July 9, 2026

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

Regulation for Federal Financial Assistance (OMB 2026-0034)

Submitted electronically via https://regulations.gov

Dear Director Vought,

Thank you for the opportunity to provide comments on the Office of Management and Budget's (OMB) proposed rule on the Regulation for Federal Financial Assistance (OMB 2026-0034), published on May 29, 2026, which seeks to revise several parts of the OMB Guidance for Federal Financial Assistance located in title 2 of the Code of Federal Regulations (CFR), subtitle A. OMB's stated reasons for the proposed regulatory changes are to: (1) improve transparency, accountability, and oversight for use of federal taxpayer dollars; (2) clarify the status of OMB's policies and requirements set forth in the 2 CFR regulatory text as an OMB regulation; and (3) reduce recipient burden. However, the rule's attempts to incorporate the administration's policy priorities in the federal awards process, such as through restricting the use of funds and granting broad discretion for agencies to terminate assistance based on presidential priorities, as well as the additional requirements that it imposes on recipients, threaten to undermine the critical work that LeadingAge's members do to support older Americans.

LeadingAge is a national organization representing more than 5,300 nonprofit and mission-driven aging services providers that serve older adults and touch millions of lives every day. From our national headquarters in Washington, DC, and in collaboration with our state partners representing members active in 50 states, the District of Columbia, and Puerto Rico, we use advocacy, education, applied research, and community-building to make America a better place to grow old. Our membership spans the full continuum of aging services, including skilled nursing, assisted living, memory care, affordable housing, retirement communities, adult day programs, hospice, Programs of All-Inclusive Care for the Elderly (PACE), and home-based care. We bring together the most inventive minds in the field to lead and innovate solutions that support older adults wherever they call home. For more information, visit leadingage.org.

Many of our members receive federal financial assistance, which is essential to support the needs of the older adults who they serve. Our members receive federal financial assistance through a variety of sources, including Medicaid, Medicare, Older Americans Act grants, and the Department of Housing and Development's (HUD) rental assistance and related programs. The proposals in this rule would introduce significant uncertainty, risk, and burdens to federal recipients. We request that OMB consider removing or substantially revising the provisions identified below to address the concerns that we have raised.

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I. The proposed rule's injection of presidential policy priorities in program design, pre-issuance review, and termination decisions undermines the integrity of federal financial assistance programs.

The authority to issue federal financial assistance comes from Congress, not the President. The statutes authorizing the financial assistance set forth the purpose, along with the terms and conditions, of the assistance. In the preamble to the proposed rule, OMB itself stressed that "[t]he use of Federal funds must always remain consistent with the purpose of appropriations and the authorizing program statutes of the Federal agency."[1]

Yet later in the preamble, OMB states that "OMB and the participating agencies are using their discretion to shape financial assistance policy consistent with applicable law and the *clear direction from the President provided in the recent [executive orders]*" (emphasis added).[2] OMB proposes to do this through a variety of ways, including:

- Requiring an agency to design a program before announcing the Notice of Funding Opportunity that aligns with administration policies and priorities (proposed 2 CFR § 200.202)

- Having senior political appointees perform pre-issuance reviews to ensure that discretionary award proposals selected for funding demonstrably advance the President's policy priorities (proposed 2 CFR § 200.205)

- Authorizing the agency or pass-through entity to suspend or terminate discretionary awards on the basis that the termination is "in the interest of the Federal agency or pass-through entity, including if a Federal award does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination" (proposed 2 CFR § 200.340)

OMB fails to explain how injecting presidential priorities in the federal assistance process is in any way consistent with "the purpose of appropriations and the authorizing program statutes of the Federal agency" that are set forth by Congress. Under the proposal, agencies would be acting outside their authority in creating new substantive criteria based on presidential priorities that may be completely unrelated to the purpose of the federal financial assistance, as they design, evaluate, and terminate federal awards.

In fact, OMB states in the rule that "[g]enerally, to impose substantive conditions on Federal grants, an agency must identify statutory authority providing the agency with discretion to impose such conditions"[3] —but at no point identifies any statutory authority that would allow OMB to impose additional substantive criteria based on presidential priorities. In attempting to conform federal financial assistance policy with presidential priorities, OMB is not providing a solution to the problem that it attributed to the previous administration and identified as the primary motivation for the rule—i.e., "Federal agencies became increasingly focused on using their award programs to serve a 'woke' policy

[1] 91 Fed. Reg. 32198, 32217 (May 29, 2026).
[2] *Id.*
[3] *Id.* at 32224.

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agenda"[4] —but rather exacerbates control over federal financial assistance to this administration's unilateral goals.

Additionally, the authority to suspend or terminate a discretionary award on the basis that it no longer effectuates the "national interests as they exist at the time" of the suspension or termination would essentially codify an arbitrary and capricious standard without any recourse to recipients. In addressing the impact of this administration's change in stance on diversity, equity, inclusion, and accessibility (DEIA), OMB acknowledges that "[r]ecipients and subrecipients should not assume that practices previously viewed as consistent with prior Executive Branch guidance will necessarily satisfy applicable Federal antidiscrimination requirements as applied to Federal awards."[5] However, this inconsistency from administration to administration and even within a single administration very much would be the reality on all fronts all the time. Recipients would no longer have any standard on which they could rely since it could change by the day.

The uncertainty that would result from having federal financial assistance suspended or terminated at any point at the agency's discretion—which may be completely unrelated to the underlying statutes—destabilizes the programs supported by federal financial assistance and puts recipients in an untenable situation. For instance, housing providers, including our members, typically leverage federal funds to secure commercial loans from private lenders for affordable housing projects because federal financial assistance is seen as consistent and stable financing. Termination of the federal financial assistance—or even the threat that it could occur at any point—would have reverberations across the entire project. Not only could it jeopardize the ability to obtain or maintain private financing but also result in much less favorable financing terms.

Worse yet, recipients would have no appeal rights with respect to any terminations. As OMB states, "administrative hearing procedures would not be required … unless expressly required by other law. Such administrative procedures—which are generally intended to allow a Federal agency to make findings of fact and conclusions of law related to a recipient's alleged misconduct or noncompliance under a Federal award—would have less purpose or need for terminations based on the discretionary reasons of the Federal agency."[6] The termination provision gives agencies absolute authority to terminate discretionary awards and provides agencies with zero accountability.

Lastly, OMB cites alignment with federal contracting requirements as a justification for this change in termination authority. However, OMB fails to appreciate the fact that federal contracts serve a completely different purpose from federal financial assistance. A contract is "an agreement between the federal government and a prime recipient to provide goods and services for a fee," while a grant or other form of federal financial assistance is "an award of financial assistance from a federal agency to a recipient to carry out a public project or service authorized by a United States law."[7] The requirements for contracts are inherently more stringent since the contractor is providing a good or service directly to or on behalf of the government.

In contrast, the relationship between the government and the grantee is intentionally more tenuous. The grantee is entrusted to use the federal financial assistance to serve a public purpose and, in turn,

[4] *Id.* at 32202.
[5] *Id.* at 32221.
[6] *Id.* at 32230.
[7] USASpending.gov, "Grants vs. Contracts" (last updated May 14, 2026) at https://www.usaspending.gov/featured-content/whats-the-difference/grants-vs-contracts.

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typically has much more discretion in how it implements the program or service that it is providing, in accordance with the law. It may be appropriate for an agency to be able to exercise broad discretion in terminating its contracts over areas where it exercises direct control. But the effect that a termination, based strictly on agency discretion, would have on a program receiving federal financial assistance would be highly disruptive, exposing the recipient to risks and liabilities that are well beyond what the existing legal framework ever contemplated.

II. Uncertainty over how agencies will enforce the prohibitions on the use of federal awards exposes recipients to multiple burdens and risks and hampers their ability to carry out legitimate activities.

OMB's proposal to prohibit the use of federal awards for a number of different activities, such as subscriptions to business, professional, academic, and technical periodicals, at its very minimum creates additional burdens on aging services providers. Activities that were previously funded by federal awards all need to be reexamined—and a recipient would need to determine whether it has other sources of funding to pay for the activity (and account for that accordingly) or would need to forego that activity altogether. In addition, provisions requiring agency approval for otherwise prohibited activities raise more questions than they answer.

For example, we hear from affordable senior housing providers that conferences and association memberships are the primary means by which new Service Coordinators under HUD's Service Coordinators in Multifamily Housing Program can get the statutorily-required training that they need to meet their minimum qualifications and standards. While it seems like a request to use federal awards for a conference or other training access in this situation should be granted, there is no assurance that it would be or if this is something that would be reevaluated at every funding cycle (proposed 2 CFR § 200.432).

Additionally, it is difficult for recipients to understand what truly is prohibited activity. For example, even though OMB proposes to prohibit the use of federal awards on DEIA "policies, principles, or practices that violate any applicable Federal anti-discrimination laws" (proposed 2 CFR § 200.300), the guidance that it cites as a basis for this prohibition, the Department of Justice's July 29, 2025 memo, titled "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination" is full of definitions and examples of what is unlawful DEIA—but does not address what is lawful DEIA. OMB's proposed prohibition certainly leaves room for DEIA policies, principles, or practices that would *not* violate Federal anti-discrimination laws.

In order to effectively utilize federal financial assistance, aging services providers need clear and consistent rules to follow. For example, the Fair Housing Act specifically requires all executive departments and agencies to administer their programs and activities relating to housing development in ways that affirmatively further fair housing.[8] While HUD has proposed to rescind its Affirmative Housing Marketing Regulation, which implements this statutory requirement, the statute itself has not changed, and therefore, the obligation to affirmatively further fair housing still exists. Activities that would further this obligation— such as diligent outreach to all groups within a vicinity, including targeted outreach to groups that may otherwise not have access to the information—could be characterized as promoting DEI yet also be completely within the authority of the statute and even

[8] 42 U.S.C. § 3608(d).

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necessary to complete obligations under the statute. However, without further guidance, recipients are oftentimes faced with an overwhelming presumption that all DEI programs are unlawful.

Similarly, Section 1115 of the Social Security Act generally authorizes the waiver of Medicaid state plans to the extent necessary to carry out a demonstration or experimental project furthering the goals of the Medicaid program. States commonly use Section 1115 waivers to promote equity in access to Medicaid programs and practitioners, targeting certain populations that are experiencing gaps in access to care. Existing Section 1115 waivers often cover individuals who are incarcerated or have an intellectual/developmental disability, HIV/AIDS, substance use disorder, or serious mental illness. It appears that the very nature of the waiver goes hand in hand with targeting certain groups for the purpose of furthering program goals by providing them with much needed access to Medicaid. Yet without understanding how the prohibition on DEIA would—or would not—affect population and practitioner targeting policies, states are faced with uncertainty over whether they can continue to engage in serving the populations covered by their waiver.

The proposed rule also would potentially undermine efforts to enforce the Fair Housing Act by requiring—to the maximum extent permitted by law—agencies to ensure that federal awards are administered in a way that does not promote or support the use of disparate impact liability (proposed 2 CFR § 200.218(b)(1)) and recipients to not adopt, issue, or enforce disparate impact liability standards in administering programs or activities supported by a federal award (proposed 2 CFR § 200.218(c)(1)). These proposed changes attempt to align federal financial assistance requirements with Executive Order 14281's policy "to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible."[9] However, in HUD's Implementation of the Fair Housing Act's Disparate Impact Standard proposed rule, HUD has recognized that "[i]n 2015, the Supreme Court held that disparate impact claims are cognizable under the Fair Housing Act in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*"[10] HUD also stated that "[i]t is appropriate for courts, not a Federal agency, to make determinations related to the interpretation of disparate impact liability under the Fair Housing Act."[11] If HUD is now leaving it up to the courts to interpret disparate impact liability and taking itself out of the picture when it comes to enforcement on that basis, victims of discrimination are even more dependent upon organizations that receive federal funding, such as through the Fair Housing Initiatives Program, to carry out enforcement on their behalf. However, OMB has not addressed whether the "to the maximum extent permitted by law" qualifier on this prohibition would allow recipients to use federal funds to enforce the types of fair housing claims that the Supreme Court itself has recognized and upheld. Without any type of assurance, recipients that are highly dependent upon federal funds to carry out legal services may be chilled from enforcing disparate impact claims that are critical to serving the needs of their clients, including ensuring access to housing.

This lack of clarity adds to the confusion that recipients face in determining what they can or cannot do with federal awards. As a result of this uncertainty, recipients may forego engaging in otherwise legitimate activities to avoid potential exposure to litigation or the risk of losing federal funds. In turn, the older adults who are served by our members could be deprived of services necessary for their health care, housing, and food and nutrition.

[9] 90 Fed. Reg. 17537 (Apr. 28, 2025).
[10] 91 Fed. Reg. 1475 (Jan. 14, 2026), citing 576 U.S. 519, 519, 532-35 (2015).
[11] *Id*. at 1476.

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III. Despite OMB's efforts to streamline some aspects of the federal financial assistance process, the proposed rule subjects recipients to unnecessarily burdensome requirements.

While we support OMB's proposal to streamline the grantmaking process, such as encouraging the use of multi-year awards and having a centralized mechanism for applying for funding opportunities, we are concerned that some of OMB's other proposals undermine these efforts by imposing additional administrative burdens on recipients. In particular, the provisions on payment justifications, E-verify, and the adjustment of conditions during the course of the award would divert recipient resources that would be better directed to the actual implementation of the award.

Proposed 2 CFR § 200.305 would add a new requirement that recipients and subrecipients other than a state include a justification describing the purpose of the payment and the specific award-related work it supports. The proposed regulation provides: "The brief, written justification must include information on the activities or aspects of the Federal award that correspond to the payment request. For example, this may include project milestones, project activities, administrative activities, or other requirements that must be completed under the Federal award." While we support holding recipients accountable for their implementation of the awards, the provision essentially introduces a new reporting requirement every time payment is requested in an already burdensome process.

Additionally, OMB proposes expanding the application of the E-verify program that it currently uses for federal contracting to federal financial assistance programs (proposed 2 CFR § 200.303). In particular, the proposed rule would require recipients to participate in the E-verify program to confirm the employment eligibility of all employees and contractors hired in or performing work in the United States under a federal award. Additionally, if E-verify cannot confirm employment eligibility, and a recipient or subrecipient receives a Final Nonconfirmation (FNC) notice, the recipient or subrecipient must submit this information to the federal agency or pass-through entity. The recipient or subrecipient must also provide the federal agency or passthrough entity with the FNC case verification number and confirm that the recipient or subrecipient has taken appropriate actions consistent with E-Verify program requirements.

According to the Migration Policy Institute, nearly 1.4 million U.S. employers used E-Verify as of mid-2025, accounting for just less than one in six employers nationally.[12] As a result, most recipients would have to learn how to use a new system to verify the employment eligibility not only of their employees but also of their contractors with whom they have no existing obligation to verify. In addition, users have experienced technical delays as well as false negatives when using E-Verify,[13] which raises questions as to what value it would add when recipients already have employment verification measures in place to meet existing I-9 requirements. Again, this is another example where the application of federal contracting requirements would not necessarily be appropriate for federal recipients and would result in additional burdens.

Lastly, OMB's proposal to allow for the addition and removal of specific conditions—including at the program level—throughout the period of performance, based on a variety of factors, would expose recipients not only to uncertainty but also considerable burdens (proposed 2 CFR § 200.208). The examples of the types of specific conditions that OMB proposes are wide ranging in scope and include

[12] Muzaffar Chishti and Colleen Putzel-Kavanaugh, "Employment Verification: The Next Front for U.S. Immigration Enforcement?" (Nov. 20, 2025) at https://www.migrationpolicy.org/article/everify-employment-verification.
[13] *Id.*

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establishing additional prior approvals, requiring the recipient to obtain technical or management assistance, and requiring additional project monitoring, which may include financial integrity-related site visits. Having to address new requirements, which can arise at any point during the period of performance would be highly disruptive not only to the recipients but also to the operation of the program.

We appreciate the opportunity to comment on this proposed rule. The extensive changes to the federal financial assistance guidance that this rule proposes would expose our members, in their capacity as federal financial assistance recipients, to greater uncertainty, risk, and burdens that would make it incredibly challenging for them to carry out their critical work serving older adults. Thank you for your consideration of our comments. If you have any questions, please feel free to reach out to Clarette Yen cyen@leadingage.org for more information.

Sincerely,

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