UNITED STATES CONFERENCE OF CATHOLIC BISHOPS

Office of the General Counsel

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 •
202-541-3300 • FAX 202-541-3337

Filed electronically

July 8, 2026

Office of Federal Financial Management
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

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

To Whom It May Concern:

The United States Conference of Catholic Bishops ("USCCB") respectfully submits the following comments in response to the Office of Management and Budget's ("OMB") proposed rule revising the Guidance for Federal Financial Assistance in title 2 of the Code of Federal Regulations. Among other things, the proposed rule addresses race discrimination, religious liberty, services to and employment of immigrants, gender ideology, abortion, and diversity, equity, and inclusion (DEI).

Numerous Catholic organizations – charities, schools, health care providers, and more – further their religious missions and the common good by participating in federally funded programs. USCCB has a longstanding interest in the effective and lawful administration of federal programs, including ensuring that such programs advance human dignity, meet the needs of vulnerable populations, and respect religious liberty.

The USCCB supports a number of the proposed rule's provisions. Others are laudable in concept but require further refinement, while some are fundamentally flawed and should be reconsidered.

In keeping with OMB's request, we have organized our comments by reference to the specific sections of the proposed rule to which they pertain.

[200.205] - federal agency merit review of proposals

The proposed rule institutes a process of pre-issuance merit review for discretionary awards. It says that awards must not be used to fund, promote, encourage, subsidize, or facilitate:

(1) Racial preferences or other forms of racial discrimination by the recipient, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation

The USCCB wholeheartedly endorses the goal of combatting racism. In our comments below on §§ 200.218 and 200.300, we note concerns about how related provisions in the NPRM fail to account for distinctions between Title VI and Title VII, and how the prohibition on use of disparate impact analysis will create unintended harms.

(2) Denial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic

We fully support this provision, which is prudently designed as a restriction on the scope of activities that may be supported by federal awards, rather than as a prohibition on speech or conduct outside the scope of the award.

(3) Illegal immigration, or any other initiatives that compromise public safety or promote anti-American values

The expansiveness of the provision threatens to chill lawful conduct that, in some cases, is religiously motivated. Providing for the basic human needs of immigrants, without regard to their immigration status, is integral to the mission of the Catholic Church and her ministries. The current administration has characterized immigration as a threat to public safety, and various Congressional representatives have accused Catholic entities of facilitating illegal immigration.[1] Religious entities that provide food, shelter, or other humanitarian aid to immigrants, or transportation related to such aid, may reasonably fear that their ordinary ministries could be characterized as facilitation of illegal immigration or as an initiative that compromises public safety. Under these same interpretations, even ensuring the full inclusion of undocumented immigrants in the sacramental life of the Church or providing for the education of undocumented children could be misconstrued as "encouraging" their presence in the United States without authorization. The proposal may thus operate to chill religious exercise protected under the First Amendment and the Religious Freedom Restoration Act.

The NPRM does not explain what it means by "anti-American values." Although the NPRM describes the merit review process as objective[2], the question of what is anti-American affords ample room for disagreement in all but the most extreme cases. Of course, tolerance of dissenting opinions has long been regarded as an American value.[3] Unfortunately, there have also been large swaths of our history when Catholicism itself was widely viewed as incompatible

---

[1] *See*, *e.g.*, statement of Rep. Elijah Crane, Hearing of the House Committee on Homeland Security, July 16, 2025 ("We are talking about the NGO's [sic] that they used as middlemen to carry out their operations, like the Catholic Charities they used to facilitate, normalize, and accelerate illegal immigration into this country."), *available at* https://www.congress.gov/event/119th-congress/house-event/LC75100/text.

[2] 91 FR at 32249 ("A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency.").

[3] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...").

with the American way of life. The prevalence of so-called Blaine Amendments, deeply rooted in anti-Catholic bigotry,[4] are one such example of religious prejudice masquerading as a bulwark against anti-American values. While these sentiments have become less mainstream, hostility toward Catholic beliefs in the public sphere persists today. If experience in recent years is any indication,[5] the potential for such an overly broad, inherently subjective criterion to be abused is far too high to justify its inclusion here.

[200.206] – review of risk posed by applicants

Alongside the merit review process in § 200.205, the NPRM would establish a process to evaluate the risks posed by applicants before issuing federal awards. We are grateful that a history of violation of civil rights and religious liberty laws are among the "questionable practices" that would count against award applicants under this process.

The NPRM also requires federal agencies to consider, "[b]ased on publicly available and verifiable information, the applicant's membership in or affiliation with organizations engaged in activities that…undermine public safety or national security…".[6]

Because we are concerned that § 200.205's application to illegal immigration may imperil funding for charities that serve everyone regardless of immigration status, it is similarly concerning that applicants for federal awards may be penalized for their associations with such charities. Many Catholic charitable organizations are formally affiliated with Catholic dioceses, which may also undertake their own pastoral and charitable efforts directly, thereby raising the possibility that Catholic dioceses themselves and their charitable arms would be deemed to pose an unacceptable risk as applicants for federal awards.

[200.218] – disparate impact (see also Section 200.300)

The NPRM says that "[t]o the maximum extent permitted by law, to avoid violating the Constitution and Federal civil rights laws, recipients and subrecipients must…[n]ot adopt, issue, or enforce disparate-impact liability standards in administering programs or activities supported by a Federal award." While the USCCB appreciates that disparate impact liability can, in some circumstances, require more than is necessary to promote racial justice, this provision of the NPRM is an overcorrection.

Various federal and state nondiscrimination laws impose disparate impact liability, most notably Title VII, which expressly codifies disparate impact liability.[7] The NPRM's caveat that its prohibition on use of disparate impact liability standards only applies to the maximum extent permitted by law is not enough to avoid creating a compliance trap. This is not a cost allowability rule – it does not merely prohibit entities from using federal funds to comply with

---

[4] *See generally* Richard W. Garnett, *The Theology of the Blaine Amendments*, 2 FIRST AMEND. L. REV. 45 (2004).
[5] *See, e.g*, Emily P. Walker, *HHS Under Fire for Denying Grant to Catholic Group*, ABC NEWS (Dec. 2, 2011), https://abcnews.com/Health/Wellness/hhs-fire-denying-grant-catholic-group/story?id=15076483.
[6] 91 FR at 32250.
[7] 42 U.S.C. 2000e-2(k); see, e.g., N.Y. Exec. Law § 296(5-a), (5-b) (establishing disparate impact liability in housing and employment); Cal. Code Regs. Tit. 2, § 11017(a) (employment).

disparate impact standards. Instead, by prohibiting observance of disparate impact standards in any program *supported by* a federal award, whether or not federal funds are put specifically to that purpose, it effectively precludes programs from receiving federal funds if they are subject to generally applicable state laws imposing disparate impact liability.

While the NPRM provides an exception for internal use of disparate impact analysis, that exception is too narrow. For the purposes of compliance with state disparate impact laws, it is of no use for a recipient to be able to "conduct[] statistical or demographic analysis for internal program evaluation, [or] research" if it cannot use that analysis to "[a]djust[] activities or performance under the Federal award based on theories, or the assumed risk of, disparate-impact liability." For example, a health clinic supported by a federal award would be permitted to analyze statistics on its patient base and local demographics in order to determine whether its outreach efforts unintentionally exclude any particular population, and may find that it has fewer Hmong patients than expected. But it would be prohibited from updating its website and intake forms to be readable in Hmong. This illustrates a crucial distinction that the NPRM fails to make: between lawful outreach efforts based on race, color, or national origin, and unlawful preferences on those bases.

[200.219] – discriminatory event services

The NPRM prohibits recipients from engaging in discrimination "on the basis of the viewpoint, content, or subject matter of speech—including on the basis of political, ideological, or religious affiliation or perspective—in providing services for events, meetings, or other expressive activities."[8]

While the intent of this provision is laudable, its application to nonpublic entities (when speech takes place within scope of a federally funded program) threatens free exercise and free speech rights of religious organizations such as Catholic universities. Especially considering the provision's protection against discrimination on the basis of religious affiliation or perspective, it is strange not to include an exemption in § 200.219(b) for religious organizations, who themselves have the right to maintain the integrity of their religious identity and expression.[9]

[200.300] – national policy requirements

A. Section 200.300(b)(1)

Section 200.300(b)(1) prohibits the use of federal awards to fund, promote, encourage, subsidize, or facilitate DEI "policies, principles, or practices that violate any applicable Federal anti-discrimination laws," including "racial preferences or other forms of racial discrimination

---

[8] 91 FR at 32252.

[9] See *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952); *Serbian E. Orthodox Diocese for U.S. & Can. v. Milivojevich*, 426 U.S. 696, 713–16 (1976); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 188–89, 196 (2012); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. 732, 746–48, 757 (2020); *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 655–57, 660–61 (10th Cir. 2002); *Demkovich v. St. Andrew the Apostle Parish*, 3 F.4th 968, 975–82 (7th Cir. 2021) (en banc); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573–75 (1995); *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648, 653–56 (2000).

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." Catholic teaching condemns the evil of racism, and the USCCB has long supported federal efforts to combat it.[10] Catholic teaching also supports some efforts, traditionally countenanced under federal civil rights law, intended to remedy the harms of past discrimination.

Painting the contours of federal civil rights laws in broad strokes, the NPRM conflates the reach and requirements of Title VI and Title VII. Title VI applies to recipients of federal financial assistance, but it does not generally prohibit discrimination in employment.[11] Title VII does prohibit employment discrimination, but it applies based on the size of the employer, not on receipt of federal financial assistance.

The NPRM nonetheless applies the same standard to both contexts, prohibiting the use of "race or intentional proxies for race…as a selection criterion for employment or program participation." It is generally true that, in the context of program participation, such practices are prohibited under Title VI. However, notwithstanding the Equal Employment Opportunity Commission's recent recission of its guidance on affirmative action, that is not generally true of voluntary affirmative action plans under Title VII.[12]

The NPRM thus seems to identify particular employment practices as inconsistent with Title VII – at least by implication, since they are beyond the reach of Title VI – and incorporate those interpretations into a certification applicable to all registrants, even those not otherwise subject to Title VII. This approach risks transforming a general certification into a mechanism for a contested interpretation of Title VII on entities that may not be subject to the statute at all, thereby extending the statute's practical reach beyond the limits established by Congress.

B. Section 200.300(b)(2) and (3)

Section 200.300(b)(2) and (3) prohibit the use of federal awards to fund, promote, encourage, subsidize, or facilitate gender ideology and the "so-called 'transition' of a child under 19 years of age from one sex to another, including the chemical and surgical mutilation of children." We support these provisions and urge OMB to further strengthen them.

---

[10] Catechism of the Catholic Church, nos. 1935, 1938; "Open Wide Our Hearts: The Enduring Call to Love - A Pastoral Letter Against Racism," U.S. Conference of Catholics Bishops (2018), *available at* https://www.usccb.org/resources/open-wide-our-hearts-enduring-call-love-pastoral-letter-against-racism.

[11] See DOJ Title VI Legal Manual, Section X, at 1 ("Title VI prohibits recipients, most of which are employers, from discriminating based on race, color, and national origin. Congress, however, did not intend Title VI to be the primary federal vehicle to prohibit employment discrimination. It does forbid recipients from discriminating in employment in certain situations. Specifically, if 'a primary objective' of the federal financial assistance to a recipient is to provide employment, then the recipient's employment practices are subject to Title VI. 42 U.S.C. § 2000d-3. In addition, a recipient's employment practices also are subject to Title VI where those practices negatively affect the delivery of services to ultimate beneficiaries.") (footnotes omitted).

[12] *See United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979); *see also Johnson v. Transp. Agency*, 480 U.S. 616 (1987).

First, the restriction on sex-rejecting procedures ("SRPs") should apply to adults as well. Limiting the prohibition to procedures on minors implies that there is no inherent problem with SRPs, but rather that SRPs are problematic only because of their health risks, their sometimes-irreversible consequences, and minors' incapacity to consent to them. But federal awards should never support SRPs, no matter the patient's age.

Second, the final rule should clarify that prohibited support of "transition" includes social transition,[13] and should specifically include actions taken by schools or school staff to facilitate "social transition" without parental notification.[14]

C. Section 200.300(c)

Section 200.300(c) prohibits federal agencies and pass-through entities from discriminating against or disfavoring faith-based organizations in the award application process. We applaud the inclusion of this provision as well; however, it too must be strengthened in order to reflect the full protection of religious liberty set out in federal law.

First, the provision is structured as a nondiscrimination principle, which is an incomplete conception of religious liberty. The Religious Freedom Restoration Act ("RFRA") demands more: even when the law places religious and secular entities on equal footing, RFRA prohibits the federal government from substantially burdening religious exercise unless doing so serves a compelling governmental interest and is the manner of doing so that is least restrictive of that exercise. The final rule should acknowledge application of RFRA to federal awards and require adoption of procedures for granting accommodations under RFRA for applicants and awardees.

Second, § 200.300(c) reads as a protection only for applicants for federal awards rather than for religious entities throughout the lifecycle of the federal award process. But discrimination against religious entities, or government action that burdens their religious exercise, can manifest during the administration and renewal of an award, not just during the selection process. The final rule should offer more comprehensive protection.

Last, there are numerous provisions of federal law that protect religious liberty across various contexts, and the precise rules they establish differ. For instance, whereas under RFRA the government can justify burdening religious exercise, the exemption for religious employers in Title VII is best read as an outright exemption for any employment decision undertaken for

---

[13] *See* 2 CFR 603.30(a)(9) (defining "social transition" as "the process of adopting a 'gender identity' or 'gender marker' that differs from a person's sex. This process can include psychological or psychiatric counseling or treatment by a counselor or other provider; modifying a person's name (e.g., 'Jane' to 'James') or pronouns (e.g., 'him' to 'her'); calling a person 'nonbinary'; use of intimate facilities and accommodations such as bathrooms or locker rooms specifically designated for persons of the opposite sex; and participating in athletic competitions or other activities specifically designated for persons of the opposite sex; and the use of non-medical physical sex-rejecting interventions such as binders used to flatten female breasts. 'Social transition' does not include the provision of sex-rejecting procedures.").

[14] *See Mirabelli v. Bonta*, 607 U.S. 492 (2026).

religious reasons.[15] To account for these variations, the final rule should include a global rule of construction stating that rule does not displace the operation of any statute, regulation, or guidance that is more protective of religious liberty.

[200.303(f)] – recipients required to use E-Verify

Section 200.303(f) requires recipients of all federal awards to use E-Verify. It is reasonable for OMB to prohibit unlawful employment under federal awards, but OMB should also not impose an undefined organization-wide E-Verify mandate on every recipient. Without a safe harbor, the proposed rule may chill lawful hiring, burden nonprofits and religious organizations, create confusion over contractors and indirect-cost employees, and encourage discriminatory over-screening.

Under a functional and appropriate safe harbor, a recipient would be deemed to comply with § 200.300(f) if it:

(1) enrolls in and uses E-Verify in accordance with applicable DHS requirements;
(2) verifies only employees who are newly hired after the effective date of the applicable award term, and whose labor is directly charged to the Federal award or who are specifically assigned to perform substantial work under the Federal award;
(3) is not required to verify existing employees, employees whose work is incidental, indirect, or *de minimis*, or persons who are not employees or contractors (e.g., beneficiaries, clients, patients, students, volunteers);
(4) satisfies the requirement as to contractors by including a contract term requiring contractors to comply with applicable E-Verify obligations for personnel performing substantial work under the Federal award and by obtaining a written certification of compliance;
(5) follows DHS procedures for Tentative Nonconfirmations and Final Nonconfirmations and does not take adverse action except as permitted by applicable law; and
(6) maintains records sufficient to show good-faith compliance.

The final rule should also specify that no disallowance, suspension, termination, or other enforcement action may be based on isolated or inadvertent errors if the recipient corrects the error within a reasonable period after discovery and has not knowingly, recklessly, or repeatedly disregarded the requirement.

We are also deeply concerned that § 200.300(f)(2), which requires recipients to report Final Nonconfirmations to the federal agency or pass-through entity, would essentially co-opt recipients into an immigration enforcement architecture. No effort is made in the proposed rule's preamble to explain or even acknowledge this additional requirement. While OMB states E-Verify has been required for federal contractors for over fifteen years,[16] it overlooks the lack of any such reporting requirement in that context, and there is no obvious nexus between the added

[15] *Starkey v. Roman Catholic Archdiocese*, 41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring); *Fitzgerald v. Roncalli High School*, 73 F.4th 529, 535 (7th Cir. 2023) (Brennan, J., concurring); *Billard v. Charlotte Catholic High School*, 101 F.4th 316, 335 (4th Cir. 2024) (King, J., concurring in the judgment).
[16] 91 FR at 32222–3.

stipulation to report Final Nonconfirmations and OMB's stated goals relative to federal awards. Therefore, OMB should remove this requirement entirely. Short of that, OMB should clarify that proposed § 200.303(f) is strictly an employment-eligibility verification requirement, not an immigration-enforcement mandate. A requirement that recipients report Final Nonconfirmations to the federal awarding agency places religious and charitable recipients in an untenable position. Once a report is made, the recipient cannot know whether the agency will use or share that information for immigration-enforcement purposes, even where the awarding agency is not itself an immigration-enforcement agency. This may create incentives for recipients to avoid hiring or assigning individuals whom they perceive as more likely to generate E-Verify complications based on national origin, ethnicity, language, accent, surname, perceived immigration status, or race – a practice that itself would expose recipients to legal liability under federal civil rights law.

[200.340] – discretionary termination

The NPRM establishes that "[t]he Federal agency or pass-through entity, to the extent permitted by law, may terminate a Federal award in part or its entirety if the Federal agency or pass-through entity determines that a 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."

This provision grants federal agencies virtually boundless latitude to terminate existing awards. This discretion could be used by future administration to evade the religious liberty protections the rule establishes, since it will be easy to claim that an award was terminated under one of the vague and expansive standards the provision sets out rather than out of disfavor toward the religious character, affiliation, or exercise of the recipient.

The uncertainty that this provision will inject into federal funding may also destabilize particular areas of the economy that depend on federal subsidies. To be sure, in some cases the government has little if any interest in propping up otherwise insolvent entities. But there are public goods that charity has generally been unable to fully fund and that are not otherwise profitable, such as development of vaccines or treatments for diseases disproportionately suffered by the poor.

[200.477] – prohibition on costs "associated with elective abortion"

Section 200.477 establishes a cost allowability rule prohibiting recipients from charging federal awards for costs "associated with elective abortions…except as expressly authorized by Federal law." This provision is laudable in concept but lacking in execution.

To fulfill its stated purpose of effectuating EO 14182, "Enforcing the Hyde Amendment,"[17] this regulation must adopt contours at least as strong as those found in the Hyde Amendment (which prohibits federal funding for abortion except in cases of rape, incest, and

[17] 92 FR at 32232 ("This addition is consistent with Executive Order 14182, Enforcing the Hyde Amendment (January 24, 2025), and reflects longstanding appropriations restrictions prohibiting the use of Federal funds for elective abortion except in limited circumstances.").

danger to life of the mother) or, where applicable, other Hyde-like statutes that an award may fall under.[18] ”Elective,” however, is not a term found in the Hyde Amendment or similar federal statutes. Unfortunately, “elective” abortions would likely be construed to be a smaller category than those for which funding is prohibited under Hyde. In other words, the range of abortion scenarios that could be considered non-"elective,” and thus eligible for federal funding under the proposed regulation, would likely be wider than what Hyde permits. For instance, some may not regard an abortion as “elective” if continued pregnancy poses a detriment to the health but not a threat to the life of the mother, or if a physician expects the child to die shortly after birth. In such interpretations, § 200.477 would permit federal funding of abortions where prohibited by Hyde. To avoid this question and conflict, § 200.477 should not say ”elective” at all and instead, at very least, adopt the relevant language from Hyde verbatim, to say that the funding restriction shall not apply to abortions “(1) if the pregnancy is the result of an act of rape or incest; or (2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.” We invite the final rule, however, to be even stronger in protecting innocent human life. It would also likely need to recognize that other statutes for respective agencies may control.

The final rule should also clarify what “associated with” means. Does it refer to Hyde’s prohibition against federal funds being spent “for” an abortion? Does it also refer to Hyde’s additional prohibition on federal funds being spent on health benefits coverage for abortion? Is its scope meant to mirror the phrase “promote, encourage, subsidize, or facilitate” in § 200.300? Does “associated with” include referrals or counseling for abortion? Does it include, and thus prohibit, costs that the prior Administration misguidedly claimed were not reached by Hyde’s prohibition, such as transportation for the purposes of obtaining an abortion?[19] The final rule must answer these questions and, we submit, should do so in a manner fully protective of innocent human life and rights of conscience.

Section § 200.477 is structured as a cost-allowability rule, which tends to aim at maintaining technical separation between certain costs and federal awards as a matter of account-keeping rather than as a restriction on the scope of conduct that a federal award may support. In that respect, this provision stands in contrast to more comprehensive language in § 200.300 regarding sex-rejecting procedures, gender ideology, and DEI. Unless the final rule construes “associated with” broadly enough to effectively collapse the distinction between a cost allowability provision and a restriction on conduct within the performance of a funded program, this difference in approach is unjustifiable. As is, absent elaboration on the meaning of “associated with,” the provision may preserve the ability of programs that promote, encourage, subsidize, or facilitate abortion to continue to receive federal funding.

[18] Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. B, tit. V, §§ 506–507, 140 Stat. 173, 317–18 (2026).

[19] *See, e.g.*, U.S. Dep’t. of Health and Human Services, “Unaccompanied Children Foundational Rule,” 89 F.R. 34602, April 18, 2024. *See also* USCCB and Catholic Charities USA comment letter, December 4, 2023, https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/23-1204_Joint_USCCB-CCUSA_Comments_UC_Foundational_Rule.pdf

Conclusion

The USCCB appreciates OMB's efforts to promote integrity and accountability in federal awards. Although some of the NPRM's provisions are flawed in concept, we support many of the rule's basic aims. We respectfully urge OMB to refine the NPRM's provisions on race discrimination, reconsider or temper its provisions regarding undocumented immigrants, expand its protections for religious liberty, strengthen its prohibitions on funding SRPs and abortion, and adopt more restrained and precise processes for review and termination of awards.

Thank you for your consideration of these comments.

Respectfully submitted,

William J. Quinn
General Counsel

Daniel Balserak
Associate General Counsel