NATIONAL EDUCATION ASSOCIATION

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September 23, 2026

Submitted via www.federalregister.gov

Linda McMahon
Secretary of Education
U.S Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Re: ED-2026-OPEPD-2542; Education Department General Administrative Regulations

Dear Secretary McMahon:

On behalf of the approximately three million members of the National Education Association (NEA), we submit these comments in response to the United States Department of Education's (ED) proposed rule, *Education Department General Administrative Regulations (EDGAR)*, published in the Federal Register on August 24, 2026. **For the reasons discussed below, NEA urges the Department to withdraw this proposal and preserve the longstanding principles of transparency, expertise, peer-reviewed and merit-based decision-making, regulatory stability, and fidelity to congressional intent that should govern federal education grant administration.**

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.

The breadth and significance of the Department's proposal cannot be understated. EDGAR establishes the Department's general framework for administering both discretionary and state-administered formula grant programs.[1] Rather than making merely technical or administrative adjustments, the proposed rule would fundamentally alter how the Department awards, administers, continues, and terminates or non-continues federal education grants.[2]

These proposed changes would expand executive discretion over funding decisions, diminish the role of objective and expert review, increase the Department's ability to terminate or non-continue grants, and embed administration-specific policy priorities into the regulations governing federal education funding.

Taken as a whole, the proposed rule would produce a federal education grants framework that is less predictable, less objective, and more susceptible to changing political priorities than to the statutory purposes established by Congress.

NEA previously raised many of these concerns in its July 13, 2026, comments on OMB-2026-0034, the proposed government-wide revisions to the Uniform Guidance.[3] The Department's proposal overlaps with OMB's proposal in several important respects, particularly regarding the expansion of executive discretion over federal awards and the authority to suspend, terminate, or discontinue funding. We have incorporated the relevant principles and concerns expressed in those comments here.

The Proposed Rule Departs from the Historical Purpose of EDGAR

EDGAR establishes general administrative requirements governing the Department's federal education grant programs. For decades, its central function has been to promote consistent administration, accountability, fiscal integrity, and effective stewardship of federal funds. The proposed rule significantly departs from that traditional role.

Rather than primarily ensuring neutral grant administration, numerous provisions would incorporate substantive policy directives and administration-specific priorities into the general regulations governing federal education assistance.[4] This approach will make EDGAR less of a stable administrative framework and more of a mechanism through which the political agenda of a particular administration can be incorporated into federal education funding requirements. The General Education Provisions Act and EDGAR already allow an administration to account for its policy preference by publishing competitive priorities through notice and comment in the Federal Register, as consistent with the applicable program statutes.[5] But they do not allow an administration to impose conditions on federal education funding that are not imposed by Congress. As explained

[1] See 20 U.S.C. §§ 1221, 1228; 20 U.S.C. §§ 3471–3474.
[2] https://www.federalregister.gov/documents/2026/08/24/2026-17239/education-department-general-administrative-regulations
[3] https://www.nea.org/advocating-for-change/action-center/letters-testimony/omb-2026-0034-regulation-federal-financial-assistance
[4] Ibid; See 20 U.S.C. §§ 1221, 1228; Department of Education Organization Act, 20 U.S.C. §§ 3401 et seq.; 91 Fed. Reg. 54666.
[5] 20 U.S.C. § 1232(d) (GEPA § 437); 34 C.F.R. § 75.105.

below, the vague new conditions violate the Spending Clause of the U.S. Constitution and the Administrative Procedure Act.

Educational institutions, state and local educational agencies, educator preparation programs, nonprofit organizations, researchers, and other grant recipients routinely administer grants that span multiple years. These awards often require recipients to make substantial investments in staffing, program development, research, partnerships, and other activities that cannot be adjusted easily from year to year. EDGAR should facilitate this 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 and highly structured grants. Formula grants supporting special education and other programs administered by states and school districts, educator preparation programs, teacher workforce initiatives, school-based mental health programs, literacy programs, professional development, community schools, and educational research all depend on predictable federal administrative requirements.[6]

These programs require sustained staffing commitments, multi-year planning, partnerships, and implementation arrangements. When the rules governing federal grants become vehicles for shifting policy priorities or heightened discretionary oversight, the consequences are not abstract. They affect the ability of schools, districts, higher education institutions, and organizations to maintain staffing pipelines, sustain services, complete research, and implement programs.

The Proposed Rule Expands Political Discretion in Federal Education 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 and policy discretion throughout the grant lifecycle, including application review, award decisions, continuation determinations, compliance decisions, and termination decisions.

Agency leadership appropriately retains responsibility for administering federal programs. But longstanding grants management practices include safeguards designed to promote consistency, objectivity, and accountability. These safeguards exist because federal financial assistance programs work best when applicants understand the criteria on which they will be evaluated, and recipients can rely upon stable standards throughout the life of an award.

Public confidence in federal grantmaking depends not only upon actual fairness but also upon the

[6] See, e.g., 20 U.S.C. §§ 1411–1419 (IDEA Part B); 20 U.S.C. §§ 1021–1022d (Title II educator preparation); 20 U.S.C. §§ 7281–7281h (school-based mental health); 20 U.S.C. §§ 7271–7271h (Full-Service Community Schools); 20 U.S.C. §§ 6361–6368 (literacy).

perception of fairness. A grants system that increasingly relies on political judgment rather than transparent and objective criteria risks undermining confidence among applicants, recipients, educators, institutions, and the public. The Department should therefore withdraw this proposed rule to preserve objective criteria, professional expertise, and meaningful peer review throughout the federal grantmaking process.

Proposed Changes to § 75.210 Would Embed Administration-Specific Priorities in Grant Selection

NEA is particularly concerned about the proposed revisions to § 75.210, which governs the criteria that the Department may use in evaluating applications for discretionary grants. The Department's scoring criteria are not merely administrative mechanisms. They influence what applicants propose, how applicants design federally funded projects, and which applicants ultimately receive federal funds. Changes to those criteria therefore have substantive consequences for federal education policy.

The proposed revisions would remove or modify several factors that currently encourage applicants to address equitable access and participation, barriers experienced by students and other program beneficiaries, diverse perspectives, lived experience, and experience serving populations facing educational barriers. These changes are particularly concerning because Section 427 of the General Education Provisions Act requires applicants to describe steps they will take to ensure equitable access to and participation in federally funded activities by addressing barriers experienced by students, teachers, and other program beneficiaries.[7] The Department should not diminish the significance of these considerations by removing them from the factors used to assess the quality of grant applications.[8]

The proposal also replaces the established reference to an "underserved population" with "target population" in several places. Although applicants may continue to serve populations experiencing barriers, the proposed change would eliminate an explicit incentive to address underserved populations in the grant-scoring process. The Department should retain criteria that encourage applicants to identify and effectively address educational barriers and the needs of populations experiencing those barriers.

NEA also has concerns about proposed additions to § 75.210 that would evaluate applicants based on compliance with the new and undefined concepts of "merit" and "high standards." Applicants should not receive additional points because they demonstrate conformity with an Administration's preferred interpretation of ambiguous concepts. Grant competitions should evaluate whether proposed projects satisfy statutory requirements and established program criteria, not whether applicants have adopted changing policy positions.

[7] See 20 U.S.C. § 1228a (GEPA § 427).
[8] See 34 C.F.R. § 75.210; 91 Fed. Reg. 54666, 54673–76.

Proposed § 75.500 and § 76.500 Create Vague New Conditions

NEA strongly objects to the proposed provisions requiring grantees to ensure that hiring, admissions, promotion, and compensation practices "under the grant" are based on "merit and high standards," without regard to specified characteristics or "proxies" for those characteristics. Federal grantees are already subject to applicable federal civil rights laws. Existing GEPA and EDGAR provisions require compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975.[9] The Department has not adequately explained why additional, undefined standards are necessary.

Terms such as "merit," and "proxies" are not defined in this proposed rule. Nor does the Department adequately explain how these terms relate to existing statutory and judicial standards governing nondiscrimination. This lack of clarity creates significant compliance concerns. Just as the courts recognized in striking down the Department's February 2025 Dear Colleague Letter, the inclusion of these criteria are susceptible to challenges under the Fifth and First Amendments because the terms are vague as to what programs or practices they prohibit, susceptible to arbitrary enforcement, and likely to have a chilling effort on both educational institutions' regular activities and on the exercise of academic freedom in higher education.[10]

A recipient may reasonably understand its obligations under the federal statutes expressly identified in EDGAR. It should not have to guess whether the Department will later interpret an undefined reference to a "proxy" to encompass a facially neutral criterion that the Department believes correlates with a protected characteristic. Ambiguous standards increase compliance burdens, discourage participation in federal programs, and invite inconsistent enforcement. Recipients may alter otherwise lawful educational, employment, admissions, research, or program practices simply to avoid the risk that the Department will later interpret an undefined provision against them.

Proposed Restrictions Concerning Political Views Require Greater Clarity and Legal Justification

NEA also has concerns about proposed § 75.500(f)(2) and § 76.500(f)(2), which would restrict grantees from compelling statements of belief supporting or opposing "political views" as conditions of employment, admission, or participation in federally funded projects. The Department does not adequately define "political views" or explain the boundaries of this provision. As described above, these vague restrictions on grant eligibility raise serious concerns under the U.S. Constitution because they are susceptible to arbitrary enforcement and chill the exercise of First Amendment rights.

Education institutions and educators routinely engage with public policy, legislation, civil issues,

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[9] See 34 C.F.R. §§ 75.500(a), 76.500(a); 42 U.S.C. § 2000d et seq.; 29 U.S.C. § 794; 20 U.S.C. § 1681 et seq.; 42 U.S.C. § 6101 et seq.; See proposed 34 C.F.R. §§ 75.500(f)(1), 76.500(f)(1), 91 Fed. Reg. 54666, 54679–80.

[10] Order, *National Education Association v. United States Dep't of Education*, No. 25-cv-091 (D.N.H. April 24, 2025), at 45-74.

educational policy, and other subjects that may have political dimensions.[11] Federal grant conditions should not create uncertainty about whether ordinary professional, academic, instructional, or research activities could affect a recipient's federal funding.

Proposed § 75.288 Would Improperly Use Grant Competition to Pressure Applicant to Reduce Negotiated Indirect Cost Rates

NEA opposes proposed § 75.228, which would permit the Department to establish a competitive preference for applicants that voluntarily accept an indirect cost rate below their negotiated rate. A negotiated indirect cost rate reflects an established methodology for determining costs appropriately attributed to federally funded activities.[12] A recipient should not be placed at a competitive disadvantage for using the rate that it has lawfully negotiated with the federal government. The proposed competitive preference could nevertheless create precisely that incentive.

Applicants could be forced to choose between accepting the negotiated indirect cost rate to which they are entitled and reducing that rate in order to improve their changes of receiving an award. Such an approach is particularly concerning for institutions and organizations that cannot easily absorb legitimate administrative costs with nonfederal funds. It could disadvantage smaller organizations, institutions with limited unrestricted resources, and organizations serving communities with substantial needs. The Department has not adequately demonstrated that this competitive preference is necessary or that it is authorized by law.

Proposed §§ 75.230, 75.252, and 75.253 Undermine the Stability of Multiyear Grants

NEA is deeply concerned about the proposed changes governing continuation of multi-year grants.

Recipients of federal assistance make long-term commitments based upon approved awards.[13] Once a multi-year award has been approved, recipients reasonably structure their operations around the funding commitment, including by retaining staff, maintaining programs, and meeting obligations to students, partners, and service providers. The proposal would expand the Department's discretion to discontinue multi-year grants in ways that could permit decisions to be based on considerations unrelated to grantee performance.[14]

In particular, the proposal removes the existing limitation referring to information "regarding grantee

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[11] *See, e.g., Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205, 214 (2013); *National Endowment for the Arts v. Finley*, 524 U.S. 569, 587 (1998); *Keyishian v. Board of Regents of the University of New York*, 385 U.S. 589, 603 (1967).
[12] See 2 C.F.R. §§ 200.414, 200.416; 34 C.F.R. § 75.562.; See proposed 34 C.F.R. § 75.228, 91 Fed. Reg. 54666, 54673.
[13] See 34 C.F.R. §§ 75.250–75.253.
[14] See proposed 34 C.F.R. §§ 75.230, 75.251, 75.253; 91 Fed. Reg. 54666, 54676–79.; Compare 34 C.F.R. § 75.253 with proposed § 75.253, 91 Fed. Reg. 54666, 54678–79.

performance" and would permit the Secretary to consider broader information when making continuation determinations. This change is significant. It would allow recipients to be held responsible not merely for how well they implement their federally funded projects, but potentially for whether their activities remain consistent with changing Department or Administration policy preferences. This approach would create substantial uncertainty for recipients.

The proposal also creates a new § 75.252 governing the frontloading of funds for multiyear projects. The proposed provision would permit the Department to provide either partial frontloaded funding for future budget periods or full frontloaded funding for the entire project period. At the same time, proposed § 75.253 would require a grantee seeking to access previously frontloaded funds after the first budget period to satisfy the same continuation requirements applicable to a continuation award, including receiving a determination from the Secretary that continuation of the project is in the best interest of the government. Thus, even when funds have already been frontloaded and obligated for future budget periods, a recipient's ability to access those funds would remain subject to a subsequent discretionary continuation determination. This structure will create significant uncertainty for recipients that make staffing, contractual, programmatic, and other long-term commitments based on an approved multiyear award.

Educational institutions and nonprofit organizations cannot responsibly plan multi-year programs if federal funding may be non-continued because of an unexpected change in policy preferences-unrelated to the recipient's performance. The result could be an inability to hire personnel, enter contracts, execute partnership agreements, maintain services, or undertake other activities necessary to implement federal funded projects successfully. This instability will discourage participation in federal grant programs by otherwise qualified applicants and diminish the capacity of recipients to achieve the very objectives those programs are intended to advance.

Proposed § 75.901 Creates Extraordinary New Authority to Terminate Grants and Conflicts with GEPA

NEA strongly opposes the proposed revisions to § 75.901 that would expressly authorize termination of discretionary awards "for convenience."

The Department describes the provision as providing clarity regarding its authority to terminate discretionary awards. However, the proposal would create substantial uncertainty for recipients by permitting the Department to terminate a grant without first demonstrating that the recipient has failed to perform or otherwise violated an applicable requirement. Federal grants are not simply procurement contracts. They are instruments through which Congress provides financial assistance to accomplish statutory public purposes within specific statutory parameters that the Department cannot change.[15]

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

As discussed above, recipients make substantial commitments based upon approved awards. The proposed termination authority would permit the Department to reevaluate awards according to unexpected or unscheduled changes in political priorities after awards have been issued. Recipients of federal assistance should be able to rely on objective and transparent standards throughout the life of an award.

Broad discretionary termination authority would undermine that necessary predictability and could discourage participation in federal grant programs by qualified applicants. This concern is particularly important because the proposed EDGAR provision overlaps with the concerns NEA previously raised regarding proposed § 200.340 in OMB-2026-0034. We have incorporated those concerns here to the extent they apply to the Department's proposed termination authority. The Department should not use EDGAR to transform a discretionary grant into an arrangement that can be terminated whenever the Department determines that doing so is convenient.

Indeed, the Department's proposal conflicts with GEPA's standards for withholding of federal funds. Through GEPA, Congress sought to create a "comprehensive system for enforcement by the [Department of Education] of the requirements related to educational programs."[16] 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."[17] 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." [18] In addition, under Section 455, the grantee must be offered an opportunity for a hearing before the Department's Office of Administrative Law Judges.[19] 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.[20]

Thus, the GEPA standard for initiating a withholding action—i.e., when a grantee has "failed to comply substantially with law" —is significantly narrower than the Department's proposed "termination for convenience" without any due process. GEPA does not treat the withdrawal of funds lightly, and recipients are given an opportunity to come into compliance and afforded significant procedural protections.

NEA therefore urges the Department to remove the proposed "termination for convenience" authority and retain objective, legally sufficient grounds for suspension and termination.

Proposed § 76.700 Should Not Make Presidential Executive Orders General Conditions of

[16] H.R. Rep. No. 95-1137, at 141 (1978).
[17] 20 U.S.C. § 1234d(a).
[18] 20 U.S.C. § 1234d(b).
[19] 20 U.S.C. § 1234d(c).
[20] 20 U.S.C. § 1234g(b).

Formula Grant Funding

NEA opposes proposed §76.700, which would require formula-funded grantees to comply with presidential executive orders.

Executive orders do not go through the legislative process or the rulemaking process applicable to regulations. They may be issued, modified, or rescinded by the President and are not legally binding on or enforceable against parties outside the executive branch, including grant applicants or recipients. And courts have found they sometimes exceed executive authority, conflict with federal statutes, or violate constitutional protections.[21]

Moreover, the Constitution assigns the power of the purse to Congress, not the President. It is therefore Congress, not the President or the Department as his delegee, that can impose conditions on federal education funding. The Department lacks the authority to transform presidential executive orders into general conditions of federal education funding through any means, including by revising EDGAR. That is especially so for formula grant awards, over which the Department exercises no discretion and as to which the Department may not establish competitive preferences or grant priorities.

Further, states, school districts, and other formula grant recipients need stable requirements that permit responsible long-term planning. Making compliance with executive orders a general condition of federal formula funding would introduce a substantial degree of uncertainty because the applicable requirements could change whenever a new President takes office. The Department's stated rationale, that § 76.700 should be aligned with § 75.700, does not adequately justify imposing this additional obligation on formula-funded recipients.

EDGAR cannot and should not create a blanket requirement that recipients comply with presidential directives as an independent condition of receiving federal education funds. NEA therefore urges the Department not to adopt the proposed revision to §76.700.

The Department Has Not Adequately Justified Its Departure from Existing Grant Administration Practices

The NPRM proposes significant changes to current grant-management systems and practices, including grant selection criteria, indirect cost rates, continuation decisions, termination authority, and conditions applicable to recipients. The Department has not adequately demonstrated that the existing framework has failed to achieve its purposes or that these proposed changes would improve outcomes.

Where an agency proposes to depart from established practices that have governed federal grantmaking for decades, it must provide a reasoned explanation supported by evidence

[21] *See e.g., Trump v. Barbara*, 146 S. Ct. 2438, 225 L. Ed. 2d 876 (2026).

demonstrating the need for those changes and explicitly consider the reliance of grant applicants, recipients, beneficiaries on the existing rules and practices. The NPRM does not adequately demonstrate that expanded discretionary authority, reduced reliance on established selection criteria, broader terminatory authority, or additional policy conditions will improve transparency, accountability, efficiency, or program effectiveness. Nor does it address the reliance interests of grant applicants, recipients, and beneficiaries who have for decades interacted with and gained from a neutral, consistent, dependable federal education grantmaking framework. Instead, many of the proposed changes would introduce additional uncertainty into the federal grants system.

Federal Education Grants Should Remain Grounded in Congressional Purposes

Federal education programs are created through statutes enacted by Congress and funded through the appropriations process. Congress establishes program objectives, eligibility criteria, intended beneficiaries, and permissible uses of federal funds.[22] The Department administers those programs pursuant to the statutory framework established by Congress.

Federal agencies may establish lawful administrative priorities within the authority Congress has provided. But agencies cannot use general grant regulations to substitute administration-specific policy objectives for the statutory purposes established by Congress. The proposed rule would move in that direction by allowing broader policy considerations to influence grant continuation, grant selection, recipient conduct, and termination. NEA urges the Department to ensure that every substantive condition imposed through EDGAR is clearly grounded in statutory authority and consistent with the particular statutes governing the affected programs.

Conclusion

The proposed rule is not merely a technical revision to the Department's regulations governing federal education assistance. Rather, it would significantly alter the framework through which federal education grants are awarded, administered, continued, and terminated. By expanding executive discretion over funding decisions, diminishing the role of objective and expert review, broadening termination and non-continuation authority, introducing vague new conditions on recipients without authority to do so, and embedding administration-specific policy priorities into EDGAR, the proposal departs from the principles that have promoted fairness, consistency, accountability, and faithful implementation of federal education programs.

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, state and local educational agencies, and community organizations depend on this stability to invest in personnel, develop programs, conduct research, and deliver

[22] See U.S. Const. art. I, § 8; 31 U.S.C. §§ 6301–6308; *West Virginia v. EPA*, 597 U.S. 697 (2022).

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, special education, and other critical education initiatives, regulatory instability and politicized grant administration can translate directly into disrupted services, diminished institutional capacity, and reduced opportunities for students and communities.

NEA therefore urges the Department to withdraw this proposed rule in its entirety and preserve the longstanding principles that should govern federal education grant administration: transparency, merit-based decision-making, professional expertise, regulatory stability, objective standards, and fidelity to congressional intent.

Please do not hesitate to contact me or Bianca Singh at BSingh@nea.org, should you have any questions.

Sincerely,

Daaiyah Bilal-Threats
Senior Director, Education Policy and Implementation Center
National Education Association