July 13, 2026

Office of Federal Financial Management, Office of Management and Budget
725 17th St NW
Washington, DC 20503
Transmitted Via Regulations.Gov

Re: OMB's Proposed Rule Regulation for Federal Financial Assistance (Docket ID No. OMB-2026-0034).

To Whom It May Concern:

The Sabin Center for Climate Change Law ("Sabin Center") submits these comments in response to the Proposed Rule titled "Regulation for Federal Financial Assistance" ("Proposed Rule") issued by the Office of Management and Budget ("OMB"), Office of Federal Financial Management, and other agencies on May 29, 2026.[1] The Sabin Center strongly opposes the Proposed Rule, and urges OMB and other agencies not to finalize it, for the following reasons:

- If finalized in its current form, the Proposed Rule would significantly overhaul the existing OMB Guidance for Federal Financial Assistance ("Guidance").[2] Since its adoption in 2013, the Guidance has consistently been treated by OMB and other federal agencies as "policy," and "not regulation."[3] OMB reiterated this view as recently as 2024.[4] Now, just two years later and without explanation, OMB proposes to transform the Guidance into regulations binding on other agencies. OMB suggests that in doing so it is merely "clarifying" the status quo[5] but, in fact, its proposal represents a fundamental change in the agency's approach which lacks any statutory basis and would have far reaching consequences.

- The Proposed Rule is poor public policy and, if finalized, would jeopardize the independence of scientific exploration and innovation by making it subject to political

[1] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (May 29, 2026) [hereinafter "Proposed Rule"].
[2] Codified in title 2 of the Code of Federal Regulations.
[3] *See, e.g.,* Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 78 Fed. Reg. 78590 (Dec. 26, 2013) (describing the Guidance as "policy" which will be implemented through regulations adopted by individual agencies in accordance with their own authorizing statutes).
[4] 2 C.F.R. § 1.105(b) (declaring that the Guidance is "guidance, not regulation").
[5] Proposed Rule, *supra* note 1, at 32200.

influence. Among other things, independent peer review, which has long been recognized as the "gold standard" for funding decisions, would be replaced by political control. The apparent intention and inevitable result will be to reduce funding for research on politically unpopular or inconvenient topics such as climate change. But independent science free from political influence is critical for sound legal decision-making, especially in the environmental context.

- OMB has failed to adequately consider the negative impacts of the Proposed Rule or provide a reasoned explanation as to why its adoption is justified nonetheless. OMB's proposed action is, therefore, arbitrary and capricious in violation of the Administrative Procedure Act.

These points are elaborated further below.

I. OMB Lacks Statutory Authority to Adopt the Proposed Rule

The Proposed Rule would substantially revise the existing Guidance, including by transforming it into "an OMB regulation" that is binding on other agencies. But the Proposed Rule points to no statute that would authorize its adoption as a regulation. This is a fatal flaw. It is well established that executive agencies have only the power conferred on them by Congress.[6] Agencies may, therefore, only adopt regulations where authorized to do so by Congressional statute.[7]

The Proposed Rule lists various statutes that OMB claims authorize it to adopt regulations on federal financial assistance but includes no analysis to support that claim.[8] In fact, for most of the listed statutes, the Proposed Rule does not even identify a specific section(s) that authorizes OMB regulation.[9] The only two specific sections cited—31 U.S.C. §§ 503 and 6307—are those previously relied upon by OMB to adopt the Guidance. But the Guidance is not a regulation, and the Proposed Rule does not address whether the cited sections authorize regulatory action. Had OMB considered that, it would have found they do not.

It is clear from the plain text of 31 U.S.C. §§ 503 and 6307 that these sections do not grant OMB rulemaking authority. Section 503 merely authorizes the Deputy Director for Management to "establish governmentwide financial management *policies* for executive agencies" (emphasis added) and to "perform [certain] financial management functions," including "provid[ing]

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[6] Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 371 (1986) ("[A]n agency literally has no power to act . . . unless and until Congress confers power upon it"); *see also* Fed. Maritime Comm'n v. Anglo-Canadian Shipping Co., 335 F.2d 255, 258 (9th Cir. 1964) ("the regulations of an agency of the United States must be issued within the powers conferred by Congress.").
[7] Am. Library Ass'n v. FCC, 406 F.3d 689, 691 (D.C. Cir. 2005) ("It is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress").
[8] Proposed Rule, *supra* note 1, at 32201. It is notable that the entire discussion of the "statutory authority for OMB regulation for federal financial assistance" totals just 2 paragraphs out of the 108-page Proposed Rule.
[9] *Id.* at 32201–02.

overall direction and leadership to the executive branch on financial management matters by establishing financial management *policies* and requirements" (emphasis added). Section 6307 authorizes the Director of OMB to issue "supplementary *interpretive guidelines* to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements" (emphasis added). Thus, by their express terms, the sections only authorize OMB to adopt "policies" and "interpretive guidelines" which have long been recognized as distinct from substantive rules. Whereas policies and interpretive guidelines merely provide an indication of an agency's construction of the statutes it administers, substantive rules grant rights, impose obligations, or produce other significant effects on private interests or subordinate agencies.[10]

While 31 U.S.C. § 503(a)(2) does provide for the establishment of "requirements," this term should not be read as authorizing the promulgation of regulations. It is a well-established principle of statutory interpretation that courts should "consider[] both 'the specific context' in which [the section] appears 'and the broader context of the statute as a whole.'"[11] The text of section 503(a), read as a whole, makes clear that the position of the Deputy Director for Management is an advisory, and not regulatory, role. The Deputy Director is only authorized to define "requirements" in the context of "establish[ing] governmentwide financial management *policies* for executive *agencies*" (emphases added). The other functions listed under section 503(a) that relate to *agencies* include responsibilities to "provide advice," "make recommendations," or "[s]ettle differences that arise among agencies regarding the implementation of financial management policies."[12] A broad power to regulate agencies could not possibly be granted by a single word buried in a section geared towards providing "overall direction and leadership," where all of the remaining functions of the Deputy Director under that section distinctly recognize that other agencies would implement financial management *policies*.

While the text of sections 503 and 6307 is determinative, the legislative history further supports the view that they do not authorize adoption of the Proposed Rule. For example, at the time section 503 was enacted, the House of Representatives Committee on Governance Operations described it as authorizing the Deputy Director of OMB to "set policies and procedures" to "guid[e] government-wide financial systems."[13] The courts have thus characterized Title 31, Chapter 5 as giving OMB "an oversight role" over federal financial assistance programs that is "supervisory, rather than directly active."[14] Consistent with this view, OMB has previously only

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[10] Chrysler Corp. v. Brown, 441 U.S. 281, 301–02 (1979).
[11] Fischer v. United States, 603 U.S. 480, 480 (2024) (citing Robinson v. Shell Oil Co., 519 U.S. 337, 341); *see also id.* at 496 ("'surplusage is . . . disfavored,' and [a] 'construction that creates substantially less of it is better than a construction that creates substantially more.'" (citing United States v. Fischer, 64 F.4th 329, 374 (D.C. Cir. 2023) (Katsas, J., dissenting)).
[12] *Compare* Proposed Rule, *supra* note 1, at 32201 *with* 31 U.S.C. § 503(a)(1)-(14).
[13] House of Representatives, Rept. 101-818: Chief Financial Officer Act of 1990, 16 (Oct. 6, 1990).
[14] Nat'l Council of Nonprofits v. OMB, 775 F. Supp. 3d 100, 126 (D.D.C. 2025); *see also*, AFL-CIO v. OMB, 807 F. Supp. 3d 1004, 1018 (N.D. Cal. 2025); Woonasquatucket River Watershed Council v. U.S. Dep't of Ag., 778 F. Supp. 3d 440, 473 (D.R.I. 2025) ("[T]he structure and provisions of Section 503 strongly suggest that OMB occupies an oversight role. Neither appears to grant the expansive authority that OMB tried to exercise here, and the Government has not pointed to specific authority that allows it to unilaterally pull the plug on nearly all federal

asserted authority under 31 U.S.C. § 503 to adopt "guidance, not regulation."[15] Those guidance documents are intended to provide "procedural rather than substantive" requirements.[16] Numerous courts have recognized that OMB guidance is "not self-executing" and must be implemented via regulation by other agencies to have force.[17] Courts have also read OMB guidance as "an accounting manual" rather than dictating substantive policies for agency-wide grant-making decisions.[18]

Despite this longstanding practice, OMB is now suddenly proposing to change its approach, but lacks a clear statutory basis for doing so. OMB's action thus implicates the Major Questions Doctrine. The Supreme Court has made clear that when an agency seeks to resolve a matter of "vast economic and political significance," it must point to "clear congressional authorization."[19] Overhauling the entire apparatus of federal financial assistance and restructuring how billions of dollars in scientific and public health grants are distributed across nearly every executive agency is an issue of extraordinary political and economic significance. Congress surely did not intend to bury the power to fundamentally reshape American scientific inquiry in such general and opaque provisions as 31 U.S.C. §§ 503 and 6307.

II. The Proposed Rule Jeopardizes Sound Science and Will Negatively Affect Scientific Innovation and Consequently the Public Interest, Health, and Well-Being

In addition to being legally unsupported, the Proposed Rule also reflects poor public policy. If finalized in its current form, the Proposed Rule would seriously undermine scientific research and innovation, and endanger the public welfare.

The Proposed Rule, if finalized, would compromise the integrity of scientific research by increasing political control over federal financial assistance programs. Among other things, the

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monetary flows under the IIJA and the IRA."); *c.f.* Ass'n of Am. Universities v. Nat'l Sci. Found., 788 F. Supp. 3d 106, 131 (D. Mass. 2025) (declining to resolve the issue of "whether 31 U.S.C. § 503 vests exclusive authority in OMB to establish policies regarding reimbursement of indirect research costs in federal grant awards.").

[15] 2 C.F.R. § 1.105(b).

[16] Bldg. & Const. Trades Dep't, AFL-CIO v. Allbaugh, 172 F. Supp. 2d 138, 162 (D.D.C. 2001), *rev'd*, 295 F.3d 28 (D.C. Cir. 2002).

[17] Metro. Trans'n Auth. v. Duffy, No. 25-CV-1413, 2026 WL 588117, *49 (S.D.N.Y. Mar. 3, 2026) (explaining that federal agencies must implement guidance issued pursuant to 31 U.S.C. § 6307 to have regulatory effect); *see also* Ass'n of Am. Universities v. Dep't of Energy, 789 F. Supp. 3d 118, 129 (D. Mass. 2025), *appeal dismissed*, No. 25-1727, 2026 WL 841632 (1st Cir. Mar. 16, 2026) ("Pursuant to statutory authority, OMB has in turn established uniform guidance for agencies to administer grants under the agencies' purview . . . which the DOE has adopted into its own regulations[.]"); Louisiana, Div. of Admin. v. U.S. Dep't of Health & Hum. Servs., No. CV 03-856-A-M3, 2005 WL 8155237 (M.D. La. Mar. 31, 2005), *report and recommendation adopted*, No. CV 03-856-A, 2005 WL 8155362 (M.D. La. June 27, 2005), *aff'd sub nom.* Louisiana v. U.S. Dep't of Health & Hum. Servs., 207 F. App'x 379 (5th Cir. 2006) (finding that supplementary interpretive guidance issued under 31 U.S.C. § 6307 must be "incorporate[ed] by reference" to have the force of regulations).

[18] *See* Ass'n of Am. Universities v. Dep't of Def., 792 F. Supp. 3d 143, 166 (D. Mass. 2025).

[19] West Virginia v. EPA, 597 U.S. 697, 716, 723 (2022).

Proposed Rule would reduce the role of expert peer review in grant funding decisions and give political appointees greater authority to choose what gets funded.[20] These political appointees are unlikely to have the knowledge and expertise needed to evaluate research proposals. That is precisely why independent peer review, whereby experts in their fields review proposals, has long been considered the "gold standard" for funding programs.[21] Independent peer review "ensures that only the most scientifically meritorious ideas and concepts receive federal funding."[22] The Proposed Rule would replace that with a system in which political considerations, not scientific ones, drive funding decisions. This would open the door to cronyism and result in politically unpopular or inconvenient topics, such as climate change, being sidelined. Indeed, that appears to be the intention. But science free from political influence is critical for advancing breakthroughs and innovation, and protecting public welfare. For example, political backlash and censorship in the 1990s and 2010s significantly delayed advances in climate science, including leading to decreased funding for satellite monitoring, which slowed the development of accurate climate models.[23] These models can help assess risks like flooding, heat, and wildfires, which pose significant danger to human health. And in the 1980s, AIDS research was crippled by a reticent political response, causing the preventable deaths of thousands of Americans.[24]

The Proposed Rule would also make it easier to terminate grants for political reasons, which is antithetical to independent science. It would "require all discretionary grants to permit termination for discretionary reasons, 'including when the award no longer advances [Federal] agency priorities or the national interest.'"[25] This is especially problematic for long-term research projects, which would be at risk of termination when political winds change.

One example is longitudinal studies—i.e., studies that repeatedly observe or measure the same individuals over an extended time period—which are critical for understanding developmental

[20] Proposed Rule, *supra* note 1, at 32212.

[21] Chandler, Jesse, Emily Rosen, Kimberley Raue, Katlyn Lee Milless and Danielle Rockman, *A Review of Funder Instructions and Grant Reviewer Practices for Assessing the Intellectual Merit and Other Impacts of Research*, U.S. Nat'l Sci. Found., at 40 (2024), https://nsf-gov-resources.nsf.gov/files/Broader-Impacts-Literature-Review.pdf?VersionId=pEEdnFPn5aISEsH5NMaA4JqhFlCKqDMG; *see also* Peter Biegelbauer, Thomas Palfinger, and Sabine Mayer, *How to Select the Best: Selection Procedures of Innovation Agencies*, 29 Rsch. Evaluation 3, 289–99 (July 2020).

[22] American Society for Biochemistry and Molecular Biology, "Peer review is essential to funding the most meritorious research," (Sep. 2, 2022), https://www.asbmb.org/advocacy/position-statements/peer-review-is-essential-to-funding-the-most-merit.

[23] Martha Kinsella & Rudy Mehrbani, "Five Cases of Political Threats Against Scientific Integrity," Brennan Center for Justice (Oct. 21, 2019), https://www.brennancenter.org/our-work/analysis-opinion/five-cases-political-threats-against-scientific-integrity; Douglas L. Mann, *When Facts Become Forbidden*, 10 JACC Basic Transl. Sci. 3, 402-04 (Feb. 19, 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC12012901/#:~:text=Despite%20advances%20in%20transparency%20and,Bush%20administration.

[24] Donald P. Francis, *Deadly AIDS policy failure by the highest levels of the US government: a personal look back 30 years later for lessons to respond better to future epidemics*, 33 J. Public Health Policy 3, 290-300 (Aug. 2012), https://pubmed.ncbi.nlm.nih.gov/22895498/.

[25] Proposed Rule, *supra* note 1, at 32225.

trends, long-term outcomes, and establishing cause-and-effect sequences. Under the Proposed Rule, a new administration that dislikes a particular longitudinal study funded by the prior one could unilaterally cancel it, regardless of the work undertaken to date. This would be detrimental not only to the scientists involved, but to the broader public. For example, multi-decade longitudinal studies funded by federal grants, such as the Harvard Six Cities study[26] and the Framingham Heart Study[27], have been foundational in establishing the long-term health impacts of air pollution and cardiovascular risks. If these grants were subject to arbitrary, discretionary termination mid-study because an incoming administration decided the research no longer "advance the President's policy priorities,"[28] decades of irreplaceable data and billions in taxpayer investments would be permanently lost without any results to show for it. Even if this does not occur, the potential for it could discourage scientists from investing their time and resources in establishing and conducting such studies, thus depriving the public of valuable scientific discoveries.

The Proposed Rule also prioritizes reproducibility for studies,[29] which is not always possible when analyzing climate impacts or handling unique sensitive patient data subject to HIPPA. Recognizing this, previous OMB guidelines actively advocate for agencies to not implement a reproducibility requirement in approving grants for scientific research.[30] Now, suddenly, OMB is proposing to change course with no explanation as to why. As explained in Section III below, this is not a one off. Throughout the Proposed Rule, OMB outlines fundamental changes to federal financial assistance programs, without offering any analysis to explain why these changes are justified.

The Proposed Rule also inappropriately limits scientists' ability to communicate about their work. Among other things, the Proposed Rule prevents the use of federal funding for "public messaging that promotes or opposes a particular social, political, or policy position[.]"[31] Many areas of scientific research could implicate so-called "divisive policy matters,"[32] such as findings related to climate change, and reporting such results could be viewed as violating this section of

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[26] Douglas W. Dockery et al., *An Association between Air Pollution and Mortality in Six U.S. Cities*, 329 N. Engl. J. Med. 24, 1753 (Dec. 9, 1993), https://www.nejm.org/doi/full/10.1056/NEJM199312093292401.

[27] *E.g.*, Mary B. Rice et. al., *Ambient air pollution exposure and risk and progression of interstitial lung abnormalities: the Framingham Heart Study*, 74 Thorax 11, 1063, (2019), https://pubmed.ncbi.nlm.nih.gov/31391318/.

[28] Proposed Rule, *supra* note 1, at 32212.

[29] Proposed Rule, *supra* note 1, at 32212.

[30] Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002) ("With regard to original and supporting data [underlying scientific research], agency guidelines shall not require all disseminated data be subjected to a reproducibility requirement. Agencies may identify . . . those particular types of data that can practicable [sic] be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints"). *See also id*. at 8455-8456 ("Agencies are encouraged to address ethical, feasibility, and confidentiality issues with care . . . OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data.").

[31] Proposed Rule, *supra* note 1, at 32231.

[32] *Id.*

the Proposed Rule. This, in turn, may have a chilling effect on free speech and potentially run afoul of the First Amendment. The Proposed Rule also prohibits the use of federal funding for publication costs, which could limit public access to the results of federally funded research.[33]

Moreover, the Proposed Rule would isolate American scientists and prevent them from working with their peers in other countries, which could limit progress and American competitiveness on the global scale. OMB relies on a single statutory amendment limiting defense agencies' funding of Chinese research collaboration to justify implementing an all-agency ban on using federal funds for "bilateral or multilateral collaborations, agreements, programs, or activities . . . unless expressly authorized by Federal statute or approved by the Federal agency in accordance with the proposed exception authority and applicable law."[34] Although there are exceptions, the restriction requires researchers to overcome significant additional hurdles to engage in international collaboration, which will likely deter much-needed global cooperation to research and address some of the world's most significant challenges. These consequences are also ignored in the Proposed Rule.

III. The Proposed Rule is Arbitrary and Capricious in Violation of the Administrative Procedure Act

Under the Administrative Procedure Act, agency action is arbitrary and capricious if the agency fails to examine relevant data and articulate "a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[35] As the Supreme Court explained in *Federal Commissions Commission v. Fox Television Stations, Inc.*, an agency must supply "good reasons" for reversing a previously held position, especially when those changes disrupt serious reliance interests.[36] Here, the OMB has failed to provide any empirical justification or reasoned analysis to explain how upending the independence of peer-reviewed scientific research will improve "transparency," "accountability," or "oversight,"[37] while entirely ignoring the immense reliance interests of researchers conducting multi-year scientific studies or handling sensitive, time-limited data.

As a specific example, to justify its proposal not to allow federal funding to be used for publication costs, the Proposed Rule conclusorily states that "publication costs are not inherently necessary to carry out the core programmatic objectives of most Federal awards" and that publication activities "may serve institutional, professional, or reputational interests rather than

[33] *Id.* at 32232.
[34] *Id.* at 32214–15.
[35] Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 43 (1983) (agencies must "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made").
[36] FCC v. Fox Television Stations, Inc., 556 U.S. 502 (1989); *see also* Department of Homeland Security v. Regents of the University of California, 140 S. Ct. 1891 (2020).
[37] Proposed Rule, *supra* note 1, at 32212.

the specific objectives of the Federal program."[38] But OMB cites no examples or studies to support this claim, and fails to consider the potential negative impacts of preventing researchers from using federal funding to publish their results. As noted above, this would not only harm scientific research, but also deprive the public of access to important scientific information.

Equally harmful is the proposal to limit international research collaborations. Again, as noted above, OMB relies on a single statutory amendment affecting a handful of agencies to justify overhauling every agency's funding of internationally collaborative research. OMB recognizes that Congress has found that funding such research could pose "a risk . . . in the case of some agencies,"[39] but ignores the limited nature of Congress's statements and action. That Congress has recognized such a risk for defense agencies, but *not* others, speaks volumes as to the inappropriateness of OMB expanding such a prohibition to each and every executive agency.

IV. Conclusion

For the reasons identified above, the Sabin Center strongly opposes adoption of the Proposed Rule. OMB lacks statutory authority to adopt the Proposed Rule. Even if it had such authority, adoption of the Proposed Rule would be unwise as a matter of public policy as it would result in a drastic reduction in reliable scientific research and innovation in America. We are particularly concerned about the proposal to limit peer review and increase reliance on non-expert political appointees to determine grants and terminations, which will endanger independent science, with serious negative consequences for the public interest, health and welfare. OMB's hollow claims that the Proposed Rule will increase "transparency," "accountability," or "oversight" are unsupported by the available evidence and do not justify moving forward with finalization.

Sincerely,

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[38] Proposed Rule, *supra* note 1, at 32232.
[39] *Id.* at 32215.