Council on Foundations

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July 13, 2026

Office of Management and Budget
Attention: Office of Federal Financial Management
Docket ID OMB-2026-0034
RIN 0348-AA31

RE: Regulation for Federal Financial Assistance

To Whom It May Concern:

The Council on Foundations (the Council) is writing to provide comments to the Office of Management and Budget's (OMB) proposed revisions to the Guidance for Federal Financial Assistance. We offer comments based on the practical implications of how the proposed changes will affect the philanthropic sector.

The Council is a nonpartisan, nonprofit membership association that serves as a guide for philanthropies as they advance the greater good. Building on our 75-year history, the Council supports approximately 1,000 organizations in the United States and around the world to build trust in philanthropy, expand pathways to giving, engage broader perspectives, and co-create solutions that will lead to a better future for all.

We are concerned that the proposed changes will inhibit our foundation members—and the organizations they help fund—from accessing federal funding that supports services in their communities, which stand to lose access to critical programs, resources, and support provided by trusted nonprofit partners.

Our comments include recommendations that address the following changes proposed in these regulations:

- Clarification of regulatory structure
- Changes to eligibility and merit review
- Changes to award and subaward structure and pass-through entity oversight
- Prohibition on use of federal awards to promote or support unlawful diversity, equity, and inclusion (DEI), "gender ideology," or disparate-impact liability
- Restrictions on federally funded lobbying and related activities and programming
- Nondiscrimination and viewpoint neutrality requirements

- Strengthening the federal authority to suspend or terminate discretionary awards
- Using E-Verify for U.S.-based award labor

Clarification of Regulatory Structure

We agree that uniform guidance for federal grants is helpful; however, we want to note the wide range and types of federal financial assistance that spans across disaster relief, humanitarian aid, scientific research, and countless other areas. Currently, federal agencies have discretion to interpret and apply the Uniform Guidance, allowing agencies to apply it in ways that reflect those program-specific differences while still maintaining accountability for federal funds. We are concerned regarding the change from Uniform Guidance to Uniform Grants Regulations. Under the new framework, future changes will impact all government agencies without allowing each agency to have clear input or consider whether the guidance is appropriate for the types of awards that it provides. In addition, the change limits public input by reducing the opportunities for the public to comment on changes to the regulations. This could create confusion and legal ambiguity if agencies adopt supplemental regulations that are contradictory or in conflict with the uniform guidance.

The Council urges OMB to allow agencies to retain discretion in applying Uniform Grants Regulations to their federal funding programs, so federal financial assistance can be implemented in ways that reflect different programs' objectives, recipients, and award structures.

Changes to Eligibility and Merit Review

Federal grants work best when award decisions are grounded in program expertise, community need, and demonstrated organizational capacity. The philanthropic sector has long supported a federal grantmaking system that relies on subject matter experts to evaluate proposals against clear, mission-aligned criteria. The proposed changes to eligibility screening and merit review would undermine that foundation, introducing new layers of uncertainty and political risk into a process that organizations depend on to plan and deliver their work.

[200.202 (d)] – Program planning and design on restricting eligibility for federal funding among different types of nonprofit organizations

Allowing agencies to restrict eligibility "among different types of nonprofit organizations" could narrow the pool of partners available to agencies to carry out the objectives and mission of federal awards. While we understand the intent to provide applicants with clearer eligibility guidance, this provision raises significant concerns for the philanthropic sector.

Many organizations operate as nonprofit corporations under various exemption designations for a variety of reasons. For example, charitable activities can be conducted by section 501(c)(3) organizations, 501(c)(4) organizations, or governmental entities exempt under section 115. Broad exclusions or limitations to a specific type of exempt organization based solely on tax designations, and not Congressional legislation, risk unnecessarily and illegally excluding effective organizations or requiring organizations to incur additional administrative costs to create affiliates that fit the created limitation.

If this provision is retained, the Council asks that OMB:

- Clarify that eligibility restrictions based on nonprofit type must be grounded in statutory authority not administrative preference.
- Require agencies to explain why a particular exemption designation restriction is warranted.
- Strengthen the section 200.202(b) presumption that agencies should "make every effort to extend eligibility requirements to all potential applicants."
- Confirm that the provision does not affect organizations acting as pass-through entities for eligible subrecipients.

[200.205 (a) and (b)] – Federal agency merit review of proposals.

Introducing a mandatory "pre-issuance review" conducted by senior political appointees to evaluate discretionary award proposals in accordance with the President's policy priorities do not promote "anti-American values" is concerning as these changes subordinate objective, expert-driven merit review to political judgment in ways that are inconsistent with the nonpartisan history of government funding. This increases the risk of corruption and undermines the predictability and fairness that grant applicants depend on. The proposed language is also undefined and open-ended in ways likely to produce inconsistent outcomes across agencies.

The Council requests that OMB:

- Remove or substantially narrow the pre-issuance review criteria in [200.205(b)(2)]. Terms such as "anti-American values" have no legal definition and vest agencies with unchecked authority to exclude applicants based on viewpoint rather than merit or capacity.
- Preserve the integrity of peer review. The proposed clarification that peer review is "advisory only" should not be used to systematically override expert panel recommendations. OMB should require that agencies document the specific basis when a senior appointee departs from a peer review recommendation.
- Clarify that philanthropic organizations applying for federal awards will be evaluated on the same objective merit criteria as other applicants, and that an organization's prior grantmaking activities or allowed activities outside of the scope of federal award will not be considered in the pre-issuance review.

[200.206] – Federal agency review of risk posed by applicants.
Expanding the factors agencies may consider when assessing applicant risk to include an applicant's "history of questionable practices" and its "memberships or affiliations" with organizations linked to broadly defined concerns, as currently written, is overbroad and lacks the procedural safeguards necessary to prevent misuse.

The "history of questionable practices" provision permits agencies to penalize applicants for engaging in activities "inconsistent with Federal civil rights laws" or "religious liberty laws" based on publicly available information, without defining those terms or requiring any formal adjudication. For organizations whose programmatic work touches on lawful activities involving scientific research, education, discrimination, equality, and social justice, this provision creates substantial uncertainty about eligibility.

Philanthropic organizations routinely grant funds to, partner with, and work with a broad range of civic, professional, and issue-focused organizations as part of their work to advance the greater good in their communities. Penalizing an applicant for its "affiliation" with other organizations, over which it exercises no operational control, and where there has been no determination of illegal activity, would introduce viewpoint discrimination and significant uncertainty into the federal grants process. This proposal as is may chill the associational relationships that are fundamental to effective philanthropy.

To that end, the Council encourages OMB to remove this provision. However, if it is retained, we strongly recommend that OMB:

- Limit the "questionable practices" criterion to conduct that has been formally adjudicated by a court or federal agency and exclude prior lawful grantmaking or programmatic activity from its scope.
- Define "affiliation" clearly and confirm that providing a charitable grant to an organization does not constitute affiliation.
- Require agencies to provide written notice of any adverse risk finding under these provisions, including the specific information relied upon, and give applicants a meaningful opportunity to respond before a final award determination is made.
- Require that risk assessments under this section be limited to factors that are connected to an applicant's ability to perform.

<u>Changes to Award and Subaward Structure and Pass-Through Entity Oversight</u>

Pass-through entities, including many nonprofits, have a distinct and valuable role in the federal funding ecosystem. They bring community knowledge, established relationships with local nonprofit partners, and the ability to subaward federal dollars to nonprofits whose service delivery aligns with program objectives and mission. When an organization serves as a pass-through entity for a federal health or rural economic development program, it extends the reach of that program into neighborhoods and communities that might otherwise go unserved. While we understand OMB's concerns about transparency and oversight gaps, several of the proposed changes to award structure and pass-through entity requirements would complicate and, in some cases, deter this form of collaboration.

[200.201 (b)] – Use of grants, cooperative agreements, and contracts.
Prohibiting fixed amount awards unless expressly authorized by Federal statute, eliminating a flexible award mechanism that has been available since 2014, will impose significant operational burdens on organizations and their nonprofit grantees that rely on this structure to manage programs with well-defined, measurable deliverables.

Fixed amount awards have been particularly valuable for smaller organizations with limited infrastructure to track and report actual costs in real time. For these organizations, the shift to cost-reimbursement structures will require additional accounting systems, staff capacity, and administrative overhead — costs that divert resources from direct program delivery. If this prohibition were to proceed, there should be a robust transition period and confirmation that this will not be retroactivity applied for existing awards.

The Council recommends that OMB reconsider the blanket elimination of fixed amount awards and instead strengthen standards and guardrails to address concerns regarding oversight and transparency.

[200.332 (h)] – Requirements for pass-through entities
Requiring pass-through entities to ensure that subrecipients do not take actions that "could significantly damage the reputation of the pass-through entity, the Federal agency making the award, or the Federal Government," introduces a vague and burdensome expansive compliance obligation. The concept of "reputational harm" is undefined, subjective, and susceptible to being applied in ways that punish subrecipients for engaging in lawful activities. Organizations that routinely partner with advocacy-oriented nonprofits would face constant uncertainty about whether their subrecipients' lawful speech could trigger an obligation to terminate the award solely based on the administration's determination of reputational harm.

Moreover, the proposed provision places organizations in an untenable position: they would have legal responsibility for monitoring the reputational impact of their subrecipients' activities on the Federal Government, a standard they have no practical means of meeting and no legal authority to enforce. This would result in chilling relationships with trusted community partners and reducing program effectiveness.

The Council strongly urges OMB to remove this provision and ensure that only conduct by subrecipients that constitutes a material breach of the subaward's programmatic terms and conditions is considered grounds for termination.

[200.332 (i)] – Requirements for pass-through entities.

Requires pass-through entities to make formal subrecipient or contractor determinations for all payments to affiliated, subsidiary, or otherwise related organizations, raises operational concerns for organizations with multiple related legal entities that may collaborate or share services for federal awards.

Many philanthropic organizations operate through affiliations that collaborate on program delivery. Requiring formal subrecipient determinations and all associated compliance documentation for every transfer of federal funds between controlled entities will increase administrative burden without a commensurate improvement in oversight, specifically the related entities are subject to consolidated governance and financial controls. Therefore, the Council requests the removal of this requirement with respect to controlled entities.

[200.202 (f)] – Multi-Year Awards.

Lastly, the Council appreciates and supports OMB's proposal to encourage agencies to design programs using multi-year awards with budget periods longer than one year. Multi-year funding can be essential to supporting the complex, community-oriented work that federal programs aim to accomplish. However, we recommend that sufficient flexibility be provided to agencies to determine when multi-year versus single year awards are most appropriate.

Prohibition on Use of Federal Awards to Promote or Support Unlawful Diversity, Equity, and Inclusion (DEI), "Gender Ideology," or Disparate-impact Liability

Philanthropic organizations serve diverse communities—rural and urban, large and small, across every state in the country. Effective program design frequently requires attention to the circumstances of those communities. A workforce development program designed to connect youth to apprenticeship opportunities, or a health access initiative in rural communities that works to reduce disparities in maternal care, reflect the practical reality that reaching the people most in need requires understanding who they are and what barriers they face. While the Council recognizes that federal funding recipients must comply with applicable federal anti-discrimination laws, several of the provisions below go well beyond existing legal requirements in ways that introduce significant ambiguity and would impair the ability of philanthropic organizations to deliver effective, community-responsive programs.

[200.300 (b)(1)] – Statutory and national policy requirements.

Prohibiting the use of federal award funds to "fund, promote, encourage, subsidize, or facilitate" DEI or DEIA policies, principles, or practices that violate any applicable Federal anti-discrimination laws, should be revised to limit the prohibition to conduct that is unlawful under existing federal statute or controlling judicial precedent, rather than referencing the broader category of "DEI or DEIA policies, principles, or practices."

Many activities, such as outreach to underrepresented communities, universal barrier-reduction programs, and data collection on demographic outcomes are lawful and critically important to program effectiveness but could fall under this prohibition. The uncertainty of whether they are prohibited could chill legitimate programmatic work.

[200.300(b)(2)] – Statutory and national policy requirements.

Prohibiting the use of federal award funds to "fund, promote, encourage, subsidize, or facilitate" gender ideology as defined in Executive Order 14168 leaves philanthropic organizations operating in the areas of health, youth development, education, and social services with great uncertainty and legal risk. It is unclear as to what activities would be considered promotion or encouragement of gender ideology and organizations whose grants are wholly unrelated to these issues will still need to expend time and resources to understand the limitations or restrictions on their actions.

If this provision is retained, the Council encourages OMB to clarify what activities are specifically prohibited based on clear standards. In addition, OMB should provide guidance on the interaction between this provision and applicable state laws that conflict with this policy position.

[200.218] – Prohibition of using Federal awards to promote or support theories of disparate-impact liability.

Restricting the use of federal funding for disparate-impact studies, litigation, and award activities based on the assumed risk of disparate-impact liability, poses particular risks for philanthropic organizations whose nonprofit community partners use demographic data and outcome analysis to identify and address service gaps. The proposed prohibition on activities "based on the assumed risk of disparate-impact liability" is so broad that it could encompass any program adjustment responsive to documented outcome disparities and could put the organization at legal risk for failing to address disparities.

The Council recommends that OMB:

- Remove the provision, or at least confirm that the provision does not prohibit recipients or subrecipients from complying with federal, state, or local laws that incorporate disparate-impact standards.

Narrow the prohibition to exclude data collection that uses demographic information to assess program effectiveness or identify underserved populations. Such activities do not constitute the promotion of disparate-impact liability theory and are essential to responsible stewardship of federal funds.

[200.111] – English language.

Requiring that all federal financial assistance announcements, applications, and federal award information "must be" in the English language, removing the existing provision that permitted, federal agencies, recipients, and subrecipients to issue translations or translate documents into other languages raises concerns about program effectiveness. The prior version specifically noted that agencies may translate funding announcements to languages which would increase the pool of applicants or participation by specific communities, while requiring that an official controlling English version always be maintained.

The Council supported the changes in the 2023 rulemaking that removed the English language mandate, and reinstating the requirement undermines access to government grants and the effectiveness of programs established by Congress.

The Council recommends OMB retain the current provisions that permit translation of federal announcements and award documents, while maintaining the requirement for an official controlling English version. This approach balances the interest of clear, consistent federal communications with the practical need for accessibility in communities.

Restrictions on Federally Funded Lobbying and Related Activities and Programming

The proposed restrictions on these federally funded activities touch on a range of functions that are integral to how nonprofits and foundations deliver effective programs and sustain the civic infrastructure of their communities. The Council recognizes that federal award funds should be used for the purposes for which they are awarded, and that appropriate limits on political activity are well-established features of federal funding requirements. However, several of the proposed restrictions are drafted so broadly that they would capture activities that are clearly within the legitimate scope of nonprofit mission and operations, creating compliance uncertainty that would deter effective organizations from participating in federal programs.

[200.450 (iii), (iv) and (v)] – Lobbying.

Prohibiting the use of federal funds for voter registration activities; issue advocacy or public messaging on social, political, or policy matters unrelated to the performance requirements of the award; and attempts to influence state executive branch agencies on matters unrelated to the award may disrupt lawful programming. It is unclear how these provisions will be interpreted and enforced, as the various terms are undefined in the grants context. We urge OMB to clarify how public education campaigns, community outreach, and policy research would be affected in any final rule. The provision should also clarify that it only applies to the use of the federal funds and not the organization's other resources.

[200.202(a) and 200.202(c)] – Program planning and design.

While the Council supports the longstanding principle that federal funds must be used for their authorized public purposes, the proposed changes to require that federal program goals and objectives "align with administration policies and priorities" and to add a new prohibition on program funds from being used for "political activities or initiatives unrelated to authorized public purposes, such as political advocacy, lobbying, or any attempt to influence legislation, elections, or government officials" raise significant concerns about how they will be applied in practice.

Requiring program design to "align with administration policies and priorities" introduces a layer of political consideration into a process that has historically been grounded in statutory authority and evidence-based program design. This requirement could be used to deny funding to qualified organizations whose programs are consistent with authorizing legislation but do not reflect current executive branch preferences.

The new § 200.202(c) prohibition on "political advocacy" and "attempts to influence" government officials, without a clear definition or limiting principle, risks sweeping in protected public education and community engagement activities that have never been treated as lobbying.

We urge OMB to remove this provision and to ground program requirements in statutory authority rather than evolving administrative priorities.

[200.454 (a) and (d)] – Memberships, subscriptions, and professional activity costs.

The two significant changes to § 200.454 will harm philanthropic organizations. First, proposed (a) would make membership costs in professional, civic, business, and technical organizations allowable only "if necessary to fulfill the award requirements," and would add a new requirement for prior written federal agency approval. Second, proposed (d) would expand the existing prohibition on membership costs for lobbying organizations to also cover organizations "whose primary purpose is" issue advocacy.

The prior approval requirement imposes administrative burdens across the nonprofit sector and reduced effectiveness of many programs. Professional memberships and subscriptions provide organizations and their staff with training, technical assistance, legal guidance, and peer networks that directly support effective grant administration. It also provides the opportunity for public dissemination of research and best practices. Requiring case-by-case federal agency approval for each membership would be time-consuming and administratively impractical. The expanded prohibition in proposed (d) compounds this concern by using the undefined term “issue advocacy” to exclude membership in a broad and indeterminate category of organizations.

The Council recommends:

- Removal of the prior written approval requirement. The existing standard, that membership costs must be reasonable and necessary, is sufficient to ensure appropriate use of federal funds without imposing a case-by-case approval burden on every professional membership maintained by every recipient.
- Remove the “issue advocacy” expansion. Without a clear legal definition, this provision would make unallowable membership costs for a broad and unpredictable range of organizations, including many that provide public education, professional development, and technical assistance to nonprofit organizations.

[200.461] – Publication and Printing Costs.
Prohibiting the use of federal funds for publication costs, including journal article processing charges, open access fees, and peer-reviewed publication costs, unless expressly required by federal statute or approved by the agency on a case-by-case basis, would make it more difficult to share federally funded research with the public. The proposal also specifies that a general requirement to make results publicly available would not be enough to authorize these costs. This change would significantly hinder the ability of federally funded researchers and service providers to disseminate findings to the communities, practitioners, and policymakers they serve.

For organizations that fund federally supported research on health, education, housing, and community development, the ability to publish and share results is integral to program objectives. Restricting publication costs to a narrow statutory or case-by-case approval pathway will create unpredictable delays and deter recipients from conducting the knowledge-sharing activities that are necessary for scientific advancement. We urge OMB to remove this provision as disseminating information to the communities, practitioners, and policymakers that philanthropic organizations serve is an integral part of these organizations’ ability to fulfill federal funding objectives and goals.

Nondiscrimination and Viewpoint Neutrality Requirements

The proposals on nondiscrimination on organizations based on their religious identity, affiliation, or practices [200.300(c)] and viewpoint neutrality requirements [200.219] raise practical questions for pass-through entities that re-grant federal dollars.

For [200.300 (c)], the Council encourages OMB to clarify how pass-through entities can document and apply neutral selection criteria while maintaining appropriate discretion to select nonprofit/community partners that are best positioned to carry out the federal award. Such clarification would help build trust among federal agencies, pass-through entities, and applicants, while reducing unnecessary disputes that could delay services to communities.

For [200.219], the effect of this provision on non-public entities is unclear, as there is no guidance on what activities are "relevant" to the scope of activities funded by a federal award. Therefore, we recommend clarification that for non-public entities, the provision applies only when hosting a public forum or open event is an explicit requirement of the award.

Strengthening the Federal Authority to Suspend or Terminate Discretionary Awards

Predictability is essential to effective federal grantmaking and to ensuring a continuity of services for communities that are supported by federal awards. When a federal award is suddenly suspended or terminated, the consequences extend beyond the recipient. Philanthropic organizations may be forced to pause services for disaster recovery, housing support, food access, workforce training, and more; lay off staff; cancel contracts; or leave communities without expected support.

[200.340 (a)(1) and (2)] – Termination and suspension

These proposals are particularly concerning as they would give agencies broader authority to pause or end awards based on shifting agency priorities or program goals. The existing framework is well-established and appropriately balances agency discretion with recipient reliance interests. The proposed additions would allow agencies to terminate awards mid-performance for political or policy reasons unrelated to the recipient's performance, with no requirement for administrative hearings or appeal rights for discretionary terminations. This fundamentally undermines the stability that organizations and the communities they serve depend on when undertaking multi-year funded programs.

The Council urges OMB to ensure that discretionary termination requires a meaningful standard of justification and establish a genuine right for recipients to contest a proposed termination before it takes effect. A notification-only process is insufficient for organizations whose operations, staff, and service recipients may depend entirely on a given award. Termination authority should also be limited to circumstances where a change in law, a material change in program authorization, or a demonstrable failure of the award to achieve its statutory objectives justifies termination, rather than allowing termination based solely on shifting agency priorities or political considerations.

Using E-Verify for U.S.-Based Award Labor

Many of the nonprofit organizations that receive federal funding through foundation pass-through entities are small, community-based organizations with limited staff capacity. The proposal, [200.303 (f)], requiring all recipients and subrecipients of federal funding to participate in the Department of Homeland Security's E-Verify, will impose a disproportionate administrative burden on the organizations that often lack the administrative infrastructure to manage a new mandatory federal employment verification program. Instead, the Council recommends:

- Limiting the E-Verify requirement to recipients above a minimum award threshold or workforce size, consistent with the tiered approach used in other federal administrative requirements and exempt small nonprofit organizations that lack the administrative capacity to implement the program without significant disruption to service delivery.
- Clarify that the E-Verify requirement applies only to employees and contractors who perform work specifically under the federal award and does not extend to an organization's entire workforce simply because the organization receives any federal funding.

Conclusion

Philanthropic organizations are among the most effective and trusted collaborators the federal government has in delivering services to communities across the country. The proposed revisions to the Uniform Guidance, taken together, would make that collaboration significantly harder to sustain. The Council urges OMB to reconsider the requests to the provisions outlined above, to preserve the flexibility and due process protections that make the federal grantmaking system work and ensure critical services to communities in need are not disrupted.

Thank you for the opportunity to comment. We would welcome the opportunity to discuss any of these matters with OMB if it would be helpful. Please contact me for additional information at govt@cof.org.

Sincerely,
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