July 13, 2026

Submitted via www.regulations.gov

Office of Federal Financial Management
Office of Management and Budget
725 17th Street NW
Washington, D.C., 20503

Re: OMB-2026-0034 et al., Office of Management and Budget, Regulation for Federal Financial Assistance

To the Office of Management and Budget:

Education Law Center ("ELC")[1] submits this comment in opposition to the Office of Management and Budget's ("OMB") proposed changes to the "Guidance for Federal Financial Assistance," also known as "Uniform Grants Guidance," which governs monetary awards and agreements to nonprofits, state and local governments, and other grantees. These sweeping changes not only apply across *all* participating federal agencies, but also constitute a *binding regulation*, rather than non-binding guidance, prescribing how entities may access and retain federal funds.

If adopted, this proposal would have wide-ranging impacts on federal funding recipients, including those responsible for providing critical public education services and programs. And OMB's proposal, in many cases, is inconsistent with the nation's civil rights laws and would undermine the protections they provide to public school students. ELC's comment focuses on the proposed provisions that would have the most significant implications for federal funding recipients in public education: (1) post-federal award requirements placing vague and confusing restrictions on grantee activities;[2] (2) a new pre-approval process granting broad discretion to political appointees to reject funding applications;[3] and (3) a blanket prohibition on theories of disparate-impact liability in all federal funding contexts.[4]

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[1] ELC is a non-profit organization that pursues justice and equity for public school students by enforcing their right to a high-quality education in safe, equitable, non-discriminatory, integrated, and well-funded learning environments. We seek to support and improve public schools as the center of communities and the foundation of a multicultural and multiracial democratic society. To achieve these goals, we engage in litigation, research and data analysis, policy advocacy, communications, and strategic partnerships and collaborations.

[2] Statutory and national policy requirements, 91 Fed. Reg. 32198, 32253 (proposed May 29, 2026) (to be codified at 2 CFR 200.300).

[3] Federal agency merit review of proposals, 91 Fed. Reg. 32198, 32248-49 (proposed May 29, 2026) (to be codified at 2 CFR 200.205).

[4] Prohibition of using Federal awards to promote or support theories of disparate-impact liability, 91 Fed. Reg. 32198, 32252 (proposed May 29, 2026) (to be codified at 2 CFR 200.218).

I. [200.300] Statutory and National Policy Requirements.

Section 200.300 currently requires that funding recipients comply with the U.S. Constitution and applicable federal laws, including Title VI of the Civil Rights Act of 1964, as well as regulations governing federal financial assistance, but OMB's proposal also adds several new provisions to this section.

Section 200.300(b)(1) proposes, to the maximum extent permitted by law, that federal awards cannot be used to "fund, promote, encourage, subsidize, or facilitate . . . **Diversity, equity, inclusion, [and/or] accessibility (DEIA)** policies, principles, or practices that violate any applicable Federal anti-discrimination laws."[5] The new provision's broad reference to DEIA risks chilling the lawful efforts of federal funding recipients to ensure equal opportunity or help address longstanding racial, social or other disparities or serve vulnerable communities. And while the provision allegedly targets "unlawful" DEIA, it still risks running afoul of antidiscrimination laws because of the broad discretion that the regulation provides to federal agencies in interpreting (or potentially misinterpreting) what is considered "unlawful."[6]

For example, OMB's notice for comment proposes this anti-DEI provision in order to "reflect key administration policies and priorities," such as Executive Order 14173[7] and the U.S. Department of Justice Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination ("DOJ Guidance").[8] But the DOJ Guidance by its own admission is "non-binding," and a federal district court has granted a partial preliminary injunction against Executive Order 14173, prohibiting the Department of Labor from enforcing its anti-DEI requirement.[9] Here, the OMB provision is also patently inconsistent with recent court orders striking down a similar DEI-related requirement for federal funding recipients.[10] The increased discretion afforded to federal

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[5] Statutory and national policy requirements, 91 Fed. Reg. at 32253.

[6] Federal agency merit review of proposals, 91 Fed. Reg. at 32248-49 (OMB proposal creating a pre-issuance political review and approval process).

[7] Exec. Order No. 14173, 90 Fed. Reg. 8633.

[8] Memorandum From U.S. Attorney General Pam Bondi To All Federal Agencies, *Guidance For Recipients of Federal Funding Regarding Unlawful Discrimination* 1-2, 9 (July 29, 2025), https://www.justice.gov/ag/media/1409486/dl?inline=&utm_medium=email&utm_source=govdelivery.

[9] *See Chicago Women in Trades v. U.S. Dep't of Labor*, 778 F. Supp. 3d 959 (Apr. 14, 2025) (blocking Executive Order 14173-related DEI certification requirements for federal contractors and grantees).

[10] *See, e.g., Am. Fed'n of Teachers v. U.S. Dep't of Educ.*, 796 F. Supp. 3d 66, 123 (2025) (vacating the U.S. Department of Education's February 14, 2025 Dear Colleague Letter and related April 3, 2025 certification requiring state education agencies and school districts to comply with the Department's viewpoints on DEI and its interpretations of Title VI and *SFFA*, thus "causing millions of educators to reasonably fear that their lawful, and even beneficial, speech might cause them or their schools to be punished"); *NAACP v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025) (preliminarily enjoining the April 3, 2025 certification on Fifth Amendment vagueness grounds); *see also Nat'l Educ. Ass'n v. U. S. Dep't of Educ.,* 779 F. Supp. 3d 149 (D.N.H. 2025) (enjoining U.S. Department of Education's Feb. 14, 2025 Dear Colleague Letter and related Title VI anti-DEI guidance as likely unlawful and unconstitutionally vague); *Nat'l Educ. Ass'n-New Hampshire v. New Hampshire*

agencies, plus the shifting landscape as to what constitutes prohibited behavior, creates a risky, destabilizing funding environment for federal grantees because it is unclear how to comply.

To exacerbate this issue, the anti-DEIA provision is also vague. One of the constraints on federal action under the U.S. Constitution's Spending Clause is the requirement that the government provide clear notice to funding recipients about the conduct expected of them.[11] This proposed provision fails to meet this requirement. Federal funding recipients likely would not know how to comply because the proposed provision uses unclear terms or phrases without properly defining them. Indeed, neither the notice for public comment nor the proposed regulatory language defines, for example, "diversity," "equity," "inclusion," or "accessibility." The vague language also provides the federal agency responsible for administering awards significant leeway in deciding which entities will receive funding, resulting in arbitrary and potentially political decisions.[12] Prohibiting federal grantees from using funding for activities or programs allegedly perpetuated by or stemming from DEIA, but not making clear what those specific practices are, would make it difficult, if not impossible, to satisfactorily comply with the regulation.

Another proposed provision, **Section 200.300(b)(2)**, restricts, to the maximum extent permitted by law, the use of federal awards that "fund, promote, encourage, subsidize, or facilitate . . . **Gender Ideology**."[13] OMB's proposal adopts the definition of gender ideology under Executive Order 14168, which refutes the concepts of gender identity and expression and denies the existence of transgender, nonbinary, or gender non-conforming individuals. Like the above referenced anti-DEIA provision, Section 200.300(b)(2) is deficient in several respects.

First, the prohibition on acknowledging gender identity and expression in all uses of federal funding is not only offensive, but also poses concrete risks to the rights of the LGBTQ+ community. This provision is particularly harmful for transgender, nonbinary, and gender non-conforming youth who face social and psychological health risks in public schools "through discrimination, harassment, and violence because of their gender identity."[14] Such a prohibition could lead to increased, rather than decreased, discrimination against LGBTQ+ public school students. Indeed, targeting LGBTQ+ or other discrete populations for disfavored treatment by

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Att'y Gen., No. 25-CV-293-LM, 2025 WL 2807652 (D.N.H. Oct. 2, 2025) (enjoining implementation of New Hampshire anti-DEI law known as HB2); *Nat'l Ass'n of Diversity Officers in Higher Educ. v. Trump*, 767 F. Supp. 3d 243, 282-84, 286-87 (D. Md. Feb. 21, 2025) (holding unconstitutional an executive order directing the Attorney General "to encourage the private sector to end illegal discrimination and preferences, including DEI").

[11] U.S. Const. art. I, § 8, cl. 1.

[12] See pp. 4-5 for additional information on the new rule under Section 200.205 granting increased discretion to agency staff under this proposal.

[13] Statutory and national policy requirements, 91 Fed. Reg. at 32253.

[14] *See Boyertown Area Sch. Dist.*, 897 F.3d 518, 528 (3d Cir. 2018); *see also Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034, 1051 (7th Cir. 2017).

statute or policy violates the Fourteenth Amendment's Equal Protection Clause under the U.S. Constitution.[15]

Second, the proposed language risks violating antidiscrimination laws and protections afforded under the First Amendment because the language is broad and vague, and likely to chill protected speech and conduct. It is unclear whether, under this provision, a school could provide mental health services to transgender youth, whether a public school student would be allowed to start an LGBTQ+ club, or whether teachers and school staff would be allowed to honor a student's chosen name and pronouns that match their gender identity. Additionally, one federal district court recently declared the Trump Administration's efforts to restrict access to information about "gender ideology," including resources for LGBTQ+ children and youth, in violation of federal agencies' statutory obligations.[16] This ruling shows how a federal funding recipient might not know what constitutes lawful behavior under OMB's proposal because the court explicitly allowed the sharing of LGBTQ+ information, whereas the proposed provision would likely prohibit it. Furthermore, recent U.S. Supreme Court decisions related to LGBTQ+ curricula, services, or rights of participation do not support the sweeping and vague policy contemplated in Section 200.300(b)(2).[17]

In short, this broad provision threatens grantees' efforts to serve vulnerable populations and resolve harmful inequities by putting them in a lose-lose situation – they either risk the loss of funding by providing critical services that may conflict with this rule, or they cease providing critical services altogether because they are not sure how to comply.

II. [200.205] Federal Agency Merit Review of Proposals.

OMB's proposal significantly expands Section 200.205 by requiring that federal agencies assign a **political appointee** to pre-approve all notices of funding opportunities and all final discretionary awards.[18] This new "pre-issuance" process purports to ensure that funding awards are "consistent with applicable law, Federal agency priorities, and the national interest" and "demonstrably advance the President's policy priorities."[19] The proposal also states that any use of peer review – a rigorous evaluation process conducted by experts in the same field – should be treated as merely advisory, and that the political appointee must only use their "independent judgment" in making final award decisions.[20]

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[15] *See, e.g.*, *Romer v. Evans*, 517 U.S. 620 (1996); *Gonzalez v. Douglas*, 269 F. Supp. 3d 948 (D. Ariz. 2017).
[16] *Drs. for Am., et al., v. Off. of Pers. Mgmt., et al.,* 793 F. Supp. 3d 112, 124 (D.D.C. 2025).
[17] *See Mahmoud v. Taylor*, 606 U.S. 522 (2025); *U.S. v. Skrmetti*, 605 U.S. 495 (2025); *W. Virginia v. B. P. J. by Jackson*, No. 24–38, 2026 WL 1868739 (U.S. June 30, 2026).
[18] Federal agency merit review of proposals, 91 Fed. Reg. at 32248-49.
[19] *Id*. at 32249.
[20] *Id*.

This proposed review process is problematic for several reasons. First, the government cannot engage in viewpoint discrimination when making actions or decisions impacting the public because it is presumptively unconstitutional under the First Amendment.[21] And "pre-approval" that relies on overly broad or vague standards of review adds additional constitutional concerns and further fuels the notion that the government is engaging in unbridled, viewpoint-based decision-making. Section 200.205 therefore sets up a process that is very likely unconstitutional in both design and application.

Additionally, it appears that OMB is potentially imposing terms and conditions on federal funding awards that extend beyond what Congress has authorized, which is clearly prohibited under federal law.[22] By mandating unilateral political oversight in federal grantmaking, agencies would have significant discretion to exclude grantees if the appointee, and only the appointee, deems the proposal inconsistent with agency priorities or as "anti-American."[23] For example, if a school district applies for program funding meant to redress harms created by racial segregation in schools, that funding application could be denied simply because the agency appointee ideologically disagrees with the proposal.

Like Section 200.300 noted above, Section 200.205(b)(2) also prohibits funding, promoting, encouraging, subsidizing, or facilitating DEI programs, including those involving LGBTQ+ activities, but again fails to define what those terms mean or provide examples of prohibited actions.[24] What's more, many efforts to advance DEI in public schools are lawful,[25] and in some instances, they are even required by law. But a federal grantee may be chilled from engaging in otherwise permissible conduct because of the political nature of the pre-approval process.

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

Section 200.218 would establish a new provision that states, "[t]o the maximum extent permitted by law, Federal agencies must eliminate the use of **disparate-impact liability** in all contexts relevant to Federal awards."[26] The rule prohibits the federal agency or pass through entity

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[21] *See, e.g.*, *Rosenberger v. Rectors and Visitors of the Univ. of VA*, 515 U.S. 819 (1995) (holding that a public university refusing to provide funding for a student publication based on that publication's viewpoint violated the First Amendment).
[22] *See* Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551–559.
[23] Federal agency merit review of proposals, 91 Fed. Reg. at 32249.
[24] *Id*.
[25] *See supra* note 10.
[26] Prohibition of using Federal awards to promote or support theories of disparate-impact liability, 91 Fed. Reg. at 32252.

and funding recipients from using Federal awards to promote or support the use of disparate-impact liability.[27] Additionally, the proposed provision wrongly asserts that disparate-impact liability "mandat[es] discrimination" and "incentivizes racial balancing, contrary to principles of equal treatment and merit-based opportunity."[28] This new provision is part of a broader concerted effort of the Trump Administration to eliminate disparate impact in ways that are unlawful and exceed the administration's authority.[29]

This new rule represents a fundamental misunderstanding and misapplication of the principles of disparate impact liability. The theory of disparate impact liability recognizes that policies may promote or result in unlawful discrimination, even when such policies are facially neutral. It is a key tool for rooting out covert discriminatory policies and practices. Thus, relying solely on a showing of intent or disparate *treatment* would eliminate the government's longstanding commitment to addressing more systemic discrimination and would actually *increase* inequality in colleges and universities, local K-12 education agencies, state governments, and other entities that accept federal funding. Further, the provision would be antithetical to well-established U.S. Supreme Court precedent, which has long recognized disparate impact as valid grounds for a discrimination claim.[30] And, like other provisions noted in this comment, Section 200.218 risks the chilling of lawful activities that serve to redress inequities in public education.

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OMB's proposal comes with potentially dire financial consequences for state education agencies, school districts, and education-related nonprofit organizations that offer, for example, education services for pre-school children, low-income or rural students, or after school programs. Public schools are already chronically underfunded and federal funding for public education, particularly for students with elevated needs, has dropped dramatically over the past year alone.[31] For example, over $30 million in special education grants was terminated last fall, affecting 14 states.[32] And though federal grants represent varying proportions of overall education revenue for schools and districts, they contribute to a more equitable distribution of critical education funds relative to poverty in nearly every state.[33] But OMB's proposal implies that federal grantees,

[27] *Id*.
[28] *Id*.
[29] *See, e.g.*, Rescinding Portions of Department of Justice Title VI Regulations to Conform More Closely with the Statutory Text and to Implement Executive Order 14281, 90 Fed. Reg. 57141 (Dec. 10, 2025) (amending the Department of Justice's regulations implementing Title VI "to eliminate disparate-impact liability").
[30] *See Griggs v. Duke Power Company*, 404 U.S. 424 (1971); *see also Alexander v. Sandoval*, 532 U.S. 275 (2001).
[31] Danielle Farrie & Robert Kim, *2025 Making the Grade: How Fair Is School Funding In Your State?*, Education Law Center (2025), https://edlawcenter.org/wp-content/uploads/2025/12/Making-the-Grade-2025.pdf.
[32] Mark Lieberman, *Trump Canceled Millions for Special Education Teacher Training. What's Next?*, Ed. Week (Sept. 8, 2025), https://www.edweek.org/teaching-learning/trump-canceled-millions-for-special-education-teachertraining-whats-next/2025/09#.
[33] Farrie & Kim, *supra* note 31.

including those already engaged in lawful activities to promote equitable opportunities, must adopt the Trump Administration's preferred, yet also vague and overly broad, viewpoints and policies or risk forgoing critical federal funding. Imposing these vague and unfair requirements only exacerbates the serious resource limitations already faced by state education agencies, school districts, and education nonprofits. Depriving these schools and organizations of critical funds threatens children's access to services they need to learn and grow.

This new regulation represents the most recent attempt by the federal government to weaken and delegitimize efforts to ensure equal access to educational opportunity for students across the nation and would severely limit access to funding for programs and services meant to benefit our nation's most vulnerable communities. For these and the foregoing reasons, Education Law Center urges OMB to withdraw this proposal.