

July 13, 2026

Via Federal eRulemaking Portal

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

Re: OMB Regulation for Federal Financial Assistance

Dear Director Vought:

We are scholars at the Ethics and Public Policy Center (EPPC), and we write in response to Office of Management and Budget's (OMB) proposed rule "Regulation for Federal Financial Assistance."¹ Rachel Morrison is an EPPC Fellow, the director of EPPC's Administrative State Accountability Project (ASAP), and a former attorney with the Equal Employment Opportunity Commission (EEOC). Eric Kniffin is an EPPC Fellow, member of ASAP, and a former attorney in the U.S. Department of Justice's (DOJ) Civil Rights Division. Jamie Bryan Hall is the Director of Data Analysis and a Fellow in EPPC's Life and Family Initiative.

In this Proposed Rule, OMB is partnering with 41 agencies to propose an overhaul of regulations at 2 CFR, the part governing federal financial assistance and create uniform standards for grants across agencies. **We strongly support the revised approach to regulations on federal financial assistance**, which, subject to public notice and comment, will create binding uniform guidance across agencies.

I. OMB has authority to issue binding regulations.

As an initial matter, we agree OMB has statutory authority to provide overall direction and leadership to federal agencies on financial management matters by issuing regulations. As noted in the Proposed Rule, 31 U.S.C. § 503(a)(2) authorizes OMB to provide "overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements." Similarly, 31 U.S.C. 6307 authorizes OMB to "issue supplementary interpretative guidelines to promote consistent and efficient use of ... grant agreements ... and cooperative agreements."

II. The Proposed Rule provides many benefits.

OMB explains that its rule would: (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.² We agree. Consistent with this administration's priorities, this rule will promote predictability and transparency, ensure consistency,

¹ 91 Fed. Reg. 32198 (May 29, 2026), <https://www.federalregister.gov/d/2026-10817>.

² 91 Fed. Reg. at 32199.

reduce confusion, eliminate fraud and waste, and improve federal oversight of grantmaking.³ These are worthy goals.

As acknowledged in Executive Order 14332, “Writing effective grant applications is notoriously complex, and grant applicants that can afford legal and technical experts are more likely to receive funds.”⁴ We support the efforts to streamline and standardize the grant application process, in particular the requirements in § 200.204 to publish all Notice of Funding Opportunities in plain language on Grants.gov, removing the need for applicants to employ technical or legal experts, as well as enabling entities to participate fully in the grant application process through use of a single platform. This will be particularly beneficial to small businesses and other small entities that do not currently have the resources to identify funding opportunities or to employ the experts necessary in many cases to win competitive grant awards. The “Regulatory Flexibility Act: Small Entity Analysis of Proposed Revisions to 2 CFR 200” rightly acknowledges that small entities may face increased administrative costs following a grant award for compliance with other standardized provisions, and we believe OMB correctly concludes that exempting small entities from various reporting requirements would undermine the purposes of the regulation without meaningfully reducing the burden on small entities.⁵ The Small Entity Analysis should also reflect potentially significant benefits to small entities from greater ability to compete for and win federal financial assistance in the first place.

This rule also will help make agencies more accountable to the people. In general, we support the involvement of political appointees reviewing grants to ensure that (within the bounds of statutory constraints) regulations are aligned with presidential priorities that more accurately reflect the will of the people. The President is elected by the people and has the prerogative to set policy priorities for agencies, within the bounds of constitutional and statutory power.

Under the Biden Administration, OMB and federal agencies used federal awards to promote woke policies, DEI (diversity, equity, and inclusion), gender ideology, and abortion.⁶ In contrast, OMB under the Trump Administration proposes to prohibit grants that push disparate impact liability, discriminatory event services, DEI, gender ideology, sex-rejecting procedures, and abortion. As explained below, we support these proposals and provide suggestions of ways OMB can bolster these proposals.

III. [§ 200.218] Disparate Impact Liability

OMB proposes a new provision requiring recipients of federal financial assistance not to use funds in a way that promotes or supports theories of disparate impact liability, unless otherwise required by law.⁷ Disparate impact liability is defined as:

a theory under which a facially neutral policy or practice (for example, a merit-based employment policy or practice) gives rise to an automatic or near-insurmountable presumption of the existence of unlawful discrimination on the basis of federally protected characteristics (such as race or sex) where there are any differences or disparities in outcomes (for example, disproportionate effects) among different races, sexes, or similar groups. Under a theory of disparate-impact liability, this

³ Cf. Exec. Order 14332, Improving Oversight of Federal Grantmaking, 90 Fed. Reg. 38929 (Aug. 7, 2025), <https://www.federalregister.gov/d/2025-15344>.

⁴ *Id.* at 38929.

⁵ Available at <https://www.regulations.gov/docket/OMB-2026-0034/document>.

⁶ See Rachel N. Morrison, *When Public Comment Matters*, National Review (Apr. 8, 2024), <https://www.nationalreview.com/corner/when-public-comment-matters/>.

⁷ 91 Fed. Reg. at 32213.

presumption would apply even if there is no facially discriminatory policy or practice, there is no discriminatory intent involved, and equal opportunity is provided. Discriminatory intent is irrelevant in a disparate-impact claim. Disparate-impact liability effectively mandates consideration of federally protected characteristics, such as race or sex, and incentivizes racial balancing, contrary to principles of equal treatment and merit-based opportunity.⁸

A. Disparate-impact liability should be prohibited.

There are several separate and independent reasons why disparate-impact liability should be prohibited. First, disparate-impact liability is based on the fundamentally flawed and abstract assumption, not backed by evidence, that any disparities are per se discrimination.⁹ As the *Washington Post* Editorial Board explained, “The concept of disparate impact stretches that idea to the point of incoherence. It says that different average outcomes among groups—even if there was no intent to discriminate—can still be a civil rights violation.”¹⁰ There are many nondiscriminatory reasons why specific determinations may result in disparities within a protected basis. Statistical disparities *alone* without evidence of actual disparate treatment should not be used as a proxy for unlawful discrimination.

Second, we agree with law professor and former U.S. Commission on Civil Rights Commissioner Gail Heriot that “disparate impact liability is incoherent,” gives a federal agency “enormous discretion,” and “makes almost everything presumptively illegal.”¹¹ For example, in the housing context, one of the authors of this comment, Eric Kniffin, served in the Civil Rights Division’s Housing and Civil Enforcement Section from 2006-2009. During that time, Section leadership encouraged attorneys to open fair lending investigations based solely on allegations that a financial institution had not opened enough branches in minority-majority census blocks. Section leadership said there was no need to prove that the financial institution had intentionally avoided minority-majority neighborhoods and that it would not even matter if there was no evidence that comparable branch location sites had been for lease or sale in the neighborhoods in question. The Housing Section opened matters during this period that relied on such legal theories. In one 2009 lawsuit, the Housing Section claimed that a financial institution was discriminating on the basis of race because it advertised on “general audience” radio stations instead of stations “with a format targeted toward black listeners.”¹² The Department of Justice negotiated a settlement that required the bank to build a branch in a majority African-American neighborhood.¹³

Third, disparate-impact liability also raises serious constitutional concerns. As President Trump explained in Executive Order 14281, “Disparate-impact liability is wholly inconsistent with the Constitution and threatens the commitment to merit and equality of opportunity that forms the foundation

⁸ *Id.* at 32522.

⁹ See generally Thomas Sowell, *Discrimination and Disparities* (2019) (gathering empirical evidence to challenge the idea that different outcomes can be explained by discrimination or any other single factor).

¹⁰ Editorial Board, *Pam Bondi’s Welcome Woke Rollback*, Wash. Post (Dec. 10, 2025), <https://www.washingtonpost.com/opinions/2025/12/10/pam-bondi-justice-disparate-impact-regulations/>.

¹¹ Gail L. Heriot, *Title VII Disparate Impact Liability Makes Almost Everything Presumptively Illegal*, 14 N.Y.U.J. L. & Liberty 159 (2020), <https://ssrn.com/abstract=3482015>.

¹² Complaint, *United States v. First United Security Bank*, No. 09-0644 (S.D. Ala., Sept. 30, 2009) ¶17, available at <https://clearinghouse-umich-production.s3.amazonaws.com/media/doc/44693.pdf>.

¹³ See Thomas E. Perez, AAG for CRT, The Attorney General’s 2009 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976 at 5-6 (Apr. 27, 2010), https://www.justice.gov/sites/default/files/crt/legacy/2015/04/13/ecoa_report_2009.pdf (citing *United States v. First United Security Bank*, No. 09-0644 (S.D. Ala.)).

of the American Dream.”¹⁴ Indeed, DOJ acknowledged in its December 10, 2025, disparate-impact rule that the theory of disparate impact raises “serious legal concerns.”¹⁵

In *West Virginia v. EPA*, the Supreme Court limited the ability of federal agencies to regulate on matters of “vast economic and political significance” without “clear congressional authorization.”¹⁶ This doctrine, known as the major question doctrine, means that Congress must clearly speak on important matters before an agency can issue regulations that have the force and effect of law. Disparate-impact liability is arguably a major question that Congress must speak to directly.

In *Loper Bright*, the Supreme Court denied that courts must defer to what federal agencies say about federal statutes. The Court recognized that “statutes ... have a single, best meaning” that is “fixed at the time of enactment.”¹⁷ *Loper Bright* recognizes that courts, not federal bureaucrats, are in the best position to determine what statutes mean. Moreover, there are frequently good reasons to doubt that regulations actually reflect an honest effort to discern congressional intent. As former Secretary of Labor Eugene Scalia has noted, regulations often reflect “policy choices, often outfitted after the fact with legal explanations.”¹⁸ Even worse, “[s]ome agency heads not only don’t interpret; at times they’re indifferent to—even contemptuous of—the right legal answer.”¹⁹ Under the text of civil rights laws (with the possible exception of Title VII), the single, best meaning is that they require equal opportunity, not outcomes, and prohibit only *intentional* discrimination.

But as DOJ’s Office of Legal Counsel recently explained, “[p]roperly understood,” Title VII (which contains statutory language authorizing disparate-impact liability) “proscribes only those practices that reflect a significant likelihood of intentional discrimination.”²⁰ DOJ further explained that the EEOC’s Title VII guidelines violate the constitution because “they contemplate liability based on disparate effects alone, without regard to an employer’s likely intent, and pressure employers to engage in race-based decisionmaking.”²¹ The argument against disparate-impact liability outside the Title VII context is even stronger where there is no statutory language authorizing disparate-impact liability.

The Supreme Court held in *Students for Fair Admissions* that race-conscious admissions policies and racial balancing in higher education violated the Equal Protection Clause of the Fourteenth Amendment.²² Any race-conscious housing policies, even to avoid disparities that could give rise to disparate-impact claims, are constitutionally suspect. Disparate impact’s equal protection issues are only

¹⁴ 90 Fed. Reg. at 17538.

¹⁵ 90 Fed. Reg. at 57143-44.

¹⁶ *West Virginia v. EPA*, 597 U.S. 697, 716, 723 (2022).

¹⁷ *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024) (quoting *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)).

¹⁸ See Eugene Scalia, *Chevron Deference Was Fun While It Lasted*, WSJ (Jan. 9, 2024), <https://www.wsj.com/opinion/chevron-deference-was-fun-while-it-lived-legal-scotus-partisan-regulation-changes-bddbfe27>.

¹⁹ *Id.*

²⁰ Constitutionality of Disparate-Impact Liability Under Title VII, 50 Op. O.L.C. __ (June 9, 2026), <https://www.justice.gov/olc/media/1444871/dl>.

²¹ *Id.*

²² *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 223 (2023) (“Outright racial balancing is patently unconstitutional.” (quoting *Fisher v. Univ. of Tex.*, 570 U.S. 297, 311 (2013))).

exacerbated by the “arbitrary,” “imprecise,” and “opaque” nature of racial and ethnic categories often used to determine disparate impact.²³

Legal scholar Alison Somin explained for the *Harvard Journal of Law and Public Policy* how disparate-impact theories violate the non-delegation doctrine:

Because disparate-impact violations can result from so many innocuous decisions, agencies that enforce disparate impact have virtually unfettered discretion to decide what disparate-impact violations to pursue. Even under the deferential ‘intelligible principle’ standard, such a grant of virtually unlimited power violates the Constitution’s prohibition on delegation of congressional power.²⁴

Somin concludes: “The nondelegation and major questions doctrines protect individual liberty. By making huge swaths of private conduct presumptively illegal, disparate impact as currently understood has significantly infringed individual liberty.”²⁵

B. Prohibiting disparate-impact liability aligns with Trump Administration priorities.

Eliminating disparate-impact liability under FFA regulations aligns with the following executive orders issued by President Trump:

- EO 14281, “Restoring Equality of Opportunity and Meritocracy,” which seeks to “eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.”²⁶
- EO 14173, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” which seeks to end illegal preferences and discrimination, including under “the guise of so-called ‘diversity, equity, and inclusion’ (DEI).”²⁷ In the words of legal scholar Giancarlo Canaparo, “To truly save America from the yoke of D.E.I., the theory of disparate impact has to be eliminated.”²⁸
- EO 14219, “Ensuring Lawful Governance and Implementing the President’s ‘DOGE’ Deregulatory Initiative,” which directs agencies to rescind regulations including those that are “not authorized by clear statutory authority,” “impose significant costs upon private parties that are not outweighed by public benefits,” and “impose undue burdens on small business and impede private enterprise and entrepreneurship.”²⁹ Outside Title VII, disparate impact liability is

²³ See DOJ, Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 Fed. Reg. 57141, 57144 (Dec. 10, 2025); *Students for Fair Admissions*, 600 U.S. at 216-17.

²⁴ Alison Somin, *Disparate Impact As a Non-Delegation Violation and Major Question*, Harv. J. L. Pub. Pol’y Per Curiam (June 20, 2024), <https://journals.law.harvard.edu/jlpp/disperate-impact-as-a-non-delegation-violation-and-major-question-alison-somin/>.

²⁵ *Id.*

²⁶ 90 Fed. Reg. 17537 (Apr. 23, 2025), <https://www.federalregister.gov/d/2025-07378>.

²⁷ 90 Fed. Reg. 8633 (Jan. 21, 2025), <https://www.federalregister.gov/d/2025-02097>.

²⁸ Giancarlo Canaparo, *Ending D.E.I. Is Only Half the Battle*, Civitas Outlook (Mar. 24, 2025), <https://www.civitasoutlook.com/research/ending-dei-is-only-half-the-battle-e5a937>.

²⁹ 90 Fed. Reg. 10583 (Feb. 19, 2025), <https://www.federalregister.gov/d/2025-03138>.

not clearly authorized by Congress and can impose significant costs and burdens on the American people.

Consistent with these executive orders, other agencies have taken action to eliminate disparate-impact liability. For example, on December 10, 2025, the Department of Justice issued a final rule amending its regulations implementing Title VI of the Civil Rights Act of to eliminate disparate-impact liability.³⁰ These amendments comply with EO 14281 and “align the conduct prohibited by the Department’s regulations with Title VI’s original public meaning, avoid constitutional concerns, reduce compliance costs, and serve the public interest.”³¹ Other agencies likewise issued proposed and final rules modifying their Title VI regulations.

Also, in response to EO 14281, the Equal Employment Opportunity Commission reportedly issued an internal memo on September 15, 2025, directing agency staff to stop investigating charges of employment discrimination based on disparate impact and issue notices of “Right to Sue,” allowing complainants to take their claims to federal court without further agency involvement.³² According to the memo, the agency will not be “commencing, developing, or continuing to pursue litigation advancing disparate impact causes of action.”³³ After DOJ’s Office of Legal Counsel opinion, EEOC formally rescinded its regulations regarding Affirmative Action Appropriate Under Title VII.³⁴

In November 2025, the Consumer Financial Protection Bureau issued a proposed rule “Equal Credit Opportunity Act (Regulation B)”³⁵ that would amend provisions related to disparate impact under Regulation B, the regulation implementing the Equal Credit Opportunity Act (ECOA),³⁶ which “prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age.”³⁷ This proposal was supported by us and others.³⁸

In January 2026, the Department of Housing and Urban Development also issued a proposal rule titled “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard,” which would remove disparate impact regulations under the Fair Housing Act.³⁹

³⁰ Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 Fed. Reg. 57,141 (Dec. 10, 2025) (amending 28 C.F.R. pt. 42), <https://www.federalregister.gov/d/2025-22448>.

³¹ *Id.* at 57141.

³² *Final Impact? EEOC Closing of Disparate Impact Investigations Is Challenged*, JD Supra (Oct. 30, 2025), <https://www.jdsupra.com/legalnews/final-impact-eec-closing-of-disparate-4101871>.

³³ *Id.*

³⁴ Rescission of Guidelines on Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as Amended, 91 Fed. Reg. 40,879 (July 6, 2026) (removing 29 C.F.R. pt. 1608), <https://www.federalregister.gov/d/2026-13637>.

³⁵ 90 Fed. Reg. 50901 (Nov. 13, 2025), <https://www.federalregister.gov/d/2025-19864>.

³⁶ 15 U.S.C. § 1691, et seq.

³⁷ *The Equal Credit Opportunity Act*, Dep’t of Justice (last updated Jan. 2, 2025), <https://www.justice.gov/crt/equal-credit-opportunity-act-3>.

³⁸ See *EPPC Scholar Submits Comment Supporting Elimination of Disparate Impact Liability for Creditors*, EPPC (Dec. 15, 2025), <https://eppc.org/publication/eppc-scholar-submits-comment-supporting-elimination-of-disparate-impact-liability-for-creditors/> (collecting comments).

³⁹ 91 Fed. Reg. 1475 (Jan. 14, 2026), <https://www.federalregister.gov/d/2026-00590>.

C. Prohibiting disparate-impact liability provides many benefits.

Eliminating disparate-impact liability provides many benefits. It will promote compliance with nondiscrimination obligations, eliminate confusion, and provide clarity. Because reading disparate-impact liability into nondiscrimination laws seems to (in the words of DOJ) “both forbid and require the same conduct,”⁴⁰ eliminating disparate impact will provide clarity regarding nondiscrimination obligations.⁴¹ Eliminating disparate-impact liability from federal financial assistance also aligns with regulatory reform efforts and will help reduce unnecessary and onerous regulatory burdens and costs. These regulatory burdens and costs include investigations, enforcement actions, litigation, remedies, and reputational harm stemming from agency-initiated disparate impact enforcement. Significantly, eliminating disparate-impact claims would not undermine and indeed would promote the Administration’s efforts to robustly enforce federal civil rights laws. Existing nondiscrimination requirements still apply. And, as the DOJ disparate impact rule acknowledges, “eliminating disparate-impact liability does not preclude the use of data on disparate outcomes to help prove intentional discrimination.”⁴²

D. OMB should strengthen the prohibition of disparate-impact liability.

We urge OMB to modify the definition of disparate-impact liability in two ways. First, OMB should delete the phrase “automatic or near-insurmountable presumption” in the definition of disparate-impact liability. It is unnecessary, and as written, the adjectives could let an agency claim it is not engaged in disparate-impact analysis by showing the presumption was not automatic and is surmountable.

Second, the definition of disparate-impact liability covers all “federally protected characteristics,” including religion. This raises concerns that the prohibition against disparate impact liability could be used to infringe on the free exercise rights of religious organizations to have policies and practices based on religion. To avoid inadvertently infringing on religious liberty, we urge OMB to add a rule of construction like the following sentence: “*Nothing in the section prohibits a religious organization from having policies and practices based on religion.*”

As proposed, the prohibition against using federal awards to promote or support theories of disparate-impact liability applies to “all contexts relevant to federal awards.” Language elsewhere in the proposed regulation limits this prohibition to activities that are funded by federal awards. OMB should consider whether it should also bar federal financial assistance from going to recipients that maintain any disparate-impact liability policies and practices outside of the scope of the federally funded program to the extent permitted by law. For instance, OMB could, consistent with federal nondiscrimination laws like Title IX, add “program or activity” language, which has been amended and interpreted to cover not just the federally funded portion but all of an entity’s related activities. This prohibition could be similar to the administration’s Promoting Human Flourishing in Foreign Assistance Policy.⁴³

⁴⁰ 90 Fed. Reg. at 57144.

⁴¹ See, e.g., 91 Fed. Reg. at 1476 (explaining HUD’s “prior assertion, that its disparate impact regulations provided clarity and predictability for all parties engaged in housing transactions, is diminished by the facts that case law continues to develop and HUD’s regulation does not provide an up-to-date picture of the legal landscape.”).

⁴² 90 Fed. Reg. at 57144.

⁴³ Protecting Life in Foreign Assistance, 91 Fed. Reg. 3,319 (Jan. 27, 2026), <https://www.federalregister.gov/d/2026-01519>; Combating Gender Ideology in Foreign Assistance, 91 Fed. Reg. 3,332 (Jan. 27, 2026), <https://www.federalregister.gov/d/2026-01516>; Combating Discriminatory Equity Ideology in Foreign Assistance, 91 Fed. Reg. 3,345 (Jan. 27, 2026), <https://www.federalregister.gov/d/2026-01517>.

IV. [§ 200.219] Discriminatory Event Services

OMB proposes a new provision at § 200.219 that clarifies that entities receiving federal financial assistance must not discriminate on the basis of viewpoint, content, or subject matter of speech — including political, ideological, or religious affiliation or perspective — in providing services for events, meetings, or other expressive activities.⁴⁴ This provision aims to prevent a “heckler’s veto” and the suppression of views (especially conservative views) through onerous security costs, by barring discrimination based on viewpoint, content, or subject matter in providing services for events.⁴⁵

This provision extends to both public and non-public entities. For public entities, the event services provision applies regardless of whether the event is directly funded by a federal award or merely occurs on property or facilities controlled by the public entity.⁴⁶ For non-public entities, it only applies “to the extent that the relevant activities are within the scope of activities funded by a Federal award.”⁴⁷

A. The discriminatory event services requirement raises religious liberty concerns.

We applaud OMB for seeking to address this important issue. However, as drafted, we are concerned about how the regulation could inadvertently and negatively impact religious liberty. The application to private entities includes religious organizations and schools and pure issue-advocacy organizations within the scope of their federally funded activities. As written, the provision could force religious institutions that receive federal financial assistance (including religious colleges receiving student aid) to accommodate any group on “ideological grounds” with no apparent boundaries. We are concerned that this provision could be used to require a church or religious organization to host a speech or allow activity contrary to its beliefs or strip away its religious identity to participate (e.g., cover up a cross).

The religious liberty concerns are exacerbated by the use of the broad and ambiguous term “services.” Using this term would create a cloud of confusion that would dissuade many religious organizations from participating in programs that involve federal financial assistance. Religious institutions—the vast majority of which are too small and too modest to be able to afford sophisticated legal counsel—would be left with a laundry list of unanswered questions. For example: Does “services” include crowd management and safety? Would a church-hosted event be required to admit someone wearing a blasphemous or pornographic shirt intended to insult the congregation, or someone demanding to use the opposite sex’s bathroom? Does “services” extend to speaker selection? Would it be impermissible for a faith-based organization to select speakers based on their faith-based perspective? Or would that be an impermissible selection criterion?

To address these concerns, we urge OMB to define services and provide more clarity, such as specifying that the term “services” is limited to services supporting an event instead of the content of the event itself.

We also urge OMB to take additional steps to protect religious liberty and preempt any confusion or fear on behalf of religious institutions. For example, OMB could add explicit language in the text of the regulation stating that nothing in the section requires a religious organization to violate its religious

⁴⁴ 91 Fed. Reg. at 32214.

⁴⁵ *See id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

beliefs and that its free-exercise rights are not abridged. This could mirror language from the Trump 1 rule on equal participation for faith-based organizations⁴⁸ or it could be an exception for religious organizations.

The proposed regulation states its purpose is to “ensure that Federal funds are not used in a manner inconsistent with the First Amendment.” The First Amendment also protects religion, and we urge OMB to ensure that this regulation not only reflects free speech under the First Amendment but also religious exercise under the First Amendment.

B. OMB should strengthen the prohibition on discriminatory event services.

We also note that subsection (a)(3) reaches facility policies that have the “purpose or effect” of suppressing lawful expression. The term “effect,” however, is often interpreted as creating disparate-impact liability. We urge OMB to resolve this tension in a manner consistent with its prohibition against disparate-impact liability.

V. [§ 200.300] Statutory and National Policy Requirements

We support the proposed revisions to the statutory and national policy requirements in § 200.300 and offer the below suggestions of ways to strengthen and build upon those important requirements. This regulation plays an important role in directing agency federal financial assistance regulations.

In October 2023, the Biden OMB proposed eliminating the policy requirements to protect free speech and religious liberty while retaining a reference to the requirement to prohibit discrimination and proposed adding two new provisions focused on sexual orientation and gender identity discrimination, referencing *Bostock v. Clayton County* and Equal Protection.⁴⁹ As comment author Rachel Morrison wrote for National Review,

The juxtaposition of the proposed changes — dropping the references to free speech and religious liberty while retaining a reference to discrimination and adding *two* new provisions focused exclusively on sexual orientation and gender identity — sent a message that LGBT rights trump religious liberty. Indeed, this was not the first time the Biden administration has proposed regulations elevating nondiscrimination based on sexual orientation and gender identity while simultaneously minimizing protections for religious freedom and conscience rights.⁵⁰

In response to concerns raised by us and other commenters,⁵¹ OMB’s final regulation retained the references to protecting free speech and religious liberty “to eliminate any confusion and allay concerns

⁴⁸ Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82037 (Dec. 17, 2020), <https://www.federalregister.gov/d/2020-27084>.

⁴⁹ Guidance for Grants and Agreements, 88 Fed. Reg. 69,390 (Oct. 5, 2023), <https://www.federalregister.gov/documents/2023/10/05/2023-21078/guidance-for-grants-and-agreements>.

⁵⁰ Rachel N. Morrison, *When Public Comment Matters*, National Review (Apr. 8, 2024), <https://www.nationalreview.com/corner/when-public-comment-matters/>.

⁵¹ See, e.g., Rachel N. Morrison, EPPC Comment on Guidance for Grants and Agreements, Docket No. OMB-2023-0017 (Dec. 4, 2023), <https://eppc.org/wp-content/uploads/2023/12/EPPC-Comment-on-OMB-Proposed-Guidance.pdf>; Matthew S. Bowman, Senior Counsel, All. Defending Freedom Comment on Guidance for Grants and Agreements, Docket No. OMB-2023-0017 (Nov. 29, 2023), <https://adfmlegalfiles.blob.core.windows.net/files/OMB-PublicCommentGrantsRule.pdf>; Rabbi Yaakov Menken, Managing Dir., Coalition for Jewish Values Comment on Guidance for Grants and Agreements, Docket No. OMB-2023-0017 (Dec. 4, 2023), <https://coalitionforjewishvalues.org/wp-content/uploads/2023/12/CJV->

that OMB was singling out certain protections.”⁵² OMB also clarified *in the preamble* that all awards must be implemented “in full accordance” with applicable constitutional, statutory, and regulatory provisions, including the free-exercise clause of the First Amendment, the Religious Freedom Restoration Act, and other provisions protecting religious liberty.⁵³

Here, OMB proposes to remove the reference to *Bostock*. We support this change for the reasons Morrison raised in her comment on the Biden OMB’s proposal, which explained that *Bostock* was a limited holding.⁵⁴ Eliminating reference to *Bostock* also aligns with DOJ’s February 2025 *Bostock* memo,⁵⁵ President Trump’s executive order E.O. 14168 on “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,”⁵⁶ and the Supreme Court’s recent decisions in *Skrmetti* and *B.P.J.* declining to extend *Bostock* to other contexts.⁵⁷

A. Subsection (a)

Proposed § 200.300 subsection (a) states:

The Federal agency or pass-through entity must manage and administer the Federal award to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution and applicable Federal statutes and regulations—including provisions protecting free speech and religious liberty, and those prohibiting discrimination—and the requirements of this part.⁵⁸

The preamble clarifies that “[s]uch non-discrimination language would encompass requirements, as applicable, not to discriminate on various bases, including race, color, national origin, disability, sex, religion, or conscience.”⁵⁹ We applaud OMB for recognizing the important protections for conscience rights in addition to protections for religious liberty and nondiscrimination.

Indeed, there are over two dozen laws that protect conscience rights in health care that “broadly prohibit discrimination by the federal government and by recipients of certain federal funds, including state and local governments and private entities, against health care providers and health care entities, and in some cases patients, by preventing them from being compelled either to act or, in defined circumstances, to undergo certain compulsory health care services contrary to their religious beliefs or

[Comment-on-Guidance-for-Grants-and-Agreements.pdf](#); Michael F. Moses & Daniel E. Balserak, U.S. Conf. of Cath. Bishops Comment on Guidance for Grants and Agreements, Docket No. OMB-2023-0017 (Dec. 4, 2023), https://www.usccb.org/sites/default/files/about/general-counsel/rulemaking/upload/23-1204_OMB_UAR_NPRM_comments%20FINAL.pdf.

⁵² Guidance for Federal Financial Assistance, 89 Fed. Reg. 30046, 30075 (Apr. 22, 2024), <https://www.federalregister.gov/d/2024-07496>.

⁵³ *Id.* at 30075.

⁵⁴ EPPC Comment on Guidance for Grants and Agreements at 3-5, <https://media.eppc.org/2023/12/EPPC-Comment-on-OMB-Proposed-Guidance.pdf>.

⁵⁵ Memorandum from the Acting Assoc. Att’y Gen., U.S. Dep’t of Justice, to the Civil Rights Division (Feb. 12, 2025), <https://www.justice.gov/crt/media/1389946/dl>.

⁵⁶ Exec. Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (Jan. 30, 2025), <https://www.federalregister.gov/executive-order/14168>.

⁵⁷ *United States v. Skrmetti*, 605 U.S. 495 (2025); *West Virginia v. B.P.J.*, 606 U.S. ____ (2026).

⁵⁸ 91 Fed. Reg. at 32253.

⁵⁹ 91 Fed. Reg. at 32216.

moral convictions.”⁶⁰ As HHS Officer for Civil Rights Director Paul Stannard wrote in a January 2026 Dear Colleagues letter, “These protections preserve professional and individual conscience against government discrimination, including in some contexts for patients, and generally ensure that service to the public is not conditioned on the surrender of conscience.”⁶¹

Despite the Biden Administration’s statutory duty to protect and enforce conscience and religious freedom rights in health care, it sought to minimize those rights, especially when it came to its radical pro-abortion and pro-LGBTQI+ policy priorities.⁶² As comment authors Morrison and Kniffin explained in a white paper, titled *Eradicating Anti-Christian Bias: A Response to Executive Order 14202*, federal agencies play a vital role in protecting conscience rights:

[Federal conscience protection laws] are not enforced the same way as most civil rights laws. That is because federal conscience protection laws do not explicitly give health care providers the power to bring a lawsuit in federal court to vindicate these rights, and federal courts have found that no such power exists. Without a private right of action, [HHS] is often the only entity with the power to enforce these guaranteed conscience rights. Moreover, HHS’s only enforcement mechanism for conscience protection laws is denying funding to the covered health-care entity. The blunt nature of this enforcement mechanism can make enforcing conscience protection laws politically fraught because critics can accuse the administration of prioritizing the conscience rights of one individual over the community’s health-care needs. In practice, this means that federal conscience protection laws are enforced very differently under different presidents.⁶³

Based on these practical realities, we urge OMB to add reference to conscience rights directly in subsection (a) to ensure that relevant agencies are on notice of their legal obligations to protect conscience rights.

This revised provision could read: “...*The Federal agency or pass-through entity must manage and administer the Federal award to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution and applicable Federal statutes and regulations—including provisions protecting free speech, ~~and~~ religious liberty, and conscience rights, and those prohibiting discrimination—and the requirements of this part....*”

We also note that subsection (a) states, “Consistent with Federal law, this includes managing and administering the Federal award to ensure that no person otherwise eligible will be unlawfully excluded from participation in, unlawfully denied the benefits of, or otherwise subjected to unlawful discrimination *in the administration of Federal programs, activities, projects, assistance, and services*” (emphasis added). We note that the phrase “in the administration of federal programs” is used instead of “under any program or activity” often found in federal nondiscrimination laws. No person should be “unlawfully excluded from participation in, unlawfully denied the benefits of, or otherwise subjected to unlawful discrimination” under any program or activity, not just the administration of the program or activity, which arguably is a subset of the program or activity and may not cover actions by third parties.

⁶⁰ See HHS, Off. for Civ. Rts., Dear Colleague Letter on Safeguarding Federal Conscience and Related Protections in Health Care (Jan. 21, 2026), <https://www.hhs.gov/sites/default/files/conscience-dcl.pdf> (summarizing “the principal federal health care conscience protection authorities” enforced by HHS Office for Civil Rights).

⁶¹ *Id.*

⁶² See Rachel N. Morrison & Eric Kniffin, *Eradicating Anti-Christian Bias: A Response to Executive Order 14202*, EPPC (Oct. 2025), <https://media.eppc.org/2025/11/25-11-Eradicating-Anti-Christian-Bias-1.pdf> (documenting the Biden HHS’s attack on attack of health-care rights of conscience).

⁶³ *Id.* at 3.

B. Subsection (b)

Proposed subsection (b) would ensure that federal awards and subawards do not fund, promote, encourage, subsidize, or facilitate DEI, gender ideology, or the so-called transition of a child (chemical and surgical mutilation, as defined in statute and executive order). Specifically, the proposed regulation states:

In administering Federal awards, to the maximum extent permitted by law, the Federal agency or pass-through entity must ensure that Federal awards and subawards are not used to fund, promote, encourage, subsidize, or facilitate:

- (1) “Diversity, equity, and inclusion” (DEI) or “diversity, equity, inclusion, and accessibility” (DEIA) policies, principles, or practices that violate any applicable Federal anti-discrimination laws. This includes racial preferences or other forms of racial discrimination used by the recipient or subrecipient that violate any applicable Federal anti-discrimination laws, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation. See also § 200.218;
- (2) Gender ideology as defined in Executive Order 14168. Gender ideology includes theories or ideologies that deny the biological reality of sex or the sex binary in humans, or endorse or advocate for the notion that sex is a chosen or mutable characteristic; or
- (3) 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. The term “chemical and surgical mutilation” has the meaning provided in Executive Order 14187.⁶⁴

We support these policy requirements. DEI, gender ideology, and sex-rejecting procedures are harmful and should not be promoted by the federal government and with taxpayer dollars. As the administration has documented in depth⁶⁵ and as we discuss in various amicus briefs and public comments,⁶⁶ there are significant problems with gender ideology and harms associated with sex-rejecting procedures.

We provide the following two suggestions of ways OMB can bolster these requirements. First, subsection (b)(3) says “so-called ‘transition’ of a child under 19 years of age from one sex to another.” We appreciate the use of the qualifier “so-called” but urge OMB to avoid using the term “transition” altogether. As HHS has stated in guidance provided for the benefit of all federal agencies, “[r]ecognizing the immutable and biological nature of sex is essential” and “[r]estoring biological truth to the Federal

⁶⁴ 91 Fed. Reg. at 32215.

⁶⁵ See HHS, Treatment for Pediatric Gender Dysphoria: Review of Evidence and Best Practices (Nov. 19, 2025), <https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf>; Exec. No. 14187, Protecting Children from Chemical and Surgical Mutilation, 90 Fed. Reg. ____ (Jan. 28, 2025); Exec. Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8,615 (Jan. 30, 2025); Complaint, *FTC v. World Prof'l Ass'n for Transgender Health*, No. 4:26-cv-00748 (N.D. Tex. filed June 17, 2026).

⁶⁶ See, e.g., Eric Kniffin, Rachel N. Morrison & Mary Rice Hasson, EPPC Comment to Ctrs. for Medicare & Medicaid Servs. (Feb. 17, 2026) (on rules to cease federal funding related to sex-rejecting procedures for minors), <https://eppc.org/publication/eppc-scholars-encourage-cms-to-stop-funding-sex-rejecting-procedures-for-minors/>; EPPC Amicus Brief, *United States v. Skrmetti*, 605 U.S. 495 (2025) (No. 23-477), <https://eppc.org/publication/eppc-scholars-urge-supreme-court-to-uphold-law-protecting-minors-from-harmful-gender-transitions/>; EPPC Amicus Brief, *Chiles v. Salazar* (U.S. filed Dec. 9, 2024), https://eppc.org/publication/eppc-scholars-file-supreme-court-amicus-brief-supporting-challenge-to-colorado-law-effectively-mandating-gender-affirming-approach-to-therapy-for-minors/?utm_source=chatgpt.com.

government is critical to scientific inquiry, public safety, morale, and trust in government itself.”⁶⁷ We encourage OMB to follow HHS’s guidance in this regard.

As such, we urge OMB to use the terminology “sex-rejecting” instead of the term “transition.” As we have argued in a May 2025 white paper, “sex-rejecting procedures” is superior terminology to “gender-affirming care,” and other variants like “transition.”⁶⁸ Indeed, HHS, DOJ, the State Department, EEOC, and other agencies and Trump Administration officials have used “sex-rejecting procedures” in public statements, press releases, proposed rules, and even an EEOC federal sector decision.⁶⁹ The administration’s use of this terminology has received high praise.⁷⁰ “Sex-rejecting” is supported by

⁶⁷ HHS, *Defining Sex: Guidance for Federal Agencies, External Partners, and the Public Implementing Executive Order 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government* (Feb. 19, 2025), <https://womenshealth.gov/sites/default/files/images/2025/2.19.25%20Defining%20Sex%20Guidance%20for%20Federal%20Agencies%2C%20External%20Partners%2C%20and%20the%20Public%20FINAL.pdf>.

⁶⁸ Eric Kniffin, Mary Hasson & Rachel N. Morrison, *Terminology and Definition: Replacing “Gender-Affirming Care” with “Sex-Rejecting Procedures”*, EPPC (May 2, 2025), <https://eppc.org/replacement-term-for-gac/>; see also EPPC Comment, EO 12866 Meeting, “Medicare and Medicaid Programs; Hospital Condition of Participation: Limiting Participation Based on the Performance of Sex Trait Modification Procedures on Children,” RIN 0938-AV87, and “Medicaid Program; Prohibition on Federal Medicaid Funding for Sex Trait Modification Procedures Furnished to Children and Youth (CMS-2451),” RIN 0938-AV73 (Aug. 28, 2025), <https://eppc.org/wp-content/uploads/2025/08/EPPC-Comment-for-EO-12866-Meeting-on-CMS-Proposed-Rules.pdf>.

⁶⁹ See, e.g.,

- Assistant Secretary for Health Admiral Brian Christine (Nov. 19, 2025), https://x.com/adm_christine/status/1991176470723518638 (“Today, we released a report exposing the truth: pediatric **sex-rejecting procedures** are not evidence-based. They are dangerous. Enough is enough. Read it for yourself. Protecting children should not be controversial, it is our duty. The tide is turning.”);
- CMS, Medicaid Program; Prohibition on Federal Medicaid and Children’s Health Insurance Program Funding for **Sex-Rejecting Procedures** Furnished to Children. 90 Fed. Reg. 59441 (Dec. 19, 2025), <https://www.federalregister.gov/d/2025-23464>;
- CMS, Medicare and Medicaid Programs; Hospital Condition of Participation: Prohibiting **Sex-Rejecting Procedures** for Children, 90 Fed. Reg. 59463 (Dec. 19, 2025), <https://www.federalregister.gov/d/2025-23465>;
- DOJ, Press Release, Department of Justice Seeks to Enforce Subpoena Against Hospital that Performs **Sex-Rejecting Procedures** on Minors (May 1, 2026), <https://www.justice.gov/opa/pr/departments-justice-seeks-enforce-subpoena-against-hospital-performs-sex-rejecting-procedures>.
- Dep’t of State, Combatting Gender Ideology in Foreign Assistance, 91 Fed. Reg. 3332 (Jan. 27, 2026), <https://www.federalregister.gov/d/2026-01516> (using “**sex-rejecting**” *passim*);
- EEOC Federal Sector Decision, *Sam T. v. Kupor*, EEOC Appeal Nos. 0120172750, 0120172751 2020000643, 2021005019 (Mar. 24, 2026), https://www.eeoc.gov/sites/default/files/2026-03/0120172750%200120172751%202020000643%202021005019%20decision_Redacted_0.pdf;
- EEOC Chair Andrea Lucas, “Civil Rights Equally Applied,” Federalist Society National Lawyers Convention (Nov. 7, 2025), <https://youtu.be/3TfYdfZ84ug?si=ZlrnstDb9mkIHsGy&t=4334> (timestamp 1:12:14) (“I do care about violence against trans kids or trans-identified kids. And I would say that **sex-rejecting procedures** and gender mutilation *is* violence against those children.”).

⁷⁰ See, e.g.,

- Isabel Brown, Daily Wire (Nov. 20, 2025), <https://x.com/theisabelb/status/1991550858115358845> (“I find the reframing of “gender affirming care” to the brutal honesty of “**sex rejecting procedures**” brilliant. We HAVE to start telling the truth about what this mutilation was... rejection of who were designed to be.”);
- Megan Brock, Daily Caller (Nov. 21, 2025), <https://x.com/MegEBrock/status/1991890746245599490> (I REALLY love calling medical procedures aimed at “changing” a person’s sex “**sex rejecting**” because that’s what they are! You cannot change your sex. Doctors are aiding children in rejecting themselves through body mutilation.”);

leading organizations, advocates, attorneys, medical and health care professionals, parents, and policy experts seeking to protect children and others from gender ideology, and has been used by individuals and organizations in various outlets from media and op-eds to court briefs and a law review article.⁷¹

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- Ryan T. Anderson, President, Ethics and Public Policy Center (Nov. 21, 2025), <https://x.com/ryantand/status/1991889905296048558> (“Nice to see the progress from September to November on the language we use to describe gender ideology.”);
 - Leor Sapir, Manhattan Institute (Oct. 30, 2025), <https://x.com/LeorSapir/status/1983911816892682721> (“A proposed alternative to STM [sex-trait modification] is ‘**sex-rejecting procedures**’ (SRP). While also not perfect, I do think this term better captures what happens in the context of medical interventions. Specifically, it better captures the *purpose* of these interventions, which is to distance oneself from the embodied, immutable reality of being male or female (i.e., sex).”);
 - Philip M. Wegmann, Real Clear Politics (Nov. 19, 2025), <https://x.com/PhilipWegmann/status/1991212244974064051> (“Notice HHS reject Biden-era nomenclature of ‘gender-affirming care’ for ‘**sex-rejecting procedures**.’”);
 - Suzy Shofar (Oct. 30, 2025), <https://x.com/suzylebo/status/1983934557997891584> (“**Sex-rejecting procedures** (SRP) works. It’s the most accurate I’ve seen.”);
 - Canadian Women’s Sex-Based Rights (Nov. 20, 2025), <https://x.com/cawsbar/status/1991600955788571063> (“Memo The term ‘gender-affirming care’ is officially retired. In its place: ‘**sex-rejecting procedures**’. Reality-based language ftw always and forever!”).

⁷¹ See, e.g.,

- Prisha Mosley, *Detransitioner: This New HHS Study on ‘Gender-Affirming Care’ Should Be a Wake-Up Call For Doctors*, IW Features (Nov. 22, 2025), <https://www.iwfeatures.com/commentary/detransitioner-this-new-hhs-study-on-gender-affirming-care-should-be-a-wake-up-call-for-doctors/> (“Indeed, it is a major victory that the U.S. government is reclaiming biological reality and protecting children from **sex-rejecting surgical procedures** and chemical mutilation.”);
- Child & Parental Rights Campaign, 2025: Purported Evidence for Medical Transition of Minors Is “Very Low Quality” While Harms Are Serious and Mostly Irreversible, <https://www.childparentrights.org/hhs-report-2025> (“The evidence supporting **sex-rejecting procedures**, i.e., puberty blockers, cross-sex hormones, and surgeries, for children and adolescents with gender dysphoria is of very low quality. The harms of these **sex-rejecting procedures** are predictable, long-term and serious—including sterility, infertility, impaired sexual function, bone damage, adverse cognitive impacts, cardiovascular disease, metabolic disorders, psychiatric disorders, surgical complications, and regret—and are most often irreversible, frequently ignored, and inadequately tracked or researched”);
- Press Release, American Academy of Pediatricians, *ACPeds Applauds and Endorses the Groundbreaking HHS Peer-Reviewed Report on Sex-Identity Disorder* (Nov. 20, 2025), <https://acped.org/acped-applauds-and-endorses-the-groundbreaking-hhs-peer-reviewed-report-on-sex-identity-disorder/> (“The report finds that the harms from **sex-rejecting procedures**—including puberty blockers, cross-sex hormones, and surgical interventions—are significant, long-term, and too often ignored or inadequately tracked.”);
- Joe Figliolia, *The Wrong Way to Cover Trans Issues*, The Dispatch (Aug. 2, 2025), <https://www.msn.com/en-us/news/opinion/the-wrong-way-to-cover-trans-issues/ar-AA1JLEiQ> (“It has leaned into rhetoric that seems to confirm what many already believe about the animus driving opposition to **sex-rejecting procedures** for minors.”);
- Laura Bryant Hanford, *California Assembly Looks to Hand Children to Traffickers and Gender Activists*, The Daily Signal (July 10, 2025), <https://www.dailysignal.com/2025/07/10/california-assembly-looks-to-hand-children-to-traffickers-and-gender-activists/> (“If the child is in the state to receive **sex-rejecting hormones or surgeries**, he or she will *not* be returned to the parent.”);
- *Gender Debrief*, Manhattan Institute (Aug. 23, 2025), <https://manhattan.institute/article/rising-global-and-u-s-challenges-to-gender-care-for-minors> (“This past Friday, Alaska’s State Medical Board was scheduled to vote on a resolution to formally oppose **sex-rejecting procedures** for minors.”);
- Joseph Mackinnon, *‘Not medicine — it’s malpractice’: Trump HHS buries child sex-change regime with damning report*, Blaze Media (Nov. 20, 2025) <https://www.theblaze.com/news/not-medicine-its-malpractice-trump-hhs-buries-child-sex-change-regime-with-damning-report> (“Cole, a detransitioner who has raised awareness across the country about the horrors and fallout of sex-change medical interventions, has sued Kaiser Permanente for alleged medical negligence in connection with the **sex-rejecting procedures** the health system performed on her as a minor.”);
- CT Centinal Staff, *HHS Peer-Reviewed Report Totally Discredits Pediatric Sex-Rejecting Procedures*, Connecticut Centinal (Nov. 20, 2025), <https://connecticutcentinal.com/hhs-peer-reviewed-report-totally-discredits-pediatric-sex-rejecting-procedures/> (“The report, released through the Office of the Assistant Secretary for Health, finds that the harms

Second, we encourage OMB to prohibit the use of federal funding to promote, encourage, subsidize, or facilitate not only sex-rejecting procedures, but also sex-rejecting “social transition,” as previously defined by this Administration.⁷² Extending the prohibition to sex-rejecting “social transition” would ensure that wraparound services and community schools, and federally funded mental health programs, will not function as gateways to gender ideology. In addition, it will ensure that schools cannot secretly encourage children to reject their sex or pursue “social transition” without parental notice or consent, and it will ensure that the state cannot remove a child from parental custody, under the guise of protecting the child from “child abuse,” merely because the parents acknowledge their child’s sex, refuse to deny the child’s sex, refuse to consent to their child’s sex rejection, “social transition,” or pursuit of sex-rejecting interventions.

These changes align with the State Department’s final rule “Combatting Gender Ideology in Foreign Assistance,” which conditions the receipt of federal foreign assistance on not providing or promoting sex-rejecting procedures or “sex-rejecting social transition.”⁷³

Defining “sex-rejecting procedures” and “sex-rejecting social transition” in regulatory text is best to ensure that it cannot be misunderstood, whether inadvertently or intentionally. Defining these terms could easily be done by incorporating a reference to definitions in the State Department’s rule:

from **sex-rejecting procedures** — including puberty blockers, cross-sex hormones, and surgical operations — are significant, long term, and too often ignored or inadequately tracked.”);

- Joseph Mackinnon, *Rigged report exposed: Utah review appears to defend child sex-altering drugs while ignoring sterility and sexual risk*, Blaze Media (Dec. 9, 2025), <https://www.theblaze.com/news/medical-watchdog-pokes-holes-in-utah-health-departments-outsourced-defense-of-child-sex-rejecting-drugs> (“So-called experts in Utah are trying to gaslight lawmakers into putting child ‘sex-rejecting’ drugs back into wider circulation.”);
- Misty Severi, *HHS opens probe into Seattle Children’s Hospital over transgender youth health care*, Just the News (Dec. 26, 2025), <https://justthenews.com/politics-policy/health/hhs-opens-probe-seattle-childrens-hospital-over-transgender-youth-health> (“The referral comes after HHS announced last week it was moving to bar hospitals from offering “**sex-rejecting procedures** on children” as a condition of participating in Medicare and Medicaid, which is in line with President Donald Trump’s executive order directing HHS to end the practice.”);
- Roger Severino, Heritage Foundation (Dec. 9, 2025), <https://x.com/rogerseverino/status/1998456869392961901> (“OCR under Biden forced doctors to participate in **sex-rejecting** (trans) sterilizations while OCR under Trump enforces laws prohibiting such coercion. No better illustration of how much elections matter.”);
- Travis Morrell, MD MPH, Do No Harm Senior Fellow (Dec. 19, 2025), <https://x.com/morrellmdmph/status/2002159620111151113> (“James Lindsay is right. Imagine it’s Fall 2026. Midterm elections. Maybe federal work against **sex-rejecting procedures** has hit hiccups, maybe not. Democrat front runners for 2028 are popping up. Newsom. AOC. @GovofCO Polis wants on that list. All of whom led the country in promoting **pediatric sex-rejecting procedures**.”);
- January Littlejohn, Do No Harm (June 27, 2025), <https://x.com/JanuaryDoNoHarm/status/1938713653731107300> (“@MarshaBlackburn please ensure alternative language is negotiated to restore cuts for **sex-rejecting procedures**. I have spoken to many detransitioners & have seen the irreversible harm that is occurring. This is not healthcare. Anyone who has read the WPATH files knows this & we should not be paying for it.”);
- Rachel N. Morrison, *Avoiding Pandora’s Box: Why Federal Nondiscrimination Statutes Do Not Prohibit Health Insurance Coverage Exclusions of Sex-Rejecting Procedures*, 75 Catholic U.L. Rev. 718 (2026), available at <https://ssrn.com/abstract=5141509>
- Brief of Amici Curiae Our Duty—USA and Colorado Principled Physicians, *Foot v. Ludlow School Committee* (No. 25-77), at 5 n.7, https://www.supremecourt.gov/DocketPDF/25/25-77/370402/20250821161619455_Foot%20Amicus%20Brief%20-%20Final.pdf (citing “*Kolstad v. Baillargeon*, No. 1:24-cv-00055-SPW (D. Mont. May 20, 2024) (transferring a non-affirming parents’ child to state where **sex rejecting interventions** are legal)”).

⁷² 91 Fed. Reg. at 3335.

⁷³ *Id.*

Sex-rejecting procedure is any pharmaceutical or surgical intervention that is provided for the purpose of attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex either by:

(I) intentionally disrupting or suppressing the normal development of natural biological functions, including primary or secondary sex-based traits; or

(II) intentionally altering an individual's physical appearance or body, including amputating, minimizing or destroying primary or secondary sex-based traits such as the sexual and reproductive organs.

Such term does not include procedures undertaken (I) to treat a person with a medically verifiable disorder of sexual development, (II) for purposes other than attempting to align an individual's physical appearance or body with an asserted identity that differs from the individual's sex, or (III) to treat complications of, including any infection, injury, disease, or disorder that has been caused by or exacerbated by, the performance of, such a sex rejecting procedure.⁷⁴

Social transition is 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.⁷⁵

To address the above suggestions, we propose the following modification to subsection (b)(3): *"The so-called 'transition'—Sex-rejecting procedures for or sex-rejecting 'social transition' of a child under 19 years of age from one sex to another, including the chemical and surgical mutilation of children. The term 'sex-rejecting procedure' and 'sex-rejecting social transition' have the meanings provided in the rule beginning at 91 FR 3332. The term 'chemical and surgical mutilation' has the meaning provided in Executive Order 14187."*

C. Subsection (c)

Proposed subsection (c) would prohibit discrimination against faith-based organizations. Specifically, it states:

(c) *Non-discrimination against faith-based organizations.* Federal agencies and pass-through entities may not discriminate against or in favor of an applicant on the basis of the organization's religious character, affiliation, exercise, or lack thereof, nor on the basis of conduct that would not be considered ground to favor or disfavor a similarly situated secular organization. Faith-based organizations are eligible to apply for Federal financial assistance on the same basis as any other eligible organization. Applicants that meet all eligibility requirements may be considered for a Federal award under a notice of funding opportunity.

We applaud OMB for including a specific provision related to non-discrimination against faith-based organizations. Faith-based organizations can be excluded because they are religious or because a

⁷⁴ *Id.*

⁷⁵ *Id.*

generally applicable grant term would force a faith-based organization to act contrary to its religious beliefs. As drafted, the proposed provision addresses the former but does not address the latter.

Treating a religious organization exactly like a secular organization fails to respect what makes a religious organization religious. For example, the Biden administration tried to impose sexual orientation and gender identity nondiscrimination requirements on all organizations, including faith-based organizations, that received federal funding. Under proposed subsection (c), this requirement would not discriminate against faith-based organizations that have Biblical views about sex and marriage because the faith-based organization would be disfavored on grounds that would similarly disfavor secular organizations. But the First Amendment and federal law give special solicitude to religion and allows faith-based organizations to be religious in ways that may differ from what is permitted by secular organizations. For example, as EEOC's Religion Guidance explains, Title VII's religious organization exemptions "allow a qualifying religious organization to assert as a defense to a Title VII claim of discrimination or retaliation that it made the challenged employment decision on the basis of religion."⁷⁶ Treating religious organizations just like secular organizations in all respects fails to respect the religious organization's constitutional and statutory protections for sincerely held religious beliefs and free exercise.

To fill this gap, OMB can add language affirming that a faith-based organization can make hiring and other employment decisions based on religion. The Trump 1 rule on equal participation for faith-based organizations spelled out different ways agencies must permit faith-based organizations to exercise their religion to be afforded equal treatment in receipt of federal financial assistance.⁷⁷ We urge OMB to consider those regulations and how similar robust protections can be incorporated into 2 CFR.

We also point OMB to DOJ Office of Legal Counsel 2007 World Vision Opinion, which explained how RFRA permits a religious organization that hires based on religion to receive funds despite a non-discrimination employment clause,⁷⁸ and DOJ's 2017 guidance to administrative agencies and executive departments regarding religious liberty protections in federal law.⁷⁹

As a final note, we applaud OMB for not including any language make funding for religious organizations contingent on the availability of secular alternatives or drawing an improper distinction between direct and indirect government funding (as the Biden Administration did).⁸⁰

⁷⁶ EEOC, Compliance Manual: Religious Discrimination § 12, at § 12-I-C-1 (2021), <https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination>. EEOC's religion guidance was passed by the Commission after notice and public comment. While it is not legally binding on employers, it states the EEOC's positions and contains extensive footnotes to caselaw in support.

⁷⁷ Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 Fed. Reg. 82037 (Dec. 17, 2020), <https://www.federalregister.gov/d/2020-27084>.

⁷⁸ Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act, 31 Op. O.L.C. 162 (June 29, 2007), https://www.justice.gov/sites/default/files/olc/opinions/2007/06/31/worldvision_0.pdf.

⁷⁹ Press Release, U.S. Dep't of Just., *Attorney General Sessions Issues Guidance on Federal Law Protections for Religious Liberty* (Oct. 6, 2017), <https://www.justice.gov/archives/opa/pr/attorney-general-sessions-issues-guidance-federal-law-protections-religious-liberty>.

⁸⁰ Cf. Rachel N. Morrison & Eric Kniffin, EPPC Scholars Comment Opposing the Nine Agency Proposed Rule "Partnerships With Faith-Based and Neighborhood Organizations," RIN 0412-AB10, at 5-8 (Mar. 14, 2023), <https://media.eppc.org/2023/03/EPPC-Scholars-Comment-Opposing-Nine-Agency-Faith-Based-Partnership-Proposed-Rule.pdf> (discussing how agencies under the Biden administration failed to apply recent developments in

D. OMB should adopt additional regulatory language to protect religious liberty.

The preamble contains strong language regarding religious freedom and the availability of religious accommodation:

All Federal agencies must comply with the Religious Freedom Restoration Act (RFRA) (42 U.S.C. 2000bb, *et seq.*) and any applicable statutes prohibiting discrimination on the basis of religion or protecting the exercise of conscience. The First Amendment, RFRA, and applicable statutes prohibiting discrimination based on religion or protecting the exercise of conscience require Federal agencies, pass-through entities, recipients, and subrecipients to respect the exercise of religion. This includes considering and providing reasonable accommodations or exemptions for religious or conscience-based objections as required by law. Where such legal protections apply, Federal agencies, pass-through entities, recipients, and subrecipients should not structure internal procedures in a way that would require discretionary case-by-case approval of requests for an accommodation or exemption. Federal agencies, pass-through entities, recipients, and subrecipients should be aware of their ongoing statutory obligations regarding religious liberty and conscience. The proposed revision of § 200.300 is intended to clarify that conscience and religious liberty are protected under multiple statutes and the Federal Government will enforce such statutes as applicable.⁸¹

However, this language is not reflected in the text of the regulations. We urge OMB to remedy this mismatch. As OMB explains, “[r]ecent and ongoing litigation regarding some of the topics addressed in § 200.300 indicates the need for a clear regulatory framework reflecting administration policy that can be uniformly applied by Federal agencies to recipients of Federal financial assistance.”⁸² This is especially true when it comes to RFRA.

To better ensure that “Federal agencies, pass-through entities, recipients, and subrecipients should be aware of their ongoing statutory obligations” under RFRA, we urge OMB to include reference to RFRA in the text of the regulations themselves. Many agency personnel are likely unfamiliar with RFRA or how its obligations interact with federal grants. RFRA is an affirmative obligation on agencies (“government shall not”), so agencies should consider any known or anticipated substantial burdens on religion at the outset.

We propose that OMB require federal agencies to conduct a RFRA analysis on the front end and before finalization, identifying and addressing known religious conflicts that may arise due to their rulemaking. This requirement could be similar to the existing federalism analysis, tribal consultation, or small-business impact review. OMB should also consider whether it makes sense to require review and sign-off from the agency’s faith-based center or civil rights office.

To this end we recommend regulations that require agencies to undergo a RFRA analysis for federal financial assistance regulations. This could be similar to the federalism analysis, impact on small businesses, consultation with Indian tribes, family impact analysis, etc.

OMB should provide model language on how agencies can acknowledge their obligations under the Religious Freedom Restoration Act, model guidance on how agencies should discern whether to

First Amendment jurisprudence to their proposed faith-based funding requirements, including the requirement of secular alternatives and their distinction between direct and indirect government funding).

⁸¹ 91 Fed. Reg. at 32216.

⁸² *Id.*

provide up front exemptions or accommodations, and guidance how agencies should solicit questions and concerns from religious institutions about their rights and obligations under various funding opportunities.

Any such accommodation should avoid using weak “case-by-case” language which acknowledges religious liberty protection in theory, but does not provide protection in practice. Indeed, the recent findings in the DOJ’s Report on “Eradicating Anti-Christian Bias within the Federal Government,” documented how the “case-by-case” approach was used by the Biden Administration to diminish religious liberty. Key Finding 13 was that “Biden agencies’ religious accommodation process often functionally penalized Christians who sought to exercise their religious rights.”⁸³ As an example, the report points to how the Biden Administration “promised a case-by-case evaluation of religious accommodation requests but, for many, this promise was illusory.”⁸⁴

Taking HHS as an example, Morrison and Kniffin explained in their white paper on Eradicating Anti-Christian Bias how the Biden administration’s “case-by-case” approach worked in practice and how such a requirement is not required by RFRA.

HHS’s claim that it must undertake a “fact-intensive, case-by-case analysis” for each request for a religious exemption or accommodation misrepresents Supreme Court doctrine and runs contrary to HHS’s own conduct in related litigation. Neither RFRA’s plaintiff-focused “substantial burden” test nor the government-focused “strict scrutiny” test necessarily requires a “fact-sensitive, case-by-case analysis” in every instance.⁸⁵

They pointed out that this conclusion is further supported by HHS’s “long history of litigating (and losing) RFRA claims brought against its contraception and transgender mandates.”⁸⁶ Morrison and Kniffin provided a more detailed explanation of how RFRA’s substantial burden and strict scrutiny analysis can be satisfied without adopting a case-by-case approach.⁸⁷

The required agency RFRA analysis and accommodation process should include, at minimum, the following requirements:

- Notice;
- Clear process;
- Evaluation by experts in religious-liberty law;
- A written explanation of any denial, with expedited review and appeal; and
- The ability to appeal before an award is finalized.

⁸³ U.S. Dep’t of Just., *Eradicating Anti-Christian Bias Within the Federal Government: 2026 Task Force Report*, at v (Apr. 30, 2026), <https://www.justice.gov/opa/media/1438506/dl?inline>.

⁸⁴ *Id.*

⁸⁵ Rachel N. Morrison & Eric Kniffin, *Eradicating Anti-Christian Bias: A Response to Executive Order 14202*, EPPC, at 9 (Oct. 2025), <https://media.eppc.org/2025/11/25-11-Eradicating-Anti-Christian-Bias-1.pdf> (documenting the Biden HHS’s attack on attack of health-care rights of conscience).

⁸⁶ *Id.*

⁸⁷ *See id.* at 10-11.

This addition would align with President Trump’s executive orders and recent actions by the Trump Administration to eradicate anti-Christian bias, combat antisemitism, and promote religious liberty.⁸⁸

VI. [200.477] Abortion

OMB proposes the following restriction on funding for abortion at § 200.477: “Costs associated with elective abortions are unallowable, except as expressly authorized by federal law.” We support restricting federal funding for abortion and provide the following suggestions of ways OMB can bolster this restriction.

A. Prohibiting federal funding for abortion accords with congressional action.

Congress has repeatedly prohibited taxpayer dollars from funding abortion or abortion benefits. Consider the following examples.

- *Healthcare programs and activities*: The Hyde Amendment (included in appropriation legislation for over forty years) states no federal funds “shall be expended for any abortion” or “for health benefits coverage that includes coverage of abortion,” with narrow exceptions. P.L. 117-103. Div. H, §§ 506-507.
- *Health insurance*: Section 1303 of the Affordable Care Act (ACA) states nothing in the ACA “shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions.” 42 U.S.C. § 18023(c)(1).
- *Employee health insurance benefits*: Title VII “shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion.” 42 U.S.C. § 2000e(k).
- *Veterans Benefits*: Section 106 of the Veterans Health Care Act of 1992 prohibits the Department of Veterans Affairs from providing abortion benefits for veterans and certain beneficiaries. Public Law 102-585, 106 Stat. 4943.
- *Military Benefits*: Federal law prohibits the Department of Defense from using any funds or facilities to perform an abortion except in cases where the mother’s life is endangered or in cases of rape or incest. 10 U.S.C. § 1093.
- *Family planning grants*: No Title X funds “shall be used in programs where abortion is a method of family planning.” 42 U.S.C. § 300a-6.

⁸⁸ Exec. Order 14202, Eradicating Anti-Christian Bias, 90 Fed. Reg. 9,365 (Feb. 12, 2025), <https://www.federalregister.gov/d/2025-02611>; Exec. Order 14188, Additional Measures To Combat Anti-Semitism, 90 Fed. Reg. 8,847 (Feb. 3, 2025), <https://www.federalregister.gov/d/2025-02230>; Exec. Order No. 14291, Establishment of the Religious Liberty Commission, 90 Fed. Reg. 19,417 (May 7, 2025), <https://www.federalregister.gov/d/2025-08134>; *Religious Liberty Commission*, U.S. Dep’t of Just., <https://www.justice.gov/religious-liberty-commission> (last visited July 13, 2026).

- *Education programs and activities*: Nothing in Title IX “shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion.” 20 U.S.C. § 1688.
- *Foreign financial assistance*: The Helms Act states that “no foreign assistance funds may be used to pay for the performance of abortion as a method of family planning or to motivate or coerce any person to practice abortions.” Sec. 305 of Pub. L. No. 100-459.

While Congress sometimes permits federal funding of abortion in limited circumstances, it does not always. While federal law permits funding for abortion in certain limited circumstances, it does not require the federal government to fund abortion. Consistent with *West Virginia v. EPA* and *Loper-Bright*, OMB should not open the door to taxpayer-funded abortion even in limited circumstances.

B. Prohibiting federal funding of abortion aligns with Trump Administration priorities.

We agree with OMB that the prohibition on federal funding for abortion 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.”⁸⁹

Prohibiting federal funding for abortion squarely aligns with President Trump’s priorities and the following executive actions.

- *Campaign Promise*. President Trump’s campaign promise was to allow states to regulate abortion and protect unborn human life.⁹⁰ Returning abortion to the states requires getting the federal government out of the business of providing and funding abortion.⁹¹
- *Executive Order 14182: Enforcing the Hyde Amendment*. We agree with OMB that the prohibition on federal funding for abortion is “consistent with Executive Order 14182, Enforcing the Hyde Amendment” signed on January 24, 2025 by President Trump.⁹² The order seeks “to end the forced use of Federal taxpayer dollars to fund or promote elective abortion.”⁹³ The executive order showed that:

Congress has annually enacted ... laws that prevent Federal funding of elective abortion, reflecting a longstanding consensus that American taxpayers should not be forced to pay for that practice. However, the previous administration disregarded this established, commonsense policy by embedding forced taxpayer funding of elective abortions in a wide variety of Federal programs.⁹⁴

⁸⁹ 91 Fed. Reg. at 32232.

⁹⁰ Cf. Rachel N. Morrison & Eric Kniffin, *Leaving Abortion to the States Requires Federal Action*, Wall St. Journal (Apr. 23, 2024), <https://www.wsj.com/articles/leaving-abortion-to-the-states-requires-federal-action-regulation-a97f704e> (explaining that rolling back Biden administration actions, including the VA Final Rule, “that have elevated abortion access above states’ rights would reduce the power of the administrative state and free states to pursue their own abortion policies” and is required to fulfill President Trump’s “law of the state” position).

⁹¹ See *id.*

⁹² 91 Fed. Reg. at 32232.

⁹³ Exec. Order 14182, Enforcing the Hyde Amendment, 90 Fed. Reg. 8751 (Jan. 24, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/enforcing-the-hyde-amendment/>.

⁹⁴ *Id.* at 8751.

- *Fact Sheet: President Donald J. Trump Enforces Overwhelmingly Popular Demand to Stop Taxpayer Funding of Abortion.* A fact sheet on Executive Order 14182 reiterated that Congress' intent via the laws it passes is to "protect taxpayers from being forced to pay for abortion."⁹⁵ The fact sheet specifically stated that "the previous administration embedded federal funding of elective abortion in a wide variety of government programs" and emphasized President Trump's desire to address the "federal overreach and taxpayer dollars" going to abortion.⁹⁶
- *Executive Order 14202: Eradicating Anti-Christian Bias.* This executive order established the Trump administration's policy "to protect the religious freedoms of Americans and end the anti-Christian weaponization of government."⁹⁷ The Biden administration demonstrated anti-Christian bias and hostility to religious freedom by simultaneously promoting abortion and minimizing conscience and religious freedom rights. Indeed, one of the examples cited in the executive order was the Biden DOJ's targeting of "nearly two dozen pro-life Christians for praying and peacefully demonstrating outside abortion facilities."⁹⁸
- *Executive Order 14217: Commencing the Reduction of the Federal Bureaucracy.* One of President Trump's priorities stated in this executive order is to "reduc[e] the scope of the Federal bureaucracy" and "minimize Government waste and abuse."⁹⁹ "[R]educing government overreach" is one of the considerations mentioned, which aligns with President Trump's desire to stop taxpayer funding of abortion.
- *Fact Sheet: President Donald J. Trump Continues the Reduction of the Federal Bureaucracy.* The fact sheet accompanying EO 14217 stated that "by reducing the Federal footprint, [the administration] is returning power to local communities and state governments."¹⁰⁰ Rescinding the Biden Rule is consistent with this policy priority by eliminating federal funds used for abortion and returning the issue of abortion to the states.
- *Executive Order 14219: Ensuring Lawful Governance And Implementing The President's "Department Of Government Efficiency" Deregulatory Initiative.* This executive order stated that it is the policy of the Trump administration to "focus the executive branch's limited enforcement resources on regulations squarely authorized by constitutional Federal statutes" and that it is a priority of the administration to restore "the constitutional separation of powers."¹⁰¹ The order flagged classes of regulations that should be rescinded, including regulations that are not based on "the best reading of the underlying statutory authority or prohibition," are "not authorized by

⁹⁵ White House, *Fact Sheet: President Donald J. Trump Enforces Overwhelmingly Popular Demand to Stop Taxpayer Funding of Abortion* (Jan. 25, 2025), <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-enforces-overwhelmingly-popular-demand-to-stop-taxpayer-funding-of-abortion/>.

⁹⁶ *Id.*

⁹⁷ Exec. Order 14202, *Eradicating Anti-Christian Bias*, 90 Fed. Reg. 9365 (Feb. 12, 2025), <https://www.federalregister.gov/d/2025-02611>.

⁹⁸ White House, *Fact Sheet: President Donald J. Trump Eradicates Anti-Christian Bias* (Feb. 6, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-eradicates-anti-christian-bias/>.

⁹⁹ Exec. Order 14217, *Commencing the Reduction of the Federal Bureaucracy*, 90 Fed. Reg. 10577 (Feb. 19, 2025).

¹⁰⁰ White House, *Fact Sheet: President Donald J. Trump Continues the Reduction of the Federal Bureaucracy* (Mar. 14, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-continues-the-reduction-of-the-federal-bureaucracy/>.

¹⁰¹ Exec. Order 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, 90 Fed. Reg. 10583, 10583 (Feb. 19, 2025), <https://www.federalregister.gov/d/2025-03138>.

clear statutory authority,” and “implicate matters of social, political, or economic significance.”¹⁰² Prohibiting funding for abortion when Congress has not mandated funding falls squarely within these policy priorities.

C. OMB should strength the prohibition on funding for abortion.

1. OMB should drop the qualifier “elective.”

We urge OMB to drop the qualifier “elective.” No other federal restriction on funding for abortion uses that qualifier. Neither “abortion” nor “elective” are defined in the proposed regulation, opening the door for arguments that federal financial assistance can be used for abortion in cases for “health” or “mental health” reasons.¹⁰³

Indeed, in litigation challenging the EEOC’s abortion accommodation mandate in its regulations implementing the Pregnant Workers Fairness Act (PWFA), the district court claimed without analysis that the PWFA statute *itself* “required” accommodating all abortions except for those that are “purely elective.”¹⁰⁴ Aside from the clear statutory error that the PWFA—which does not mention abortion and only requires workplace accommodations for “pregnancy, childbirth, or related medical conditions”—requires accommodations for elective abortion, limiting abortions to only those that are “purely elective” still has “severe ramifications for religious objectors” and is a form of “regulatory overreach.”¹⁰⁵

To the extent OMB is using the term “elective” to exclude cases involving treatment to save a mother’s life, miscarriage management, and treatment for ectopic pregnancy, none of those cases are abortion rightly understood.¹⁰⁶ To address any concerns that the proposed abortion funding restriction could be interpreted broader than intended and cover situations involving life-saving care, miscarriage, or ectopic pregnancy, OMB should add clarifying language that such cases are not considered abortion.

Consider, for example, the Department of Veterans Affairs’ (VA) restriction on abortion benefits. The Veterans Health Care Act prohibits the VA from providing abortion benefits for veterans and certain beneficiaries.¹⁰⁷ “VA had never understood the VHCA or its regulations ‘to prohibit providing care to pregnant women in life-threatening circumstances, including treatment for ectopic pregnancies or

¹⁰² *Id.*

¹⁰³ *Cf. Doe v. Bolton*, 410 U.S. 179, 192 (1973) (“[M]edical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman’s age—relevant to the well-being of the patient. All these factors may relate to health. This allows the attending physician the room he needs to make his best medical judgment.”), *abrogated by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

¹⁰⁴ *USCCB v. EEOC*, No. 2:24-cv-691 (W.D. La. May 21, 2025).

¹⁰⁵ Brief for Appellants at 2, *USCCB v. EEOC*, No. 25-30398 (5th Cir. May 18, 2026), <https://becketnewsite.s3.amazonaws.com/20260519091442/Fifth-Circuit-Opening-Brief-in-USCCB-v-EEOC.pdf>.

¹⁰⁶ *See, e.g.*, American Association of Pro-Life OBGYNs, AAPLOG Practice Guideline: Concluding Pregnancy Ethically (Aug. 2022), <https://aaplog.org/wp-content/uploads/2023/04/PG-10-Concluding-Pregnancy-Ethically-updated.pdf>.

¹⁰⁷ Veterans Health Care Act of 1992, Pub. L. No. 102-585, § 106, 106 Stat. 4943, 4947 (“In furnishing hospital care and medical services under chapter 17 of title 38, United States Code, the Secretary of Veterans Affairs may provide to women the following health care services: ... (3) General reproductive health care, including the management of menopause, but not including under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition....”).

miscarriages”¹⁰⁸ In a recent opinion, the Department of Justice’s Office of Legal Counsel explained that the VA’s “longstanding approach”—interpreting the abortion exclusion as not applying to “life-saving medical interventions” when “a physician certifies that the life of the mother would be endangered if the fetus were carried to term”—“accords with the plain meaning of ‘abortion,’ as informed by common legal and medical usage.”¹⁰⁹ The VA’s December 2025 final rule reiterated:

VA did not in its proposed rulemaking, does not now, and has never interpreted the regulatory bar against abortions to be a bar against providing life-saving treatment. VA has simply never used the term “abortion” to refer to life-saving treatment provided to a pregnant woman. VA’s proposal and final action today do not change this long-standing understanding of the difference between an abortion and a medical intervention necessary to save the life of a pregnant woman.¹¹⁰

The VA’s and DOJ’s interpretation of what constitutes an abortion is consistent with state abortion laws which clarify that lifesaving care does not fall under the abortion restrictions.¹¹¹

We urge OMB to provide similar clarifying language in its final rule: “Consistent with long-standing understanding, abortion does not include medical interventions necessary to save the life of a pregnant woman.”

2. OMB should add clarifying language.

The proposed regulation uses the phrase “costs associated with elective abortions.” We are concerned that costs may not include a non-billed referral or similar actions. As such, we urge OMB to consider using similar language to the longstanding Hyde Amendment that no funds “shall be expended for any abortion.” Regardless of the phrase used, we urge OMB to provide examples in the preamble of what types of costs can be associated with abortion, such as abortion referrals, abortion counseling, abortion travel, and assistance in the performance of abortion (noninclusive). The Biden Administration tried to claim that costs associated with travel to receive an abortion were not funding for abortion. We disagree.¹¹² We also urge OMB to explicitly prohibit funding for health benefits coverage.

We also urge OMB to add a physical and financial separation requirement similar to what HHS did during Trump 1 in its Title X regulations.¹¹³ Physical and financial separation creates a bright-line and is necessary to ensure that federal funds are not being used to create infrastructure that supports abortion. Without separation there could be ambiguity and confusion between federally funded activities and abortion services, making it more difficult, if not impossible, to ensure compliance. This is especially true

¹⁰⁸ Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services, 49 Op. O.L.C. __ (Dec. 18, 2025), at 3 n.2, <https://www.justice.gov/olc/media/1421726/dl>.

¹⁰⁹ *Id.* (citing Nicholas Colgrove, *Defining ‘Abortion’: A Call for Clarity*, Theoretical Med. & Bioethics, No. 46, 137–69 (2025)).

¹¹⁰ VA, Reproductive Health Services, 90 Fed. Reg. 61310, 61311 (Dec. 31, 2025), <https://www.federalregister.gov/d/2025-24061>.

¹¹¹ See, e.g., EPPC Scholars Comment Opposing Department of Veterans Affairs’ “Reproductive Health Services” Interim Final Rule, RIN 2900–AR57, at 3–5 (Oct. 11, 2022), <https://media.eppc.org/2022/10/VA-IFR-Ethics-and-Public-Policy-Center.pdf> (collecting state laws restricting abortion, all of which do not cover procedures to save the life of the mother).

¹¹² Cf. Rachel N. Morrison & Natalie Dodson, *Should Taxpayers Pay for Abortion Travel?*, The Hill (Nov. 24, 2022), <https://thehill.com/opinion/healthcare/3749245-should-taxpayers-pay-for-abortion-travel/>.

¹¹³ HHS, Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714 (Mar. 4, 2019), <https://www.federalregister.gov/d/2019-03461>.

when physical space is shared. Physical and financial separation will advance transparency and accountability and effectuate President Trump’s executive order on restoring the Hyde Amendment.

To address these suggestions, we propose the following: *“No funds may be expended for any abortion or health benefits coverage that includes coverage of abortion. This includes any use of federal funds to provide ancillary services necessary to receive an abortion, but does not apply to any intervention necessary to save the life of the mother.”*

Similar to the State Department’s rule on Protecting Life in Foreign Assistance,¹¹⁴ OMB should also consider whether it can prohibit federal financial assistance from going to abortion providers, not just for abortion. In *Harris v. McRae*, the Supreme Court upheld the ability of the federal government—even under *Roe*—to make, and implement, a “value judgment favoring childbirth over abortion and implement that judgment,” including in the allocation of federal funding.¹¹⁵

D. Prohibiting federal funding for abortion protects women’s health.

Last year, comment author Jamie Bryan Hall and EPPC President Ryan T. Anderson released the largest-known study of the abortion pill, “The Abortion Pill Harms Women: Insurance Data Reveals One in Ten Patients Experiences a Serious Adverse Event,” which discovered that 10.93 percent of women experience sepsis, infection, hemorrhaging, or another serious adverse event within 45 days following a mifepristone prescription.¹¹⁶ This real-world finding, based on insurance claims data from 865,727 abortions performed in the United States from 2017 to 2023, exposed that mifepristone is more than 22 times as harmful to women as is acknowledged on the FDA-approved drug label.¹¹⁷ To the extent that prohibiting federal funding reduces the number of abortions performed, this policy will serve to protect women from the health risks of abortion.

VII. [§ 1.205] Applicability to Federal Financial Assistance

Proposed § 1.205 provides that “The types of instruments that are subject to the regulations in this subtitle vary from one portion of the regulations to another. All portions of the regulations apply to grants and cooperative agreements, and some portions also apply to other types of Federal financial assistance.”¹¹⁸

Some have argued that tax-exempt status or tax benefits confer a financial benefit to a person or entity and thus should be subject to obligations attached to federal financial assistance. Indeed, in 2022 two district courts held that a private school which is tax-exempt, and did not otherwise receive federal financial assistance, was nevertheless receiving federal financial assistance based on its tax-exempt status and thus subject to strings attached to receipt of federal education dollars under Title IX.¹¹⁹ Under those

¹¹⁴ Protecting Life in Foreign Assistance, 91 Fed. Reg. 3,319 (Jan. 27, 2026), <https://www.federalregister.gov/d/2026-01519>.

¹¹⁵ *Harris v. McRae*, 448 U.S. 297, 314 (1980).

¹¹⁶ Jamie Byan Hall & Ryan T. Anderson, The Abortion Pill Harms Women: Insurance Data Reveals One in Ten Patients Experiences a Serious Adverse Event, EPPC (Apr. 28, 2025), <https://eppc.org/publication/insurance-data-reveals-one-in-ten-patients-experiences-a-serious-adverse-event/>.

¹¹⁷ *Id.*

¹¹⁸ 91 Fed. Reg. at 32241.

¹¹⁹ *E.H. v. Valley Christian Acad.*, 2:21-cv-7574, 10 (C.D. Cal. Jul. 25, 2022) (“Accordingly, the Court holds that Valley Christian’s tax-exempt status confers a federal financial benefit that obligates compliance with Title IX.”); *Buettner-hartsoe v. Balt. Lutheran High Sch. Ass’n*, No. RDB-20-3229, 6 (D. Md. Jul. 21, 2022) (“The tax-exempt

strained rulings, any organization that Congress does not choose to tax could be subject to all federal spending legislation. This “logic” could even extend to individuals who avail themselves of various tax credits or deductions, including those as common as the Child Tax Credit or the home mortgage interest deduction, that are classified as “tax expenditures” by the Treasury Department and other federal agencies in official reports. This is absurd!

While the court cases were ultimately resolved correctly,¹²⁰ codifying a rejection of this premise in the 2 CFR regulations provides durable protection and clarity. As such, we urge OMB to include a statement at § 1.205 (or elsewhere as OMB deems appropriate) clarifying that tax exempt status is not federal financial assistance. The statement could be as simple as: “*Tax benefits and nonprofit tax status are not a conferral of federal financial assistance.*”

Conclusion

We urge OMB to finalize the rule with the above suggestions.

Sincerely,

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status of a private school subjects it to the same requirements of Title IX imposed on any educational institution. CPS cannot avail itself of federal tax exemption but not adhere to the mandates of Title IX.”).

¹²⁰ Order Dismissing Action with Prejudice, *E.H. v. Valley Christian Acad.*, No. 2:21-cv-7574 (C.D. Cal. Aug. 10, 2023); Memorandum Order, *Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass’n*, No. RDB-20-3132 (D. Md. May 1, 2024), ECF No. 156.