Comment on Regulation for Federal Financial Assistance (91 FR 32198)

Docket: Regulation for Federal Financial Assistance

Re: Opposition to Proposed 2 CFR §§ 200.206(b), 300.300(b), and 300.300(c)

To Whom It May Concern:

I submit this comment in opposition to several specific provisions of the proposed rule, *Regulation for Federal Financial Assistance* (91 FR 32198). There are broad problems with the proposed rule. First, it would politicize grant awards by giving political appointees final say over grant decisions, displacing the existing peer review process and minimizing the role of experts in the fields in which grants are being awarded. This process would of course be used by the current and by subsequent administrations, whether their priorities line up or not, with the overall effects of sowing confusion and resulting in less effectiveness in the government's grant award process and in the value of the awarded grants after new priorities are implemented.

Agencies would now be able to cancel grant awards at almost any time for almost any reason, with little avenue for appeal, further disrupting the grant process and reducing the value federal grant awards provide across the nation. This proposed rule paves the way for every new administration to take the DOGE approach to canceling grant awards. DOGE accomplished little except inserting chaos in government agencies and arbitrarily canceling in mid-award many grants providing valuable, in some cases life-saving, research and services. Grant applications could and likely would be denied or terminated based on partisanship rather than merit, with no requirement that the decisions be explained under the proposed rule.

Those are general objections to the broad effects of this proposed rule. More specifically, my comments concern proposed 2 CFR §§ 300.300(c), 200.206(b), and 300.300(b), which I oppose. Collectively, these provisions would erode longstanding safeguards that protect beneficiaries of federally funded programs, introduce religious favoritism into federal grantmaking, and weaken essential civil rights protections.

Federal financial assistance programs exist to advance public purposes authorized by Congress and funded by taxpayers of every faith and of no faith. The federal government has a responsibility to administer these programs in a manner that is neutral toward religion, protective of beneficiaries, and consistent with fundamental principles of equal treatment under the law.

Unfortunately, the proposed rule moves in the opposite direction by elevating religious claims above the rights of program participants and by creating new opportunities for discrimination under the guise of protecting religious liberty.

Opposition to Proposed 2 CFR § 300.300(c)

Proposed § 300.300(c) would add a new provision barring discrimination against faith-based organizations. While faith-based organizations should be eligible to compete for federal funding on equal terms with secular organizations, the language proposed here goes far beyond ensuring equal access to federal grants. The proposal suggests that federally funded entities may be entitled to religious exemptions whenever they claim that compliance with a program requirement would burden their religious exercise. This interpretation is deeply troubling.

The purpose of federal financial assistance is to provide services to the public, not to subsidize religious preferences. Faith-based organizations remain free to exercise religion and maintain their religious identity. However, when an organization voluntarily accepts taxpayer funds, it also accepts the obligation to comply with the conditions attached to those funds. Allowing recipients to disregard program requirements whenever they invoke religious objections would undermine the integrity of federal assistance programs and threaten the rights of beneficiaries.

The practical consequences could be severe. Under the logic advanced by the proposed rule, a federally funded organization could claim a religious exemption from serving certain populations, providing required services, or complying with otherwise applicable program requirements. Beneficiaries seeking housing assistance, educational services, disaster relief, workforce development programs, health services, or social services could find themselves denied access because a recipient has asserted a religious objection.

Such outcomes would be particularly harmful in communities where federally funded providers represent the only realistic source of assistance. In many rural and underserved areas, beneficiaries do not have the option of simply finding another provider. A denial of service by a federally funded organization may therefore amount to a complete denial of access to a government program.

Religious liberty is a fundamental constitutional right. However, religious liberty has never meant the right to accept public funds while disregarding the obligations that accompany them. The government may not favor religious interests over the rights of beneficiaries who depend on federally funded services.

The final rule should make clear that faith-based organizations may participate in federal programs on equal terms with all other applicants, but that participation does not create a right to exemptions from program requirements that protect beneficiaries and ensure the effective delivery of services.

Opposition to Proposed 2 CFR § 200.206(b)

The proposed amendment to § 200.206(b) would require federal decisionmakers to consider whether an applicant has engaged in activities or initiatives that are "inconsistent with religious liberty laws" when evaluating risks associated with a federal award. This provision should be removed in its entirety.

The proposed rule provides no definition whatsoever for the term "religious liberty laws." The phrase is vague and could encompass an almost limitless range of constitutional provisions, statutes, executive orders, regulations, judicial decisions, or policy preferences. The phrase "religious liberty" in practice is used in numerous ways by different people to mean different ideas.

The absence of a definition creates a serious risk of arbitrary enforcement. Without clear standards, agencies could conclude that an organization is engaged in activities inconsistent with "religious liberty laws" simply because it advocates positions that some religious groups oppose. Organizations that support LGBTQ equality, reproductive health policies, strong religion-government separation protections, comprehensive nondiscrimination laws, or secular approaches to public policy could potentially be viewed as presenting a heightened funding risk. Nothing in the proposed rule prevents such an interpretation.

The provision effectively invites federal officials to evaluate applicants based on their perceived alignment with preferred religious viewpoints. Rather than focusing on traditional indicators of grantworthiness—such as financial responsibility, programmatic effectiveness, compliance history, and organizational capacity—decisionmakers would be encouraged to scrutinize applicants' positions on contentious questions involving religion. This creates a framework through which funding decisions could be influenced by ideology and political influence rather than merit.

A civil rights organization could be deemed risky because it challenges religious exemptions that permit discrimination. A public health organization could be deemed risky because it supports evidence-based policies opposed by certain religious groups. An organization advocating stronger separation of religion and government could be deemed risky because government officials view its work as inconsistent with their understanding of religious liberty.

In each of these cases, the applicant's ability to effectively administer federal funds would be irrelevant. What would matter instead is whether decisionmakers considered the applicant's activities sufficiently favorable to religion.

Such a framework violates principles of governmental neutrality. The government should neither reward organizations because they promote religious interests nor penalize organizations because they advocate secular policies or support civil rights protections.

The provision also raises substantial due process concerns. Regulated entities deserve clear notice regarding the standards that will be used to evaluate them. An undefined reference to "religious liberty laws" provides no meaningful guidance and invites inconsistent application across agencies and administrations.

For these reasons, OMB should strike this provision from the final rule.

Opposition to Proposed 2 CFR § 300.300(b)

The proposed amendment to § 300.300(b) is equally troubling. The rule would entirely remove references to sex discrimination and replace them with language prohibiting the use of federal funds for diversity, equity, and inclusion initiatives, "gender ideology," and gender transition.

The proposed rule attempts to justify this change by claiming that prior protections against sex discrimination "infringe[d] on fundamental religious liberties." That assertion is fundamentally flawed.

Protections against sex discrimination are not religious in nature. They are civil rights protections grounded in the fundamental principle that individuals should not be denied opportunities, benefits, services, or equal treatment because of their sex. Such protections exist to safeguard individual liberty and human dignity. They are not attacks on religion, nor were they adopted for religious purposes.

The federal government has long recognized that preventing discrimination is a compelling public interest. Anti-discrimination protections help ensure that federally funded programs remain accessible to all eligible individuals. They promote fairness, equal opportunity, and accountability in the administration of public resources.

Characterizing these protections as infringements on religious liberty creates a false and dangerous conflict between civil rights and religious freedom. Religious liberty protects the right to hold and practice religious beliefs. It does not create a right to use taxpayer funds in ways that exclude, disadvantage, or discriminate against others. Nor does it require the government to abandon its responsibility to ensure equal access to publicly funded programs.

The proposed replacement language is also remarkably vague. Terms such as "gender ideology" lack established legal definitions and are subject to widely varying interpretations. This ambiguity will create confusion for recipients, beneficiaries, and federal agencies alike.

Organizations may be discouraged from undertaking legitimate efforts to ensure equal access to services, comply with civil rights obligations, conduct research, provide educational programming, or serve vulnerable populations. The result will be uncertainty, inconsistency, and an increased risk of discriminatory outcomes.

Conclusion

Federal financial assistance programs should be administered in a manner that respects religious liberty while also protecting beneficiaries, preserving civil rights, and maintaining governmental neutrality toward religion.

Proposed §§ 300.300(c), 200.206(b), and 300.300(b) fail to achieve that balance. Instead, they elevate religious interests above the rights of beneficiaries, invite ideological considerations into federal funding decisions, and weaken longstanding protections against discrimination.

The federal government has an obligation to ensure that taxpayer-funded programs remain accessible to all eligible individuals, regardless of religion, sex, gender identity, or other protected characteristics. It also has a duty to ensure that funding decisions are based on objective measures of merit and performance rather than perceived conformity with favored religious viewpoints.

For these reasons, I urge OMB to withdraw or substantially revise these provisions before issuing a final rule.

Respectfully submitted,

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