NIH and NSF provide detailed reviewer feedback that helps investigators improve future proposals, making successful participation in peer-reviewed competitions a critical component of scientific training and career advancement.

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[29] "New PhD Admissions Data Show Threat to U.S. STEM Workforce, Breakthroughs, Innovations," *Association of American Universities*, July 7, 2026; "Decline of Ph.D. Admissions Could Imperil a 'Generation of New Talent," *The New York Times*, July 6, 2026; "Admissions to top PhD programs down 15% amid federal funding cuts, uncertainty," *The Washington Post*, July 6, 2026

The proposed pre-issuance review process is inconsistent with the statutory framework Congress has established to govern scientific grantmaking. The statutes governing grantmaking by NIH, NSF, and DOD require that funding decisions be guided principally by peer review and scientific expertise:

- **NIH**: Congress provided that the HHS secretary, acting through the NIH director, "shall by regulation require appropriate technical and scientific peer review" of all grants, development contracts, and agreements for biomedical and behavioral research.[30] The secretary is thus statutorily forbidden from approving research proposals unless they have undergone peer review, received approval from a majority of members of the peer-reviewing body, and been approved by an expert advisory council.[31]
- **NSF**: The National Science Foundation Act includes an express "[r]eaffirmation of merit-based peer review" for evaluating grant proposals, relying on the fact that NSF's "peer review and merit review processes have identified and funded scientifically and societally relevant basic research and should be preserved."[32] Other funding programs administered by NSF require "merit review," including review by "panels" populated by "representative[s] of eligible institutions, including research universities."[33]
- **DOD**: The "Secretary of Defense may not make a grant or award a contract to a college or university for the performance of research and development, or for the construction of any research or other facility, unless . . . the grant is made using competitive procedures," which is defined to include "the competitive selection for award of science and technology proposals resulting from a general solicitation and the peer review or scientific review (as appropriate) of such proposals."[34]

By inserting a layer of political review after these statutorily required processes, the proposed regulation risks subordinating expert evaluation to political considerations, eroding the independence and credibility of federally funded research, and weakening the performance of a system that has historically fueled U.S. economic and technological dominance. This approach is also difficult to reconcile with agencies' own scientific-integrity commitments. For example, HHS has adopted a scientific-integrity policy resting on the considered judgment that "[s]cience, and public trust in science, thrives in an environment that prevents political interference and inappropriate influence from impacting scientific data and analyses and their use in decision making."[35] That policy identifies peer review, and the absence of political considerations in evaluating science, as critical to protecting scientific integrity.[36] The proposed rule may also degrade the quality of peer review over time, as expert reviewers—who

[30] 42 U.S.C. § 289a(a)(1)
[31] 42 U.S.C. § 289a-1(a)(2)
[32] 42 U.S.C. § 1862s(a)(4)
[33] Id. § 1862c(a)(2)(A)–(B); see also id. §§ 1862n-1, 1862n-1a, 1862s-5
[34] 10 U.S.C. §§ 3012, 4141
[35] HHS, Final Scientific Integrity Policy, 89 Fed. Reg. 106,526 (Dec. 30, 2024)
[36] *Id.*

generally serve on a voluntary basis—may be less willing to devote substantial effort to a process whose recommendations can be overridden based on political considerations.

The proposed rule also lacks critical definitional clarity, particularly in its reference to vague and undefined terms such as "anti-American values," "national interest," and performance criteria for meeting "Gold Standard Science." The proposed rule's attempt to ensure ideological consistency with the current administration is problematic in two additional ways: (a) It is effectively an unconstitutional condition on grant funds; and (b) such conditions are unrelated "to the federal interest in particular national projects or programs," and thus illegitimate.[37] Without clear, objective standards, agencies would be left to apply subjective and potentially shifting interpretations, increasing the likelihood that funding decisions reflect political priorities rather than scientific merit. This ambiguity not only undermines the proposed rule's stated goal of transparency but also creates systemic friction in the research enterprise—delaying awards, increasing administrative burden, and discouraging participation by top researchers, who could be drawn to go elsewhere. In contrast to stated goals of efficiency and excellence, such uncertainty would slow the pace at which scientific insights are translated into new cures for debilitating diseases and into strategic economic and national-security advantages.

More broadly, introducing political review into individual funding decisions risks weakening the United States' position in global innovation competition at a critical moment. Merit review has been used as the basis for making scientific research awards in part because determining which research proposals are most likely to yield important discoveries requires highly specialized expertise. Major breakthroughs often emerge from basic research that may appear unimportant to non-experts, making political officials poorly positioned to substitute their judgment for that of field-specific reviewers. Competitor nations, including China, are making sustained, strategic investments in research and development with streamlined decision-making processes aimed at accelerating technological advancement in areas such as artificial intelligence, quantum computing, biotechnology, and advanced manufacturing. By comparison, layering political review onto individual grant awards risks slowing U.S. discovery, fragmenting the research pipeline, and discouraging the kind of exploratory, curiosity-driven science that has historically produced transformative breakthroughs. Over time, this could result in fewer foundational discoveries, diminished private-sector spillovers, and a reduced capacity to translate research leadership into economic and geopolitical advantage.

Ultimately, conditioning funding on perceived ideological alignment would chill scientific inquiry, narrow the scope of research discovery, and discourage innovative approaches that fall outside prevailing political preferences. It would also erode domestic and international confidence in the integrity and stability of the U.S. research enterprise. Taken together, these effects would not only undermine OMB's own stated goal of funding "Gold Standard Science," but also weaken the economic foundations and innovation capacity that underpin U.S. competitiveness in the global economy.

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[37] *South Dakota v. Dole,* 483 U.S. 203 (1987), *Massachusetts v. United States*, 435 U.S. 444 (1978), and related cases.

Recommendation: *AAU requests that OMB preserve the primacy of scientific merit review and limit any political appointee review to program-level design decisions, not individual award selections.*

2. [§ 200.205(b)(3)] Preference for Institutions with Lower Indirect Cost Rates

The proposed rule would make an institution's negotiated IDC rate a selection criterion for discretionary federal awards, allowing agencies to favor applicants with lower rates when evaluating otherwise comparable proposals. This injects a non-merit factor into the competitive award process, conflicts with the statutory framework Congress has established for merit-based scientific grant-making, is inconsistent with the appropriations riders protecting negotiated IDC rates at multiple agencies, undermines substantial reliance interests built on the government's longstanding treatment of those rates, and rests on assumptions about proposal evaluation that do not reflect how competitive research funding operates in practice.

Federal agencies have deliberately kept IDC rates out of the merit-review process because they bear no relationship to a proposal's scientific quality. Negotiated IDC rates reflect real costs of the facilities, equipment, libraries, and administrative and compliance infrastructure necessary to support research. They are not a measure of scientific excellence, operational efficiency, or the likelihood that a project will yield significant results. NSF has expressly recognized this principle by prohibiting staff from requesting or encouraging investigators to seek IDC reductions or waivers, and that prohibition is embedded in NSF's own Proposal and Award Policies and Procedures Guide.[38] Congress has reinforced it by requiring NIH and NSF to evaluate proposals based on scientific merit and embedding the merit-based framework as the governing standard for competitive award decisions.[39] The proposed rule would depart from that framework by allowing a cost-based administrative factor to influence award decisions independently of scientific judgment.

The available evidence further suggests that such a preference would produce counterproductive results. Institutions with higher IDC rates account for a disproportionate share of major scientific and commercial innovations — and particularly in biomedical research, including the creation of new drug therapies and commercially valuable patents.[40] Physical research infrastructure, which is a principal driver of higher IDC rates, is also a principal driver of the capacity to conduct the most demanding research. A preference for lower IDC rates would therefore systematically disadvantage many of the country's most research-intensive institutions not because their science is weaker, but because they have invested more heavily in the infrastructure needed to conduct cutting-edge research. It would also perversely incentivize

[38] NSF Proposal and Award Policies and Procedures Guide (PAPPG), NSF 24-1, pt. II, ch. X.D.1; PAPPG, NSF 23-1, pt. II, ch. X.D.1.

[39] 42 U.S.C. § 289a (NIH peer review); 42 U.S.C. § 1864 (NSF merit review); 42 U.S.C. § 1862s (reaffirmation of NSF merit-based review).

[40] Pierre Azoulay, Daniel P. Gross & Bhaven N. Sampat, *Indirect Cost Recovery in U.S. Innovation Policy: History, Evidence, and Avenues for Reform*, NBER Working Paper 33627 (rev. June 2025), at 3, 20-21, 37 & Figure 7; Roy H. Perlis, *Indirect Costs and Scientific Impact at NIMH*, PNAS Nexus, vol. 4, no. 11, pgaf357 (Nov. 2025).

institutions to improve their competitiveness by reducing or absorbing research costs rather than strengthening research capacity. Federal agencies have long limited the role of cost-sharing in the proposal review process to avoid comparable distortions.[41]

This provision would also undermine substantial and long-standing reliance interests. Universities have made significant long-term capital investments in research centers, laboratories, and supporting infrastructure based on the government's longstanding commitment that negotiated IDC rates reflect those investments and should not disadvantage institutions in competition for research funding. Because scientific progress depends on sustained investments that accumulate over time, making research infrastructure a negative factor in the evaluation of grant proposals would predictably discourage future investment and weaken the research ecosystem on which federally funded discovery depends.

In addition, the provision is both vague and impractical. The notion that two scientific proposals could be materially identical for an institution's IDC rate to serve as a meaningful tiebreaker does not reflect the realities of competitive research funding. Proposals typically differ across numerous dimensions, including scientific approach, investigator expertise, available facilities, institutional capabilities, project scope, and anticipated impact. Yet the rule provides no guidance regarding how agencies would identify comparable proposals, what rate differential would be significant, or how the criterion would interact with other selection criteria. The result is likely to be inconsistent application across agencies and programs without any corresponding benefit to the quality of funded science.

Finally, the proposed rate criterion conflicts directly with the appropriations riders through which Congress has protected negotiated IDC rates at multiple agencies. Those riders require agencies to continue applying negotiated rates under 2 C.F.R. § 200.414 in the same manner and to the same extent as before.[42] IDC rates have never functioned as a selection criterion for the evaluation of grant proposals; using them to influence award decisions would alter how negotiated rates are applied and would do so at the very agencies that Congress has specifically provided protection.

***Recommendation**: AAU urges OMB to withdraw § 200.205(b)(3) in its entirety.*

3. [§ 200.218] Prohibition on Promoting or Supporting Disparate-Impact Liability

This provision would prohibit the use of award funds to promote or support theories of disparate-impact liability, an established legal framework that the Supreme Court has upheld as a valid interpretation of

[41] National Science Board, Investing in the Future: NSF Cost Sharing Policies for a Robust Federal Research Enterprise, NSB-09-20 (Aug. 3, 2009), at 10-12.

[42] Commerce, Justice, Science; Energy and Water Development; and Interior and Environment Appropriations Act, 2026, Pub. L. No. 119-74, div. A, tit. V, § 542, 140 Stat. 5, 61 (Commerce, NASA, NSF); *id.* div. B, tit. III, § 313, 140 Stat. at 89 (Energy); Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. A, tit. VIII, § 8146, 140 Stat. 173, 234 (DOD); *id.* div. B, tit. II, § 224, 140 Stat. at 288 (HHS/NIH); Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, div. D, tit. II, § 224, 138 Stat. 460, 677 (HHS/NIH).

federal civil rights statute.[43] An executive order directing agencies to abandon that framework does not override a Supreme Court statutory interpretation, and a regulation implementing such a directive carries the same infirmity.[44] The statutory conflicts run deeper than that single case. Federal agency implementing regulations under Title VI, Title IX, Section 504 of the Rehabilitation Act, and the Age Discrimination Act all include disparate-impact provisions that agencies are affirmatively required to enforce. § 200.218 would simultaneously prohibit what those regulations require. The proposed rule offers no account of how that conflict is supposed to be resolved.

The research consequences of this portion of the proposed guidance deserve equal attention. The provision's prohibition on "disparate-impact studies and other related activities" is broad enough to encompass a substantial body of federally funded science — research on racial health disparities, educational achievement gaps, environmental exposure differentials, and labor market inequality all involve exactly the statistical analysis of group-level differences the provision aims to prohibit. There is no safe harbor for peer-reviewed scientific inquiry. The problematic nature of this provision is illustrated by many studies where research has demonstrated that there are, in fact, often disparate health outcomes based upon sex and race. Examples include research examining sex-based differences in cardiovascular disease and research demonstrating racial disparities in chronic kidney disease. In fact, Congress recognized the importance of studying differential outcomes among demographic groups in the NIH Revitalization Act of 1993.[45] The law's inclusion requirements were based on the understanding that meaningful improvements in care depend on identifying how diseases, treatments, and interventions affect different populations. This provision directly contradicts those legal requirements.

Further, and most importantly, the provision's own definition of disparate-impact liability mischaracterizes the doctrine — it describes a rebuttable evidentiary showing as an "automatic or near-insurmountable presumption," which is not how any civil rights statute applies the framework.[46] A regulation restricting federally funded activities based on a legally inaccurate description of the doctrine it purports to address is arbitrary and capricious on its face.

Recommendation*: AAU requests that OMB withdraw this provision in its entirety, as it is inconsistent with controlling Supreme Court precedent, a mischaracterization of the disparate-impact doctrine, and in direct conflict with federal agency implementing regulations under Title VI, Title IX, Section 504, and the Age Discrimination Act.*

[43] *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519 (2015).
[44] *See* EO 14281 (cited as basis for §200.218).
[45] (Pub. L. No. 103-43, 107 Stat. 133 (1993).
[46] *See* §200.218 (defining "disparate impact liability" as creating an "automatic or near-insurmountable presumption").

4. [§ 200.300] National Policy Conditions (DEI, Gender Ideology, Protecting Children)

§ 200.300 embeds three interlocking prohibitions into the grants-management framework that together would chill or prohibit a substantial and undefined range of federally funded research, clinical care, and educational activity; create compliance conflicts with existing civil rights law that the rule does not resolve; expose institutions to termination risk for activities that are not only lawful but, in many cases, legally required; and condition funding on adherence to definitions drawn from executive orders under active judicial challenge. In addition to the concerns raised in the initial section on overarching legal concerns, each prohibition requires specific attention here.

The Unlawful DEI Provision. The provision prohibits use of award funds to "fund, promote, encourage, subsidize, or facilitate" DEI policies, principles, or practices that violate applicable anti-discrimination law. The operative terms are undefined, and the provision gives no guidance on which activities at a research university fall within its scope. Whether a clinical research study examining racial health disparities "promotes" DEI, whether a faculty search process that values mentoring experience "subsidizes" DEI, whether a Title IX compliance office "facilitates" DEI — none of these questions has an answer in the proposed rule. Recipients who misjudge face grant termination and fund recovery, which could be existential depending on the size and scope of the program. That is not a workable compliance standard, and a provision that fails to give regulated parties fair notice of what it prohibits cannot be enforced.[47]

Additionally, as noted in Section II. B. above, the conflict with mandatory statutory programs is direct and unacknowledged by OMB in the proposed rule.[48] Each statutory program targets exactly the demographic-conscious program design the DEI prohibition would forbid. The rule's repeated qualifier — "to the maximum extent permitted by law" — does not resolve these conflicts; it delegates their resolution to individual agencies without guidance, in plain violation of the requirement that conditions on federal funds be stated clearly enough for recipients to understand what is expected of them.[49] OMB must identify each mandatory statutory program that conflicts with this provision and specify definitively which obligation governs. The rule as proposed cannot be implemented or enforced.

Civil Rights Compliance Conflict: Institutions must simultaneously comply with the DEI provision and their obligations under Title VI, Title IX, and Section 504 — statutes that require activities that appear to be in direct conflict with and prohibited under the rule. The rule provides no clear guidance for how recipients of financial assistance should seek to reconcile such conflicts to ensure that they both comply with OMB rules and adhere to specific legal requirements.

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[47] *Grayned v. City of Rockford*, 408 U.S. 104 (1972).
[48] As noted above, the proposed rule presents conflicts with the mandatory "shall" language included in statutes such as the NIH Revitalization Act of 1993, the Chips and Science Act of 2022, the American Innovation and Competitiveness Act of 2017, and the Public Health Service Act.
[49] *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981).

Students for Fair Admissions Overreach: OMB's reliance on the Supreme Court's decision in *Students for Fair Admissions v. Harvard* as authority for the DEI prohibition overreads that decision. The Court specifically addressed race-consciousness only as it relates to admissions decisions and explicitly declined to address faculty hiring, financial aid, or research programs. It does not validate a categorical prohibition across the full range of federally funded activities at research universities.[50]

The Gender Ideology Provision. The provision imports its operative definition verbatim from Executive Order 14168, which is subject to active litigation and preliminary injunctions on equal protection and First Amendment grounds. As discussed in Section II. A, a regulation whose definitional framework derives entirely from an enjoined executive order faces a fundamental legal problem: if the order is invalidated, the definition is legally unmoored while the regulation remains in force. Beyond the EO problem, the provision would prohibit or chill NIH-funded research on gender dysphoria and transgender health, clinical care at university medical centers, and IRB-approved research protocols without identifying any statutory authority for doing so. In a research and academic context, a prohibition on "promoting or supporting" a defined set of ideas is a viewpoint-based restriction on expression, and the government's authority to attach such conditions to federal spending programs has constitutional limits that this provision does not respect.[51]

The Protecting Children Provision. The provision rests definitionally on Executive Order 14187, which is similarly subject to injunctions. OMB's reliance on *U.S. v. Skrmetti* as validating this provision does not hold for reasons outlined above. That decision addressed a state statute under rational-basis review and said nothing about OMB's grants-management authority or the lawfulness of a federal prohibition on funding gender dysphoria research.[52] Active IRB-approved research involving minor participants cannot be abruptly terminated without violating the Common Rule's special protections for children.[53] The rule does not acknowledge this conflict.

Recommendation: *AAU requests that OMB withdraw or substantially revise all three national policy conditions; provide definitions independent of any litigated executive order; explicitly exclude mandatory statutory programs; and establish safe harbors for research, clinical care, civil rights compliance, and scientific publication.*

B. Ensuring Stability, Predictability, and Due Process in Federal Research Awards

Several proposed revisions introduce significant new authority and flexibility to agencies that risk undermining the stability, predictability, and fairness that are essential to the effective administration of federal research awards. This section highlights concerns that expanding agency discretion without

[50] *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).
[51] *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013).
[52] *United States v. Skrmetti*, 605 U.S. 495 (2025).
[53] Common Rule, 45 C.F.R. Part 46, Subpart D.

sufficient guardrails may erode due process, reduce transparency, and impair institutions' ability to reliably plan and execute federally funded research.

1. *[§ 200.340 – 200.343] Discretionary Termination and Suspension*

The proposed revisions to § 200.340 through § 200.343 represent one of the most consequential structural changes in the entire rulemaking. By granting agencies broad discretion to suspend or terminate awards based on shifting priorities and undefined standards, the proposed rule departs from the historically stable framework governing federal research grants and replaces it with something closer to a procurement termination model that is ill-suited to the research context. This shift introduces significant instability and uncertainty into the federal research grant system. That instability is at odds with longstanding federal research policy recognizing the importance of continuity in scientific funding. NIH has emphasized the value of providing "greater funding stability, flexibility, and support" through multiyear awards,[54] and DOD has similarly recognized that "basic research is a long-term activity that requires continuity and stability of support."[55] Such uncertainty would weaken the reliability of federal investments, discourage participation, and could be a credit negative in the financing sector for entities that depend on competitive federal awards.[56] The result would be a grants-management environment in which no multi-year research award can serve as a reliable platform for sustained scientific investment, creating uncertainty that may deter institutions from accepting federal funding in the first place and ultimately diminish the quality and impact of federally supported research.

§ 200.340(a)(2) broadly authorizes agencies to terminate discretionary awards whenever an agency determines that a project does not effectuate agency priorities or serve the "national interest." That standard provides no objective criteria against which recipients can measure their conduct or anticipate agency action. This provision implies that agency priorities may shift after an award is made, or that a recipient may no longer be considered the best choice to carry out a project, thereby injecting additional uncertainty into the award process. The "national interest" standard lacks sufficient definition to provide meaningful guardrails, transparency, or mechanisms for contesting such decisions. When paired with the similarly vague "national policy" conditions in § 200.300, this creates a regime in which any research even touching on contested policy areas would be at risk of termination without specific findings or meaningful recourse. Categorical use of this authority against congressionally mandated programs raises Impoundment Control Act concerns and inconsistent or unclear use of it raises Spending Clause concerns.[57] Using discretionary termination authority to defund programs Congress has specifically mandated and funded does not satisfy those procedures, and a grants-management regulation cannot serve as a substitute for them.

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[54] Nat'l Inst. of Neurological Disorders & Stroke, Research Program Award (R35), RFA-NS-22-038
[55] DoDI 3210.1, Administration and Support of Basic Research by the Department of Defense (September 15, 2005)
[56] "Public Finance - US: Proposed rewrite of federal grant rules would erode reliability of discretionary awards," *Moody's*, June 5, 2026
[57] Impoundment Control Act of 1974, 2 U.S.C. §§ 681-688.

The proposed rule's effort to align several termination procedures for research grants with those established under the Federal Acquisition Regulation (FAR), which governs federal procurement contracts, is misplaced. This approach misapplies procurement concepts that are ill-suited to the research context. Procurement contracts and research grants are different instruments serving different statutory purposes and creating fundamentally different reliance interests. Unlike procurement contracts, which involve the purchase of defined deliverables, research grants support scientific inquiry, where outcomes are inherently uncertain and progress is iterative.

In reliance on multi-year federal awards, universities hire personnel, support trainees, purchase specialized equipment, establish subawards, and commit institutional resources that are not easily unwound when a project is abruptly terminated. A contractor terminated for convenience is owed its costs and a reasonable profit on the work performed. Research grants, however, depend on long-term scientific investments and relationships that cannot be readily valued or restored once disrupted. The mismatch is particularly stark because the FAR's termination-for-convenience framework is built around a requirement that contractors receive "fair compensation."[58] The proposed rule imports the termination concept without providing comparable protections for grant recipients that have made substantial, reliance-based scientific investments.

Imposing FAR-based termination constructs risks significant harm to ongoing research — and particularly for multi-year research projects involving active IRB-approved human subjects research, which cannot be abruptly terminated without violating the Common Rule's participant protection obligations.[59] A research university facing abrupt termination of an active project has responsibilities that cannot be discharged simply by winding down and submitting a final invoice. Graduate students and postdoctoral researchers whose training and financial support depend on the award cannot simply be reassigned. Nor can highly specialized research teams, unique scientific expertise, and collaborative subaward arrangements be readily transferred or reconstituted once disrupted. Specialized equipment cannot be idled without cost, and data collection protocols that took years to establish cannot be paused and resumed without compromising the integrity of the underlying science. Abrupt terminations can also create enormous sunk costs, causing specialized equipment to sit idle, perishable samples to be lost, and live specimens to be euthanized before studies can be completed.[60] For projects involving human participants, abrupt termination may also create heightened risks to participant protections and study continuity that have no meaningful analogue in the procurement context.

These are not transition costs in the procurement sense; they are irreversible losses that the proposed FAR-aligned cost reimbursement framework does not adequately address. The absence of any requirement that agencies justify denied reimbursement claims leaves institutions with little meaningful recourse.

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[58] 48 C.F.R. § 49.201

[59] Common Rule, 45 C.F.R. Part 46

[60] "Harvard scientist ordered to halt multicenter TB trial in funding freeze," *Stat News*, April 15, 2025. (describing efforts to avoid euthanizing macaques after an abrupt funding cutoff).

The FAR-like proposal to allow up to a 90-day temporary suspension authority is particularly problematic for scientific research, where abrupt interruptions can have significant and potentially irreversible impacts. Such a suspension would effectively operate as a "stop-work order," introducing disruptions that are often costly and, in many cases, irreversible. This creates inefficiencies and risks wasting taxpayer resources. Multi-year, data-intensive, or time-sensitive projects depend on sustained progress, coordinated staffing, and uninterrupted access to facilities and research subjects. Abrupt pauses can disrupt research continuity and lead to permanent data loss, missed experimental windows, and cascading delays that cannot be recovered within the performance period. The risks are especially acute for longitudinal studies, where even a single missed follow-up period can permanently compromise the ability to measure change over time; unlike procurement work, missing data from a discontinued cohort generally cannot be recreated later. In many cases, these disruptions can prevent projects from achieving their intended objectives within the awarded period of performance, even if funding is ultimately restored. The resulting inefficiencies increase costs, diminish the return on federal investments, and undermine the scientific outcomes the award was intended to support. The governing standard for suspension, that an agency may act whenever it determines a suspension is "in the interest of the Federal agency," is entirely self-referential and provides no limiting principle. It could be applied to suspend any program an agency views as inconsistent with current priorities — without advance findings, without an opportunity for the recipient to be heard, and with consequences that are difficult or impossible to reverse.

These disruptions extend beyond individual projects to the research workforce, jeopardizing graduate student training, postdoctoral appointments, and the retention of highly skilled personnel essential to maintaining the United States' competitive advantage in critical fields. Such disruptions can delay degree completion, reduce access to critical research and mentorship opportunities, and interrupt stipend support that many trainees depend upon to remain in the research enterprise. Graduate students, postdoctoral researchers, and research staff whose appointments, stipends, and salaries depend on a suspended award cannot remain in professional limbo indefinitely and may seek alternative sources of funding or employment during a suspension. The resulting loss of trained personnel and institutional knowledge is often permanent, even if funding is ultimately restored, and may divert highly skilled individuals from basic research altogether. Once key personnel leave, projects that rely on specialized technical expertise frequently cannot be restored to their prior trajectory, resulting in losses that extend well beyond the period of suspension itself. As a result, the long-term damage to the nation's capacity to develop, attract, and retain scientific talent compounds the immediate scientific impacts of award suspensions. Yet these workforce consequences are not adequately reflected in the regulatory impact analysis accompanying the proposed rule and should be fully considered.

Further, the addition of proposed language in § 200.342 would provide no opportunity for appeal in cases of discretionary termination, reserving appeal rights only for terminations based on noncompliance. This represents a significant departure from the current framework, which has allowed recipients to demonstrate alignment with agency priorities and has resulted in the reversal of some

termination decisions. Eliminating appeal rights for discretionary terminations while dramatically expanding the grounds on which such terminations may occur creates a regime that is simultaneously more consequential and less accountable. Institutions facing terminations that carry significant financial and operational consequences deserve a meaningful opportunity to respond before those consequences become final. The proposed approach instead adopts a more unilateral and authoritative enforcement model that drastically changes the expectations of award recipients.

AAU institutions have already observed the harmful impacts of award terminations, delayed renewals, and suspensions, which would likely increase under these proposed changes:

- *Loss of training for the next generation of scientific talent*. Recent data provided by 55 public and private AAU member universities shows that on average, these institutions accepted 15% fewer applicants to doctoral programs for fall 2026 compared to fall 2025.[61] This decline is, in large part, attributable to financial uncertainties caused by declining and unpredictable federal research funding essential to support PhD students in critical science and engineering fields. For example, the California Institute of Technology, one of the nation's premier research institutions, said it would reduce its new graduate students by 40 percent in fall 2026 across the board[62]. The result is a broad contraction in doctoral training and the prospect of losing an entire generation of rising scientific talent.

  In addition, the possibility that grants can be terminated mid-stream for political reasons is causing universities to be more cautious about making long-term commitments to new doctoral students in STEM fields, whose ability to pursue their education depends heavily on research grants. These unexpected terminations are stalling doctoral students from completing work necessary for their dissertations and resulting in extended time to degree. This has immediate impacts on current students and further limits universities' ability to admit new PhD students.

- *Loss of globally competitive scientific talent.* One department reports losing a leading HIV cure researcher who returned to China after concluding that the resources available there would allow greater scientific impact. The investigator had spent more than two decades training in leading U.S. research institutions, generated significant intellectual property, and contributed research that influenced HIV cure strategies across the pharmaceutical sector. The departure illustrates how funding instability can accelerate the loss of highly trained scientific talent and strengthen the competitive position of foreign research enterprises.

- *Erosion of research infrastructure.* Funding disruptions have produced significant reductions in staffing across core research facilities, with some cores reducing personnel by 25% to 50% following declines in internally and externally funded research activity. For example, one institution's animal research program implemented a 25% staffing reduction in response to

[61] "," *Association of American Universities,* July 7, 2026
[62] "," *The New York Times*, July 6, 2026

reduced demand associated with instability in federal research funding. Because core facilities operate with largely fixed expenses (including operations and maintenance, space, and debt obligations), institutions have also been forced to reduce facility footprints and consolidate research capacity. These impacts extend well beyond individual grants and weaken the shared infrastructure upon which future scientific discoveries depend.

- *Loss of infectious-disease-preparedness research.* One infectious disease training grant supplement was terminated despite supporting the development of innovative methods for sanitizing emergency medical vehicles after transporting infectious patients. The project was designed to help reduce disease transmission risks and strengthen public health preparedness. Its termination halted work intended to address future infectious disease threats and eliminated training opportunities for personnel responsible for frontline response.

Bottom line: The expansion of discretionary termination and suspension authority under vague and undefined standards would chill participation in federal research programs, slow scientific progress, and increase the likelihood of stalled or abandoned projects at precisely the moment when sustained American investment in research is most critical to national security, economic competitiveness, and public health.

Beyond its implications for research awards, the proposed approach introduces material economic risk by reducing the reliability and predictability of federal funding streams that underpin key sectors of the economy. Moody's Ratings has concluded that the proposed rule would materially weaken the reliability of multi-year federal funding commitments and could be a credit negative for entities that depend on competitive federal awards (including research universities, hospitals, transit systems, and local governments).[63] Any resulting credit downgrades or increased borrowing costs would reduce resources and reverberate through capital planning and long-term investment decisions, ultimately raising the cost of infrastructure, research, and public services while dampening economic activity tied to federally supported innovation ecosystems.

Recommendation*: AAU requests that OMB define "national interest" with objective criteria; require documented findings before termination; provide a 90-day notice and cure period; exclude active human subjects research from abrupt termination; exempt all currently active awards and align agency authority with statutory requirements and congressional funding directives.*

2. ***[§ 200.206] Federal agency review of risk posed by applicants***

AAU supports rigorous, objective evaluation of applicants' capacity to manage federal funds responsibly, including consideration of documented plagiarism and research misconduct findings made through established federal or institutional processes with appropriate due process protections. However, the

[63] "Public Finance - US: Proposed rewrite of federal grant rules would erode reliability of discretionary awards," *Moody's*, June 5, 2026

proposed expansion of § 200.206 would fundamentally reorient federal grant risk assessment from a narrow, objective evaluation of an applicant's ability to responsibly manage federal funds to a broader and more subjective review of institutional and individual applicant characteristics. Under the current framework, risk assessments rely on clear, evidence-based indicators—such as financial stability, audit findings, prior performance, and administrative capacity—that directly relate to grant management and project execution. By contrast, the proposed changes broaden the scope of review to factors that may only be tangentially related to grant performance, moving the focus away from scientific merit and increasing the influence of an institution's overall profile and perceived risk posture. This shift does little to improve the government's ability to identify genuine financial and programmatic risk and instead introduces greater subjectivity into a process that depends on objectivity for its legitimacy.

The proposed rule also raises significant implementation concerns. By expanding the range of factors agencies may consider, it increases the likelihood that applicants will be classified as higher risk based on criteria that are not directly connected to grant performance. The new 30-day timeframe for agency risk evaluations further exacerbates these concerns by limiting opportunities for applicants to clarify or address potential concerns, increasing uncertainty in award outcomes and reducing transparency in how risk determinations are made. Moreover, because many of the new criteria require subjective interpretation (particularly those related to institutional activities and affiliations), the proposed rule is likely to produce inconsistent application across agencies and programs. This would result in uneven treatment of similarly situated applicants and would impose substantial administrative burdens on institutions and their staff to review and investigate these factors.

The "history of questionable practices" factor would permit agencies to consider an applicant's "engagement in activities or initiatives inconsistent with federal civil rights laws" and "engagement in activities or initiatives inconsistent with religious liberty laws." AAU supports consideration of documented research misconduct where a formal finding has been made by the Office of Research Integrity (or an analogous function within another agency), an institutional review process, or another competent authority following established procedures with due process protections consistent with how debarment and suspension decisions are currently made. However, the proposed factor goes substantially further — without adequate guardrails. It would permit agencies to consider "engagement in activities or initiatives inconsistent with federal civil rights laws" and "inconsistent with religious liberty laws" — undefined terms tied to contested executive orders and active litigation, with no objective standard, no established process, no competent adjudicating authority, and no due process mechanism. Moreover, the proposal is also problematic in that currently it applies to the applicant and staff with no indication that "staff" must be associated with the specific project under consideration.

The "membership and affiliations" factor presents a different but equally serious problem. The factor relies on vague and undefined concepts, including terms such as "undermining national security," without providing objective criteria, evidentiary standards, or any established process for determining when an institution's activities fall within its scope. It would allow agencies to consider an institution's record of hosting controversial speakers, maintaining open forums for student organizations, and

engaging in protected academic inquiry as factors in grant-making decisions. None of these activities has any demonstrated relationship to an institution's capacity to manage federal funds responsibly, which is the stated purpose of the risk assessment framework. All of them are activities that universities engage in as a matter of fundamental academic mission, and many are activities that universities are legally obligated to accommodate. Nor does the proposed rule identify a competent authority, adjudicative process, or meaningful opportunity for an institution to respond before adverse funding consequences are imposed. Conditioning federal research funding on an institution's associational and expressive choices is not risk management. It is the use of the federal funding relationship to penalize protected activity, which conflicts with the First Amendment.[64] The risk of viewpoint-based, politically motivated, or arbitrary grant denials is significant, and AAU requests that OMB remove this factor.

The "foreign gift and contract reporting" factor reflects a legitimate research security interest that AAU shares and has actively worked to advance through member institution compliance with Section 117 of the Higher Education Act. The problem is the absence of any workable implementation standard. The proposed factor provides no objective criteria for evaluating compliance history, no defined threshold for what level or type of noncompliance would trigger adverse consideration, and no process by which an institution could respond to an adverse assessment before it affects a funding decision. Compliance with Section 117 involves genuinely complex determinations about reportability thresholds, institutional relationships, and disclosure obligations that can be contested in good faith. Without objective standards and a pre-decision response opportunity, this factor will be applied inconsistently across agencies and will penalize institutions for technical compliance disagreements rather than genuine failures of research security stewardship.

***Recommendation**: AAU requests that OMB remove or substantially revise these factors to limit new risk assessment criteria to objective, process-grounded standards directly tied to grant performance and institutional capacity; require that any adverse finding be based on a formal determination by a competent authority following an established process; establish clear, objective, and consistently applied standards; and remove or substantially narrow criteria that are undefined, viewpoint-based, or tied to activities protected by the First Amendment and academic freedom principles. With respect to Section 117 compliance, OMB should provide specific, objective standards for evaluating an institution's compliance history, clearly define the level of noncompliance that would be sufficient to affect a funding decision, and ensure institutions have a meaningful opportunity to respond to and remedy alleged deficiencies before any adverse determination is made.*

3. ***[§ 200.339] Remedies for Noncompliance: Agency Cooperation with Private Litigants***

§ 200.339 of the proposed rule would authorize federal agencies to cooperate with private litigants bringing suits against grant recipients for alleged failure to comply with the Constitution, federal statutes and regulations, or the terms and conditions of a federal award.

[64] *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013); *Rust v. Sullivan*, 500 U.S. 173 (1991).

This provision is not an extension of existing federal enforcement mechanisms and should not be characterized as such. Although it may invite comparison to the False Claims Act's *qui tam* framework, that analogy fails on closer examination. The *qui tam* mechanism is a carefully designed statutory scheme with defined substantive boundaries, procedural safeguards, and a clear theory of government interest. A relator must allege the knowing submission of false claims for federal payment, a legally bounded action that has been extensively interpreted by the courts. The government retains substantial control throughout the litigation, including the authority to intervene, assume responsibility for the case, or seek dismissal even when it declines to proceed. Courts likewise perform an independent gatekeeping function from the outset. None of these constraints appear in the proposed § 200.339 cooperation authority.

Instead, the proposed rule would permit agencies to align themselves with private litigants pursuing grant recipients for alleged noncompliance with an effectively unlimited range of legal requirements, including the proposed rule's own vaguely defined national policy conditions at § 200.300. The term "cooperate" is undefined. The provision establishes no standards governing when or how an agency may decide to cooperate, no requirement that the alleged noncompliance be material to the federal interest in the relevant program, no notice requirement, and no opportunity for the recipient to be heard before a cooperation decision is made. Under this framework, a private organization alleging that a university's research programs, hiring practices, or academic activities violate the DEI prohibition, gender ideology provision, or another award condition could seek agency cooperation (including information sharing, technical assistance, or public declarations of support) without the procedural protections that typically accompany formal federal enforcement actions.

The implications for research universities are significant and extend well beyond the merits of any individual lawsuit. Decisions about whether and how to pursue grant recipients for alleged noncompliance are executive enforcement functions that carry significant consequences. By enabling agencies to support private litigants without meaningful procedural constraints or materiality requirements, § 200.339 risks circumventing those accountability structures. Grant recipients facing private litigation backed by formal agency cooperation must bear substantial legal costs, administrative burdens, and institutional disruption regardless of whether the underlying claims ultimately succeed. Where the alleged noncompliance is based on the vague and undefined terms of § 200.300, the burden of merely defending against such litigation (rather than its ultimate outcome) can become an overly coercive and unwarranted means of compelling compliance.

These concerns are not merely theoretical. As discussed in Section III of this letter, the national policy conditions set forth in § 200.300 prohibit activities that are undefined, contested in federal court, and impossible to reconcile with existing civil rights law and mandatory statutory programs. Authorizing private litigation premised on alleged violation of those conditions, while allowing federal agencies to cooperate with private plaintiffs, would create litigation exposure that is broader and less predictable than anything contemplated by existing federal enforcement frameworks. The government cannot

constitutionally use the threat of litigation cooperation to chill activities protected by the First Amendment or required by other federal law. A provision that creates such a chilling effect without procedural safeguards raises serious constitutional concerns that the proposed rule does not address.

Recommendation: *AAU requests that OMB either withdraw this provision or replace it with a framework that: defines "cooperate" with specificity and limits it to formal, documented forms of assistance; requires a threshold determination that the alleged noncompliance is material to the federal interest in the specific program at issue; requires agency counsel review and approval before any cooperation decision is made; provides recipients with written notice of a potential cooperation decision and a meaningful opportunity to respond before that decision is finalized; and prohibits cooperation in suits premised on alleged violations of award conditions that are themselves the subject of active litigation or judicial challenge.*

4. ***[§ 200.208] Specific Conditions of Authority***

The proposed revisions to § 200.208(b) and (d), along with the addition of § 200.208(f), substantially expand agency authority and flexibility to impose, modify, or scale "specific conditions" throughout the period of performance, raising significant concerns about the stability and predictability of federal research funding for award recipients. Allowing agencies to revise award conditions at any time based on an expanded and potentially evolving set of "risk" factors under § 200.206 introduces considerable uncertainty that undermines institutions' ability to plan, budget, and execute complex research portfolios. The prospect of shifting requirements midstream will disrupt scientific progress, delay timelines, and increase administrative burden, all of which run counter to the goals of advancing U.S. research and innovation.

While the proposed rule contemplates a process through which a recipient may request reconsideration of a specific condition, that mechanism does not provide meaningful procedural protections commensurate with the expanded authority granted to agencies. Recipients would be required to respond within 15 days and could experience significant operational, financial, and research impacts before any reconsideration process is completed. The proposed rule provides no clear standards for governing reconsideration decisions, no independent review mechanism, and no assurance that award activities may continue while reconsideration is pending, further exacerbating this instability.

Moreover, § 200.208(f) would allow agencies to impose additional terms and conditions outside normal processes when a program is deemed an "elevated risk," without defined criteria or transparency. When combined with a 15-day response requirement and limited, informal reconsideration process, this approach risks compelling institutions to accept significant changes with insufficient notice of a condition put forth by an agency (in violation of the Spending Clause) and only limited recourse through an informal reconsideration process. The proposed revisions introduce heightened uncertainty during the award performance period, as budgets, timelines, and activities could be paused or interrupted at any time to accommodate new conditions.

***Recommendation**: AAU requests that OMB expand the timeline for implementation of an agency decision beyond the stated 15 days and allow grant work to continue until new conditions are mutually agreed upon by both agency and award recipient.*

5. ***[§ 200.331] Treatment of Affiliates and Subsidiaries***

The proposed addition of § 200.331(c) would represent a significant shift in how institutions structure and manage internal research collaborations by no longer permitting the treatment of funding transfers to affiliates and subsidiaries as internal distributions of work and funding. Under this provision, institutional affiliates and subsidiaries (such as research foundations, hospitals, branch campuses, or Federally Funded Research and Development Centers) would be treated as subrecipients and subject to the full suite of subrecipient monitoring procedures — including prior approvals, risk assessments, and increased reporting requirements. This approach fails to recognize the integrated nature of certain entities within institutional research enterprises, which already operate under shared governance, compliance systems, and financial controls. Instead, the proposed rule would impose duplicative and unnecessary administrative processes. As a result, institutions would face increased compliance obligations, reduced operational flexibility, and delays in research grant execution, ultimately hindering efficient internal collaboration and the timely advancement of federally funded research—outcomes that run directly counter to the proposed rule's stated goal of reducing administrative burden.

The problem would be particularly acute for state universities that maintain affiliated research foundations and rely on such entities to efficiently manage large research portfolios across multiple campuses. In one possible scenario, under an NIH-funded clinical research award to a large state university, funds may be routed through the university's affiliated research foundation, which serves as the administrative hub for the project. Within this structure, a regional branch campus may be responsible for participant recruitment and community-based data collection in a distinct geographic area, while the university's academic medical center provides centralized clinical trial management and specialized analytic support. Under the proposed change, these routine internal collaborations could require treating the branch campus and the academic medical center as separate subrecipients. This would necessitate issuing multiple subawards, conducting duplicative risk assessments, and implementing ongoing subrecipient monitoring across entities that are effectively part of the same institutional system. For state universities operating through affiliated research foundations, this added layer of administrative burden would undermine the efficiencies those foundations are designed to achieve and could significantly delay project initiation and execution.

***Recommendation**: AAU requests that OMB withdraw § 200.331(c) or at least revise to exempt certain affiliates and subsidiaries from being treated as subrecipients.*

6. *[§ 200.305] Federal Payments Written Justification Requirement*

The proposed revisions to § 200.305 would introduce a new requirement that each payment request submitted by recipients and subrecipients (other than states) include a brief written justification describing the purpose of the payment and the specific award-related work it supports, alongside a requirement for agencies and pass-through entities to verify recipient eligibility through the Treasury Department's Do Not Pay system prior to disbursement. For large research universities managing extensive federal portfolios across multiple agencies, this would represent a significant operational change. Institutions may process payment drawdowns frequently—often weekly or more—across hundreds or thousands of active awards, resulting in thousands of transactions annually. Requiring a distinct narrative justification for each individual drawdown rather than relying on existing award documentation (such as approved budgets, scopes of work, and periodic financial and performance reports) would introduce a substantial new layer of administrative effort that current grants and financial management systems are not designed to support at that scale and which would constitute an enormous administrative burden upon recipients.

The proposed rule also lacks critical clarity regarding implementation. It does not define the expected level of detail for an acceptable justification, nor does it establish whether or how agencies may reject payment requests based on the sufficiency of those justifications or set standard timelines for agency review. This ambiguity creates a risk of inconsistent interpretation across agencies and potential delays in processing routine payments. For research institutions, such delays have immediate operational consequences, including interruptions to payroll for research personnel, delayed payments to subrecipients and vendors, and disruptions to the operation of federally funded facilities and equipment. These risks are particularly acute for institutions with the highest volume of federal awards, where even minor delays can compound quickly across the research enterprise.

Moreover, the proposed per-payment justification requirement appears to duplicate, rather than enhance, the robust financial oversight framework already governing federal awards. Recipients are already required to maintain compliant financial management systems with strong internal controls, submit regular financial and performance reports tied to award milestones, and undergo Single Audit Act reviews at established expenditure thresholds. The addition of transaction-level justification does not correspond to a clearly identified gap in payment integrity, nor does the regulatory impact discussion quantify the administrative burden this requirement would impose. Similarly, while the use of the Do Not Pay system aligns with the goal of preventing improper payments, the proposed rule does not clarify how this screening will integrate with payment workflows, whether it may introduce additional delays, or what recourse exists in the event of an erroneous flag. Taken together, these uncertainties suggest a meaningful risk of added administrative friction in a process that is critical to the continuity of federally funded research activities.

Recommendation*: AAU requests that OMB withdraw the requirement that recipients submit a brief written justification with each individual payment request, or, at a minimum, narrow it to apply only to*

payment requests above a meaningful dollar threshold and allow justification at the award or milestone level rather than at the level of each individual drawdown.

7. *[§ 200.450] Issue Advocacy*

The proposed issue advocacy prohibition is one of the most conceptually confused provisions in the entire rulemaking, and its application to federally funded research and scholarship would produce consequences OMB appears not to have considered. The provision bars recipients from using award funds for "issue advocacy or public messaging that promotes or opposes a particular social, political, or public policy position," including messaging "designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award." This cannot be a routine restriction on using grant funds for political lobbying, which already exists in the current Uniform Guidance. As applied to scientific research and the scholars who conduct it, it promised to be something fundamentally different and far more troubling.

The definition fails at its first word. "Issue advocacy" is a term of art drawn from Supreme Court precedent regulating electoral communications.[65] Transplanting it into the grants-management context without defining it for that context leaves researchers with no workable guidance. Subjects like climate change, vaccine efficacy, criminal-justice policy, and educational equity are subjects of federally funded scientific inquiry precisely because they are important and contested. Every meaningful research finding in public health, environmental science, education, economics, and social policy has implications for how people think about contested questions. That is not a bug in the federal research enterprise; it is the point. A prohibition on "influencing public attitudes" on such matters, applied to the researchers that Congress funds to generate knowledge about them, is incoherent.

Congress has long recognized the importance of ensuring the free flow of information to policymakers. And federal law protects the right to furnish information to Congress, underscoring the public interest in allowing researchers and subject-matter experts to communicate relevant findings to legislative decisionmakers.[66]

The phrase "not necessary to accomplish the purpose of the Federal award" compounds the problem. This qualifier asks researchers to draw a line between communicating findings that are necessary to the award's purpose and communicating findings that go beyond it; this is a distinction that does not map onto how science actually works, the role of scientific experts in informing policy, or how scientific communication about such policy matters actually happens. A researcher funded to study the mechanisms of air pollution exposure may produce findings with broad implications for environmental regulation, public health policy, and environmental justice. A researcher funded to study educational interventions may generate results that speak directly to debates about school funding, curriculum design, and teacher preparation. The scientific work and its public implications are not separable. Asking

[65] *McConnell v. FEC*, 540 U.S. 93 (2003); *Buckley v. Valeo*, 424 U.S. 1, 44 (1976).
[66] See 5 U.S.C. § 7211.

researchers to publish their findings while refraining from any communication that might "influence public attitudes" on related policy questions or decisions is essentially asking them to draw a line that does not exist — and the penalty for guessing wrong is loss of federal funding.

Researchers who publish peer-reviewed findings, provide congressional testimony, or communicate scientific results to the public should not have to worry that these actions could be interpreted as engaging in impermissible issue advocacy, thus endangering their federal funding. In fact, they have done exactly what federally funded scientists are supposed to do and what multiple federal statutes specifically direct, including:

- National Science Foundation Act of 1950, 42 U.S.C. § 1861 et seq.; see also 42 U.S.C. § 1862 (directing NSF to "initiate and support" scientific research and "appraise the impact of research upon industrial development and upon the general welfare").
- The Public Health Service Act, 42 U.S.C. § 241(a) authorizes the Secretary to "make and publish studies, investigations, and reports" of health research findings and to "disseminate" health information to the public and to "health personnel and the general public".
- The CHIPS and Science Act of 2022, Pub. L. 117-167, § 10312; 42 U.S.C. § 19101 et seq. directs NSF to support public communication of science as a component of the broader impact's criterion applied to all competitive grant awards.
- The Federal Advisory Committee Act, 5 U.S.C. App. 2 (establishing the statutory framework for expert scientific advisory committees advising the federal government, premised on the free flow of expert knowledge and findings to federal policymakers and agencies).

A grants-management regulation that penalizes researchers for communicating findings bearing on contested policy questions does not merely raise constitutional concerns—it directly conflicts with the statutory mandates under which the underlying research was funded, and the statutory framework Congress has built to ensure that scientific knowledge informs public and legislative decision-making.

Further, the provision is unconstitutionally vague as applied to this context. A regulation restricting federally funded activity must give regulated parties fair notice of what is prohibited; a standard this indeterminate as applied to scientific communication cannot satisfy that requirement.[67] But the First Amendment implications go further than just vagueness. The Supreme Court has drawn a clear line between the government defining the scope of a spending program, which it may do, and the government using spending conditions to suppress or compel speech based on viewpoint, which it may not.[68] A condition that effectively prohibits researchers from communicating findings the current administration finds politically inconvenient while permitting communication of findings that align with administration positions is not a neutral program definition; it is viewpoint discrimination. The government cannot fund scientific research and then prohibit the researchers it funds from sharing what

[67] *Grayned v. City of Rockford*, 408 U.S. 104 (1972).
[68] *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013).

they found because the findings bear on a contested policy question. That would impermissibly leverage federal funding to impose speech restrictions outside the scope of the federal program.

The practical consequences for the scientific community and for the public that depend on it are serious. Researchers who publish peer-reviewed findings on contested policy-relevant topics, testify before congressional committees, present at scientific conferences, participate in public health communication campaigns, or give public lectures about the implications of their work are doing exactly what federal research sponsors have always expected and wanted them to do. These activities are not peripheral to federal research investment; they are how that investment generates public value. Restricting them in the name of preventing "issue advocacy" would chill precisely the scientific communication that translates federally funded discoveries into public knowledge, informed policy debate, and eventually into improved health, safety, and welfare outcomes. The research community would respond rationally to the uncertainty this provision creates by self-censoring, declining to publish findings that touch contested areas, withdrawing from public scientific debate, and retreating from the kind of engaged scholarship that justifies the federal investment in the first place. That would be an unfortunate loss for the national interest.

***Recommendation**: AAU requests that OMB withdraw the issue advocacy prohibition in (c)(1)(iv) or narrow it with explicit safe harbors for scientific publication, congressional testimony, conference presentations, and public communication of federally funded research findings.*

C. Sustaining American Scientific Leadership through Global Research Collaboration

Proposed restrictions on international research collaboration, while intended to address national security concerns, risk undermining the openness and global engagement that are foundational to U.S. scientific leadership. This section highlights concerns that broadly defined and insufficiently clear limitations on international partnerships may fragment the research enterprise, harm U.S. competitiveness, and hinder the ability of U.S. institutions to attract, train, and retain talent.

1. [§ 200.220] International Research Collaboration Restrictions

§ 200.220 would impose a broadly defined new prohibition on the use of federal funds for bilateral or multilateral collaborations with "covered foreign countries" or "covered foreign entities," absent prior authorization from an agency head or expressly permitted by statute. As drafted, this provision lacks clear parameters and leaves significant questions unanswered about what activities or collaborations would or would not be permissible. A blanket prohibition that restricts international engagement broadly – rather than targeting specific, verified risks – fragments the global research enterprise, diminishes U.S. scientific leadership, and impairs the ability of American universities to attract and retain world-class talent.

The ambiguity of key terminology makes compliance with this provision difficult to operationalize. For example, the definition for "covered foreign country" relies on multiple, overlapping, and frequently changing authorities across statutes, Executive Order, or "other Federal laws," none of which are clearly identified. These designations, maintained by different agencies (e.g., State, Treasury, Commerce, and Defense) and updated on varying timelines, are also not aligned with established definitions such as those in the CHIPS and Science Act or National Security Presidential Memorandum 33 (NSPM-33). This leaves institutions to navigate a fragmented, layered, and evolving compliance landscape without clear guidance. The inclusion of countries subject to sanctions or restrictions "relating to national security, defense, or intelligence activities" further broadens the definition. As a result, institutions may reasonably interpret even limited or unrelated restrictions as triggering the prohibition. Similar concerns apply to the definition of "covered foreign entity," which lacks clear alignment with existing federal research-security frameworks and creates substantial uncertainty regarding which foreign universities, nonprofit organizations, research institutes, industry partners, or affiliated entities may be subject to the restriction. As drafted, the definition invites inconsistent interpretation, overcompliance, and unnecessary disruption of legitimate international research partnerships.

The proposed rule also lacks essential procedural clarity, providing no meaningful guidance on implementation, compliance expectations, or how institutions might seek and obtain exceptions. Without clear criteria, defined timelines, or an appeal process, it is unclear when and how this requirement would be evaluated within the grant lifecycle. In practice, institutions are likely to adopt overly cautious approaches to mitigate risk, unnecessarily limiting potentially benign and valuable international research collaborations.

In addition to these operational concerns, § 200.220 appears to exceed OMB's regulatory authority and conflict with congressional intent. The provision applies a narrowly tailored statutory restriction (the Wolf Amendment)[69] into a far broader, government-wide prohibition without explicit legislative authority to do so. Congress deliberately limited the Wolf Amendment to NASA and the Office of Science and Technology Policy (OSTP) and to specific bilateral engagements involving China. By contrast, the proposed rule would apply across all federal agencies, all grant and cooperative agreement funding, and a broader and undefined set of defined foreign countries and entities. It would also extend beyond bilateral relationships to encompass multilateral research collaborations involving international consortia and scientific partnerships, significantly expanding the scope of the restriction beyond what Congress narrowly authorized. This shift not only extends the policy beyond its original scope but does so through grants management regulation rather than statute, raising separation-of-powers concerns. If Congress had intended to impose a uniform, government-wide prohibition on international research collaboration, it could have done so explicitly; its decision not to impose such a broad ban reflects a deliberate, targeted approach.

[69] P.L. 112-10, § 1340 (Wolf Amendment)

The proposed prohibition also conflicts with broader congressional policy reflected in the CHIPS and Science Act, which expressly recognizes international scientific cooperation as an important component of the United States' strategy to maintain global scientific leadership and competitiveness.[70] Rather than imposing broad restrictions on international engagement, Congress has generally pursued a targeted approach that promotes collaboration while addressing identified security risks through specific disclosure, transparency, and research security requirements. Moreover, existing research security frameworks—including NSPM-33, disclosure requirements under the Higher Education Act and FY21 NDAA, CHIPS and Science Act restrictions on participation in certain foreign talent recruitment programs, and export control regulations—already provide robust, risk-based mechanisms to safeguard national security. These frameworks focus on transparency, disclosure, and targeted restrictions where warranted, making this additional blanket prohibition duplicative and unnecessarily complicating institutional compliance.

Finally, the cumulative effect of this prohibition would be to weaken, rather than strengthen, the United States' global scientific leadership and competitiveness. Researchers operate in an increasingly interconnected global ecosystem in which collaboration across borders is essential to advancing discovery and innovation. Broad and shifting prohibitions that limit engagement with international partners—particularly without clear, risk-based criteria—will deter collaboration, reduce research productivity, and make it more difficult for U.S. institutions to attract top global talent. At the same time, competitor nations, including China, continue to invest heavily in international partnerships and scientific capacity. This asymmetry risks ceding leadership in key fields to our global competitors and undermines national objectives to remain at the forefront of science and technology. A more effective approach would build on existing, targeted research security frameworks while preserving the openness and international collaboration that have long been central to U.S. scientific leadership, innovation, and competitiveness.

***Recommendation**: AAU requests that OMB withdraw or substantially revise restrictions on international research collaborations to address ambiguity and procedural clarity. A modified restriction should align definitions with NSPM-33 and the CHIPS and Science Act; exempt all active awards; narrowly tailor any prohibition to specifically defined circumstances warranting mitigation; require maintenance of a consolidated screening list and provide a time-of-screening safe harbor; define ownership, control, agency, and affiliation; and establish transition rules and a written exception process with clear timelines.*

2. [§ 200.202(e)] Eligibility of Entities for Research and Development Awards

While AAU appreciates the intent of § 200.202(e) to ensure robust domestic investment, we are concerned that implementing a "domestic-first" framework without more detailed guidance could unintentionally undermine these goals if applied too broadly. Such an approach risks limiting the scope and viability of federally funded projects that involve foreign entities or activities conducted outside the

[70] CHIPS and Science Act §§ 10381–10393

United States, effectively forcing researchers to self-regulate the design of a project on factors other than scientific objectives.

The provision states that awards to foreign entities will only be made only when they are in the "national interest." However, because the rule does not define "national interest," it is virtually impossible to determine when awards to foreign entities would qualify.

Additionally, § 200.202(e)(4) states that nothing in paragraph (e) prohibits subawards to foreign entities, which is at odds with the NIH Grants Policy Statement, which provides that "NIH no longer recognizes foreign subawards."[71] The United States' global leadership in science has long depended on the ability to collaborate with top talent and partners worldwide; erecting barriers to these collaborations would make U.S.-funded research less attractive to global collaborators and risks diverting talent to competitors such as China. Even if intended to prioritize domestic investment, this approach may ultimately make U.S.-funded research less competitive, less collaborative, and less influential globally — weakening, rather than strengthening, U.S. scientific leadership.

***Recommendation**: AAU requests that OMB remove or substantially revise factors that would impair America's competitiveness.*

IV. Additional Operational and Administrative Concerns

Several additional provisions in the revised guidance raise concerns that would introduce unintended challenges for the federal research enterprise.

A. [§ 200.202(g)] Categorizing Scientific Awards by R&D Type

OMB's proposal to require federal agencies to categorize individual scientific research awards as basic research, applied research, and experimental development would impose significant administrative burden without a policy rationale or demonstrated benefit. It would also depart from longstanding practice by forcing an ill-fitting framework onto research projects that do not fit neatly within discrete categories.

Scientific research projects exist on a spectrum, and many projects evolve over time in ways that blur the distinctions between basic, applied, and development activities. "Applied" research efforts can yield unexpected fundamental discoveries, while "basic" research can sometimes lead to unforeseen applications. Some of the most consequential scientific advances emerge precisely because research does not conform to predetermined classifications.

This challenge is particularly acute for translational and use-inspired basic research, which increasingly represents a focus of federal investment and is central to the missions of organizations such as NSF's

[71] NIH Grants Policy Statement at IAA-110, *National Institutes of Health*, updated March 2026

Technology, Innovation, and Partnerships (TIP) Directorate and DARPA. Such projects intentionally bridge traditional categories, making award-level classification difficult, subjective, and likely to become inaccurate as research progresses.

Current agency reporting practices already provide a practical approach to R&D categorization by estimating the mix of basic, applied, and development activities at the program or portfolio level. This approach recognizes the inherent uncertainty of research classification while providing useful information for budget and reporting purposes. Requiring agency staff to make award-by-award determinations would substantially increase workload while producing classifications that may be speculative and subject to change over the life of a project. Such a requirement runs counter to OMB's stated goals of reducing administrative burden and increasing efficiency, particularly given that OMB has not identified any policy objective that cannot already be met through existing portfolio-level reporting.

Beyond administrative costs, the proposed rule could create unintended consequences for research funding and policy. Award-level classifications may encourage agencies to favor projects that fit neatly within predefined categories while disincentivizing interdisciplinary, translational, and use-inspired research that spans those boundaries. Combined with the broader Gold Standard Science framework in § 200.205, such classifications could influence funding priorities, program design, and proposal review in ways that reduce support for the very types of boundary-crossing research that often generate the greatest scientific, economic, and societal benefits. Rather than improving stewardship of federal research investments, the proposed rule risks narrowing the range of projects agencies are willing to support and undermining U.S. scientific leadership, innovation, and competitiveness.

Recommendation: *AAU requests that OMB withdraw the proposal to categorize individual scientific awards by R&D type in § 200.202(g).*

B. [§ 200.432], [§ 200.454], and [§ 200.461] Allowable Direct and Indirect Costs

The proposed restrictions on publication, subscription, and conference-related costs would discourage several of the principal mechanisms through which federally funded researchers access, disseminate, and exchange scientific knowledge. Researchers depend on access to existing scholarship to build on prior discoveries; publication to communicate research results; and conferences to present findings, receive feedback, establish collaborations, and remain current in rapidly evolving fields. Together, these activities are integral components of the modern research enterprise and have long been recognized as allowable costs associated with conducting federally supported research.

Making publication costs unallowable by default directly conflicts with OSTP's 2022 Public Access Policy Memorandum, which requires federally funded research results to be made freely available without embargo. It also conflicts with NIH's statutory obligation to make funded research publicly accessible.[72] Compliance with those requirements carries real and unavoidable costs. We therefore disagree with the

[72] OMB Memorandum M-22-21 (Aug. 25, 2022); 42 U.S.C. § 282c.

claim in Section VI of the supplementary information that publication costs are "not inherently necessary to carry out the core programmatic objectives of most Federal awards." Disseminating research findings is a fundamental part of the research process and has long been recognized as such through agency award terms that expressly permit publication expenses as allowable direct costs. A rule that directly conflicts with existing agency and OSTP policies mandating open access compliance while prohibiting the costs necessary to achieve it creates an unworkable compliance conflict and does not reflect the realities of the scholarly publishing landscape.

The proposed revisions to § 200.432 governing conference costs would significantly restrict a longstanding and essential component of federally funded research by making conference attendance costs allowable only when expressly approved by the federal agency and included in the award's terms and conditions. Conferences are not merely professional development opportunities; they are critical venues for disseminating research findings, obtaining peer feedback, building collaborations, recruiting partners, training students and early-career researchers, and accelerating the translation of research into practical applications. Because researchers often identify important meetings and collaboration opportunities only after an award is issued, requiring advance approval through award-specific terms would create substantial administrative burdens for both agencies and recipients, introduce uncertainty regarding cost recovery, and limit participation in scientific meetings that are often necessary to achieve award objectives—particularly in emerging and interdisciplinary fields. These restrictions could delay or prevent the dissemination of federally funded research, reduce opportunities for collaboration and workforce development, create disparities based on agency-specific administrative practices, and increase administrative costs without a corresponding programmatic benefit.

The proposed rule also raises significant concerns regarding researchers' access to scholarly literature. A substantial majority of peer-reviewed research remains available only through subscription, and research libraries provide federally funded investigators with access through institutional subscriptions that collectively cost U.S. universities more than $1 billion annually. These expenses have historically been recovered in part through the library component of negotiated IDC rates. Disallowing such costs would be inconsistent with OMB's stated intention not to alter the IDC rate negotiation framework and would likely force institutions to reduce collections significantly, limiting access to resources that federally funded researchers rely upon to conduct their work.[73]

Taken together, these proposed changes would restrict both direct costs that support dissemination and collaboration and indirect costs that support access to the scholarly record. The result would be a research environment in which investigators are expected to comply with federal public access requirements, remain engaged with the scientific community, and produce high-quality research outcomes while being denied the very tools and mechanisms necessary to achieve those objectives.

[73] Comment from Association of Research Libraries in response to "Regulation for Federal Financial Assistance" (July 7, 2026), https://www.arl.org/wp-content/uploads/2026/07/ARL-Comments-on-Regulation-for-FFA.pdf.

Nor does the proposed rule provide institutions with sufficient flexibility to meet the needs of their researchers, particularly at smaller institutions and for early-career researchers with fewer alternative funding sources. At minimum, article processing charges, repository fees, conference registration fees, and reasonable travel costs necessary to disseminate federally funded research and participate in scientific meetings should remain allowable costs without requiring case-by-case agency approval. In addition, awards issued under current guidance should be grandfathered and exempt from these changes through the duration of the award period. If OMB declines to withdraw these provisions, it should direct agencies to establish clear, streamlined, and consistent approval processes that do not impede participating in scientific conferences or continued practical compliance with public access requirements, including clarifying that the federal purpose license under § 200.351(b) permits dissemination through agency-designated repositories while preserving researchers' choice of publication outlet.

Recommendation*: AAU requests that OMB withdraw the prohibition on subscription costs in § 200.454(b), restore publication costs as allowable under § 200.461 to the extent required to comply with federal and agency-specific open access mandates without case-by-case agency approval, and remove the proposed restriction on § 200.432. At a minimum, OMB should clarify that reasonable conference registration, travel, and participation costs necessary to disseminate federally funded research remain allowable without agency approval.*

C. ***[§ 200.332] Reputational Harm Standard***

New language in § 200.332 on subrecipient monitoring would condition continued funding on subrecipients refraining from actions that could "significantly damage the reputation" of the pass-through entity, federal agency, or the federal government. This provision raises significant concerns due to its impermissible vagueness, provides no objective content, and risks conditioning federal funding on speech and conduct entirely unrelated to performance. The provision would be extraordinarily difficult for pass-through entities to administer. Prime recipients cannot reasonably determine what actions a federal agency or the federal government might later conclude are reputationally harmful, nor can they effectively monitor compliance with such an indeterminate standard. As a result, the requirement would create substantial administrative burdens and compliance uncertainty for both pass-through entities and subrecipients while providing little meaningful guidance regarding prohibited conduct.

Recommendation: *AAU requests that OMB withdraw changes to § 200.332 or replace them with narrowly drawn, objective criteria tied specifically to programmatic performance and award integrity.*

D. ***[§ 200.201] and [§ 200.333] Elimination of Fixed Amount Awards***

A wholesale elimination of fixed-amount awards for research grants directly contradicts the stated goals of the revised guidance to improve efficiency and accountability, while also seeking to reduce recipient burden. Fixed-amount awards in research are used in limited, well-defined circumstances, where

planning milestones and deliverables are clear. Removing this option would increase documentation, invoicing, monitoring, and oversight requirements across the research enterprise. This change is especially puzzling given concurrent administration priorities to promote fixed-price approaches, most notably the April 30, 2026, Executive Order on Promoting Efficiency, Accountability, and Performance in Federal Contracting.[74] Additionally, this change is inconsistent with § 200.320, which would limit the use of cost-reimbursement vendor contracts.

Recommendation*: AAU requests that OMB maintain fixed-amount awards for research grants with certain conditions as it is consistent with the proposed rule's goal of increasing transparency, efficiency, and reducing recipient burden.*

V. Summary of AAU Requests and Recommendations

Below is a complete summary of AAU's specific requests made in our comments above for changes to the OMB proposed Rule.

Procedural

- Extend the comment period to at least 90 days.
- Provide a minimum 12-month implementation period following publication of a final rule.

Overarching Legal and Structural Concerns

- Before finalizing any provision whose operative text or legal justification derives from a currently litigated executive order, identify the independent statutory authority for that provision and explain how it would function if the relevant executive order were enjoined or invalidated.
- Identify each mandatory statutory program whose administration the proposed rule would affect and provide a definitive statement of which obligation governs when they conflict.
- Identify the specific statutory authority for each substantive policy provision in the proposed rule and address the major questions doctrine directly in the final rule's preamble.
- Clarify the meaning of all ambiguous terms identified in this letter.
- Preserve agency-level notice-and-comment rulemaking for all future substantive revisions and amendments to uniform guidance, with a minimum 60-day public comment period.

[74] "Promoting Efficiency, Accountability, and Performance in Federal Contracting," *Executive Order 14402*, April 30, 2026

Concerns with Provisions Affecting Scientific Research, Innovation, America's Global Competitiveness, National Security, and Administrative Operations

- § 200.205: Preserve the primacy of scientific merit review; limit political appointee review to program-level design decisions, not individual award selections.

- § 200.205(b)(3): Withdraw in its entirety.

- § 200.218: Withdraw this provision as it is inconsistent with controlling Supreme Court precedent and in direct conflict with federal agency implementing regulations under Title VI, Title IX, Section 504, and the Age Discrimination Act.

- § 200.300: Withdraw or substantially revise all three national policy conditions; provide definitions independent of any litigated executive order; explicitly exclude all mandatory statutory programs; establish safe harbors for research, clinical care, civil rights compliance, and scientific publication.

- § 200.340 to § 200.343: Define "national interest" with objective criteria; require documented findings before termination; provide a 90-day notice and cure period; exclude active human subjects research from abrupt termination; exempt all active awards; align agency authority with statutory requirements and congressional funding directives.

- § 200.206: Limit risk assessment criteria to objective, performance-based factors; require formal findings through established processes; remove vague, viewpoint-based, or First Amendment-protected considerations; establish clear standards and due process protections for Section 117 compliance determinations.

- § 200.339: Withdraw or narrowly tailor the cooperation provision by defining cooperation requirements clearly, limiting them to material federal interests, providing notice and an opportunity to respond, and ensuring appropriate legal review and procedural safeguards before any cooperation determination.

- § 200.208: Expand the implementation timeline for agency-imposed conditions beyond 15 days; allow grant work to continue until new conditions are mutually agreed upon.

- § 200.331: Withdraw § 200.331(c) or revise it to exempt affiliates and subsidiaries that operate under shared institutional governance and compliance frameworks.

- § 200.305: Withdraw requirement that recipients submit a brief written justification with each individual payment request; at a minimum, narrow it to apply only to payment requests above a meaningful dollar threshold; allow justification at the award or milestone level.

- § 200.450: Withdraw the issue-advocacy prohibition at § 200.450(c)(1)(iv) or narrow with explicit safe harbors for scientific publication, congressional testimony, conference presentations, and public communication of federally funded research findings.

- § 200.220: Withdraw or substantially revise international collaboration restrictions; align definitions with NSPM-33 and the CHIPS and Science Act; exempt all active awards; narrow any prohibition to specifically defined circumstances; require maintenance of a consolidated screening list; provide a time-of-screening safe harbor; define ownership, control, agency, and affiliation; establish transition rules; establish a written exceptions process.

- § 200.202(e): Remove or substantially revise factors that would implement a domestic-first framework.

- § 200.202(g): Withdraw categorization of individual scientific awards by R&D type.

- § 200.432, § 200.454, and § 200.461: Withdraw the prohibition on subscription costs in § 200.454(b); restore publication costs as allowable under § 200.461 to the extent required to comply with federal and agency-specific open access mandates, without case-by-case agency approval, and remove the proposed restriction on § 200.432. At a minimum, OMB should clarify that reasonable conference registration, travel, and participation costs necessary to disseminate federally funded research remain allowable without agency approval.

- § 200.332: Withdraw changes or replace them with narrowly drawn, objective criteria tied specifically to programmatic performance and award integrity.

- § 200.201 and § 200.333: Maintain fixed-amount awards for research grants with appropriate conditions, consistent with the proposed rule's goal of increasing transparency, efficiency, and reducing recipient burden.

VI. Conclusion

American research universities are among the most consequential institutions in the world for advancing the science and scholarship on which America’s public health, national security, economic competitiveness, and human welfare depend. That leadership role is inseparable from the federal-university research partnership, a relationship built on the shared understanding that sustained public investment in merit-based scientific inquiry, conducted through rigorous merit review and governed by a transparent and predictable administrative framework, produces returns to the American people that no other model can match. AAU's member institutions are committed to that partnership and to the responsible stewardship of the public funds that taxpayers should reasonably expect.

The proposed rule, as written, would put that partnership at serious risk. It would embed in permanent federal regulation legal positions derived from executive orders whose validity remains unresolved in federal courts. It would prohibit or chill research activities that Congress has specifically mandated, without acknowledging the statutory conflicts those prohibitions create. It would impose compliance obligations that no research university can satisfy simultaneously with its existing obligations under civil rights law and human-subjects research protections. It would vest in the executive branch open-ended discretion to terminate congressionally mandated research programs based on undefined standards and shifting priorities. And it would do all of this on a timeline, and under a comment period, that did not allow the affected community to meaningfully assess and respond to changes of this magnitude.

AAU urges OMB to take these concerns seriously, to address each on the merits in its response to comments, and to substantially revise the proposed rule before finalization.