

July 13, 2026

Submitted via Regulations.gov

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

Re: OMB-2026-0034; Regulation for Federal Financial Assistance

Dear Director Vought:

On behalf of the approximately three million members of the National Education Association (NEA), **we submit these comments in strong opposition to the Office of Management and Budget's (OMB) proposed rule, *Regulation for Federal Financial Assistance*, published in the Federal Register on May 29, 2026.**

Federal financial assistance programs play a vital role in supporting students, educators, schools, institutions of higher education, educator preparation programs, researchers, and community organizations nationwide. These programs advance educational opportunity, professional development, innovation, research, workforce development, and critical services that strengthen communities and support student success. At the same time, the federal grants framework has long been guided by several foundational principles: objective award criteria, transparent decision-making, reliance on professional expertise, fidelity to statutory purposes established by Congress, and predictable rules that permit recipients to plan and implement programs effectively. These principles help ensure that federal financial assistance is administered fairly, consistently, and in accordance with the law.¹

The breadth of the proposed rule cannot be overstated. The Uniform Guidance establishes the government-wide framework governing the administration of federal financial assistance across virtually every federal agency. Because nearly all federal education grants and a substantial share of

¹ See 2 C.F.R. Part 200; Office of Management and Budget, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 78 Fed. Reg. 78,590 (Dec. 26, 2013).

all federal financial assistance are administered under this framework, the proposed revisions would have consequences far beyond any single agency or program. Rather than making technical or administrative adjustments, the NPRM would fundamentally reshape the rules governing how federal grants are awarded, administered, monitored, suspended, and terminated throughout the federal government.

These proposed changes are also unprecedented. Historically, the Uniform Guidance has functioned as a neutral, government-wide administrative framework designed to promote consistency, accountability, fiscal integrity, and faithful implementation of programs established by Congress. It has not served as a vehicle for embedding the policy preferences of any particular administration into the general rules governing federal financial assistance. The NPRM departs from that longstanding approach by incorporating broader ideological, viewpoint-based restrictions, expanding political review of funding decisions, and conditioning participation in federal grant programs on compliance with evolving executive branch priorities.

Most fundamentally, the proposal would permit political priorities to displace statutory and constitutional constraints that have long governed federal grantmaking. Throughout the NPRM, agencies are directed to evaluate awards according to presidential priorities and broad, undefined policy concepts that conflict with congressional directives, constitutional protections, and judicial interpretations of federal law. If adopted, these provisions would grant the Executive Branch unprecedented discretion to advance changing partisan policy objectives through the federal grants system, even where Congress has established different statutory purposes or where constitutional limitations prohibit the government from imposing such conditions on federal funding.

Consistent with these concerns, NEA believes the proposed rule departs sharply from the longstanding principles that have governed federal financial assistance. Taken as a whole, the NPRM would fundamentally alter the federal grants system by expanding political review of awards, increasing executive discretion over funding decisions, diminishing the role of independent expert review, broadening agencies' authority to suspend and terminate awards, and embedding administration-specific policy priorities within government-wide grants regulations. The result would be a federal financial assistance framework that is less predictable, less objective, and more susceptible to changing political priorities than to the statutory purposes established by Congress and the constitutional limits that govern federal action.

As explained in more detail below, NEA also has serious concerns about the legality of many provisions of the proposed rule, including:

- The vague and overly broad prohibitions of measures branded as relating to “diversity, equity, inclusion, and accessibility” (DEIA), gender identity, “illegal immigration,” “anti-American values,” and disparate-impact liability will create a chilling effect and improperly intrude on academic speech and content. The proposed rule thus violates the First and Fifth Amendments of the U.S. Constitution. It also conflicts with multiple courts striking down

similar vague and discriminatory restrictions by the Education Department, repeating the same legal errors the courts identified in those orders.

- The proposed restrictions related to DEIA, gender identity, and disparate-impact liability conflict with the mandate for equity in Section 427 of the General Education Provisions Act (GEPA)² and will prohibit or discourage the use of beneficial programs and curricula that advance equal educational opportunities, particularly for students of color and LGBTQ+ students.
- The prohibition based on “membership in or affiliation with organizations” engaged in certain activity infringes on First Amendment free associational rights and violates U.S. Supreme Court precedent against conditioning grants on First Amendment restrictions.³
- The proposed new authority to suspend and terminate awards conflicts with the comprehensive enforcement scheme in GEPA and other federal laws.
- The proposed restrictions impose vague new substantive conditions on grants, in violation of the Spending Clause of the U.S. Constitution⁴ and the Administrative Procedure Act (APA).⁵
- The proposed changes will be costly, difficult to parse, and burdensome on funding recipients and their communities, in contravention of the Paperwork Reduction Act.⁶

For the reasons discussed below, **NEA urges OMB to withdraw this NPRM and preserve the longstanding principles of transparency, expertise, peer-reviewed, merit-based decision-making, and regulatory stability that have historically governed federal grant administration.**

The NPRM Departs from the Historical Purpose of the Uniform Guidance

The Uniform Guidance was developed to establish consistent, government-wide standards governing the administration of federal financial assistance.⁷ Historically, these regulations have focused on fiscal management, internal controls, procurement, audit requirements, recipient accountability, and efficient stewardship of federal funds.⁸ The NPRM significantly departs from that traditional role. Rather than focusing principally on federal grants administration, numerous provisions seek to incorporate substantive policy directives, ideological priorities, and political review mechanisms into government-wide grants regulations.

As a result, the Uniform Guidance would no longer function primarily as a neutral administrative framework. Instead, it would become a mechanism through which current executive branch priorities

² 20 U.S.C. §§ 1221, 1228.

³ See, e.g., *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013).

⁴ Art. I, §, cl. 1, U.S. Constitution.

⁵ 5 U.S.C. §§ 551 *et seq.*

⁶ See 44 U.S.C. § 3506(c)(3).

⁷ 78 Fed. Reg. 78,590, 78,590–91.

⁸ See 2 C.F.R. Parts 200.302–200.345.

are incorporated into federal financial assistance programs across approximately four hundred agencies and a myriad of sectors. Educational institutions, state and local educational agencies, labor-management partnerships, institutions of higher education, and nonprofit organizations routinely administer grants that span multiple years.⁹ They hire personnel, establish partnerships, enter contractual obligations, conduct research, and develop educational programs based on expectations of regulatory stability and clarity. Government-wide grants regulations should facilitate that stability, not create unnecessary uncertainty by embedding standards that may change with each administration.

For NEA members, these concerns are not theoretical. Federal financial assistance is deeply embedded in core education and educator workforce programs that operate through long-term, highly structured grants. For example, formula grants such as special education grants to states through IDEA Part B, educator preparation programs funded under Title II of the Higher Education Act,¹⁰ teacher residency and apprenticeship models supported through federal workforce initiatives,¹¹ school-based mental health and counseling grants,¹² National Professional Development grants,¹³ Full-Service Community Schools program,¹⁴ literacy and evidence-based reading programs,¹⁵ and research-practice partnerships between districts and institutions of higher education all depend on predictable Uniform Guidance standards to function effectively.

These programs routinely require multi-year planning horizons and formalized agreements between school districts and preparation programs, including apprenticeship programs, and sustained staffing commitments. Institutions recruit teacher candidates, place clinical residents in classrooms, deploy school-based mental health professionals, design literacy interventions, and build data-sharing arrangements with research partners based on the expectation that federal administrative requirements will remain as drafted and stable across a single cycle or multiple award cycles. When rules for government-wide grants become vehicles for shifting policy priorities or heightened discretionary oversight, these programs face disruption not in abstract governance terms, but in the ability to maintain staffing pipelines, sustain school-based services, and complete longitudinal research commitments.

The NPRM Codifies Policy Positions Previously Advanced Through Executive Action

NEA is particularly concerned that many provisions of the NPRM are designed to codify policy positions previously advanced through executive orders, agency guidance, funding conditions, grant terminations, and administrative enforcement actions. Since January 2025, federal agencies have increasingly relied on executive directives and funding-related mechanisms to advance

⁹ See, e.g., 34 C.F.R. Parts 75 and 77; 20 U.S.C. § 1022d.

¹⁰ See 20 U.S.C. §§ 1021–1022d.

¹¹ See 29 U.S.C. § 3101 et seq.

¹² See 20 U.S.C. § 7281; Bipartisan Safer Communities Act, Pub. L. No. 117-159, §§ 4101–4102.

¹³ See 20 U.S.C. § 6861.

¹⁴ See 20 U.S.C. § 7271(2).

¹⁵ See 20 U.S.C. §§ 6361–6368; 20 U.S.C. § 6301 et seq.

interpretations of federal law aiming to advance a purely political agenda. For example, we have seen concerning interpretations around diversity, equity, inclusion, immigration, gender identity, research priorities, and other policy matters. Courts have found these interpretations inconsistent with federal anti-discrimination laws and found agency actions based on those faulty interpretations unlawful.¹⁶

The NPRM would institutionalize many of these same approaches by incorporating them into government-wide grants regulations. This would transform temporary executive policy directives of the current administration into enduring regulatory requirements applicable across the federal government. The Uniform Guidance should not serve as a vehicle for codifying executive policy priorities regardless of the policy preferences of any particular administration. Administrations can focus on policy perspectives through such actions as the Secretary of an agency establishing competitive priorities. The purpose of the Uniform Guidance is to establish neutral administrative rules governing federal financial assistance across all federal agencies. Regulations intended to govern recipients across administrations should remain focused on accountability, stewardship, and program administration rather than the shifting sands of contested policy objectives.

The Proposed Rule Expands Political Discretion in Federal Grantmaking

A defining feature of the federal grants system has been its reliance on transparent procedures and objective standards designed to ensure that awards are made on the basis of statutory objectives and programmatic merit. The proposed rule would significantly expand the role of political discretion throughout the grants lifecycle, including application review, award decisions, performance assessments, compliance determinations, and termination decisions.

While agency leadership appropriately retains ultimate responsibility for administering federal programs, longstanding grants-management practices have included safeguards that promote consistency, objectivity, and accountability. These safeguards exist because federal financial assistance programs are most effective when applicants understand the criteria on which they will be evaluated, and recipients can rely upon stable standards throughout the multi-year life of an award. In educator preparation's teacher quality partnership grants, for example, selection criteria are based on statutory requirements and implemented through structured peer review evaluating clinical training design, district partnership strength, candidate support systems, and evidence of effectiveness in preparing classroom-ready educators. Similarly, literacy-focused grants under federal education programs have been evaluated based on alignment with evidence-based instructional practices, implementation fidelity, and demonstrated impact on student reading outcomes, not shifting policy priorities unrelated to instructional effectiveness.

¹⁶ See, e.g., [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. August 14, 2025), at 46-49; [Order](#), *National Education Association v. United States Dep't of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), at 73-74; *Chicago Women in Trades v. Trump*, 778 F. Supp. 3d 959, 984 (N.D. Ill. 2025); *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716, 748-49 (N.D. Cal. 2025).

School-based mental health grants and student support initiatives depend on multidisciplinary teams of educators, counselors, psychologists, and community providers whose work is evaluated through service delivery metrics and student access outcomes. Introducing expanded political review into these processes will displace programmatic and professional standards and replace them with criteria that are neither transparent nor consistently tied to educational effectiveness or student need.

Public confidence in federal grantmaking depends not only upon actual fairness but also upon the perception of fairness. A grants system that increasingly relies on political judgment rather than transparent and objective criteria as assessed through the peer review process risks undermining confidence for and among applicants, recipients, and the public. Keep in mind that the funds disbursed through the federal grantmaking process are public funds and the neutral Uniform Guidance as it stands today is the basis of establishing public trust in the stewardship of federal dollars.

Proposed § 200.205 Improperly Elevates Political Review Over Merit Review

NEA strongly opposes the proposed revisions to § 200.205 governing review of discretionary awards. The proposed rule would require agencies to designate senior political appointees to conduct pre-issuance reviews of discretionary awards and determine whether proposals are consistent with applicable law, agency priorities, and the national interest.¹⁷ The NPRM further requires that, where applicable, discretionary awards demonstrably advance the President's policy priorities.

These requirements represent a significant departure from longstanding, successful grantmaking norms. Federal agencies establish merit review systems, peer review panels, career staff expertise, and objective evaluation criteria to assess applications and make funding recommendations.¹⁸ The NPRM would make political review a mandatory component of discretionary award decisions while simultaneously elevating broad and subjective concepts such as agency priorities, presidential priorities, and national interests.¹⁹

The proposed rule provides little guidance regarding how these concepts should be interpreted.²⁰ Because they are inherently political and subject to change from administration to administration (even when the administrations are of the same party), applicants will face significant uncertainty regarding how proposals will be evaluated. Applicants should continue to compete for federal funding based on the quality of their proposed work as assessed through a strong peer review process and their ability to achieve statutory program objectives, not on their perceived alignment with evolving political priorities. OMB should revise §200.205 to preserve the vital role of merit review and subject-matter expertise in award decisions and clarify that political review may not supplant objective evaluations conducted through established merit and peer review processes.

¹⁷ Proposed § 200.205.

¹⁸ See 2 C.F.R. § 200.205; 34 C.F.R. § 75.217; *see also* 5 U.S.C. App. 2.

¹⁹ Proposed § 200.205(d).

²⁰ Proposed §§ 200.202, 200.205, 200.340.

Proposed Requirements to Advance Presidential Priorities Can Create Tension with Congressionally Established Program Purposes

NEA is particularly concerned by the proposed provisions requiring discretionary awards to demonstrably advance presidential priorities. Federal financial assistance programs are created through statutes passed by Congress signed into law by the President and funded through the Congressional appropriations process.²¹ Congress establishes program objectives, eligibility criteria, intended beneficiaries, and permissible uses of federal funds, among other aspects of the federal grant programs. While presidents and their confirmed secretaries and heads of administrations, agencies, and other federally led entities establish and execute on executive branch priorities across the federal government as well as for specific federal grant programs, ultimately federal financial assistance derives authority from statutes enacted by Congress. Federal agencies administer programs in accordance with those statutory objectives, rather than requiring recipients to demonstrate alignment with political priorities that may change between administrations.²² By requiring agencies to evaluate whether awards advance presidential priorities, the NPRM shifts emphasis away from congressionally established purposes and toward administration-specific policy objectives.

OMB should remove these provisions to ensure that statutory objectives remain the primary basis for funding decisions.

Proposed § 200.205(d) Weakens a Critical Safeguard Provided by Peer Review

NEA is particularly concerned by proposed § 200.205(d), which provides that peer review recommendations may not be ministerially ratified, routinely deferred to, or otherwise treated as de facto binding. No participant in the federal grants system believes peer review should be legally binding. Agencies have always retained discretion to depart from reviewer recommendations when justified by but not limited to programmatic considerations, statutory requirements, geographic distribution, and/or portfolio balance. Agency discretion should be preserved. Rather, there is great loss in impartiality, neutrality, and overall objective decisions when elevating political alignment above all other currently required review criteria and panels.

The peer review system in the United States is revered and copied by other nations to ensure a clear and to the best practicable outcome, objective review not only of grant applications but also of research publications. Peer review exists because the review panel of subject-matter experts possess distinct, critical, and pertinent knowledge on the subject of the federal assistance is being sought that political officials most likely do not. In education programs, peer reviewers frequently include educators, researchers, practitioners, administrators, and community stakeholders with direct experience implementing and evaluating programs similar to those under consideration.²³

²¹ See U.S. Const. art. I, § 8; 31 U.S.C. §§ 6301–6308.

²² See *West Virginia v. EPA*, 597 U.S. 697 (2022).

²³ See 34 C.F.R. §§ 75.209–75.217.

OMB has not determined that longstanding peer review practices have failed or that reducing reliance on expert recommendations will improve grant administration. OMB should remove this language and reaffirm that peer review remains a preferred mechanism for evaluating merit while preserving agencies' authority to depart from recommendations when supported by a documented rationale.

The Vague and Overbroad Restrictions in Proposed §§ 200.205(b)(2), 200.300(b), and 200.218 on DEIA, Gender Identity Related Issues, Disparate-Impact Liability, and Other Subjects Violate the First Amendment and Fifth Amendment and Conflict with Court Orders.

NEA is concerned about multiple provisions that would prohibit federal funding related to DEIA and “racial preferences,” gender identity related issues, “illegal immigration,” “anti-American values,” and “disparate-impact liability.” As the Supreme Court has made clear repeatedly, the government may not leverage federal funding to penalize disfavored viewpoints.”²⁴ The proposed restrictions are vague and overbroad and risk chilling expression based on certain viewpoints disfavored by the government and thus violate the First Amendment and Fifth Amendment of the Constitution. And, as explained below, they conflict with court orders halting similar efforts by the Education Department to suppress disfavored ideas.

1. The Dear Colleague Letter Litigation

Proposed §§ 200.205(b)(2), 200.300(b), 200.218 raise serious legal concerns similar to those presented in the Education Department’s February 14, 2025, [Dear Colleague Letter](#) to educational institutions, which three federal courts found likely unlawful in whole or in part, and one court permanently vacated.²⁵ Those orders halted the Department’s attempt to stifle efforts in schools, colleges and universities to advance educational opportunity for all students through inclusive curricula and DEI practices.

The Dear Colleague Letter set forth the Education Department’s new, novel, and expansive position on the meaning of the Supreme Court’s decision about race-conscious college admissions under Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause, *Students for Fair Admissions v. Harvard*,²⁶ and its application to a range of activities in educational settings. NEA and other plaintiffs each filed lawsuits in federal district courts challenging the Letter, a Certification document and other implementing documents as unlawful intrusions into educators and students’ rights, and into educational programming, in violation of the First Amendment, the due process clause of the Fifth Amendment, and the APA.

²⁴ See, e.g., *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013); *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998); *Rust v. Sullivan*, 500 U.S. 173 (1990); *Keyishian v. Bd. of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967); see also *President & Fellows of Harvard Coll. v. United States Dep’t of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 124 (D. Mass. 2025); *Thakur v. Trump*, No.25-4249, 2026 WL 1466303 at *9 (9th Cir. May 26, 2026); *Rhode Island Latino Arts v. Nat’l Endowment for the Arts*, 777 F. Supp. 3d. 87, 107 (D.R.I. Apr. 2, 2025).

²⁵ [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025).

²⁶ 600 U.S. 181 (2023).

In *National Education Association v. United States Dep’t of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), the New Hampshire federal district court preliminarily enjoined the Letter and implementing materials as to NEA, its co-plaintiffs, and their members.²⁷ The court reasoned that the Department’s “ban on DEI” likely violated educators’ Fifth Amendment rights on vagueness grounds and their First Amendment right to academic freedom in the higher education context and violated the APA.²⁸

In *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025), the Maryland federal district court fully vacated the Letter and Certification requirement, concluding that the Department had violated the APA and educators’ constitutional rights.²⁹ The court held that the Letter constituted “textbook viewpoint discrimination” in violation of the First Amendment based on its identification of “systemic and structural racism” and “teach[ing] about moral burdens” relating to racism as discrimination that could give rise to enforcement actions.³⁰ In addition, the court held that the Letter and Certification were unconstitutionally vague because they prohibited “DEI practices” without clearly defining what they were.³¹ A third federal district court, in the District of Columbia, enjoined the Certification requirement, holding that its prohibition on DEI was likely unconstitutionally vague.³²

The Department noticed but then voluntarily dismissed an appeal, leaving the Maryland order in place. Soon after this dismissal, NEA, its co-plaintiffs, and the Department jointly sought dismissal of the New Hampshire action, which the court granted. They stipulated, in relevant part, that the challenged agency actions had been vacated, that the Department would not rely on them in its enforcement actions, and that the Certification “will not be reinstated in substance even if under another name.” The District of Columbia challenge was closed in essentially the same fashion.

2. The Proposed Restrictions Repeat the Legal Errors that Courts Identified in the Dear Colleague Letter Litigation.

The proposed restrictions resemble the agency actions vacated in the Dear Colleague Letter litigation in at least two respects: their express targeting of ill-defined DEIA “policies, principles, or practices” and their infringement on academic freedom and content by restricting certain viewpoints disfavored by the government.

Proposed § 200.205(b)(2) requires that, in the pre-issuance assessment of competitive grants, political appointees consider the principle that federal awards “must not be used to fund, promote, encourage, subsidize, or facilitate”:

²⁷ [Order](#), *National Education Association v. United States Dep’t of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), at 81.

²⁸ *Id.* at 45-74.

²⁹ [Memorandum Opinion](#), *American Federation of Teachers v. Department of Education*, No. 1:25-cv-00628 (D. Md. Aug. 14, 2025), at 40-69.

³⁰ *Id.* at 56.

³¹ *Id.* at 63-68.

³² [Oral Ruling](#), *NAACP v. U.S. Dep’t of Education*, No. 1:25-cv-01120 (D.D.C. April 24, 2025), at 13-15.

- (i) Racial preferences or other forms of racial discrimination . . . including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation;
- (ii) Denial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic;
- (iii) Illegal immigration; or
- (iv) Any other initiatives that compromise public safety or promote anti-American values.

Proposed § 200.300(b) includes similar federal funds restrictions for DEIA “policies, principles, or practices that violate any applicable Federal anti-discrimination laws,” which “includes racial preferences or other forms of racial discrimination used by the recipient or subrecipient that violate any applicable Federal anti-discrimination laws, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation.” Funding restrictions in this proposed regulation also apply to “gender ideology” and the “so-called ‘transition’ of a child under 19 years from one sex to another....”

The disparate-impact liability restriction in proposed § 200.218 includes the requirement that federal agencies ensure that federal awards “are administered in a way that does not promote or support the use of disparate-impact liability,” which includes ensuring, “unless expressly required by law, that Federal awards are not used in support of disparate-impact studies, disparate-impact litigation, or other related activities; and that Federal award activities based on the assumed risk of disparate-impact liability are not allowed.”

These provisions rely on vague terminology and broad prohibitions. Terms such as DEIA, “anti-American values,” “public safety,” and other similarly broad concepts lack clear regulatory definitions and will create uncertainty for recipients attempting to determine their compliance obligations. The phrases “fund, promote, encourage, subsidize, or facilitate” (in § 200.205(b)(2) and § 200.300(b)) and “promote or support” (in § 200.218) are so broad that they could be interpreted by an agency to encompass *any* activity that even touches on proscribed concepts (however individual agencies may choose to interpret each concept).

Just as the plaintiffs successfully argued in the various Dear Colleague Letter challenges, proposed §§ 200.205(b)(2), 200.300, and 200.218 leave educational institutions without adequate guidance as to when efforts to build and meet the needs of their students and staff (whether labeled “DEIA” or not) might run afoul of the restrictions—and at the risk of grave penalties if they do.³³ Moreover, the proposed restrictions are ripe for subjective interpretation and inconsistent or even selective enforcement. The restrictions would be yet another hook for the Education Department, for example,

³³ See the General Service Administration’s January 28, 2026 notice of proposed revisions to an existing information collection, 2090-0290, proposing certifications for federal funding recipients in the System for Award Management. The proposed certifications target DEIA and immigration, among other issues, and impose criminal and civil penalties for misrepresentations or falsehoods. On March 30, 2026, NEA submitted a response highlighting the proposed certifications’ many problems.

to use in its crusade against disfavored educational institutions that promote diversity and inclusion—one that has continued even after its losses in the Dear Colleague Letter litigation.³⁴

Even if the proposed restrictions do not run headlong into the Maryland order and the stipulated terms of the dismissals in New Hampshire and District of Columbia, they falter under the same kinds of reasoning. As discussed above, the restrictions are susceptible to challenges under the Fifth and First Amendments. Although § 200.300 limits prohibited DEIA practices to those “that violate any applicable Federal anti-discrimination laws,” that does not solve the vagueness and overbreadth problem, particularly given this administration’s pattern of misinterpreting federal civil rights laws. This administration has left no doubt that it aims to prohibit *any* sort of programming that is supportive of DEIA, chilling the exercise of First Amendment rights in the classroom based on viewpoint. The restrictions are vague as to what forms of DEIA-related “policies, principles, or practices” they prohibit, susceptible to arbitrary enforcement, and will have a chilling effect on both educational institutions’ regular activities and on the exercise of academic freedom in higher education and in K-12 schools.

Similar vagueness and overbreadth problems apply to gender identity-related restrictions in proposed § 200.205(b)(2) and § 200.300. Among other areas of confusion, it is unclear what types of conduct would *not* be covered by the phrase “fund, promote, encourage, subsidize, or facilitate.” Would, for example, referring to a transgender student by their appropriate gender pronoun or name “promote” the “denial...of the sex binary”? Would GSAs (Gender and Sexuality Alliance or Gay-Straight Alliance), common students clubs for LGBTQ+ and allied youth, which are ubiquitous in schools across the country and open to all students, violate this provision? Once again, such broad and vague restrictions will create a chilling effect in schools.

Similar defects afflict the “illegal immigration” and the “compromise public safety or promote anti-American values” restrictions in proposed § 200.205(b)(2). Those restrictions expose educational institutions to great risk and are likely to stamp out important community programming that NEA members support. For example, most schools provide basic services, including health care and nutrition, to all students, even students who may be undocumented or whose families may include undocumented members. Some schools may offer additional supports to families that are experiencing food or resource insecurity, including in periods of widespread fear and chaos relating to immigration enforcement activities in the community—a phenomenon that has affected documented and undocumented families alike. If a grantee receives or seeks discretionary federal grants for such programs, this administration might deny them based on its interpretation that the program “encourages,” “facilitates,” or “subsidizes” “illegal immigration.”

The prohibition in proposed § 200.205(b)(2) on “[a]ny other initiatives that compromise public safety or promote anti-American values” is especially unclear, giving untethered discretion to agencies to decide what those terms mean. The recent propensity of government officials to declare without evidence that individuals and organizations engaged in lawful protest are “domestic terrorists” only increases the reasonable fear that these terms may be construed broadly and subjectively.³⁵ Further,

³⁴ See, e.g., [U.S. Department of Education Probes Colorado School District Amid Reports of Rampant Racially-Discriminatory Programming | U.S. Department of Education](#) (June 8, 2026); [U.S. Department of Education’s Office for Civil Rights Initiates Title VI Investigation into Portland Public Schools](#) (Feb. 17, 2026).

³⁵ See Jonah E. Bromwich, [‘White House Use of ‘Domestic Terrorist’ Doesn’t Match Legal Reality](#), New York Times (Jan 28, 2026).

the administration has issued multiple memoranda and orders seeking to expand both the definition of domestic terrorism and to expand investigations into groups and organizations that support political views that it disfavors.³⁶ As with other provisions, this prohibition is impermissibly vague and will compel prospective recipients to deter lawful conduct at their institutions, including the exercise of First Amendment rights, to avoid time-consuming and expensive investigation into any potential misrepresentations and possible substantial liability.

Finally, proposed § 200.218's restriction on disparate-impact liability theories suffers from the same vagueness and overbreadth defects discussed above. It is unclear in what circumstances a recipient would "promote or support" disparate-impact liability, a basis for discrimination claims recognized by the Supreme Court for over 50 years.³⁷ Among other things, this proposed restriction could prohibit or discourage lawful admissions and hiring practices and intrude on academic freedom and content. The provision would, for example, raise the question of whether a higher education faculty member could even discuss the benefits of the disparate-impact liability theory in a seminar or program that received federal funding. Such broad and vague restrictions are inconsistent with the First Amendment and Fifth Amendment.

To the extent OMB seeks to prohibit conduct already prohibited by federal law, existing statutory and regulatory mechanisms provide tools for addressing those concerns. The NPRM does not adequately explain why broad new government-wide restrictions are necessary or how recipients will reliably determine compliance with standards that remain undefined or subject to evolving interpretations. Recipients should not be required to guess how agencies may interpret such terms and phrases in the future. Ambiguous standards increase compliance burdens, discourage participation in federal programs, and invite inconsistent enforcement. The proposed restrictions will have a chilling effect on lawful educational, research, and community-based activities as recipients seek to avoid potential compliance risks.

The Restrictions in Proposed §§ 200.205, 218, and 300 on DEIA, Gender Identity Related Issues, Disparate-Impact Liability, and other Issues Conflict with GEPA's Equity Directive and Will Prohibit or Discourage the Use of Beneficial Programs and Curricula That Advance Equal Opportunity and Supportive Educational Environments.

1. The Proposed Restrictions Conflict with GEPA's Equity Directive

The proposed regulatory restrictions in § 200.205(b)(2) and § 200.300 on DEIA and gender identity related issues and, under proposed § 200.218, "the use of disparate-impact liability" are also legally dubious because they conflict with a federal statute—specifically, Section 427 of GEPA. In that statutory provision, Congress has mandated that the Education Department require grant applicants to describe in their applications the steps they propose to take "to ensure equitable access to, and equitable participation in" in the funded project or activity "by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable

³⁶ See, e.g., The White House, [Designating Antifa as a Domestic Terrorist Organization](#) (Sept. 22, 2025); [National Security Presidential Memorandum-7](#) (Sept. 25, 2025); Office of the Attorney General, [Implementing National Security Presidential Memorandum-7: countering Domestic Terrorism and Organized Political Violence](#) (Dec. 4, 2025).

³⁷ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

participation, including barriers based on gender, race, color, national origin, disability, and age.”³⁸ Congress enacted this requirement, commonly referred to as the “GEPA Equity Directive,” specifically to ensure “equal opportunities to participate for all eligible students, teachers, and other program beneficiaries in any project or activity carried out under an applicable program.”³⁹

Given the breadth and vagueness of the proposed restrictions (as detailed above), it is unclear how grantees would be able to fulfill GEPA’s Equity Directive if they are not allowed to engage in programs or activity that would likely be branded by this administration as being “unlawful DEIA,” advancing “gender ideology,” or perceived as advancing disparate impact liability. Indeed, instead of advancing GEPA’s statutory goals, the proposed restrictions will *thwart* them, stifling lawful programs and practices that promote equal opportunity, advance academic achievement, and support all students and staff in K–12 schools, colleges, and universities, whether termed “DEIA” or not.

2. The Proposed Restrictions Will Prohibit or Discourage Lawful and Beneficial Diversity Measures.

Research and educator experience confirm that promoting a diverse student body is beneficial to all students—and can be achieved through a variety of lawful measures—despite the proposed rule’s presumption to the contrary.⁴⁰ Studies have shown that exposure to diversity in the classroom improves both K–12 and higher education students’ cognitive skills, such as critical thinking and problem solving.⁴¹ In addition, contact among students of different racial backgrounds can combat stereotypes and prejudice, and can make students more comfortable relating to others, better preparing them for interacting with clients, customers, and colleagues in the workplace.⁴² This also

³⁸ 20 U.S.C. § 1228a(b).

³⁹ 20 U.S.C. § 1228a(a).

⁴⁰ In proposing the DEIA restrictions, OMB appears to draw on the current administration’s expansive and novel interpretation of *Students for Fair Admission v. Harvard*, 600 U.S. 181 (2023). See 91 Fed. Reg. 32217. But that decision was specifically about race-conscious college admissions when tied to the aim of achieving the educational benefits of diversity. It did not address, much less condemn, the extremely broad range of practices to which the administration apparently wishes to apply it—from race-neutral admissions practices, to addressing systemic racism in the classroom, to practices that have nothing whatsoever to do with educational opportunity.

⁴¹ Century Foundation, [The Benefits of Socioeconomically and Racially Integrated Schools and Classrooms](#) 1–2 (Apr. 29, 2019); Amy Stuart Wells, et al., [How Racially Diverse Schools and Classrooms Can Benefit All Students](#), The Century Foundation 14, 18 (Feb. 2016); Katherine W. Phillips, [How Diversity Works](#), 311 SCI. AM. 42, 44–46 (Oct. 2014); Roslyn Arlin Mickelson & Martha Bottia, [Integrated Education and Mathematics Outcomes: A Synthesis of Social Science Research](#), 88 N.C. L. REV. 993, 998 (2010); Geoffrey Borman & Maritza Dowling, [Schools and Inequality: A Multilevel Analysis of Coleman’s Equality of Educational Opportunity Data](#), 112 TEACHERS COLL. REC. 1201, 1236–39 (2010); Bernadette Gray-Little & Robert A. Carels, [The Effect of Racial Dissonance on Academic Self-Esteem and Achievement in Elementary, Junior High, and High School Students](#), 7 J. RES. ON ADOLESCENCE 109, 123, 125–26 (2010); James Benson & Geoffrey Borman, [Family, Neighborhood, and School Settings Across Seasons: When Do Socioeconomic Context and Racial Composition Matter for the Reading Achievement Growth of Young Children?](#), 112 TEACHERS COLL. REC. 1338, 1371, 1374–75 (2010); Mary J. Fischer & Douglas S. Massey, [The Effects of Affirmative Action in Higher Education](#), 36 SOC. SCI. RESEARCH 531, 544 (2007).

⁴² Leane Salazar Montoya, [Equity, Diversity and Inclusion: What’s in a Name?](#), 22 SEATTLE J. FOR SOCIAL JUSTICE 621, 630 (2024); Elise Cappella et al., [The Hidden Role of Teachers: Child and Classroom Predictors of Change in Interracial Friendships](#), 37 J. EARLY ADOLESCENCE 1093, 1111 (2017); Elizabeth Stearns, [Long-Term](#)

prepares students for citizenship in a diverse society.⁴³ Programs that support the recruitment and persistence of students from underrepresented groups also have been proven to contribute to expanding participation in crucial fields like STEM.⁴⁴

Fostering and supporting diversity within the faculty and staff of educational institutions is another valuable practice that the proposed rule will needlessly hinder. Indeed, diversity among professionals and academics leads to more creativity and innovation,⁴⁵ and enables a field to take advantage of a broader talent pool.⁴⁶ The benefits of a diverse teaching body include the capacity to lead for social justice through local and global civic engagement, as well as the development of an inclusive school culture and culturally relevant pedagogy; diverse educators can also serve as both cultural translators and role models.⁴⁷

Diversity among educators also supports student achievement. For example, having a Black teacher is associated with higher test scores (and social and emotional gains) for Black elementary school students, and emerging findings show that the same holds true for Latino teachers and students.⁴⁸ The presence of a Black teacher within a school's grade-level teaching team is associated with improved test scores for Black students even when those students are assigned to a White teacher.⁴⁹ And, like exposure to diverse classmates, exposure to diverse educators also develops culturally proficient students "who are equipped to promote cross-cultural consciousness and equitable social change."⁵⁰ A lack of exposure, on the other hand, can lead students to a propensity for heightened stereotypical behavior.⁵¹ To reap the benefits of diversity among faculty and staff, however, schools may need to employ targeted and responsive measures to address barriers to the recruitment, and, importantly, retention, of educators of color.⁵²

Correlates of High School Racial Composition: Perpetuation Theory Reexamined, 112 TEACHERS COLL. REC. 1654, 1670–74 (2010); Cynthia Estlund, *Working Together: The Workplace, Civil Society, and the Law*, 89 GEO. L. J. 1, 19, 23–24 (2000).

⁴³ Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOC. ISSUES 17, 28 (2004).

⁴⁴ Mica Estrada, et al., *Improving Underrepresented Minority Student Persistence in STEM*, 15 CBE Life Sci. Educ. (2017); Kenneth Maton, et al., *Outcomes and Processes in the Meyerhoff Scholars Program: STEM PHD Completion, Sense of Community, Perceived Program Benefit, Science Identity, and Research Self-Efficacy*, 15 CBE Life Sci. Educ. (2017); John T. Matsui, *"Outsiders at the Table"—Diversity Lessons from the Biology Scholars Program at the University of California, Berkeley*, 17 CBE Life Sci. Educ. (2018); Zakiya S. Wilson, et al., *Hierarchical Mentoring: a Transformative Strategy for Improving Diversity and Retention in Undergraduate STEM Disciplines*, 21 J. Sci. Educ. Technol. 148 (2012).

⁴⁵ National Institutes of Health, *Notice of NIH's Interest in Diversity* (2019); Talia H. Swartz, et al., *The Science and Value of Diversity: Closing the Gaps in Our Understanding of Inclusion and Diversity*, 220 THE JOURNAL OF INFECTIOUS DISEASES S33 (2019).

⁴⁶ James A. Olzman, *Diversity Through Equity and Inclusion: The Responsibility Belongs to All of Us*, 31 MOLECULAR BIOLOGY OF THE CELL 2749 (2020).

⁴⁷ Carlos Nevarez, *Benefits of Teacher Diversity: Leading for Transformative Change*, 4 J. OF SCH. ADMIN. RESEARCH & DEV. 24 (2019); Desiree Carver-Thomas, et al., *Supporting and sustaining a diverse teacher workforce*, Learning Policy Institute (2025).

⁴⁸ Carver-Thomas, at 3.

⁴⁹ *Id.*

⁵⁰ *Id.* at 30.

⁵¹ Hua Yu Sebastian Cherng & Peter F. Halpin, *The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers*, 45 EDUCATIONAL RESEARCHER 407 (2016).

⁵² Carver-Thomas, at 46-53.

Further, the proposed restrictions may dissuade schools and educators from adopting instructional approaches that promote and support diversity, which also can advance equal educational opportunity and attainment for all students. Research has established that a culturally responsive and racially inclusive curriculum benefits all students and offers the most effective pedagogical approach.⁵³ Indeed, widely implemented equity-based practices are simply good instruction, regardless of whether they are labeled “DEI.”⁵⁴ Culturally responsive education can also enhance “students’ critical thinking . . . reasoning, inference-making, and analytical skills,” and is associated with “increased standardized test scores,” “improved math, science, and reading achievement,” “higher GPAs,” “higher attendance rates,” and higher graduation rates.⁵⁵ Additionally, like a diverse student body, such approaches prepare students to thrive in our multiracial democracy, preparing them as citizens and voters who are able to critically engage with the world and make their place within it.⁵⁶

Deterring lawful programs and instructional approaches that seek to promote goals like diversity, equity and inclusion also inhibit academic freedom and the exercise of First Amendment rights by students, faculty and staff. Schools and universities must be forums where free and open debates about pressing issues are encouraged, not silenced or chilled by fears of government retaliation. Indeed, efforts to the contrary, like this one, may force educators out of the classroom; at least one study has shown that state-level restrictions on “honest teaching and conversations” is a reason that many K–12 educators have considered leaving the profession in recent years.⁵⁷ As institutions whose very mission is education, schools and colleges must set an example, by their words and actions, that decisions about curriculum and instruction are off limits from federal interference and censorship efforts.

3. The Proposed Restrictions Will Prohibit or Discourage Programs and Research Supporting LGBTQ+ Students.

As has been well documented, LGBTQ+ youth face higher risks of bullying at school.⁵⁸ There are thus particular benefits to affirmatively creating a welcoming and accepting learning environment for LGBTQ+ students by including supportive programming and services at schools.⁵⁹ Proposed

⁵³ See National Education Association and Law Firm Antiracism Alliance, *The Very Foundation of Good Citizenship: The Legal and Pedagogical Case for Culturally Responsive and Racially Inclusive Public Education for All Students* (2022), at 6-11.

⁵⁴ Joshua P. Starr, *How Education Leaders Should Respond to the Anti-DEI Crowd*, Education Week (March 27, 2025).

⁵⁵ *Id.* at 7 (citing studies).

⁵⁶ *Id.* at 15.

⁵⁷ Anna Merod, *Survey: 37% of teachers will likely quit if K-12 censorship laws reach them*, K-12 Dive (Jan. 24, 2022).

⁵⁸ Valerie A. Earnshaw et al., *Bullying Among Lesbian, Gay, Bisexual, and Transgender Youth*, *Pediatr Clin North Am.* 2016, 63(6), 999-1010 (Mar. 23, 2022); “Trevor Project Research Brief: Bullying and Suicide Risk Among LGBTQ Youth” (2021), <https://www.thetrevorproject.org/wp-content/uploads/2021/10/The-Trevor-Project-Bullying-Research-Brief-October-2021.pdf>; Madline Roberts, *New CDC Data Shows LGBTQ Youth are More Likely to be Bullied Than Straight Cisgender Youth*, HRC (Aug. 26, 2020), available at <https://www.hrc.org/news/new-cdc-data-shows-lgbtq-youth-are-more-likely-to-be-bullied-than-straight-cisgender-youth/>.

⁵⁹ See Am. Psych. Ass’n, *School-Based Risk and Protective Factors for Gender Diverse and Sexual Minority Children and Youth* at 26 (2015), <https://www.apa.org/pi/lgbt/programs/safe-supportive/lgbt/risk-factors.pdf>; Enoch Leung et al., *Social Support in Schools and Related Outcomes for LGBTQ Youth: A Scoping Review*, *DISCOV. EDUC.* 2022 art 18 (2022), doi: 10.1007/s44217-022-00016-9, available at https://pmc.ncbi.nlm.nih.gov/articles/PMC9662773/pdf/44217_2022_Article_16.pdf.

restrictions on vaguely defined “gender ideology”—unscientific, politically-laden terminology used to express animus toward transgender and other gender diverse people—will cause further stigmatization and harm to a vulnerable student population. And despite GEPA’s Equity Directive, the broad and vague gender identity-related restrictions in proposed §§ 200.300 and 200.205(b)(2) will discourage, or outright prohibit, educational institutions from continuing or creating trainings, student resource centers, mental health programs, and other programming and services designed to help support LGBTQ+ students. And at the higher education level, research on transgender youth, gender identity, gender dysphoria, or gender-affirming care could face increased scrutiny if agencies conclude that such work promotes concepts disfavored by the administration.

Proposed § 200.218’s Sweeping Disparate-Impact Restrictions Threaten Critical Research Examining Disparities Based on Federally Protected Characteristics

Proposed § 200.218 mandates that “Federal awards are not used in support of disparate-impact studies, disparate-impact litigation, or other related activities.” As a result of this proposed restriction, critical research examining disparities in health, education, employment, housing, environmental exposures, and other facets of society could face removal from federal funding consideration.

The proposed language is exceptionally broad and does not distinguish between advocacy or litigation support and independent scientific inquiry. As written, it could be interpreted to prohibit federally funded research that seeks to identify, measure, or better understand disparities experienced by populations protected under federal law, even when the research is purely descriptive, observational, or intended to inform evidence-based policymaking. Researchers frequently examine differences in outcomes across populations defined by race, ethnicity, sex, disability, age, or other protected characteristics to identify barriers to opportunity, evaluate the effectiveness of public programs, and improve the equitable delivery of services. Such research is a cornerstone of public health, social science, education, economics, and numerous other disciplines.

The ambiguity surrounding the phrase “other related activities” further compounds these concerns. Because the proposal provides no limited definition, institutions and researchers may reasonably conclude that studies documenting disparate outcomes or even collecting demographic data necessary to evaluate whether programs serve all populations effectively, could jeopardize funding. This uncertainty is likely to create a substantial chilling effect, discouraging researchers from pursuing otherwise meritorious research questions and prompting institutions to avoid projects perceived as carrying regulatory risk.

The consequences would extend beyond academic research. Federal agencies routinely rely on rigorous empirical evidence to assess program performance, identify unmet needs, allocate resources efficiently, and improve public services. Research documenting disparities in disease prevalence, educational attainment, environmental health risks, access to healthcare, or workforce participation provides essential information for evaluating whether federally funded programs are achieving their intended objectives. Restricting support for such research would diminish the federal government’s own evidence base and undermine longstanding commitments to evidence-informed policymaking.

Proposed § 200.206(b)(2)(viii)’s “Memberships and affiliation” Risk Criteria Violates the First Amendment’s Associational Freedom Protections

Proposed § 200.206(b)(2) expands the list of factors that agencies consider in evaluating a funding applicant for “risk” and includes as a factor “the applicant’s membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government.” This broad and vague factor violates the First Amendment associational freedom protections. The Supreme Court has recognized a right to associate for the purpose of engaging in those activities protected by the First Amendment.⁶⁰ First Amendment freedom of association protections “are triggered not only by actual restrictions on an individual’s ability to join with others to further shared goals,” but also by laws or regulations that may have a “chilling effect on association.”⁶¹

The proposed regulation does not define or explain what “in affiliation with,” “undermine public safety,” and “national security” mean. This leaves complete discretion to this administration to deny funding to applicants based on “membership in or affiliation with” groups whose ideas or expression the government disfavors—even if those groups are not engaged in illegal activities. And, as discussed above, given this administration’s propensity to label organizations engaged in lawful activity as “domestic terrorists, proposed § 200.206(b)(2)(viii) will, at a minimum, create a chilling effect on funding applicants’ association with organizations engaged in lawful activities protected by the First Amendment. The proposed regulation thus amounts to an unconstitutional restraint on freedom of association.

Additional Restrictions in Proposed § 200.421 and § 200.432 on Allowable Costs May Impede Effective Program Administration

NEA is also concerned by proposed revisions that would further restrict allowable uses of federal funds for activities that support effective program administration. Educational institutions, school districts, institutions of higher education, nonprofit organizations, and other entities in the many facets of education and education research frequently rely on federal funding to recruit qualified personnel, participate in professional development opportunities, share best practices and relevant data and strengthen program implementation.

The NPRM would impose new limitations on certain recruitment-related expenditures and conference participation unless specifically approved by awarding agencies and incorporated into award terms and conditions. While such activities may represent a relatively small portion of overall grant expenditures, they often play a significant role in helping disseminate research findings (often a requirement of receiving federal funding), recruit staff, build administrative capacity within the education ecosystem, and ensure effective implementation of federally funded programs.

Educational institutions, encompassing the pre-baccalaureate and post-baccalaureate institutions, continue to face workforce challenges across multiple fields, including teaching, specialized instructional support services, educator preparation, research administration, and program management. Federal grants should support recipients’ ability to attract and retain qualified personnel necessary to carry out congressionally authorized programs.

⁶⁰ See, e.g., *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984).

⁶¹ *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 618 (2021).

OMB has not adequately demonstrated that these additional restrictions would improve stewardship of federal funds or outweigh the potential negative effects on program implementation and outcomes, and therefore they should be removed from the final rule.

Proposed § 200.340 Creates Extraordinary New Authority to Suspend and Terminate Awards

NEA is deeply concerned by proposed revisions to § 200.340 concerning suspension and termination of awards. The proposed rule will authorize agencies to terminate discretionary awards if they determine that an award no longer advances agency priorities or the national interest as those priorities and national interest exist at the time of termination.⁶² This provision creates substantial uncertainty for recipients. Educational institutions and nonprofit organizations make long-term commitments based upon approved awards.⁶³ They hire personnel, establish partnerships, conduct research, and provide services in reliance on the expectation that funding will remain available absent non-compliance or other established grounds for termination. This proposed change by OMB to the Uniform Guidance would create unsustainable uncertainty in the overall grants process, leading to the potential inability to hire personnel, procure contracts, execute memoranda of understanding, and undertake other essential activities necessary to successfully implement federally funded projects. The result would be a chilling effect on participation in federal grant programs and diminish capacity to achieve the very objectives those programs are intended to advance.

The proposed rule would allow agencies to reevaluate awards according to unexpected, unscheduled changes to political priorities after awards are issued. Such agency authority undermines recipients' ability to plan effectively and creates significant disruption for students, educators, researchers, and communities. Ultimately, recipients are at risk of failing to fulfill not only their statutory requirements and obligations, but also commitments, including contracts and memoranda of understanding that will negatively impact their partnerships and communities. These negative outcomes and challenges are compounded by other provisions of the NPRM that expand agencies' ability to consider broad and often undefined, nebulous, and potentially uncommunicated to the recipient, factors when evaluating recipients and subrecipients. The proposal incorporates standards related to agency priorities, presidential priorities, national interests, and other concepts that will be interpreted differently across the approximately 400 agencies and administrations. When combined with expanded suspension and termination authority, these provisions create a risk that recipients may face adverse funding consequences based on standards that are insufficiently clear, difficult to predict, or unrelated to the current effective measures of financial stewardship and program performance.

For educator preparation programs, teacher residency initiatives, and school district-university partnerships, abrupt termination or suspension of awards would have immediate operational consequences on faculty, staff, and students, and for each of these groups, could have drastic impact

⁶² Proposed § 200.340.

⁶³ See 2 C.F.R. §§ 200.308–200.309.

on their financial futures, which impacts their ability to contribute to society and the economy. Teacher candidates placed in year-long clinical residencies could lose structured classroom placements mid-cycle, delaying their program completion and delaying or stopping their ability to enter the classroom as a fully licensed or certified teacher. School districts participating in workforce development partnerships could be unable to complete induction programs for early-career educators, leading to the potential departure of these early career educators which would further exacerbate our nation's teacher shortage. Institutions administering federal literacy grants could be forced to halt ongoing interventions mid-academic year, disrupting instructional continuity for students receiving targeted reading support.

Similarly, school-based mental health grants often fund embedded mental health personnel such as counselors, social workers, and behavioral health specialists in schools that have the greatest need for these services. These vital services are integrated into established and evolving complex student support systems which often combat absenteeism, a challenge faced by school systems across the nation. When students are in school not only are they learning subject matter, but they are also learning skills to be a member of a community, all of which will serve them not only in the moment, but in their future. Furthermore, unpredictable suspension or termination authority over such critical federal funding creates the risk of mid-year staffing disruptions, leaving districts unable to maintain even their mandated service levels or continuity of care for students with significant needs as well as meeting the needs of their entire school community. These are not administrative inconveniences; they are direct disruptions to student services and to the entire school community.

Recipients of federal assistance should be able to rely on objective and transparent standards throughout the life of an award.⁶⁴ The current Uniform Guidance provides this concrete stability, certainty, and reliable framework for those receiving federal assistance. These proposed changes to the Uniform Guidance to permit broad discretionary authorities tied to evolving political judgments undermine that necessary predictability and will discourage participation in federal programs by otherwise qualified applicants. Such uncertainty is extremely problematic for educational institutions and nonprofit organizations that undertake multi-year commitments involving personnel, research activities, student services, community partnerships, and long-term program planning. Such changes to the Uniform Guidance should not be undertaken.

NEA is similarly opposed to the proposed authority to suspend awards whenever an agency determines that suspension is in its interest.⁶⁵ The NPRM provides few meaningful standards governing the exercise of this authority by an agency and again creates disruption for educational programs and services, including services to students and their schools.

OMB should retain existing termination authorities tied to noncompliance and clearly defined programmatic considerations rather than creating broad new authorities tied to evolving political priorities.

⁶⁴ See 2 C.F.R. §§ 200.339–200.340.

⁶⁵ Proposed §§ 200.340–200.343.

Proposed §§ 200.339-342’s Expansion of Termination and Suspension Authority Conflicts with GEPA and Other Federal Statutes

Not only do the proposed new regulations on suspension and termination create substantial uncertainty for recipients, they also conflict with GEPA⁶⁶ and the standards for withholding of federal funds for noncompliance in other federal statutes, including Title VI⁶⁷ and Title IX.⁶⁸

Through GEPA, Congress sought to create a “comprehensive system for enforcement by the [Department of Education] of the requirements related to educational programs.”⁶⁹ Part D of GEPA includes extensive procedures, set forth in 10 sections, giving the Education Department enforcement powers over funding recipients. Section 455 establishes the Department’s authority to “withhold from a recipient, in whole or in part, further payments...under an applicable program.”⁷⁰ Specifically, the Department can only end competitive grant payments in the middle of a budget period if it provides the grantee with written notice of the basis for its belief that the grantee “has failed to comply substantially with a requirement of law.”⁷¹ In addition, under Section 455, the grantee must be offered an opportunity for a hearing before the Department’s Office of Administrative Law Judges.⁷² A grantee can seek judicial review challenging any final Department action “within 60 days of that action” in the applicable United States Court of Appeals.⁷³

The GEPA standard for initiating a withholding action—i.e., when a grantee has “failed to comply substantially with law”—is significantly narrower than OMB’s proposed termination and suspension procedures in §§ 200.339-342. For example, GEPA does not provide for terminating or suspending a discretionary grant because “it does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of termination.”⁷⁴ Further, GEPA’s administrative and judicial due process provisions are different than those provided for under OMB’s proposed rules. For example, OMB’s proposed rule allows for the “temporary suspension” of discretionary grants without any due process, whereas GEPA subjects the Education Department’s limited authority to temporarily withhold funds to rigorous procedural requirements. In sum, then, proposed §§ 200.339-342’s rules on termination and suspension would directly conflict with GEPA’s statutory framework for terminating grants.

OMB’s proposed rule on “temporary suspension” for noncompliance without any due process also conflicts with funding termination procedures in federal civil rights statutes, including Title VI and

⁶⁶ 20 U.S.C. § 1232i.

⁶⁷ 42 U.S.C. § 2000d-1.

⁶⁸ 20 U.S.C. § 1682.

⁶⁹ H.R. Rep. No. 95-1137, at 141 (1978).

⁷⁰ 20 U.S.C. § 1234d(a).

⁷¹ 20 U.S.C. § 1234d(b).

⁷² 20 U.S.C. § 1234d(c).

⁷³ 20 U.S.C. § 1234g(b).

⁷⁴ Proposed § 200.340(a)(2).

Title IX, which include requirements that the agency first advise recipients of any noncompliance issues, make express findings of noncompliance on the record after an opportunity for a hearing, and attempt to secure voluntary compliance.⁷⁵ As with GEPA, these civil rights statutes (and their corresponding regulations) do not treat the withdrawal of funds lightly. Recipients are given an opportunity to come into compliance and afforded significant procedural protections. That makes sense, given the considerable disruption of losing funds in the middle of a school year.

Performance Measures Should Remain Objective, Transparent, and Statutorily Grounded

NEA supports meaningful performance measurements and evaluation of federally funded programs. This NPRM, however, grants agencies increased discretion to define and/or revise performance standards and outcome measures according to changing priorities, which will undermine predictability and complicate effective program administration. Performance standards and outcome measures must remain transparent, objective, measurable, and directly connected to statutory program purposes. Recipients frequently design projects, hire staff, establish partnerships, and commit resources based upon performance expectations established at the time of award.

Federal performance measurement systems should evaluate program effectiveness, not ideological or political alignment.

The Uniform Guidance already offers the necessary transparent, stable framework supporting federal assistance recipients. OMB should not make changes that will negatively impact the work of recipients of federal financial assistance, including educational institutions, school districts, and non-profit organizations. OMB should clarify that performance measures must remain stable throughout the award period whenever practicable.

The Proposed Restrictions Add Vague New Substantive Conditions on Grants and Thus Violate the Spending Clause and the Administrative Procedure Act

The proposed restrictions in the NPRM, including §§ 200.205, 206, 218, and 300, violate the Spending Clause of the U.S. Constitution and the APA. Under the Spending Clause, if Congress wants to “impose a condition on the grant of federal moneys, it must do so unambiguously,” so that States can “exercise their choice knowingly, cognizant of the consequences of their participation.”⁷⁶ As explained above, the new conditions around DEIA, gender identity, disparate-impact liability, immigration, and “anti-American values” are vague and thus do not withstand scrutiny under the Spending Clause. Nor do they meet the Spending Clause requirement that any new condition imposed on the receipt of federal funding be “reasonably related to the federal interest in particular national projects or programs.”⁷⁷ To the contrary, they impede efforts by educational institutions to

⁷⁵ See 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682; 34 C.F.R. § 100.8(c).

⁷⁶ *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981).

⁷⁷ *Mass. v. United States*, 435 U.S. 444, 461 (1978).

help advance educational opportunity, professional development, research, and critical services for communities and students.

The conditions also violate the APA for reasons similar to those that doomed the February 14, 2025, Dear Colleague Letter discussed above: the conditions violate constitutional rights, exceed statutory limits on agency authority (potentially serving as a back door for the Department of Education to intrude upon curricular choice), and they are arbitrary and capricious. The proposed restrictions here, then, should be removed.

Expanded Monitoring and Oversight Requirements Will Impose Significant Burdens on Education Recipients and Violate the Paperwork Reduction Act

The provisions expanding monitoring, payment justification, and oversight obligations for recipients and subrecipients must be reassessed. Effective oversight is a vital component of responsible federal grant administration. However, oversight mechanisms should be proportionate to risk and designed to avoid unnecessary administrative burdens. Schools, colleges, universities, educator preparation programs, and community organizations already devote substantial resources to compliance activities.⁷⁸ Additional monitoring and documentation requirements will disproportionately affect smaller entities with limited administrative capacity, including rural school districts, some community-based organizations, and smaller institutions of higher education.

The NPRM's proposed payment-justification requirement increases the burden of both the federal agency offering the financial assistance and the recipients and subrecipients. Under the proposal, recipients and subrecipients will be required to provide written explanations describing the purpose of payment requests and the specific award-related activities those payments support. Educational institutions already operate under extensive fiscal controls, audit requirements, reporting obligations, and documentation standards. Imposing additional payment-justification requirements will create substantial administrative burden without a demonstrated corresponding benefit to accountability or program integrity. In addition, the federal agency must ensure that the civil servant(s) assessing the justification is fully versed not only in the statutory and agency requirements of the specific program, but also fully versed in the political, administration and national interests at the time of receipt of the justification(s). Furthermore, such justifications will lengthen the time to reimbursement, negatively impacting recipients and subrecipients, especially those without substantive finances or other stable funding sources. To meet this requirement, school districts, colleges, universities, and nonprofit organizations will divert limited administrative resources away from educational services, student supports, research activities, and program implementation to ensure repetitive compliance obligations.⁷⁹

While some employers are required to enroll in E-Verify, the Department of Homeland Security system to verify work eligibility, requiring all recipients and subrecipients to enroll in E-Verify and

⁷⁸ <https://www.gao.gov/assets/gao-23-106797.pdf>

⁷⁹ See 2 C.F.R. §§ 200.302, 200.328, 200.501–200.521.

implementing it will impose an additional administrative burden on educational institutions and non-profit organizations, including those that employ NEA members. This requirement alone will result in denial of employment due to the common and well-documented technical system errors and database mismatches associated with E-Verify.⁸⁰

Excessive compliance obligations divert resources away from students, educators, research activities, and program delivery. The proposed changes will impose burdensome requirements that violate the Paperwork Reduction Act.⁸¹ OMB should preserve risk-based oversight approaches and ensure that monitoring requirements remain appropriately tailored to recipient capacity and demonstrated risk.

OMB Has Not Adequately Justified its Departure from the Current Grants Administration Practices, including the current Uniform Guidance Regulations

The NPRM proposes significant changes to current, transparent and consistent grants-management systems and practices, including peer review, merit review, political oversight, termination authority, and substantive funding restrictions. In this NPRM, OMB provides limited evidence that existing systems have failed to achieve their intended purposes or that proposed changes would improve outcomes.

Where agencies propose to depart from established practices that have governed federal grantmaking for decades, they should provide a reasoned explanation supported by evidence demonstrating the need for such changes. NEA does not believe the NPRM adequately demonstrates that expanded political review, reduced reliance on expert review, or broader termination authority will improve transparency, accountability, efficiency, or program effectiveness.

Conclusion

The NPRM is not merely a revision to the Uniform Guidance governing federal financial assistance. Rather, it would fundamentally transform the government-wide framework that has long ensured federal grants are administered according to objective criteria, professional expertise, statutory purposes established by Congress, and transparent, predictable rules. By expanding political review of funding decisions, increasing executive discretion, diminishing the role of independent expert judgment, and embedding administration-specific policy priorities into government-wide grants regulations, the proposal departs from the longstanding principles that have promoted fairness, consistency, accountability, and faithful implementation of federal law across administrations.

Federal financial assistance programs are most effective when recipients can rely upon stable, transparent, and merit-based processes that permit long-term planning and faithful implementation of congressionally authorized programs. Educational institutions, nonprofit organizations, researchers, educator preparation programs, and community organizations depend on this stability to invest in

⁸⁰ See Bruno, Andorra. "Electronic Employment Eligibility Verification." (2018), pp. 9-10.

⁸¹ See 44 U.S.C. § 3506(c)(3).

personnel, develop programs, conduct research, and deliver services that strengthen educational opportunity and support students.

For programs supporting educator preparation, literacy instruction, school-based mental health services, teacher workforce development, educational research, and other critical educational initiatives, regulatory instability and politicized grant administration will translate directly into disrupted services, diminished institutional capacity, and reduced opportunities for students and communities. For legal, constitutional, administrative, and practical reasons, NEA urges OMB to withdraw this proposal and preserve the Uniform Guidance and the longstanding principles that have made the federal grants system across 400 agencies and administrations effective: transparency, merit-based decision-making, regulatory stability, professional expertise, and fidelity to congressional intent.

We appreciate the opportunity to provide this feedback. Please do not hesitate to contact me or Daaiyah Bilal-Threats, Senior Director for Policy, at DBilal@nea.org, should you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Rebecca S. Pringle". The signature is fluid and cursive, with the first name "Rebecca" being more prominent and the last name "Pringle" following in a similar style.

Rebecca S. Pringle
President
National Education Association