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Messrs. Andrew Reisig and Joel Savary
Office of Federal Financial Management
Office of Management and Budget
725 17th Street N.W.
Washington, D.C. 20503

OMB Docket No. OMB-2026-0034, Regulation for Federal Financial Assistance, RIN 0348-AB88

Dear Messrs. Reisig and Savary:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund), in response to the request for comment on the proposed rule Regulation for Federal Financial Assistance that was published in the Federal Register on May 29, 2026. 91 Fed. Reg. 32,198 (May 29, 2026) (OMB Docket No. OMB-2026-0034). Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of voting rights, education, immigrants' rights, employment, and freedom from open bias.

On May 29, 2026, the Office of Management and Budget (OMB) published a proposed rule in the Federal Register that would drastically overhaul the federal grantmaking process.[1] For the following reasons, MALDEF strongly opposes the proposed rule and urges OMB to withdraw it in its entirety.

I. OMB Lacks the Statutory Authority to Issue Broad Grant Policy Regulations with the Force of Law Binding both Non-Federal Recipients and Federal Agencies Government-Wide

The proposed rule claims that it merely provides a "proposed clarification" to OMB's regulatory structure.[2] In reality, it is an unprecedented assertion of power beyond anything it has claimed in the more than half-century it has administered government-wide grant policy: that OMB itself may promulgate binding, legislative rules governing federal financial assistance.[3] These rules will

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[1] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198 (May 29, 2026) ("NPRM").
[2] *Id.* at 32,206.
[3] *Id.* at 32,206-08.

necessarily carry the force and effect of law with respect to non-federal recipients, and future OMB amendments to Title 2 of the Code of Federal Regulations ("C.F.R.") will automatically "apply government-wide"—stripping regulatory authority from all grant-awarding agencies whose organic statutes authorize them to regulate.[4] As OMB's longstanding practice to the contrary indicates, it lacks the statutory authority to issue broad government-wide regulations governing federal grant policy.

"[A]n agency literally has no power to act . . . unless and until Congress confers power upon it."[5] "The legislative power of the United States is vested in Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes."[6]

OMB principally relies on two statutes, neither of which provides it the authority to issue binding regulations or to claim regulatory authority from grant-issuing agencies. It first cites 31 U.S.C. § 503(a)(2), which grants the Deputy Director for Management of OMB authority to provide "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements."[7] A grant of power to provide "direction and leadership to the executive branch" is not authority to issue binding regulations with the force and effect of law. It is an internal executive-branch management provision, a "housekeeping statute" of the kind the Supreme Court has held does not confer the power to exercise quasi-legislative power.[8]

OMB then cites 31 U.S.C. § 6307, which authorizes the Director to "issue supplementary interpretative guidelines to promote consistent and efficient use of . . . grant agreements . . . and cooperative agreements."[9] This statute undermines OMB's claimed authority. Congress did not use the word "interpretive" casually. It is a term of art from the Administrative Procedure Act ("APA")[10] for a class of rules that—the Supreme Court has repeatedly held—"do not have the force and effect of law."[11]

The remaining statutes the NPRM summarily cites do not help its cause. It cites 31 U.S.C. § 6105, an OMB housekeeping provision providing the Director "oversight responsibility for the exercise of all authorities and responsibilities" not specifically assigned to the Director in Chapter 61 of Title 31.[12] And it refers to 31 U.S.C. § 7505, which provides the Director the authority to "prescribe *guidance*" to implement Chapter 75 of Title 31.[13] As discussed above, agency guidance does not carry the force and effect of law.[14]

Last, the NPRM cites 41 U.S.C. § 1125(a), which likely contains a genuine delegation of regulatory authority touching federal procurement policy—but its text confirms the conclusion that Congress

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[4] *Id.* at 32,205.
[5] *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).
[6] *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979).
[7] NPRM at 32,201 (quoting 31 U.S.C. § 503(a)(2)).
[8] *Chrysler Corp.*, 441 U.S. at 308.
[9] NPRM at 32,201 (quoting 31 U.S.C. § 6307).
[10] 5 U.S.C. § 553(b)(A).
[11] *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (quoting *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 99 (1995)).
[12] 31 U.S.C. § 6105.
[13] 31 U.S.C. § 7505(a) (emphasis added).
[14] *See supra* at 2.

withheld OMB rulemaking power over federal grant administration generally. Under this provision, the Administrator for Federal Procurement Policy ("AFPP") "may prescribe Government-wide policies, regulations, procedures, and forms . . . that executive agencies shall follow in providing for the procurement . . . of property or services referred to in section 1121(c)(1) of this title by recipients of Federal grants or assistance under the programs."[15] Several factors confirm this provision does not provide OMB with its claimed authority.

First, the provision is limited to agency procurement of certain property or services—it does not provide OMB broad authority to issue binding regulations over federal government grant policy. Second, the contrast between this provision and OMB's principal authorities cuts against OMB's broader claim. Section 1125 uses clear, unmistakable language to confer the power to issue regulations. Congress knew how to provide OMB with such authority when it wanted to, and it chose to provide the AFPP the power to do so only in this narrow field of procurement policy. Thus, while OMB may have the authority to issue executive branch-wide regulations in this limited sphere of procurement policy, section 1125(a) confirms it does not have the authority to issue government-wide binding regulations covering federal grant policy.

II. OMB Lacks the Statutory Authority to Regulate Grant Program Substance

The NPRM does not just seek to impose government-wide financial management regulations governing grant policy. It uses OMB's financial management statutes as a proverbial Trojan horse to dictate the substantive content of federal grant programs government-wide. The NPRM is littered with substantive policy controls OMB seeks to impose on all federal government agencies, such as:

- Requiring agencies to conduct pre-issuance review to determine whether the award is consistent with the "national interest," including denial "by the recipient of the sex binary in humans[,]" and any "initiatives that … promote anti-American values."[16]

- Requiring agencies, to the maximum extent permitted by law, to ensure that federal awards do not fund, promote, encourage, subsidize, or facilitate: diversity, equity, and inclusion; gender ideology; and gender transitions of those under 19 years old.[17]

- Authorizing federal agencies and pass-through entities to terminate awards if they do not "effectuate . . . the national interest[.]"

- Prohibiting agencies from providing funds to support voter registration campaigns or drives.[18]

- Extending the "Wolf Amendment" (which narrowly applies to NASA and the Office of Science and Technology Policy) government-wide to prohibit expenditure of federal funds to support certain foreign collaborations involving covered foreign countries or covered foreign entities.[19]

[15] 41 U.S.C. § 1125(a).
[16] NPRM at 32,248-49.
[17] *Id.* at 32,253.
[18] *Id.* at 32,262.
[19] *Id.* at 32,214.

- Requiring agencies, to the maximum extent permitted by law, to eliminate the use of disparate-impact liability in all contexts relevant to federal awards.[20]

- Prohibiting the costs associated with elective abortions from being paid with federal awards, except as expressly authorized by federal law.[21]

OMB principally relies on 31 U.S.C. §§ 503 and 6307 to support its authority to issue these regulations, but these statutes make clear that OMB's authority to provide guidance (let alone to issue binding regulations) is limited to administrative financial management policy.[22] It thus lacks the statutory authority to bind agencies to these substantive constraints on federal grant policy.

Section 503 provides the Deputy Director for Management the authority to "establish governmentwide financial management policies[.]"[23] His powers are limited to that which "relat[es] to financial management."[24] The rest of section 503, defining the scope of his "financial management functions," confirms that OMB's guidance authority is limited to fiscal administration. These fiscal administration powers include: "monitoring the establishment and operation of . . . financial management systems[;]"[25] "[r]eview[ing] agency budget requests for financial management systems and operations[;]"[26] "monitoring the financial execution of the budget in relation to actual expenditures[;]" making "recommendations to heads of agencies on" their "administrative structure . . . with respect to their financial management activities[;]"[27] providing advice to "agency heads with respect to the selection of agency Chief Financial Officers and Deputy Chief Financial Officers[;]"[28] and providing "advice to agencies regarding the qualifications, recruitment, performance and retention of other financial management personnel[,]"[29] among other administrative-related functions. Nothing in these limited authorities provides OMB the power to impose substantive controls on agency award-making government-wide.

Neither does section 6307 provide OMB this authority. This provision appears in Chapter 63 of Title 31. The purposes of Chapter 63 are to "promote a better understanding of . . . Government expenditures and help eliminate unnecessary administrative requirements on recipients of Government awards[;]" to "prescribe criteria for executive agencies in selecting appropriate legal instruments to achieve" "uniformity in their use by executive agencies; a clear definition of the relationship they reflect; and . . . a better understanding of the responsibilities of the parties to them; and" to "promote increased discipline" and "maximize competition" in selecting, using, and making procurement contracts, grants, and cooperative agreements.[30] To serve these purposes, section 6307 provides the OMB director the limited authority to issue interpretive guidance "to promote consistent and efficient use of procurement

[20] *Id.* at 32,252.
[21] *Id.* at 32,263.
[22] *Id.* at 32,245.
[23] 31 U.S.C. § 503(a).
[24] *Id.* at § 503(a)(1).
[25] *Id.* at § 503(a)(2).
[26] *Id.* at § 503(a)(3).
[27] *Id.* at § 503(a)(6).
[28] *Id.* at § 503(a)(8).
[29] *Id.* at § 503(a)(9).
[30] *Id.* at § 6301.

contracts, grant agreements, and cooperative agreements[.]"[31] This narrow grant of power does not provide OMB the authority to impose substantive policy constraints on grant awards government-wide.

Congress, moreover, "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."[32] To provide a single agency substantive policy control over federal grants government-wide would alter the entire design of the executive branch. Thus, even if there were ambiguity within either of these provisions that OMB could arguably exploit to justify its list of proposed substantive policy restrictions—and, to be clear, there is not—it cannot rely upon that ambiguity to seize for itself this sweeping power Congress clearly did not and would not hide in statutory ambiguity.

To no avail, OMB also summarily cites 31 U.S.C. §§ 6101-06 and 7501-07 to support its authority to impose these controls on grant policy.[33] First, OMB's failure to explain why these statutes provide it the authority to impose these controls on government-wide grant policy is arbitrary and capricious in violation of the APA.[34] In any event, none of these statutes provides OMB with such control over executive branch grant-issuing policy. And, for the reasons discussed above, any ambiguity in these provisions cannot be interpreted to provide it with such control over grant policy. OMB thus lacks the authority to impose these substantive controls on federal grants and must rescind these portions of the NPRM.

III. OMB Failed to Give the Public a Meaningful Opportunity to Review and Provide Informed Comment to the NPRM in Violation of the APA

"The APA requires that the public have a meaningful opportunity to submit data and written analysis regarding a proposed rulemaking."[35] The "usual" amount of time to provide the public an opportunity to comment is 90 days.[36] OMB itself is well aware of what is typically required for a "significant regulatory action," as it (through OIRA) administers Executive Order 12866 ("EO 12866") review of all such regulatory proposals.[37] EO 12866 dictates that most significant regulatory actions should provide a comment period "of not less than 60 days" to "provide the public with a meaningful participation in the regulatory process[.]"[38] OMB concedes the NPRM is a significant regulatory action under EO 12866, yet it provides only a 45-day comment period.[39]

OMB has meaningfully involved the public in its far less significant interpretive guidance. When OMB sought to implement its 2013 Uniform Guidance, it first issued an Advanced Notice of Proposed Guidance in February 2012 with a 30-day comment period,[40] then a Notice of Proposed Guidance in

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[31] *Id.* at § 6307(1).
[32] *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).
[33] NPRM at 32,245.
[34] *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 223-24 (2016).
[35] *Prometheus Radio Project v. F.C.C.*, 652 F.3d 431, 453 (3d Cir. 2011) (citing 5 U.S.C. § 553(c)).
[36] *Id.*
[37] Executive Order 12,866, *Regulatory Planning and Review*, 58 Fed. Reg. 51735 (Oct. 4, 1993).
[38] *Id.* at § 6(a)(1).
[39] NPRM at 32,235.
[40] Reform of Federal Policies Related to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act), 77 Fed. Reg. 11778 (Feb. 28, 2012).

February 2013 with a 90-day comment period,[41] only to finalize its guidance in December 2013—almost two years after it began the process with 120 days of total comment period.[42] OMB's even less significant 2024 revisions followed a similar process: a February 2023 Request for Information with a 30-day comment period,[43] an October 2023 Notice of Proposed Guidance with a 60-day comment period,[44] only for OMB to issue its final guidance in April 2024 over a year later after 90 total days for public comment.[45]

This NPRM is a considerable break with this well-established practice for far less significant agency guidance. Now, when OMB seeks to arrogate significant authority to itself—power that it has never claimed in its over 50-year history—OMB provides a single 45-day comment period during the summer, spanning two federal holidays, when universities and other affected parties have limited capacity to provide input.

Indeed, this comment addresses far less than it would like, and at a far higher level of generality than it would like, precisely because the 45-day comment period has not afforded the public a meaningful "opportunity to participate in the rule making[.]"[46] The NPRM thus violates the APA, and OMB must considerably extend the comment window or rescind the NPRM in its entirety.[47]

IV. Constitutional Deficiencies

The NPRM also raises serious constitutional concerns. For example, the NPRM violates the Fifth and First Amendments, among other provisions. Accordingly, the NPRM must be withdrawn.

a. Fifth Amendment Due Process Concerns

Under the Fifth Amendment's Due Process Clause, a provision is void for vagueness when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited" or "is so standardless that it authorizes or encourages seriously discriminatory enforcement."[48] The NPRM's provisions are vague, both because they fail to provide fair notice of prohibited conduct and because they are so standardless that they encourage arbitrary and discriminatory enforcement.

The NPRM includes various undefined terms that fail to provide necessary clarity. For example, the NPRM references "diversity, equity, and inclusion." Rather than define these terms, the NPRM relies on references to other administration articulations of policy, such as executive orders and guidance

[41] Reform of Federal Policies Related to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act), 78 Fed. Reg. 7282 (Feb. 1, 2013).
[42] Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 78 Fed. Reg. 78590 (Dec. 26, 2013).
[43] OMB Request for Information, 88 Fed. Reg. 8480 (Feb. 9, 2023).
[44] Guidance for Grants and Agreements, 88 Fed. Reg. 69390 (Oct. 5, 2023).
[45] Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046 (Apr. 22, 2024).
[46] 5 U.S.C. § 553(c).
[47] *Id.* at § 706(2)(D) (authorizing courts to set aside agency action conducted "without observance of procedure required by law").
[48] *United States v. Williams*, 553 U.S. 285, 304 (2008).

documents, even when those have been struck down by courts for being impermissibly vague.[49] The NPRM's provisions related to "illegal immigration," "anti-American values," or "gold standard science," also create confusion. Applicants and recipients will be unable to determine whether their activities comply with OMB's ambiguous and vague regulations. Others may choose to abandon any effort to seek federal grants because the confusing terms of the NPRM are likely to make the cost of applying and complying with the whims of agency political appointees too high.

In addition, the NPRM's provisions that allow agencies the authority to terminate or suspend any awards that are not in the "in the Federal Government's interest"—with no opportunity for a recipient to object, obtain a hearing, or appeal the termination—permit the termination of awards without any applicable standards. This provision will authorize and encourage arbitrary and discriminatory enforcement to revoke the grants of any recipients the government disagrees with on issues like immigration, racial equity, and gender equity, among other issues.

b. Fifth Amendment Freedom-of-Speech Concerns

The NPRM also raises serious First Amendment concerns. The government may not "regulate speech based on its substantive content or the message it conveys," and "[d]iscrimination against speech because of its message is presumed to be unconstitutional."[50] A U.S. district court recently held that similar restrictions on federal grants for projects determined to promote "gender ideology" violated the First Amendment and APA.[51] Various provisions of the NPRM, including sections 200.205, 200.206, 200.218, and 200.300, are designed to prohibit or restrict funds based on viewpoint, and therefore are inconsistent with Supreme Court precedent requiring that government-funding be viewpoint-neutral.[52] For example, the NPRM would restrict access to funding based on viewpoint through its anti-DEI directives. The NPRM's pre-issuance review process, which requires senior political appointees to review all discretionary award proposals selected for funding to allow only those awards that advance presidential policy priorities and the national interest, will invite and encourage government funding decisions to be made based on impermissible viewpoint discrimination.

Furthermore, the NPRM raises serious concerns about its chilling effect on applicants and recipients, as it will limit recipients' ability to engage in constitutional activities, even if those activities are not funded by the grant. For example, section 200.206 requires federal agencies to assess an applicant's risk of "engaging in activities or initiatives that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination." This assessment puts recipients at the mercy of political appointees who review a recipient's entire history to make funding decisions based on activities or projects beyond the specific award. The substantial chilling effect of this sweeping provision and others violates the First Amendment.

The NPRM also implicates the Spending Clause of the U.S. Constitution, because the NPRM attempts to require binding conditions and requirements on federal funding in excess of OMB's and federal

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[49]*See San Francisco AIDS Found. v. Trump*, 786 F.Supp.3d 1184, 1224-26 (N.D.Ca. 2025); *Nat'l Educ. Ass'n v. Dep't of Educ.*, 779 F.Supp.3d 149, 187 (D. N.H. 2025).
[50] *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).
[51] *Rhode Island Latino Arts v. NEA*, 800 F.Supp.3d 351, 368-69 (D.R.I. 2025)
[52] See *Rosenberger*, 515 U.S. 828; *Legal Services Corp. v. Velazquez*, 531 U.S. 533, 547 (2001).

agencies' statutory authority. The NPRM is therefore a blatant overreach that conflicts with the U.S. Constitution and federal law.

V. The Proposed Rule Violates the APA on Substantive Grounds

In addition to the legal issues explored above, OMB's proposed rule raises many policy concerns. Under the Administrative Procedure Act (APA), a court must "hold unlawful and set aside agency action…found to be…arbitrary, capricious, [or] an abuse of discretion[.]"[53] Courts may set aside agency action as arbitrary and capricious if the agency has "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[54] For all these reasons, the proposed rule violates the APA.

a. The Proposed Rule Would Align Grant Decisions with the President's Political Priorities, Perpetuating Racism, Transphobia, Xenophobia, and Nationalism

Among the stated objectives for OMB's proposed revisions is improved oversight "to align…with administration policies and priorities set by the President."[55] These policies and priorities include a prohibition on the use of discretionary awards "to fund, promote, encourage, subsidize, or facilitate … racial preferences or other forms of racial discrimination … denial … of the sex binary in humans or the notion that sex is a chosen or mutable characteristic … illegal immigration; or … any other initiatives that compromise public safety or promote anti-American values."[56] Leaving aside that the administration fails to define what it means by "anti-American values," the administration's stated policies and priorities enable unlawful discrimination on the basis of race and outright promote discrimination on the basis of sex. In taking no action to combat racial discrimination, grant recipients and subrecipients will, in fact, perpetuate racial discrimination, which also violates OMB's proposed revisions. Indeed, OMB would have grant recipients and subrecipients ignore existing disparities and refuse to address them.[57]

Furthermore, the administration's prohibition on using discretionary awards to benefit unauthorized immigration is impermissibly vague. The administration could claim that any program providing any benefit to any individual, regardless of immigration status, even if the benefit or service provided is one to which the individual is entitled by law, somehow benefits unauthorized immigration. Such abuse of discretion poses an existential risk for grant beneficiaries serving countless individuals and communities. Thus, the proposed rule jeopardizes research based on administration's priorities, which may shift at any time; OMB has failed to engage in reasoned decision-making on this point as well.[58]

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[53] Administrative Procedure Act, 5 U.S.C. § 706(2) (1966).
[54] Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (agency must provide a reasoned analysis for its rule).
[55] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198, 32,204 (May 29, 2026).
[56] Improving Oversight of Federal Grantmaking, 90 Fed. Reg. 38,929, 38,930 (Aug. 12, 2025).
[57] *See* Bhd. of Locomotive Eng'rs & Trainmen v. Fed. R.R. Admin., 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting DHS v. Regents of the Univ. of Cal., 591 U.S. 1, 16 (2020)).
[58] *See id.*

b. The Proposed Rule Would Prohibit the Use of Federal Funds for Equity, Diversity, Inclusion, and Gender Affirmation for Transgender Individuals, Including Gender-Affirming Medical Care for Minors, While Simultaneously Asserting That It Is Not Altering Existing Statutory Anti-Discrimination Requirements

This administration has made targeted efforts to punish transgender individuals for merely existing, exhibiting animus against an already marginalized population on a staggering scale, and this proposed rule is no exception. The administration's priorities misrepresent sex as a clearly delineated binary rather than as a complex constellation of a host of factors, including physical characteristics, chromosomes, and hormones.[59] To deny the reality of this complexity is to deny science itself.[60] That OMB reiterates this unscientific priority underscores the ideological rather than evidence-based nature of the administration's priorities.[61] Even if OMB wishes to limit the programs and benefits that transgender individuals can obtain, anti-discrimination statutes still govern OMB, agencies, and grant recipients and subrecipients. OMB cannot change those statutory anti-discrimination requirements, nor can it instruct agencies to violate anti-discrimination statutes.

c. The Proposed Rule Would Clarify That All Recipients' Grants May Be Subject to Termination at the Federal Government's Discretion

OMB's proposed rule would "further clarify the existing regulatory text related to award termination and further ensure that Federal agencies provide clear notice to all recipients of the Federal Government's ability to terminate discretionary awards for discretionary reasons in a manner consistent with law."[62] This purported clarification operates more like a threat than mere notice to researchers: such a revision removes any kind of certainty for grant recipients, potentially leaving vital research or other programs vulnerable to termination at any time. With this level of uncertainty hanging over their heads, grant recipients can never be certain they will maintain their awards, adding unnecessary complications and stressors throughout the course of their awards. Part of the purpose of grant awards is to alleviate such pressures so that researchers can focus on their substantive work. It is difficult, if not impossible, to reconcile this proposed caprice with OMB's stated intention of enabling recipients to conduct their work efficiently.[63] Thus, OMB should rescind this proposed rule.

d. The Proposed Rule Purposefully Obscures and Perverts Anti-Discrimination Language in Opposition to Equity Efforts

OMB claims that the previous administration's grant programs "serve[d] a 'woke' policy agenda that deliberately favored certain identity groups over others."[64] However, it supports this claim by citing a publication from the Heritage Foundation, a notorious right-wing think tank that is hardly an unbiased source.[65] Furthermore, OMB fails to define what "a 'woke' policy agenda" even entails, instead utilizing

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[59] *See, e.g.,* Hannah Chinn et al., *How Is Sex Determined? Scientists Say It's Complicated*, NAT'L PUB. RADIO (Mar. 12, 2025), https://www.npr.org/2025/03/12/1237991522/male-female-sex-science-human-biology.
[60] *See id.*
[61] *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43.
[62] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32,204–05.
[63] *Id.* at 32,208. *See also* Dep't of Com. v. New York, 588 U.S. 752, 755 (2019) (decisionmaking arbitrary and capricious where there was "a significant mismatch between" the agency's decision and the sole rationale provided for it).
[64] *Id.*
[65] *Id.*

scare quotes to instill wariness in readers.[66] Likewise, OMB refuses to define what it terms "unlawful identity-based 'Diversity, Equity, and Inclusion' (DEI)" efforts.[67] Instead, OMB cites the current administration's own executive orders and the Heritage Foundation's policy briefs in an attempt to support its own baseless and substantially meaningless allegations.[68]

Furthermore, OMB has coopted and perverted the language of civil rights efforts to undermine the very goals of anti-discrimination laws and policies.[69] In fact, it implies that policies and programs designed to combat racial discrimination are in fact discriminatory themselves.[70] This defies reason: anti-discrimination policies and programs exist to correct historical and current inequities, and the very laws to which OMB alludes were created in furtherance of that goal.[71] OMB must rescind its distortion of existing civil rights laws.

e. The Proposed Rule Seeks to Undermine Longstanding Civil Rights Laws' Goals in Prohibiting Grant Recipients from Engaging in Unlawful Discrimination Under the Guise of Supposedly Reducing Grant Recipients' Burdens

OMB claims that some of its proposed revisions "are aimed at ensuring that recipients can focus on timely and efficient delivery of core program purposes."[72] To that end, OMB proposes to eliminate funding for "unlawful DEI mandates" without specifying what those so-called mandates encompass—let alone what OMB even means by "DEI" itself.[73] Yet, it is precisely this kind of imprecision that OMB claims to combat throughout the proposed rule.[74]

In addition, OMB neglects to consider how important prohibitions on discrimination and efforts to combat discrimination have been and still are to preserving the civil rights of workers across sectors. If OMB truly wants to eliminate discrimination on the basis of immutable characteristics like race, then it should rescind this counterproductive and nonsensical provision.

f. The Proposed Rule Prioritizes Political Appointees' Discretion, Regardless of Their Own Scientific Credentials or Lack Thereof, Over Peer Review

The proposed rule would seek to overhaul federal agency merit review and create "a new pre-issuance review process consistent with Executive Order 14332."[75] The numerous problems that the cited executive order contains far exceed the scope of this comment, but the relevant provision instructs senior appointees "not [to] ministerially ratify or routinely defer to the recommendations of others in reviewing … awards, but … instead [to] use their independent judgment."[76] Additionally, as mentioned above, the

[66] *Id.*
[67] *Id.* at 32,199.
[68] *Id.* at 32,199–200.
[69] *See generally id.* at 32,198–305.
[70] *See, e.g., id.* at 32,199 (claiming without adequate support that equity policies conflict "with basic American values and civil rights law").
[71] *See Dep't of Com.*, 588 U.S. at 752, 755.
[72] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32,208.
[73] *Id.* at 32,199, 32,208.
[74] *See generally id.* at 32,198–305.
[75] *Id.* at 32,212.
[76] Improving Oversight of Federal Grantmaking, 90 Fed. Reg. 38,929, 38,931 (Aug. 12, 2025).

executive order requires that discretionary awards "demonstrably advance the President's policy priorities" and instructs agencies to "prioritize institutions that have demonstrated success in implementing Gold Standard Science."[77]

While that executive order does not provide a definition for "Gold Standard Science," a separate executive order from May of 2025 defines "Gold Standard Science" as "science conducted in a manner that is … reproducible … transparent … communicative of error and uncertainty … collaborative and interdisciplinary … skeptical of its findings and assumptions … structured for falsifiability of hypotheses … subject to unbiased peer review … accepting of negative results as positive outcomes; and … without conflicts of interest."[78] A political appointee, however, may not possess the subject-matter expertise necessary to make such determinations, yet that appointee's discretion would, under this proposed rule, still outweigh the recommendations of subject-matter experts.

It is difficult to overstate just how disastrous this would be for funding across all fields. The United States has long been a global leader in scientific research, in part due to the peer review process. Scientific progress requires clear eyes and expertise. When policy leads science rather than vice versa, the resulting data may reflect and reinforce existing pernicious biases. When political appointees rather than subject-matter experts make funding determinations, they may inappropriately overfund some projects and underfund or outright deny others. Everyone has biases, whether conscious or unconscious, and the peer review process helps correct for those biases or other substantive mistakes, ensuring that funded research projects are correct and comprehensive. That OMB has failed to consider this demonstrates another basis on which the proposed rule violates the APA.[79]

g. The Proposed Rule Would Increase Burdens and Costs in Contradiction of Its Own Stated Goals

The proposed rule undermines its own goals of efficiency and cost reduction by expanding the list of factors that agencies can use to determine a recipient's risk, thereby increasing the burden imposed on agencies, and by requiring that federal grant recipients and subrecipients participate in E-verify, thereby increasing the burden imposed on recipients.[80] The proposed rule adds several new provisions that increase the number of factors that agencies may use to evaluate applicant risk, including "overall financial stability" and "history of questionable practices based on publicly available and verifiable information."[81] These questionable practices include "[p]lagiarism," "[d]iscredited or non-replicable studies," violation of federal civil rights laws, and violation of "religious liberty laws."[82] While academic integrity and observance of civil rights laws certainly matter, investigating such "questionable" practices will certainly add to agencies' burdens in making funding determinations. Likewise, as frequently as OMB claims to seek to increase efficiency and reduce costs, both for agencies and for grant recipients, OMB fails to consider fully the costs in both time and resources that enrollment

[77] *Id.* at 38,931.
[78] Restoring Gold Standard Science, 90 Fed. Reg. 22,601, 22,602 (May 29, 2025).
[79] *See Bhd. of Locomotive Eng'rs & Trainmen*, 972 F.3d at 115.
[80] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32,212, 32,222–23.
[81] *Id.* at 32,212.
[82] *Id.* at 32,249–50.

in E-verify will impose upon grant recipients and subrecipients.[83] To achieve its desired goals of efficiency and cost reduction, OMB should rescind this proposed rule.

VI. Conclusion

For the foregoing reasons, MALDEF respectfully requests that OMB rescind the proposed rule in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or efindley@maldef.org.

Thank you.

Sincerely,

Ellen E. Findley
Legislative Staff Attorney

[83] *See Bhd. of Locomotive Eng'rs & Trainmen*, 972 F.3d at 115.