

July 13, 2026

Andrew Reisig
Joel Savary
Office of Federal Financial Management,
Office of Management and Budget,
725 17th Street NW,
Washington, DC 20503

RE: Docket OMB-2026-0034; Regulation for Federal Financial Assistance; Notice of Proposed Rulemaking, 91 FR 32198 (May 29, 2026)

Dear Mr. Reisig and Mr. Savary,

The American Society of Association Executives (“ASAE”) respectfully submits these comments in response to the Notice of Proposed Rulemaking (“NPRM” or “proposed rule”) published by the Office of Management and Budget (“OMB”) and participating federal agencies on May 29, 2026, proposing revisions to the regulations governing federal financial assistance in Title 2 of the Code of Federal Regulations, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (the “Uniform Guidance”).¹

ASAE is the leading organization serving the association and nonprofit community. It provides learning, research, and advocacy to enhance the effectiveness and impact of trade associations, professional societies, credentialing and standards organizations, and similar nonprofits (“associations”). ASAE represents approximately 50,000 association professionals across more than 7,000 organizations. ASAE’s members manage nonprofit 501(c)(6) trade associations and individual membership societies across the United States, and the organizations they manage include many 501(c)(3) tax-exempt charitable and educational organizations.

ASAE submits these comments for two reasons. First, the products and services through which associations serve their professions and industries, including professional memberships, conferences and technical meetings, periodicals, and peer-reviewed journals, are purchased routinely by federal award recipients and their employees. For decades the cost principles incorporated into federal awards have recognized these as ordinary, allowable costs of performing high-quality federally funded work. Several provisions of the proposed rule would reverse that longstanding treatment. Second, many associations are themselves recipients, subrecipients, or pass-through entities of federal awards, and would be directly subject to the

¹ 91 FR 32198

proposed changes to merit review, risk review, national policy requirements, subrecipient monitoring, and termination provisions.

As detailed below, ASAE supports several elements of the proposed rule that would streamline federal grantmaking and reduce burden. But the provisions of the proposed rule addressed in Parts III through V of these comments would instead increase administrative burden on recipients and federal agencies alike, inject vague and not administrable standards into the cost principles, and disrupt settled reliance interests. They would do all of this without record evidence of abuse under the current rules. OMB specifically requested comments on “requirements in 2 CFR that increase administrative burden—and particularly those that increase administrative costs,” and on “any reliance interests that commenters may have based on the existing text of 2 CFR.”² These comments respond directly to both requests.

I. Executive Summary

ASAE’s principal positions with regard to the proposed changes to 2 CFR Part 200 are briefly summarized as follows and are addressed in more detail in the referenced sections of this comment letter.

1. **[200.454]:** OMB should withdraw the proposed revision of § 200.454 and retain the current rule. Membership and subscription costs for professional, business, and technical organizations and periodicals have been allowable for decades, serve award performance, and present no documented integrity problem. The proposed prior-approval requirement and the prohibition on periodical subscriptions would impose costs on recipients and agencies far exceeding any conceivable savings. (Part III.D)
2. **[200.432]:** OMB should withdraw proposed § 200.432(b), which would condition conference attendance on express agency approval embedded in award terms and conditions. The current rule already limits conference costs to those “necessary and reasonable for successful performance under the Federal award.” If OMB nonetheless retains an approval requirement, it should operate through approval of a conference/travel budget category at the time of award rather than event-by-event amendment of award terms. (Part III.B)
3. **[200.450]:** OMB should withdraw proposed § 200.450(c)(1)(iv), as the prohibition on “issue advocacy or public messaging” costs is vague and not administrable. If any version is retained, the operative terms must be defined by reference to established Internal Revenue Code concepts, and OMB should confirm the existing exceptions at § 200.450(c)(2) apply. (Part III.C)
4. **[200.461]:** OMB should withdraw the proposed revision making publication costs unallowable by default, which conflicts with federal public-access policy and keeps the results of federally funded research from being published and used. (Part III.E)
5. **[200.205]:** OMB should not finalize the pre-issuance review provisions of proposed § 200.205(b) in their current form. At minimum, the final rule should require published objective criteria for and require written documentation of any pre-issuance decisions that depart from merit review results, should delete undefined criteria such as “anti-American values,” and should include an express prohibition on viewpoint-based denials. (Part IV.A)

² 91 FR 32235

6. **[200.206]:** OMB should strike proposed § 200.206(b)(2)(vii)(C)–(D) and (viii). If retained, consideration of a “history of questionable practices” must be limited to conduct established through formal adjudication or admission, with notice and an opportunity to respond, and the “memberships and affiliations” factor must be limited to organizations formally designated under existing legal authorities. (Part IV.B)
7. **[200.218] and [200.300]:** OMB should not finalize these national-policy conditions as drafted. ASAE accepts recipients’ obligation to comply with federal anti-discrimination law but opposes these provisions to the extent they reach practices that have not been subject to a finding of a violation by a court. ASAE requests definitional and procedural amendments (responding to OMB’s express invitation, 91 FR 32220 - 32221) to make the provisions administrable: define key terms in regulatory text; confine the provisions to activities and costs charged to federal awards by striking or defining “subsidize” and “facilitate”; remove the reference to “proxies”; provide a safe harbor for conduct consistent with agency guidance in effect when the conduct occurred; and provide that violations are determined through the procedures of §§ 200.339 through 200.342. (Part IV.C)
8. **[200.219]:** OMB should withdraw proposed § 200.219, which would inject an open-ended federal speech-regulation standard into ordinary event management. (Part IV.D)
9. **[200.332]:** OMB should withdraw proposed § 200.332(i), the undefined “reputational damage” monitoring duty. (Part IV.E)
10. **[200.333]:** OMB should retain fixed amount subawards, with any additional guardrails OMB believes necessary, rather than prohibiting them entirely. (Part IV.F)
11. **[200.340], [200.341], [200.342], [200.343]:** ASAE opposes the expanded discretionary termination and suspension provisions. If OMB finalizes these provisions, basic fairness requires mandatory reimbursement of reasonable, unavoidable termination costs (paralleling the Federal Acquisition Regulation (FAR) settlement principles on which the preamble relies), meaningful explanations for class terminations, reasonable wind-down periods, and compensable suspension impacts. (Part IV.G)
12. **[200.503], [200.202], [200.204], [200.207]:** ASAE supports proposed § 200.503(b) (limiting additional audits to those statutorily authorized), § 200.202(f) (multi-year awards), the NOFO reforms in § 200.204, and § 200.207(c) (periodic reduction of unnecessary requirements). (Part VI)
13. ASAE requests, whatever the disposition of particular provisions, a delayed effective date for changes to the cost principles in subpart E, applying them prospectively to new awards no earlier than fiscal year 2028. (Part II)

II. Procedural Request: Delayed and Prospective Effective Date

Whatever the disposition of the particular provisions discussed below, ASAE requests that, in the final rule, OMB (a) delay the effective date of all revisions to the subpart E cost principles until at least the start of fiscal year 2028, and (b) apply those revisions only to Federal awards issued on or after the effective date. Recipients have constructed institutional budgets, library and subscription arrangements, professional development programs, and indirect cost structures in reliance on cost principles that have been largely stable since before the 2013 consolidation of the Uniform Guidance. These are the clear reliance interests that OMB asked commenters to

identify³, and an orderly transition protects the government’s investment in work already underway. In the Regulatory Impact Analysis⁴ (“RIA”), OMB acknowledges that it “was unable to quantify the expected costs of the rule”⁵, and the RIA requests that commenters supply cost and impact data on multiple topics⁶, confirming that the full effects of these changes on recipients have not yet been established and supporting a prospective, delayed transition.

III. The Proposed Cost Principle Revisions Affecting Association Products and Services

A. Background

Associations are part of the knowledge infrastructure on which federally funded work depends. Professional and trade associations disseminate technical knowledge through journals, periodicals, and conferences; develop and maintain voluntary consensus standards that federal agencies are directed by law to use wherever practical⁷; provide the continuing education and credentialing that many professions require; and convene the communities of practice through which federally funded research and program results reach practitioners. The cost principles have treated the modest costs of participating in this infrastructure, including memberships, subscriptions, conference attendance, and publication charges, as allowable for decades.⁸ The NPRM identifies no evidence (audit findings, Inspector General reports, or any other data) of abuse of §§ 200.432, 200.450, 200.454, or 200.461 under the current standards. Each of these costs already must satisfy the general tests of § 200.403: necessary and reasonable for performance of the award, allocable, and adequately documented. Agencies and auditors already possess every tool needed to disallow unjustified charges.

In June and July 2026, ASAE circulated a questionnaire to its member organizations concerning the proposed rule’s effects. ASAE offers the responses as illustrative reports from affected organizations, not as a statistical sample. They are cited throughout Parts III through V because they describe concretely the operational effects of provisions the Regulatory Impact Analysis did not examine. Reports from responding organizations include dues revenue exposures ranging from roughly ten percent to more than half of membership revenue at individual organizations; conference exposures ranging from ten percent of attendance to entire events; and journal programs in which the majority of publication revenue is tied to federally funded research. One scientific and research society described the stakes for the standards infrastructure discussed above: standards of practice in its field are developed collaboratively among members, other organizations, and the federal government, and “[w]ithout this ability, it would cost the government a great deal to orchestrate our processes and produce common standards.”

B. [200.432] Conferences

OMB proposes to add § 200.432(b), under which “[t]he costs for attending conferences are allowable only if participation in the conference is expressly approved by the Federal agency and

³ 91 FR 32235

⁴ Docket No. OMB-2026-0034-0038

⁵ RIA § 9

⁶ See RIA §§ 7.2, 7.3, 7.5, 7.6, 8.6, 10

⁷ See National Technology Transfer and Advancement Act of 1995, Public Law 104-113, § 12(d); OMB Circular A-119

⁸ See OMB Circulars A-21, A-87, and A-122; 2 CFR part 200 (2013); and the 2020 and 2024 revisions

included in the terms and conditions of the Federal award.” ASAE urges OMB to withdraw this provision.

First, the provision is unnecessary. Current § 200.432 permits conference costs only where the event “is necessary and reasonable for successful performance under the Federal award,” and directs that conference spending be “appropriate, necessary, and managed to minimize costs to the Federal award.” A recipient that cannot justify attendance under that standard already may not charge it. An agency or auditor that doubts a charge already may question and disallow it. The preamble offers no example of conference spending the current standard failed to address.

Second, the provision is unworkable as drafted. Award terms and conditions are fixed at the time of award. Conference schedules, calls for papers, selection of conference speakers and approvals of presentations, and registration windows are not known years in advance, and project needs evolve. As written, paragraph (b) would force recipients to try to predict every conference any project participant will attend over a multi-year period of performance – an impossible task, especially as attendance by a project participant may hinge on whether the participant’s proposal to present at the conference is accepted. Alternatively, award recipients would be required to seek formal award amendments conference by conference, forcing grantmaking agencies to staff and process that amendment volume. This would cause significant delay and increased workload for agencies and grant recipients, in direct conflict with the NPRM’s stated objectives of efficient project delivery and reduced burden.⁹

Member responses to ASAE’s questionnaire illustrate the scale and the logistical challenges caused by this proposal. Responding organizations provided estimates ranging from ten percent to all of their event attendance as at risk under an express-approval requirement, and several stated they would expect to cancel events outright if this provision is included in the final rule. A medical and health professional society reported that approximately 65 percent of its annual conference attendees rely on federal funds, that the conference supplies 60 percent of the association’s total revenue, and that its venue contracts are signed through 2029 and cannot be moved without significant penalty. A trade association reported venue commitments through 2031 and projected an attendance decline of 30 to 50 percent that would put it in breach of its hotel contracts. The RIA does not analyze § 200.432, and Appendix A records the change as having “[n]o perceived impacts” because “costs may still be charged to Federal awards.” That characterization does not reflect the approval-and-award-terms mechanism. Whether costs “may still be charged” depends entirely on a new federal approval process for which the request volume, timing, criteria, and administrability have not been considered in the RIA.

Third, the provision would suppress activity that advances federal program purposes. Conferences are the principal venue where federally funded research results are presented and disseminated, frequently in satisfaction of dissemination expectations and public-access requirements applicable to the same awards. Conferences are also the most common venues where the technical workforce that performs federal projects is trained and maintains required credentials. An association management company reported that a federally funded program for undergraduates writes conference participation into its grant budgets. Students conduct research and then present it at a small professional meeting, developing presentation skills, disseminating their research, finding mentors, and gaining exposure to potential career paths. A state-level

⁹ 91 FR 32199-32200

association reported expanding its conference programming on children’s behavioral health specifically so that federally funded early-childhood staff (who are required by their program standards to pursue professional development) could respond to rising behavioral challenges in their classrooms. Suppressing attendance reduces the return on the government’s own investment.

If OMB nonetheless concludes that an additional control is warranted, ASAE proposes that conference attendance costs be allowable where attendance is consistent with a conference or travel budget category included in the budget approved at the time of award (or approved thereafter), without requiring event-by-event identification in the terms and conditions. This approach parallels how prior approval operates elsewhere in the cost principles and gives agencies visibility and control without continuous amendment cycles. Alternatively, OMB could limit paragraph (b) to attendance costs exceeding a defined dollar threshold or expressly authorize blanket or programmatic approvals.

C. [200.450] Lobbying and proposed “issue advocacy” provision

OMB proposes to add new categories of unallowable cost at § 200.450(c)(1). ASAE is particularly concerned with paragraph (c)(1)(iv), which would make unallowable the costs of “[e]ngaging in issue advocacy or public messaging that promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award.”

ASAE urges OMB to withdraw paragraph (c)(1)(iv) and opposes it because of the vague, undefined and broad restrictions on “issue advocacy or public messaging.” The cost principles are applied daily by grants administrators and auditors who need administrable rules, which are not provided under paragraph (c)(1)(iv). “Issue advocacy,” “public messaging,” and “a particular social, political, or public policy position” are undefined and, as a practical matter, not administrable. Virtually any public communication by a nonprofit organization (such as a statement on professional practice standards, public health information, an op-ed by a staff member, educational materials, or the dissemination of findings from federally funded research) could be characterized as promoting or opposing some “public policy position.” For example, many healthcare, medical, and scientific research topics necessarily have interplay with related topics. Thus, public messaging disseminating findings on the topic of the Federal award may also be characterized as messaging designed to influence public attitudes on interrelated matters that are not directly identified as “necessary to accomplish the purpose of the Federal award.” Beyond the practical impossibilities of parsing every instance of public messaging, this provision would also create a substantial administrative burden. Because recipients seeking indirect cost recovery must identify and segregate unallowable activity costs¹⁰, the practical consequence is a new obligation to track staff time and costs for essentially all public communications, for which there are no existing, generally accepted accounting or tracking practices. The proposal would incentivize curtailing lawful, privately funded speech.

Member questionnaire responses demonstrate both costs. One state-level association estimated that tracking compliance with this provision alone would cost roughly \$5,000 per year against a

¹⁰ See §§ 200.413(e) and 200.450(c)(3)

\$2 million operating budget, a recurring expense with no corresponding benefit to any federal program. A medical and health professional society observed that its public communications activity “resides in almost everything we do,” so there is no discrete budget line to segregate. Additionally, responding organizations anticipate that compliance would require curtailment of issue advocacy activities through the cancellation of member fly-ins and legislative education days.

The RIA does not analyze this provision either. Appendix A asserts there are “[n]o perceived impacts” because the “costs prohibited are already unallowable unless required by the Federal award.” That premise is correct only as to lobbying expenditures, which are already unallowable under the current rule; it is incorrect as to paragraph (c)(1)(iv). **Nothing in the current cost principles makes “issue advocacy or public messaging” on policy positions an unallowable cost.** The mistaken premise confirms that the actual scope of this paragraph, and the tracking and segregation obligations it would trigger throughout the recipient community, has not been examined in the rulemaking record.

The vagueness problem is compounded by the interaction with proposed § 200.454(d), discussed below, which makes unallowable the costs of membership in any organization “whose primary purpose is lobbying or issue advocacy.” The breadth of paragraph (c)(1)(iv)’s description of “issue advocacy” will determine whether auditors challenge recipients’ membership dues in trade associations and professional societies across the board. An undefined term should not have such a broad potential impact.

If OMB retains any version of this provision, ASAE requests the following amendments. First, define “issue advocacy” by reference to the established concepts the section already uses. The existing exceptions at § 200.450(c)(2)(iv) incorporate the Internal Revenue Code’s definitions of lobbying and the exclusions for nonpartisan analysis, study, and research.¹¹ Adopting existing definitions allows recipients and auditors to apply one familiar body of definitions rather than a new and undefined concept. Second, state expressly that the existing exceptions at § 200.450(c)(2), including technical and factual presentations in response to documented requests and nonpartisan analysis, apply fully to the new paragraph. Third, state expressly that the provision governs only costs charged to Federal awards and imposes no tracking, certification, or segregation obligations with respect to activities funded entirely from non-federal sources beyond those already imposed by §§ 200.413 and 200.450(c)(3) - (5).

D. [200.454] Memberships, subscriptions, and professional activity costs

OMB proposes to rewrite § 200.454 so that, under § 200.454(a), membership costs in “professional, civic, business, and technical organizations” are allowable only “if necessary to fulfill the award requirements” and only with prior written agency approval (a requirement also added to the § 200.407 prior-approval list); under § 200.454(b), costs of subscriptions to “business, professional, academic, and technical periodicals” are unallowable; and under § 200.454(d), costs of membership in organizations “whose primary purpose is lobbying or issue advocacy” are unallowable. ASAE urges OMB to withdraw the proposed revision in its entirety and retain current § 200.454. This provision is particularly consequential for the association community.

¹¹ See 26 U.S.C. 501(h), 4911

Memberships: Membership costs directly improve the quality, efficiency, and integrity of federally funded work. Membership in professional, business, and technical organizations is among the least expensive means by which a recipient organization and its personnel obtain current technical knowledge, practice standards, training, professional credentials, and access to communities of expert practice. Associations maintain the voluntary consensus standards federal agencies are statutorily directed to prefer¹²; operate the peer-reviewed journals and technical meetings through which federally funded findings are validated and disseminated; and provide the continuing education many professions require for licensure. Disallowing or burdening these costs forces recipients to meet the need for these inputs through more expensive substitutes or to go without, to the detriment of the federal programs the awards are intended to serve. For example, a trade association reported that its members are often the only professionals in their city, county, or state working toward their federal program’s goals, and depend on the association’s programming to remain current in the practices that make the federal investment effective.

The requirement that memberships be necessary to fulfill award requirements and receive prior approval would function as a prohibition. “[N]ecessary to fulfill the award requirements” is a narrower test than § 200.403’s “necessary and reasonable for the performance of the Federal award,” and read literally would disallow any membership not itself dictated by the award’s terms. Adding a prior written approval requirement converts every membership (often a few hundred dollars) into a formal transaction with a federal program office. Neither the preamble nor the RIA estimates the volume of approval requests this would generate across roughly 40 grantmaking agencies, the staff time agencies would need to adjudicate them, or the criteria by which they would be judged. The predictable institutional response is that recipients will simply cease charging membership costs and will then no longer fund memberships for their employees. One state-level association whose members are funded entirely through federal grants reported that routine expenditure approvals that once took 30 to 60 days now take nine months or longer. Under similar timelines for membership reviews, no typical organization will submit a few-hundred-dollar membership for prior written approval. These practical obstacles to reimbursement of membership costs are likely to lead to a drop in memberships, harming associations and hurting the ability of employees of federal grant recipients to access all the important benefits of participation in associations.

The prior-approval requirement is also unworkable for indirect costs. Membership and subscription costs are commonly charged through indirect cost pools because they benefit an organization’s activities as a whole rather than a single award. Prior approval is an award-by-award concept. The NPRM does not explain how a recipient would obtain “prior written approval of the Federal agency” for a cost residing in an indirect pool allocated across multiple awards from different agencies, nor how the subscription prohibition in paragraph (b) is to be implemented within institutional library budgets recovered through negotiated indirect cost rates.

Periodical Subscriptions: The proposal adds “academic” periodicals to the list and makes all of these subscriptions unallowable with no opportunity for approval. Access to the professional, technical, and scholarly literature is a basic input to competent performance of federal awards.

¹² See Public Law 104-113, § 12(d)

The current rule has allowed these costs without documented incident for decades. The preamble devotes a single clause to this change and offers no rationale specific to subscriptions at all.

Issue Advocacy Organizations: Paragraph (d)’s extension to “issue advocacy” organizations brings the vagueness of § 200.450(c)(1)(iv) into every membership decision. As explained in Part III.C, “issue advocacy” is undefined, and “primary purpose” is both undefined and unaccompanied by any process for determination. Many trade associations and professional societies engage in some public policy advocacy on behalf of their members, in addition to the member services of education, standards, research, credentialing, and meetings. Under the proposed text, a grantee cannot know whether an auditor will determine a given association’s “primary purpose” to be issue advocacy, so grantees may feel compelled to stop charging dues to any association that ever takes a public position. That outcome would penalize associations for engaging in constitutionally protected speech and petitioning activity — through a cost rule adopted without any analysis of these effects. If any version of paragraph (d) is retained, ASAE requests that the final rule (i) define “primary purpose” by an objective standard based on the organization’s actual expenditures and the share spent on lobbying, (ii) permit recipients to rely conclusively on the organization’s most recent public filings (for example, IRS Form 990 disclosures of lobbying expenditures) in making that determination, and (iii) define “issue advocacy” as recommended in Part III.C.

The proposed changes described in this section work against the NPRM’s own stated objectives. The third stated objective of this rulemaking is “reducing recipient burden,”¹³ and Executive Order 14332 directs more efficient grantmaking. A rule that multiplies micro-approvals for agencies and recipients, forces cost-accounting restructuring, and suppresses inexpensive knowledge inputs to federally funded work moves in the opposite direction. The RIA confirms that these effects were never analyzed, by disposing of § 200.454 in a single Appendix A line as a “clarification of policy” with “[n]o perceived impact.” A revision that converts a decades-old presumptive allowance into a necessity-plus-prior-approval process, and converts presumptively allowable subscriptions into unallowable costs, is not a “clarification.” The lack of analysis of such a significant change is alarming when considering the agency’s stated intent to finalize and implement the rules less than three months following the conclusion of the public comment period.

E. [200.461] Publication and printing costs

OMB proposes to make publication costs, including page charges, article processing charges, and open-access fees for peer-reviewed publications, unallowable unless “specifically required by Federal statute or approved in advance by the Federal agency on a case-by-case basis,” and to provide that “[a] general requirement to make results publicly available must not be construed as authorizing publication costs.” ASAE urges OMB to withdraw this revision and retain current § 200.461.

The federal government funds research so that its results will be used. Publication in peer-reviewed venues is how results are validated, disseminated, and made available to other researchers, practitioners, and the public. The proposed rule would disallow the standard

¹³ 91 FR 32199

mechanism by which recipients fund compliance with federal open-access policies, while expressly providing that the policies themselves do not authorize the costs. The NPRM does not explain how recipients are expected to satisfy federal dissemination and public-access requirements whose costs the cost principles disallow.

The RIA's only quantified estimate is focused on this provision. OMB projects that making publication costs unallowable would reduce transfers to recipients by "around \$300 million per year," based on estimates in OSTP's 2024 *Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research* that article processing charges for federally funded research totaled between approximately \$318 and \$399 million as of 2022.¹⁴ The RIA classifies the \$300 million as a "transfer" rather than an economic cost on the paired assumptions that recipients will "continue to publish" and will simply "reallocate funds to other allowable costs."¹⁵ Those assumptions cannot both hold without a significant impact. If recipients must fund the same publishing obligations from other sources, the money comes out of research activity or out of the nonprofit societies, university presses, and institutions that absorb the loss. Conversely, if recipients do not continue to publish, federally funded findings will not be disseminated.

Additionally, the RIA expressly requests comment on "the Federal share of publication-related expenditures, the reliability of available estimates, and the extent to which making these costs unallowable may alter the distribution or level of Federal transfers."¹⁶ Member questionnaire responses supply data relevant to RIA § 8.6. Every responding organization whose journal program depends on subscription or publication-charge revenue reported that they would experience material harm from the combined operation of §§ 200.454(b) and 200.461. Reported federal exposure ran as high as 80 percent of a journal program's revenue derived from article processing charges, the majority tied to federally supported research. Other responding publishers placed U.S. submissions at 30 percent of journal volume and projected royalty declines of 10 to 15 percent. A scientific and research society reported that nearly half of its flagship journal's authors are NIH-funded, with roughly another 20% supported by other federal agencies. That journal revenue underwrites travel awards, student chapters, and educational programming that would contract with it. An association management company described a small society journal in the process of a transition to full open access that the proposal would render "almost impossible," because open-access publishing cannot occur without the article processing charges that sustain it. A medical and health professional society operating a hybrid journal reported that without subscription and article processing charges revenue (much of it paid from research awards), the journal would not be sustainable.

IV. Pre-Award Review, National Policy, Subrecipient, and Termination Provisions

A. [200.205] Federal agency merit review of proposals

Proposed § 200.205(b) would require senior political appointees to conduct a pre-issuance review of all discretionary awards, applying principles that include whether awards "demonstrably advance the President's policy priorities" and whether they fund "[a]ny other

¹⁴ OSTP (2024), *Updated Report to the U.S. Congress on Financing Mechanisms for Open Access Publishing of Federally Funded Research*, Table 2; cited in RIA § 8.6, footnote 5 (which dates the report as 2022).

¹⁵ RIA §§ 7.6, 8.6

¹⁶ RIA § 8.6

initiatives that compromise public safety or promote anti-American values,” with peer review reduced to advisory input that must not be “routinely deferred to.”

ASAE opposes paragraph (b) as proposed. Discretionary awards have long been selected through objective, expertise-based merit review against published criteria. Creating a discretionary review by political appointees against undefined criteria makes award outcomes unpredictable, invites viewpoint-based decision-making, and will deter qualified organizations from applying. Many senior political appointees are placed in those positions based on considerations other than their substantive expertise in the work that their agencies fund through grants. Peer review selection of grants has been critical to the federal government’s funding of research and endeavors based on the substantive merit of the grant proposal. This provision upends that process. It also burdens senior political officials with an extensive workload reviewing every discretionary award across government without estimating the capacity of these officials to efficiently complete these reviews. The RIA dismisses the volume of this workload, describing the change as having “[n]o perceived impacts.”

If OMB retains a pre-issuance review, the final rule should at minimum: (1) require each agency to publish the criteria its pre-issuance review will apply and identify them in the NOFO; (2) require written documentation of any pre-issuance decision that departs from the merit review outcome, available to the affected applicant upon request; (3) delete the “anti-American values” criterion, which has no ascertainable meaning; and (4) state expressly that pre-issuance review may not be used to deny awards based on an applicant’s lawful speech, advocacy, or associations unrelated to performance of the proposed project.

B. [200.206] Federal agency review of risk posed by applicants

Proposed § 200.206(b)(2) would add, among new risk factors, paragraph (vii) “History of questionable practices,” including, “[b]ased on publicly available and verifiable information,” a record of “[e]ngaging in activities or initiatives that are inconsistent with Federal civil rights laws” or “religious liberty laws.” The proposal also adds paragraph (viii) “Memberships and affiliations,” addressing “the applicant’s membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government.”

ASAE urges OMB to strike paragraphs (vii)(C), (vii)(D), and (viii). Paragraph (vii)(C) would permit an agency to treat as a “questionable practice” any past activity that the agency now views as “inconsistent with” civil rights laws, based not on any adjudication, settlement, or admission, but on “publicly available” information such as an organization’s old web pages or program descriptions. The federal government’s own enforcement positions on civil rights laws, including diversity-related programming, have changed substantially in recent years. A standard that invites agencies to penalize applicants for past activities that were never found unlawful, and that may have been consistent with federal guidance or expressly encouraged by grantor agencies at the time, is neither fair nor “verifiable.” It would also produce inconsistent and arbitrary decisions about what counts as a “questionable practice,” as different reviewers reach different conclusions about the same publicly available information.

Paragraph (viii) makes an applicant’s memberships and affiliations a risk factor. As drafted, “affiliation with organizations engaged in activities that violate Federal law” is elastic, and in

combination with changing federal enforcement positions could be read to reach membership in mainstream professional and civic organizations. The federal grant system should not put applicants in the position of resigning association memberships to protect their eligibility for federal financial assistance. If these provisions are retained in any form, the final rule should (1) limit “questionable practices” to conduct established by formal adjudication, settlement, or admission; (2) require that an applicant receive notice of, and an opportunity to respond to, any adverse information considered under paragraphs (vii) and (viii) before it affects an award decision; and (3) limit paragraph (viii) to organizations designated or excluded under existing legal authorities.

C. [200.218] and [200.300] National policy requirements

Proposed § 200.300(b) would require agencies and pass-through entities to ensure that awards and subawards “are not used to fund, promote, encourage, subsidize, or facilitate” specified categories of activity, including DEI or DEIA “policies, principles, or practices that violate any applicable Federal anti-discrimination laws.” The proposal defines unlawful DEI to include activities in which “intentional proxies for race” would be used as a selection criterion for program participation. The preamble explains that violations would constitute material breaches of the award, and specifically “seeks comment on whether the final rule should include additional discussion or elaboration in the regulatory text or preamble,”¹⁷ including whether definitions would assist recipients in meeting their obligations.

ASAE accepts that recipients must comply with federal anti-discrimination law. ASAE opposes these provisions, however, to the extent they reach practices that have not been found unlawful by a court. As drafted, the provisions sweep in conduct that remains lawful and give a compliance officer, grants administrator, or auditor no workable standard for distinguishing what is permitted from what is prohibited. The predictable result is that recipients will curtail lawful activity well beyond what the law requires. Moreover, inclusion of these provisions will likely attract legal challenges and court injunctions, as similar provisions in other contexts have done, resulting in heightened uncertainty for federal funding recipients.

ASAE therefore opposes the provisions as drafted and, responding to OMB’s express invitation for comment, requests the following amendments.

First, ASAE recommends that OMB define the operative terms in regulatory text. “DEI” and “DEIA” are not defined anywhere in the proposal. The provision’s only illustration is racial preferences in selection for employment or program participation. Recipients should not have to infer the scope of a material-breach condition from preamble citations to non-binding guidance.

Second, OMB should strike or define “subsidize” and “facilitate.” The verbs “fund, promote, encourage, subsidize, or facilitate” extend the provision beyond costs charged to an award and into activities that merely coexist with federal funding inside the same organization. If the provision means that prohibited activities may not be charged to Federal awards directly or through indirect cost allocation, it should confirm that by deleting “facilitate” or defining it to require use of federal award funds. OMB should also strike the verbs “promote” and “encourage,” which go to expression of opinions rather than prohibited practices.

¹⁷ 91 FR 32220 - 32221

Third, OMB should remove the reference to “proxies.” Defining unlawful DEI to include the use of “intentional proxies for race” as a selection criterion imports a contested and undefined concept into a material-breach condition and is contrary to Supreme Court rulings. Both the Constitution and anti-discrimination laws prohibit, in many contexts, selection decisions directly based on racial classifications. By contrast, decisions based on nonracial factors should not be treated as discriminatory, both under Executive Order 14281¹⁸ (calling for an end to treating “differences in outcomes” as discriminatory when there is “no facially discriminatory policy or practice”) and under the principles recently articulated by the U.S. Supreme Court in *Louisiana v. Callais* (holding, in the context of the Voting Rights Act, that prohibitions on intentional racial discrimination do not prohibit operational decisions based on nonracial factors, even if there is a correlation between the factor used and the race of those affected).¹⁹ Although the preamble to the NPRM asserts that the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. Harvard*²⁰ (“*SFFA*”) treated use of proxies for race as a selection criterion for program participation as unlawful discrimination, that is not accurate. For example, the NPRM’s prohibition of “proxies” presumably stems in part from the Department of Justice’s July 29, 2025, *Guidance for Recipients of Federal Funding*. The *Guidance* also cited *SFFA* in support of its assertion that “Unlawful proxies occur when a federally funded entity intentionally uses ostensibly neutral criteria that function as substitutes for explicit consideration of race, sex, or other protected characteristics,” citing as an “example” of an unlawful proxy selection processes that “require[s] applicants to describe ‘obstacles they have overcome’ ..., using the narrative as a proxy for advantaging that protected characteristic in providing benefits.”²¹ In *SFFA*, however, the Court expressly held that its decision did not bar universities from “considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise,” and the Court also described racial diversity goals as “commendable” and “worthy.” The NPRM’s prohibition of facially neutral practices under its “intentional proxies for race” term would turn *SFFA* on its head, prohibiting otherwise permissible, nonracial, neutral practices based on the “worthy” motivations of the federal grantee. The term should be removed.

Fourth, OMB should provide a safe harbor for past conduct consistent with then-applicable federal guidance. Recipients previously administered programs under written federal agency guidance and award terms encouraging many of the practices now under scrutiny. A recipient should not face risk of losing or being denied a federal grant for conduct consistent with the federal guidance in effect when the conduct occurred.

Fifth, violation determinations should be routed through the existing remedies framework. The final rule should state that a determination that a recipient violated §§ 200.218, 200.219, or 200.300 is subject to the procedures of §§ 200.339 through 200.342, including written notice, an opportunity to object and provide information, and applicable hearing and appeal rights. The final rule should also state that such determinations may not instead be effectuated through the discretionary termination provision of proposed § 200.340(a)(2).

¹⁸ See <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/> (April 23, 2025).

¹⁹ 608 U.S. ___, 146 S. Ct. ___ (2026) (Docket No. 24-109), decided on April 29, 2026.

²⁰ 600 U.S. 181 (2023).

²¹ See <https://www.justice.gov/ag/media/1409486/dl>

D. [200.219] Prohibition of discriminatory event services

Proposed § 200.219 would prohibit recipients from “discriminat[ing] on the basis of the viewpoint, content, or subject matter of speech” in providing “services.” This is defined to include security, crowd management, and facility access for “events, meetings, or other expressive activities,” including by imposing “additional, inconsistent, or unreasonable fees, security costs, insurance requirements, related charges, or other administrative burdens,” or applying facility-use policies “in a manner that has the purpose or effect of suppressing lawful expression.” Paragraph (b) extends these requirements to non-public entities “to the extent that the relevant activities are within the scope of activities funded by a Federal award.”

ASAE urges OMB to withdraw § 200.219. Associations are convening organizations, and producing meetings is core to what they do. The section would inject an open-ended federal speech-regulation standard into ordinary event management whenever a meeting falls within the scope of federally funded activities. The key terms of this provision are undefined and not administrable, and the preamble identifies no problem in federally funded events that existing law fails to address. An “unreasonable” security fee is not a standard an event planner can apply; “purpose or effect” liability condemns neutral, generally applicable policies based on outcomes the organizer neither intends nor controls; and nothing in the text distinguishes viewpoint discrimination from the ordinary editorial judgments every conference organizer makes in selecting speakers, sessions, and exhibitors for relevance and quality. For private associations, paragraph (b) raises serious First Amendment problems of compelled hosting and association. The provision also overlaps with existing constitutional obligations for public entities, which are already directly bound by the First Amendment without any need for grant regulation. The costs of this provision, including legal review of every event policy and exposure to effect-based claims by any aggrieved would-be participant, would be significant.

E. [200.331] and [200.332] Requirements for pass-through entities

Proposed § 200.332(i) would require a pass-through entity to “[e]nsure that each subrecipient . . . does not take actions that could significantly damage the reputation of the pass-through entity, the Federal agency making the award, or the Federal Government,” to consult with the agency where such actions occur, and would authorize the agency to direct termination of the subaward or terminate the pass-through entity’s own award.

ASAE urges OMB to withdraw paragraph (i). The provision introduces a standard (“actions that could significantly damage the reputation”) that has no definition, no limiting connection to the subaward’s purpose or terms, and no procedures. A pass-through entity cannot build internal controls around it, such as knowing in advance what conduct an agency might later determine to be reputationally damaging. A pass-through also has no lawful means of ensuring that independent organizations refrain from unspecified conduct unrelated to the subaward. Many associations administer federal programs through chapters, affiliates, and member institutions as subrecipients. This provision would oblige them to surveil those organizations’ general activities, chilling lawful speech and association throughout the chain, while exposing the pass-through entity’s own award to termination for third-party conduct it could not control. The RIA characterizes the § 200.332 revisions as a “minor clarification of existing policies” with no perceived impacts. But the RIA’s own baseline description of current pass-through obligations recites monitoring, compliance, and SAM.gov reporting duties, and nothing resembling a

reputational-monitoring obligation.²² The monitoring systems, documentation, and award-level risk the duty would impose on pass-through entities have not been analyzed. If OMB retains any version, the duty should be confined to subrecipient noncompliance with the terms and conditions of the subaward (which paragraph (i)'s first clause already covers), with any reputational concern addressed by the Federal agency through the procedures of §§ 200.339 through 200.342.

ASAE also notes the new related-entity classification requirements (proposed §§ 200.331(c), 200.332(h)). Treating every transfer among affiliated entities as a subaward or contract, with attendant SAM.gov reporting and full subrecipient-monitoring obligations, will impose meaningful new administrative costs on associations operating through related (c)(3)/(c)(6) entities and chapters. OMB should clarify the treatment of routine shared-services arrangements among affiliates and consider a simplified regime for low-dollar, related-entity transfers.

F. [200.333] Fixed amount subawards

OMB proposes to provide that “[f]ixed amount subawards are not permitted.” Fixed-amount instruments exist precisely because full cost-reimbursement compliance is disproportionate for small, well-defined projects. Eliminating them replaces a simple, accountable mechanism (defined deliverables, fixed price) with cost-reimbursement accounting, indirect rate negotiation, and audit overhead for the smallest actors in the system. This is a substantial net increase in burden, contrary to the rule’s third objective. OMB should retain fixed amount subawards, and, if necessary, propose any additional guardrails OMB believes are necessary.

G. [200.340], [200.341], [200.342], [200.343] Termination and suspension

Proposed § 200.340(a)(2) would require every discretionary award to permit termination whenever the agency or pass-through entity “determines that a termination is in the interest of the Federal agency or pass-through entity,” including when an award “does not effectuate... Federal agency priorities, or the national interest as they exist at the time of the termination.” § 200.341(c) would require only “a brief summary of the reason or reasons,” which “may apply to an individual award or class of awards”; § 200.342 would confirm that no hearing or appeal rights attach to discretionary terminations; and § 200.343(b) would leave reimbursement of post-termination wind-down costs to agency discretion. A new § 200.340(e) would authorize 90-day stop-work orders on the same “interest of the Federal agency” standard.

ASAE opposes this expansion. Organizations cannot responsibly hire staff, sign venue and vendor contracts, or issue subawards against funding that may be withdrawn abruptly with one-paragraph explanations and no procedural recourse. The proposal adopts flexibility for the government but withholds protections for the grantee; proposed § 200.343(b) states only that the agency “may consider allowing” post-termination costs, in its “reasonable discretion,” weighed against “competing policy concerns.” This approach stands in contrast to the Federal Acquisition Regulation (FAR)’s approach that the preamble cites.²³ FAR pairs termination for convenience

²² RIA Appendix A and § 4.2.1.

²³ 91 FR 32225 - 32228

with a defined settlement framework entitling contractors to recover costs incurred, reasonable termination and settlement expenses, and appropriate profit on work performed.²⁴

The RIA supports the need for these protections. OMB expects “no substantial change in the number of awards that are terminated or suspended relative to current practice” because, in its view, the revisions “clarify rather than expand” existing authority.²⁵ If that projection is accurate, codifying a mandatory entitlement to reasonable, unavoidable termination costs would be costless to the government by OMB’s own estimate, while giving recipients the predictability they need to commit staff and enter contracts against awarded funds. The RIA also seeks comment on whether recipients and agencies will restructure contracts and payment schedules in response to these provisions.²⁶ ASAE questionnaire respondents noted that they would move work to contract and temporary staffing, hire on terms expressly conditioned on the award’s survival, and be more cautious with signing venue and vendor contracts.

If OMB finalizes the discretionary termination and suspension provisions, the reliance interests OMB asked commenters to identify (and basic fairness) require at minimum: (1) amending § 200.343(b) to provide that, upon a discretionary termination, the Federal agency must reimburse the Federal share of reasonable, allocable costs that the recipient cannot avoid despite reasonable mitigation efforts, including non-cancellable commitments and reasonable wind-down and settlement expenses, paralleling FAR settlement principles; (2) requiring that notices of class terminations explain the basis for including each award or category of awards in the class; (3) providing a reasonable wind-down period (for example, 60 days) absent circumstances requiring immediate cessation; and (4) providing that suspension periods under § 200.340(e), and any schedule and budget impacts they cause, toll performance deadlines and are presumptively compensable as allowable costs under § 200.343(a).

V. The Proposal’s Aggregate Administrative Burden Contradicts Its Own Objectives

OMB requested comment on requirements that increase administrative burden and cost.²⁷ Viewed together, the provisions discussed above create, at minimum, the following new classes of compliance transactions: per-membership prior-approval requests (§ 200.454(a)); event-by-event conference approvals embedded in award terms, with associated amendment actions (§ 200.432(b)); identification and removal of subscription and publication costs from direct budgets, library operations, and indirect cost pools (§§ 200.454(b), 200.461); time-and-cost tracking to segregate “issue advocacy” and “public messaging” activities (§ 200.450(c)(1)(iv)); compliance reviews and documentation for the national policy conditions (§§ 200.218, 200.300); monitoring of subrecipients against an undefined reputational standard (§ 200.332(i)); classification, execution, and SAM.gov reporting of related-entity transfers as subawards or contracts (§§ 200.331(c), 200.332(h)); and conversion of fixed-amount subawards to cost-reimbursement instruments (§ 200.333).

Each transaction has a mirror image inside the government. Agencies must receive, adjudicate, document, and audit all of it, plus conduct senior-appointee pre-issuance reviews of every

²⁴ 48 CFR 49.502, 52.249-2

²⁵ RIA § 8.3

²⁶ RIA §§ 7.3, 8.3

²⁷ 91 FR 32235

discretionary award (§ 200.205(b)). The NPRM and RIA do not estimate the volume of these transactions or the agency staffing they require.

The RIA acknowledges that the rule’s benefits “remain unquantified” due to data limitations and that OMB “was unable to quantify the expected costs of the rule.” OMB nonetheless expects “minimal to modest costs for the Federal Government and minimal to modest to substantial short-term costs for recipients.”²⁸ On the RIA’s own qualitative scale, a “substantial” impact is one that is “[s]ignificant and systemic” with “long-term implications.”²⁹ More concerning, the RIA does not analyze the provisions addressed in Parts III and IV of these comments with the greatest effects on the nonprofit community. §§ 200.205, 200.206, 200.219, 200.332(i), 200.432, 200.450, and 200.454 are excluded from the analysis entirely and disposed of in one line each in Appendix A as having “no perceived impacts.” As shown in the relevant sections above, several of those one-line characterizations are inaccurate.

The RIA notes the scale of nonprofit organizations that will have to deal with each new compliance transaction described throughout these comments. A total of 36,283 unique nonprofit organizations received federal grants between FY2015 and FY2024, representing 34 percent of all grant recipients. More than 11,000 distinct nonprofit organizations receive awards each year.³⁰

The RIA closes by inviting comment on “how entities anticipate responding to the proposed changes and what additional safeguards or flexibilities may be needed to support effective implementation.”³¹ ASAE’s member data responds directly to that request. Responding organizations described recurring compliance costs layered onto small staffs: an estimated \$5,000 per year for advocacy cost-tracking at one \$2 million organization; two to three senior-executive hours weekly for national-policy compliance monitoring; thousands of dollars per organization in compliance review; outside counsel retained for want of in-house capacity. They also described the behavioral responses RIA § 10 asks about: costs no longer charged to awards (memberships forgone); activities curtailed (advocacy participation, public communications, conference programming); and federal funding avoided.

A rule with stated objectives that include “reducing recipient burden” and ensuring recipients can “restore focus on efficient project delivery”³² should not multiply approval gates and tracking obligations and impose undefined monitoring duties. ASAE urges OMB to apply its own standard (retaining only requirements “necessary for the efficient implementation and oversight of assistance programs”) to each provision identified above.

VI. Provisions ASAE Supports

ASAE supports the following elements of the proposed rule:

²⁸ RIA §§ 6.8, 9

²⁹ RIA Appendix B.2

³⁰ RIA § 4.1.2, tbls. 1–2

³¹ RIA § 10

³² 91 FR 32199

- [200.503] Limiting additional audits to those authorized by statute (proposed § 200.503(b)) will reduce duplicative audit burden while preserving the Single Audit framework and agencies' ability to conduct statutorily grounded oversight.
- [200.202] Encouraging multi-year awards (proposed § 200.202(f)) will reduce annual re-competition burden and give recipients the funding stability that supports sound planning and staffing.
- [200.204] The proposed § 200.204 reforms - including public announcement of funding opportunities on Grants.gov, plain-language NOFOs that applicants can complete without engaging technical or legal consultants, 500-word executive summaries, presumptive 60-day availability periods (with a published justification required for any period under 30 days), and the Statement of Interest mechanism (proposed § 200.204(c)) - are constructive accessibility and efficiency reforms.
- [200.207] Requiring agencies to review and remove unnecessary program-specific requirements (proposed § 200.207(c)) operationalizes the burden-reduction objective, and ASAE encourages OMB to hold agencies to it.

VII. Conclusion

ASAE appreciates and shares OMB's stated commitment to efficient, accountable grantmaking. The provisions addressed in Parts III through V, however, would impose substantial and unanalyzed costs on recipients and agencies, disrupt decades-old reliance interests, and discourage lawful activity through vague standards without demonstration of the benefits of these provisions. ASAE urges OMB to withdraw or amend them as set forth above, and to delay and only prospectively apply any final changes to the cost principles. ASAE would welcome the opportunity to provide additional information and to engage further with OMB and the participating agencies.

Sincerely,



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