July 13, 2026

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

Submitted electronically via Regulations.gov
Docket ID: OMB-2026-0034

Re: Comments on Proposed Rule, Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (May 29, 2026)

Dear Director Vought:

The Center for Public Justice (CPJ) and Christian Legal Society (CLS) respectfully submit these comments in response to the Office of Management and Budget's proposed rule, Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (May 29, 2026).

CPJ is a Christian, nonpartisan civic education and public policy organization dedicated to advancing a political framework that upholds public justice, institutional pluralism, and the religious freedom of faith-based organizations that serve the public good. For nearly five decades, CPJ has worked to strengthen the participation of faith-based organizations in American public life, including in social services, education, health care, humanitarian service, and other areas where government and civil society can work together for the common good.

CLS is a nationwide association of lawyers and law students who seek to serve Jesus Christ by, among other ministries, defending the first freedom of the First Amendment for all persons in the U.S. For half a century, its Center for Law & Religious Freedom has filed friend of the court briefs and represented clients in the courts; helped lead coalitions for passage of laws like the Religious Freedom Restoration Act in Congress and state legislatures; and shared its expertise with the Executive Branch through comments on proposed regulations, such as those promulgated by OMB here.

We appreciate OMB's stated commitment to improving transparency, accountability, and oversight in federal financial assistance. Responsible stewardship of public funds is important not only for taxpayers, but also for faith-based and community-based organizations whose public credibility can be harmed when federal grantmaking is perceived as wasteful, politicized, or insufficiently accountable. We also support OMB's efforts to remove grant conditions not grounded in law or the Constitution, to reduce unnecessary burdens, and to lower barriers to participation by smaller and novice applicants. Faith-based and community-based organizations, too, are deeply concerned about the harm caused to people needing assistance when federal funding is wasted on ineffective or fraudulent activities.

At the same time, we respectfully urge OMB to ensure that the final rule better aligns its requirements with its stated aims. In particular, the final rule should preserve the legal and institutional distinction between grants and procurement contracts; protect the distinctive role of civil society partners; limit unnecessary volatility in grant relationships; and make religious-freedom protections operational in the regulatory text rather than leaving them only in the preamble.

Faith-based organizations are not merely service-delivery vendors. They are civil society institutions with their own missions, convictions, governance, practices, and relationships of trust. The federal faith-based initiative[1] has helped government better understand that religious organizations can serve the public without secularizing their identity, altering their governance, abandoning religious staffing, or forfeiting religious exercise. Federal grantmaking should continue to reflect that insight.

Accordingly, we support OMB's goals of lawful grantmaking, accountability, and broader participation, while recommending changes to ensure that the final rule: (1) preserves grants as partnerships rather than converting them into contract-like vendor relationships; (2) limits volatility caused by expanded discretionary termination authority; (3) makes RFRA and religious-exercise protections operational in the regulatory text; (4) protects both the religious freedom of faith-based providers and the religious freedom of beneficiaries; and (5) lowers barriers for smaller and novice faith-based and community-based organization applicants without exposing them to unacceptable legal, financial, or mission-related risk.

[200.201] OMB should add a new paragraph preserving the statutory distinction between grants, cooperative agreements, and procurement contracts.

The Federal Grant and Cooperative Agreement Act[2] distinguishes procurement contracts from grants and cooperative agreements. A procurement contract is appropriate when the principal purpose is the acquisition of property or services for the direct benefit or use of the federal government. A grant agreement, by contrast, is appropriate when the principal purpose is the transfer of money, property, services, or anything of value to a recipient to accomplish a public purpose of support or stimulation authorized by federal statute, and no substantial federal involvement is anticipated during performance. A cooperative agreement is similar to a grant, except that substantial federal involvement is anticipated. See 31 U.S.C. §§ 6303–6305.

This distinction is not a mere technicality. It reflects different relationships between the federal government and non-federal actors. In a contract, the government purchases goods or services for itself. In a grant, the government supports or stimulates work carried out by a non-federal entity to advance a public purpose.[3] Grants therefore depend on a different posture: oversight

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[1] "What is the Faith-Based Initiative?," https://cpjustice.org/what-we-do/institutional-religious-freedom-alliance/faith-based-initiative/
[2] https://www.govinfo.gov/content/pkg/STATUTE-92/pdf/STATUTE-92-Pg3.pdf
[3] "Grants/Contracts Differences," U.S. Department of Energy, https://science.osti.gov/grants/About/Grants-Contracts-Differences

and accountability, yes, but also respect for the recipient's own knowledge, mission, expertise, and relationship to the community it serves.

This distinction is especially important for faith-based organizations and other civil society institutions. Their distinctive contributions often arise precisely from what government cannot create: religious mission, community trust, spiritual and moral formation, cultural proximity, long-term presence, and non-governmental relationships of care. Grantmaking at its best enables such institutions to expand the demonstrated good work they are already doing and not subjugate them to the micromanaging of shifting agency personnel and priorities, provided the organization is faithfully fulfilling its grant responsibilities.

We recognize and support OMB's concern for stronger oversight. Federal agencies should write clearer Notices of Funding Opportunity, better assess applicants' capacity and integrity, monitor awards responsibly, and ensure that public funds are used lawfully and effectively. But increased accountability should not become centralized micromanagement. Nor should it result in a system in which grantees must continually adjust their mission-driven work to the policy priorities of whichever administration is in office.

OMB should therefore add language to the final rule clarifying that nothing in Part 200 should be construed to convert grant or cooperative agreement relationships into procurement relationships, or to authorize federal agencies to administer grants in a manner inconsistent with the Federal Grant and Cooperative Agreement Act.

We recommend that OMB add a new paragraph at 2 CFR § 200.201(c), titled "Preservation of statutory distinction between Federal award instruments."

> § 200.201(c) *Preservation of statutory distinction between Federal award instruments*. Nothing in this part shall be construed to alter the statutory distinction between procurement contracts, grants, and cooperative agreements under 31 U.S.C. §§ 6303–6305. Federal agencies shall administer Federal awards in a manner consistent with the legal instrument used. In the case of grants and cooperative agreements, Federal agencies shall preserve the recipient's role in carrying out a public purpose of support or stimulation authorized by Federal statute and shall not administer such awards as procurement contracts for the direct benefit or use of the Federal Government.

[1.205] OMB should clarify that tax-exempt status, generally available tax benefits, and tax credits are not Federal financial assistance.

OMB should consider clarifying that nonprofit tax-exempt status, generally available tax benefits, and tax credits do not constitute federal financial assistance for purposes of Title 2. Such clarification would provide durable protection against future efforts to treat tax status or tax benefits as federal financial assistance in order to impose federal grant-related obligations on organizations that have not accepted federal funds.

This issue is especially important for religious schools, colleges, charities, and other nonprofit organizations. Tax-exempt status is not a federal grant. Nor is a generally available tax benefit the same as federal financial assistance. Treating tax benefits as federal financial assistance would create substantial uncertainty and could discourage participation in programs designed to expand educational opportunity, charitable giving, and civil society service.

We recommend that OMB revise proposed § 1.205 by designating the existing text as § 1.205(a) and adding a new § 1.205(b) as follows:

> § 1.205 Applicability to Federal financial assistance.
>
> (a) *General applicability*.
> 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.
>
> (b) *Tax status and tax benefits.*
> For purposes of this title, Federal financial assistance does not include tax-exempt status, generally available tax deductions, tax credits, tax exclusions, tax exemptions, rebates, or other tax benefits, whether received directly or indirectly, unless Congress expressly provides otherwise.

[200.340(b)(2)] OMB should revise the first sentence of the "Exceptions" subsection to clarify that discretionary termination authority applies only to discretionary awards.

The proposed rule would expand and emphasize federal agencies' authority to terminate discretionary awards when agency priorities change, when the award is no longer considered in the federal government's interest, or when the agency determines that the recipient is no longer the best choice for achieving program purposes. We understand the need for agencies to address fraud, waste, unlawful activity, failure to perform, or awards that no longer comply with statutory or constitutional requirements.

However, expanded discretionary termination authority could create significant instability for grantees, especially smaller and novice faith-based and community-based organization applicants. These organizations often expand staff, facilities, service capacity, and community commitments in reliance on federal awards. If grant terms can be substantially changed, suspended, or terminated midstream because of changed administration priorities, many organizations may reasonably conclude that the risks of participation outweigh the benefits.

This concern is directly related to OMB's stated goal of reducing barriers for smaller and novice organization applicants. Organizations with limited reserves, limited compliance staff, or few alternative funding sources are least able to absorb sudden grant termination, suspension, or major programmatic redirection. A rule intended to broaden participation should not make the grant environment so volatile that only large, sophisticated, well-capitalized institutions can prudently participate.

OMB should clarify that discretionary termination authority applies only to discretionary awards and never to federal awards made under programs where legislation establishes an entitlement, formula, or other mandatory award criteria. The proposed phrasing in § 200.340(b)(2) is unnecessarily ambiguous because it says the discretionary termination provision is "generally applicable to discretionary awards, but not to Federal awards made under programs where legislation establishes an entitlement." OMB should make clear that non-discretionary statutory awards are not subject to discretionary termination based on changing agency or administration priorities.

We recommend that OMB revise the first sentence of proposed § 200.340(b)(2), under "Exceptions," to read:

> The discretionary termination provision in paragraph (a)(2) applies only to discretionary awards and does not apply to Federal awards made under programs where legislation establishes an entitlement, formula allocation, or other mandatory statutory criteria for the award or continuation of funding.

[200.341(c), 200.342, 200.340(e), 200.208, 200.343(b)] OMB should add procedural safeguards for discretionary terminations and suspensions.

OMB should also add safeguards to ensure that discretionary termination, suspension, or modification is not used in a manner that undermines reasonable reliance interests, disrupts services unnecessarily, or discourages participation by faith-based and community-based organizations.

We recommend the following safeguards:

1. Written explanation. Before terminating, suspending, or materially modifying an award for discretionary reasons, the agency should provide the recipient a written explanation identifying the changed priority or federal interest and explaining why that change is of sufficient importance to outweigh continuation of activities the agency previously determined to be lawful, constitutional, and consistent with statutory program purposes.
2. Opportunity to respond or appeal. The recipient should have an opportunity to object, respond, or seek review before the termination, suspension, or modification takes effect, except where immediate action is required by statute, court order, imminent risk of harm, or demonstrated misuse of funds.
3. Protection during the final portion of an award period. Where less than half of the award period remains, an agency should not terminate, suspend, or materially modify the award solely because of changed agency or administration priorities, unless continuation would conflict with law, constitutional requirements, appropriations restrictions, or a specific statutory program requirement.
4. Guaranteed closeout cost recovery. In the case of discretionary termination, recipients should be entitled to recover reasonable, allowable, allocable, and necessary closeout costs, not merely permitted to request such costs subject to agency discretion.

5. Minimum wind-down period. Except where immediate termination is legally required or necessary to prevent imminent harm, agencies should provide a reasonable wind-down period, such as 180 days, so that recipients can responsibly transition beneficiaries, staff, facilities, and program commitments.

We recommend that OMB revise proposed § 200.341(c)(1), add a new § 200.341(c)(5), revise the final sentence of § 200.342, add a new § 200.340(e)(1)(iv), add a new § 200.208(g), and replace proposed § 200.343(b)(1)–(2).

Suggested replacement for § 200.341(c)(1)

Current proposed text begins:

> (1) A brief summary of the reason or reasons for finding that termination is in the interest of the Federal agency or pass-through entity…

We recommend replacing that with:

> (1) A written explanation identifying the specific agency priority, Federal interest, legal basis, or other reason for finding that termination is in the interest of the Federal agency or pass-through entity, and explaining why the termination outweighs continuation of the award as previously approved;

Suggested new § 200.341(c)(5)

We recommend adding a subparagraph after proposed § 200.341(c)(4):

> (5) Except where immediate action is required by law, court order, imminent risk of harm, or demonstrated misuse of Federal funds, the Federal agency or pass-through entity must afford the recipient or subrecipient a reasonable opportunity to respond or seek review before the discretionary termination takes effect.

Suggested revision of the final sentence of proposed § 200.342.

Current proposed text reads:

> The Federal agency is not required to allow for objections, hearings, and appeals related to any reasons for termination except termination for noncompliance.

We recommend replacing it with:

> The Federal agency is not required to allow for objections, hearings, and appeals related to any reasons for termination except termination for noncompliance or discretionary termination under § 200.340(a)(2). For discretionary terminations under § 200.340(a)(2), the Federal agency must provide an expedited opportunity for the recipient or subrecipient to object, respond, or seek review before the

termination takes effect, unless immediate action is required by law, court order, imminent risk of harm, or demonstrated misuse of Federal funds.

Suggest new § 200.340(e)(1)(iv)

We recommend adding a subparagraph after proposed § 200.340(e)(1)(iii)

> (iv) Provide a written explanation identifying the specific agency priority, Federal interest, legal basis, or other reason for the suspension, and, except where immediate action is required by law, court order, imminent risk of harm, or demonstrated misuse of Federal funds, afford the recipient or subrecipient a reasonable opportunity to respond or seek expedited review.

Suggested new § 200.208(g)

We recommend that OMB add a new subsection after proposed § 200.208(f), as follows:

> § 200.208(g) *Material modifications after award.*
> A Federal agency or pass-through entity may not materially modify the terms or conditions of a Federal award during the period of performance solely on the basis of changed agency priorities, administration priorities, or discretionary policy preferences unless the Federal agency or pass-through entity provides the recipient or subrecipient with written notice identifying the specific basis for the modification and explaining why the modification is necessary notwithstanding the agency's prior determination that the award, as approved, satisfied applicable law, constitutional requirements, statutory program purposes, agency priorities, and the Federal interest.
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> For purposes of this paragraph, a material modification includes any post-award change that materially alters the scope of work, required activities, prohibited activities, performance objectives, service population, program design, religious-freedom obligations, nondiscrimination obligations, reporting obligations, or other substantive award terms on which the recipient or subrecipient reasonably relied in accepting and performing the award.
>
> Except where immediate action is required by law, court order, imminent risk of harm, demonstrated misuse of Federal funds, or recipient noncompliance, the Federal agency or pass-through entity must provide the recipient or subrecipient a reasonable opportunity to respond or seek review before the material modification takes effect.
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> Where less than half of the approved period of performance remains, a Federal agency or pass-through entity may not materially modify the terms or conditions of the Federal award solely on the basis of changed agency priorities, administration priorities, or discretionary policy preferences unless continuation of the award under its existing terms would conflict with Federal law, constitutional requirements, appropriations restrictions, or specific statutory program requirements.

Suggested replacement for § 200.343(b)

We recommend replacing proposed § 200.343(b)(1)–(2) with:

> (b) *Costs resulting from discretionary terminations.* In the case of a termination under § 200.340(a)(2), the recipient or subrecipient shall be entitled to recover the Federal share of reasonable, allowable, allocable, and necessary closeout costs resulting from the termination, including costs associated with responsible wind-down of grant-funded activities, transition of beneficiaries, and termination of obligations reasonably incurred in reliance on the Federal award, consistent with § 200.472(a).

[200.300(c)] OMB should strengthen proposed § 200.300(c) and add new paragraphs § 200.300(d)–(j) to provide fuller Equal Treatment protections for faith-based organizations and beneficiaries.

We support OMB's proposal to add § 200.300(c), which would prohibit discrimination against faith-based organizations in grantmaking. This is an important statement of national policy. Faith-based organizations should be eligible to participate in federal financial assistance programs on the same basis as other organizations, without being penalized because of their religious character, affiliation, exercise, or identity.

However, the proposed § 200.300(c) is much more abbreviated than the Equal Treatment or Equal Opportunity regulations[4] currently applicable in major federal grantmaking agencies. Those regulations do more than prohibit overt discrimination against faith-based applicants. They also protect institutional religious identity, religious staffing, religious symbols, governance, mission statements, and the ability of faith-based organizations to retain their autonomy and religious character while participating in federally funded programs.

The final rule should not unintentionally narrow or destabilize those protections. Nor should OMB rely on a general nondiscrimination statement if a fuller government-wide Equal Treatment framework is needed. We recommend that OMB expand § 200.300 to create a government-wide Equal Treatment regulation that applies across federal financial assistance programs.

A proper Equal Treatment framework should protect two sets of religious-freedom interests at the same time: the religious freedom of faith-based providers and the religious freedom of beneficiaries. Faith-based organizations should not be excluded from federal funding because their services are religiously shaped, religiously motivated, or religiously integrated. At the same time, beneficiaries who are intended to receive federally funded services should have access to those services without being compelled to participate in religious teaching or religious activities to which they object. This does not mean that a beneficiary may never choose a religiously

[4] "What are Equal Treatment Regulations?," https://cpjustice.org/what-we-do/institutional-religious-freedom-alliance/faith-based-initiative/equal-treatment-regulations/

integrated service that includes required religious teaching or activities. In an indirect or voucherized program, where the beneficiary freely chooses among providers and has access to a meaningful secular alternative, the beneficiary may choose a religiously integrated provider whose program includes mandatory religious teaching or activities.

We recommend that OMB strengthen the proposed § 200.300(c) with a fuller statement of nondiscrimination and institutional religious freedom protections for faith-based organizations and add new paragraphs § 200.300(d)–(j) to provide a government-wide Equal Treatment framework applicable to federal financial assistance programs.

We recommend replacing proposed § 200.300(c) with the following:

> § 200.300(c) *Nondiscrimination against faith-based organizations and protection of religious exercise*. Faith-based organizations are eligible, on the same basis as any other organization, to participate in any Federal financial assistance program for which they are otherwise eligible. A Federal agency, or a State or local government or other pass-through entity administering Federal financial assistance shall not discriminate for or against an organization on the basis of the organization's religious character, affiliation, motives, exercise, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.
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> A faith-based organization that participates in a Federal financial assistance program retains its autonomy; right of expression; religious character; independence from Federal, State, and local governments; authority over internal governance; and ability to define, develop, practice, and express its religious beliefs. A faith-based organization does not forfeit protections under the First Amendment, the Religious Freedom Restoration Act, Title VII of the Civil Rights Act of 1964, or any other applicable religious-freedom, conscience, or nondiscrimination law by receiving Federal financial assistance.
>
> Where a federally funded service incorporates religious teaching or religious activities, the Federal agency or pass-through entity administering the program must ensure that beneficiaries are not compelled to participate in such teaching or activities as a condition of receiving federally funded assistance, unless the beneficiary has freely chosen that religiously integrated service through an indirect or voucherized funding program and has access to a reasonably accessible secular alternative of substantially similar value.

We further recommend adding new paragraphs § 200.300(d)–(j) as follows:

> § 200.300(d) *Institutional religious freedom*.
> A faith-based organization that participates in a Federal financial assistance program retains its autonomy; right of expression; religious character; independence from Federal, State, and local governments; authority over internal governance; and ability to define, develop, practice, and express its religious beliefs. Such an organization may retain religious terms in its name, religious references in its mission statements and

governing documents, religious criteria for selecting board members or leaders, religious art, icons, scriptures, and symbols in its facilities, and religious staffing practices protected by law.

§ 200.300(e) *Religion incorporated into federally funded services.*
A faith-based organization may apply for and receive Federal financial assistance to support a program of service that incorporates religious teaching or religious activities, consistent with the First Amendment, the Religious Freedom Restoration Act, and the beneficiary protections in this section.

§ 200.300(f) *Beneficiary protections.*
A beneficiary may not be compelled, as a condition of receiving a federally funded service intended for the beneficiary, to participate in undesired religious teaching or religious practices. Where a federally funded service incorporates religious teaching or religious activities, the Federal agency or pass-through entity administering the program must ensure that, where needed, beneficiaries have access within a reasonable period of time to an alternative service that is reasonably accessible, religiously acceptable to the beneficiary, and of substantially similar value. This paragraph does not prohibit a beneficiary from choosing, through an indirect or voucherized funding program with a meaningful alternative available, a religiously integrated service that includes religious teaching or practices.

§ 200.300(g) *Notice to beneficiaries.*
Before enrollment or participation, a provider that incorporates religious teaching or religious activities into a federally funded service must clearly inform potential beneficiaries whether the federally funded service does or does not incorporate religious teaching or religious activities, and must inform potential beneficiaries of their rights under paragraph (f). In an indirect or voucherized program, the notice should also make clear that choosing a religiously integrated provider constitutes consent to participate in the religious elements incorporated into that provider’s federally funded service, while preserving the beneficiary’s ability to choose or request an available alternative service that does not include religious elements to which the beneficiary objects.

§ 200.300(h) *Religious staffing and employment decisions.*
A faith-based organization’s rights under Title VII of the Civil Rights Act of 1964, including the religious-organization exemption set forth at 42 U.S.C. § 2000e-1(a), are not forfeited when the faith-based organization receives Federal financial assistance. Nothing in this part shall be construed to limit a faith-based organization’s ability to make employment decisions in accordance with its religious tenets, standards, mission, or identity, including where the alleged employment discrimination is pleaded on a basis other than religion, to the extent protected by Title VII, the First Amendment, RFRA, or other applicable law. Where RFRA requires an accommodation from a grant condition that would otherwise burden a faith-based organization’s religious staffing practices, the Federal agency or pass-through entity must provide such accommodation unless application of the condition satisfies RFRA.

§ 200.300(i) *Religious accommodations and religious-freedom notice*.
A faith-based organization shall not be disqualified from participating in a Federal financial assistance program on the basis of the organization's indication that it may request a religious accommodation. Federal agencies and pass-through entities must notify faith-based applicants, recipients, and subrecipients that they retain rights under the First Amendment, the Religious Freedom Restoration Act of 1993, and other applicable religious-freedom and conscience protections when participating in Federal financial assistance programs. Such notice must identify the official, office, or process through which an applicant, recipient, or subrecipient may raise a concern that a program requirement, award condition, specific condition, enforcement action, suspension, termination, or other agency action may burden religious exercise. Any request for relief from such a burden, and any agency determination regarding such request, must be evaluated under paragraph (k).[5]

§ 200.300(j) *Relationship to agency-specific Equal Treatment regulations*.
Agencies with existing Equal Treatment or Equal Opportunity regulations should conform those regulations to this section. Agencies without such regulations should apply this section to all Federal financial assistance programs they administer, subject to agency-specific statutory requirements.

[200.300(a)] OMB should make RFRA protections operational in the regulatory text by revising 200.300(a) and adding new subsections §200.300(k).

The NPRM's preamble contains strong and welcome language affirming that federal agencies must comply with the Religious Freedom Restoration Act, the First Amendment, and other laws protecting religious exercise and conscience. We appreciate this language. However, the proposed regulatory text does not sufficiently translate that commitment into operational requirements agencies and pass-through entities must follow.

This concern is related to, but distinct from, our recommendation that OMB replace proposed § 200.300(c) and add new paragraphs § 200.300(d)–(j) to provide fuller Equal Treatment protections for faith-based organizations and beneficiaries. Those provisions address equal eligibility, institutional religious freedom, religious staffing, religiously integrated services, and beneficiary protections. The additional recommendation below addresses the process by which agencies must identify, evaluate, and accommodate burdens on religious exercise under RFRA.

RFRA is not merely a defense to be raised after a religious organization has been burdened. It is an affirmative statutory command: the federal government "shall not substantially burden a person's exercise of religion" unless it satisfies strict scrutiny. 42 U.S.C. § 2000bb-1. Agencies should therefore consider RFRA obligations at the front end, that is when designing programs, drafting NOFOs, establishing award conditions, reviewing applications, and administering awards.[6]

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[5] The recommendation for the addition of paragraph § 200.300(k) is in a recommendation that follows.
[6] "Federal Law Protections for Religious Liberty," Department of Justice, 82 Fed Reg 49668 (October 6, 2017).

Faith-based organizations should not be forced into uncertainty, delay, or litigation to obtain the protections RFRA already guarantees. Nor should they be disqualified from participation merely because they indicate that they may need a religious accommodation. To broaden participation by smaller and novice faith-based organization applicants, OMB should require a clear, accessible, and timely accommodation process.

Accordingly, we recommend that OMB revise § 200.300 in three ways.

First, we recommend that OMB revise proposed § 200.300(a) to expressly identify RFRA among the federal laws that agencies and pass-through entities must comply with when administering federal financial assistance.

Current proposed § 200.300(a) text begins:

> (a) *In general*. 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…"

We recommend revising the first sentence of proposed § 200.300(a) with the following text:

> "(a) *In general*. Federal agencies and pass-through entities must administer Federal awards in full compliance with the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb–2000bb-4, the First Amendment, and with the U.S. Constitution and all other applicable Federal laws, statutes, and regulations protecting religious exercise, conscience, and institutional religious freedom."

Second, in the recommendation above on Equal Treatment protections we have already recommended adding a new paragraph § 200.300(i) so that the new paragraph does not attempt to carry the entire RFRA process itself, but instead points to the more detailed RFRA procedure that follows and so that faith-based applicants and recipients are notified of their religious-freedom rights and of the process for seeking relief when a federal award requirement may burden religious exercise.

Third, we recommend adding a new § 200.300(k), after proposed § 200.300(j), as follows:

> § 200.300(k) *RFRA review and religious accommodation process.*
> (1) Program design and categorical accommodations. In designing, announcing, awarding, and administering Federal financial assistance programs, Federal agencies must comply with the Religious Freedom Restoration Act of 1993, the First Amendment, and all other applicable religious-freedom and conscience protections, and consider whether program requirements, award conditions, specific conditions, eligibility criteria, enforcement mechanisms, suspension provisions, termination provisions, or other agency actions may substantially burden religious exercise for program applicants, recipients, subrecipients, and beneficiaries. Where a foreseeable burden on religious exercise exists, the Federal agency must either refrain from imposing the burden unless

application of the requirement satisfies RFRA, or include in the regulation, Notice of Funding Opportunity, award terms, or other controlling program documents an appropriate religious exemption, alternative compliance mechanism, or other accommodation.

For example, where a nondiscrimination, staffing, service-delivery, facilities-use, referral, certification, or reporting requirement may burden the religious exercise, religious staffing, religious governance, religious teaching, or religious mission of a faith-based organization, the Federal agency should address that issue at the program-design stage by specifying the applicable religious exemption, accommodation, or alternative means of compliance.

(2) Notice of religious-freedom rights. Federal agencies must ensure that Notices of Funding Opportunity, award documents, and other appropriate program materials notify applicants, recipients, subrecipients, and beneficiaries that participation in Federal financial assistance does not require them to forfeit rights under the First Amendment, RFRA, Title VII, or other applicable religious-freedom and conscience protections. Such materials must identify a clear point of contact or process for raising religious-freedom concerns.

(3) Requests arising after program design or award. If an applicant, recipient, or subrecipient believes that a Federal award requirement, award condition, specific condition, enforcement action, suspension, termination, or other agency or pass-through entity action would substantially burden its religious exercise and that the burden has not already been addressed by a categorical exemption, alternative compliance mechanism, or other accommodation, it may request relief through the process identified under paragraph 200.300(k)(2).

A pass-through entity that receives such a request must promptly process the request through the Federal agency's designated religious-accommodation procedure or refer the request to the appropriate Federal agency official. A pass-through entity may not deny such a request or take adverse action against the applicant, recipient, or subrecipient on the basis of the requirement at issue while the request is pending, unless immediate action is required by law, court order, imminent risk of harm, or demonstrated misuse of Federal funds.

(4) Written determination and expedited review. The Federal agency must evaluate requests for religious accommodation under RFRA and other applicable religious-freedom and conscience protections. If the Federal agency denies a request, it must provide a written explanation identifying the compelling governmental interest in denying the requested exemption or accommodation to the particular applicant, recipient, or subrecipient under the specific circumstances presented. The explanation must also state why applying the requirement to that particular party, rather than granting the requested exemption, accommodation, or another less restrictive alternative, is the

least restrictive means of furthering that compelling governmental interest. The requesting party must be afforded an opportunity for expedited review.

(5) Consultation with religious-liberty expertise. Federal agencies should consult their Faith Centers, Centers for Faith-Based and Neighborhood Partnerships, civil rights offices, or other officials with expertise in religious liberty, conscience, and institutional religious freedom when developing rules, program designs, Notices of Funding Opportunity, award conditions, or enforcement actions that may affect religious exercise or conscience.

[200.218(a)] OMB should revise § 200.218(a) to add a rule of construction protecting religious accommodations, religious staffing, and other religious-freedom protections required or permitted by law.

The proposed § 200.218 is designed to prevent use of federal funds to promote or support theories of disparate-impact liability. We do not address here all issues raised by that proposed provision. However, because religion is a protected characteristic under federal law, OMB should ensure that § 200.218 and related nondiscrimination provisions do not inadvertently prohibit religious accommodations or other forms of legally required protection for religious exercise.

Religious freedom often requires more than formally identical treatment. A generally applicable requirement may substantially burden religious exercise unless an accommodation is provided. Likewise, Title VII's religious-organization exemption protects the ability of religious organizations to make employment decisions in accordance with their religious tenets, standards, mission, and identity; those protections should not be treated as forfeited or categorically unavailable merely because a claim is framed under a protected classification other than religion. RFRA may also require that such protections apply where federal funding is involved. See 42 U.S.C. § 2000e-1(a); 42 U.S.C. § 2000bb-1; Office of Legal Counsel, Application of the Religious Freedom Restoration Act to the Award of a Grant Pursuant to the Juvenile Justice and Delinquency Prevention Act (June 29, 2007).

OMB should add language clarifying that nothing in § 200.218 prohibits actions required or permitted by the First Amendment, RFRA, Title VII, or any other law protecting religious exercise, religious staffing, conscience, or religious accommodation.

We recommend that OMB revise proposed § 200.218(a) by designating the existing text as § 200.218(a)(1) and adding a new § 200.218(a)(2) as follows:

§ 200.218(a)(1) *General prohibition.*
To the maximum extent permitted by law, Federal agencies must eliminate the use of disparate-impact liability in all contexts relevant to Federal awards. Disparate-impact liability imperils the effectiveness of civil rights laws by mandating, rather than proscribing, discrimination.

> § 200.218(a)(2) *Rule of construction.*
> Nothing in this section shall be construed to prohibit, restrict, or treat as unlawful any accommodation, exemption, staffing practice, or other action required or permitted by the First Amendment, the Religious Freedom Restoration Act of 1993, Title VII of the Civil Rights Act of 1964, or any other applicable Federal law protecting religious exercise, conscience, or institutional religious freedom.

OMB should also avoid expanding the scope of § 200.218 in a way that regulates a recipient's activities outside the federally funded program. The Supreme Court has recognized that government may define the limits of a federally funded program, but may not use funding conditions to control protected activity outside the contours of that program. See *Agency for International Development v. Alliance for Open Society International, Inc.*, 570 U.S. 205 (2013). This principle is especially important for faith-based organizations, which must remain free to carry out their religious mission outside a federally funded program even when they accept public funds for a specific service. For example, if faith-based or community organizations are prohibited from requiring a beneficiary to convert in order to receive a federally funded service, that prohibition should not be interpreted to restrict the organization's religious teaching, worship, membership expectations, employment practices, or mission-based activities outside the federally funded program. Accordingly, we recommend that OMB clarify that § 200.218 applies only to the federally funded program or activity and does not regulate a recipient's privately funded, non-federally funded, or constitutionally protected activities outside the scope of the Federal award.

[200.219(b), 200.219(c)(2)] OMB should revise the discriminatory event-services provision to protect religious organizations and clarify the meaning of "services."

We understand and support the concern that public entities should not use event services, facility access, or security fees to suppress disfavored viewpoints, including religious viewpoints. Public institutions that receive federal funds should not discriminate against lawful expression on the basis of viewpoint, content, or religious perspective.

However, proposed § 200.219 raises concerns as applied to non-public or nongovernmental entities, including faith-based colleges, schools, ministries, charities, houses of worship, and other religious organizations. The term "services" is broad and could be interpreted to cover facility use, event support, speaker selection, sponsorship, security, publicity, access policies, or other forms of assistance. Without a more precise specification, a non-public or nongovernmental religious organization could be pressured to host, sponsor, facilitate, or provide event-related services for expressive activity contrary to its religious beliefs or mission.

The final rule should make clear that § 200.219 does not abridge the First Amendment rights of non-public or or nongovernmental religious organizations, including free exercise, expressive association, religious speech, control over religious mission, and internal governance. It should also distinguish between event-related services that a recipient has expressly undertaken to provide within the scope of the federally funded program and decisions that belong to the organization itself, including religious expression, speaker selection, facility-use policies, sponsorship decisions, internal governance, and mission-based event decisions.

OMB should also define “services” more precisely to avoid confusion. For example, the rule could clarify that “services” refers to generally available logistical or administrative support provided as part of a federally funded program, and does not include a non-public or nongovernmental organization’s own expressive decisions, religious criteria, speaker selection, worship, teaching, sponsorship, or mission-related programming.

OMB should also replace the term “non-public entities” in § 200.219(b) and proposed § 200.219(c)(2) with “nongovernmental entities.” The term “non-public” could be misconstrued to mean private, closed, or member-only entities, when the intended category appears to be entities that are not governmental actors. Many faith-based organizations that would be affected by this provision, including religious schools, colleges, hospitals, charities, social-service organizations, and houses of worship, are nongovernmental institutions that often serve the public. Using “nongovernmental” would more accurately distinguish these organizations from public entities while avoiding the mistaken implication that the provision applies only to organizations that are not open to or serving the public.

We recommend that OMB revise proposed § 200.219(b), “Non-public entities,” by designating the existing text as § 200.219(b)(1) and adding a new § 200.219(b)(2) as follows:

> § 200.219(b)(1) *Nongovernmental entities.*
> To ensure that Federal funds are not used in a manner inconsistent with the First Amendment, the requirements of paragraph (a) of this section also apply to nongovernmental entities to the extent that the relevant activities are within the scope of activities funded by a Federal award.
>
> § 200.219(b)(2) *Rule of construction for nongovernmental religious organizations.*
> Nothing in this section shall be construed to require a nongovernmental religious organization to host, sponsor, facilitate, provide space for, provide services for, or otherwise support expressive activity in a manner contrary to its religious beliefs, religious mission, internal governance, expressive association, or rights under the First Amendment or the Religious Freedom Restoration Act. With respect to nongovernmental entities, this section applies only to event-related services that the recipient or subrecipient has agreed to provide as part of the federally funded program and shall not be construed to regulate the entity’s own religious expression, selection of speakers, membership, governance, worship, doctrinal standards, or mission-based activities.

We also recommend that OMB revise proposed § 200.219(c)(2) to define “services” more precisely by replacing proposed § 200.219(c)(2) with the following:

> For purposes of this section, the term “services” means generally available logistical, administrative, safety, or facility-support services that the recipient or subrecipient ordinarily provides for events of a similar type and size, such as security, crowd

management, facility access, room setup, registration support, or other comparable logistical support. For nongovernmental entities, “services” does not include the entity’s own expressive decisions, religious expression, selection of speakers, sponsorship decisions, worship, teaching, membership standards, governance, doctrinal standards, expressive association, or mission-based programming.

[200.202, 200.204] OMB should require agencies to design and announce funding opportunities in ways that facilitate participation by smaller, novice, faith-based, and community-based organization applicants by adding new paragraphs § 200.202(h) and 200.204(f)(4).

We support OMB’s proposals to reduce unnecessary burdens, require plain-language funding announcements, post opportunities on Grants.gov, and encourage the use of statements of interest where appropriate. These provisions can help smaller and novice organization applicants avoid devoting scarce resources to full applications when they have little realistic chance of success.

However, lowering barriers requires more than simplifying paperwork. Many smaller faith-based and community-based organizations have deep community trust and effective service models but lack dedicated grant writers, compliance staff, or prior federal funding experience. If OMB wants to broaden participation, federal agencies should be encouraged to design programs in ways that fit the capacities of smaller organizations while preserving accountability.

We recommend OMB add provisions encouraging or requiring agencies, where practicable, to:

1. Use tiered grant structures, including smaller award amounts appropriate for smaller organizations;
2. Encourage responsible subawards to qualified community-based and faith-based organizations;
3. Use intermediaries, including culturally or religiously distinctive intermediaries where appropriate, to provide administrative support, training, and compliance assistance to smaller organizations;
4. Provide capacity-building assistance to organizations unfamiliar with federal financial assistance;
5. Avoid unnecessary prior-federal-grant experience requirements that favor legacy grantees;
6. Draft NOFOs and award terms in plain language that can be understood without specialized legal or technical expertise.

This recommendation aligns with OMB’s stated goal of reducing recipient burden while also improving program effectiveness. Faith-based and community-based organizations are often closest to the people federal programs intend to serve. A grantmaking system that is accessible only to large organizations with sophisticated compliance infrastructure will not fully benefit from the insights and capacities of civil society.

We recommend that OMB add a new § 200.202(h) to address this issue at the program-design stage. We further recommend adding a new § 200.204(f)(4) to require agencies to disclose in the NOFO whether and how they are using such methods.

We recommend adding the following new paragraph to § 200.202:

> § 200.202(h) *Facilitating participation by smaller, novice, faith-based, and community-based organization applicants.*
> Where practicable and consistent with statutory program purposes, Federal agencies should design funding opportunities to facilitate participation by smaller, novice, faith-based, and community-based organization applicants. Such methods may include statements of interest, tiered award sizes, smaller awards, subawards, intermediary models, capacity-building assistance, plain-language application materials, and evaluation criteria that do not unnecessarily favor legacy recipients or applicants with prior Federal grant experience. Where intermediary models are used to provide technical assistance, training, or compliance support to prospective applicants or subrecipients, Federal agencies should ensure that such intermediaries are not responsible for selecting, scoring, or evaluating the same applicants or subrecipients they assist unless appropriate conflict-of-interest safeguards and firewalls are in place.

We further recommend adding the following new paragraph to § 200.204(f):

> § 200.204(f)(4) *Participation design features.*
> Where a Federal agency uses any of the methods described in § 200.202(h), the notice of funding opportunity should identify those methods and explain how they are intended to facilitate participation by smaller organizations, organizations inexperienced in accessing government funds, including federal funds, and faith-based and community-based organizations. Where intermediary models are used, the notice of funding opportunity should also identify any safeguards designed to separate technical assistance, training, or compliance support from the selection, scoring, or evaluation of applicants or subrecipients assisted by the intermediary.

Conclusion

We appreciate OMB's effort to improve transparency, accountability, and lawful administration of federal financial assistance. Better stewardship of public funds serves taxpayers, beneficiaries, and responsible grantees alike. We also appreciate the proposed rule's attention to reducing unnecessary barriers to participation by smaller and novice organization applicants and its stated commitment to protecting faith-based organizations from discrimination.

To fulfill those goals, however, the final rule should preserve the distinction between grants and contracts, prevent expanded oversight from becoming centralized micromanagement, limit volatility caused by discretionary termination authority, and make religious-freedom protections enforceable in the regulatory text. A grantmaking system that is lawful, accountable, stable, and hospitable to civil society will better serve the public good.

Respectfully submitted,

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