July 12, 2026

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

Dear Director Vought:

On behalf of the National Association of Counties (NACo) and the nation's 3,069 counties, parishes and boroughs we represent, we respectfully submit these comments on the Office of Management and Budget's (OMB) proposed rule, "Regulation for Federal Financial Assistance" (Docket No. OMB-2026-0034), published in the Federal Register on May 29, 2026. NACo is the national voice of America's county governments as intergovernmental partners in our federalism system.

We are among the largest and most consistent recipients and pass-through administrators of federal financial assistance in the intergovernmental system.

Counties administer a broad array of federal programs and grant funds that touch the daily lives of residents, spanning public safety, transportation, public health, behavioral health, housing, human services, elections administration and emergency management, among many others. In many of these programs, we act not only as direct recipients but as pass-through entities responsible for distributing and overseeing funds reaching nonprofit organizations, hospitals, housing authorities, water and special districts, and other local subrecipients. Federal financial assistance to state and local governments totaled $1.1 trillion in FY 2024, and we are a substantial and essential part of our nation's intergovernmental delivery system. [1]

Counties are not merely recipients of federal grants – we are a core intergovernmental partner that Congress and the administration relies on to deliver congressionally appropriated funding and federally authorized services. Counties appreciate OMB's stated objectives of improving transparency, accountability and oversight of federal financial assistance. We share these goals so we can sustain the public's trust in all levels of government. We appreciate this Administration's commitment to streamlining the federal grant process and expanding access to federal funds for entities that have historically not been recipients of federal awards. The proposed changes to simplify Notices of Funding Opportunity (NOFOs) through plain language, and to facilitate a centralized federal grant repository, are changes counties have long supported and have previously urged the federal government to adopt. We take seriously our responsibility as stewards of public funds. Counties maintain documented internal control frameworks, undergo extensive audits, including annual Single

[1] Source: Congressional Research Service, *Federal Grants to State and Local Governments: Trends and Issues*, R40638 (2026), https://www.congress.gov/crs-product/R40638.

Audits when applicable, and have decades of experience administering federal programs in full partnership with federal and state agencies.

We raise the questions and concerns below as long-standing intergovernmental delivery partners. We organized our comments below by section number so that OMB officials may route each comment to the appropriate part of the rule. Before turning to section-specific comments, we outline several overarching concerns that affect the rule as a whole. These comments reflect extensive consultation with, and feedback from, county elected and professional officials across the country, whose on-the-ground experience administering federal awards has directly informed the positions and recommendations below.

Executive Summary

NACo supports OMB's stated goals of improving transparency, accountability, and efficiency in federal grants administration, and we credit the proposed rule's burden-reduction provisions, including its NOFO simplification and its limitation on duplicative audit requirements. We do, however, have reservations that some of the changes included in the proposed rule intended to ensure proper management and expenditures of federal funds could increase the administrative and cost burdens of pursuing a federal grant, especially for entities that do not traditionally access federal awards that this Administration aims to support.[2] Given the scope of this rulemaking, we highlight below the eight concerns we consider highest priority. The remainder of this letter addresses these and all other provisions on a section-by-section basis.

- **Comment Period:** A 412-page, government-wide rewrite of federal grants regulations warrants more than 45 days of public comment. We ask OMB to extend the comment period by at least 60 additional days, including a specific consultation process for state and local officials.
- **Effective Date:** The proposed October 1, 2026 effective date does not allow counties adequate time to update internal controls, policies and subaward agreements. We ask OMB to establish an effective date of no earlier than January 1, 2027, or adopt a phased implementation approach similar to past OMB practices.
- **Federalism Assessment:** We ask OMB to withdraw its determination that the rule "does not have federalism implications" and to conduct a formal federalism consultation process consistent with Executive Order 13132. We also ask OMB to address whether the rule's new compliance and monitoring obligations trigger an assessment under the Unfunded Mandates Reform Act.
- **§ 200.219 Viewpoint Neutrality:** This provision extends a viewpoint-neutrality condition to county property and events that receive no federal funding at all. We ask OMB to narrow the provision to the specific federally funded activity and to clarify how its rationale applies to private pass-through subrecipients that are not independently bound by the First Amendment.
- **§ 200.300(b):** This provision uses undefined terms, including "significantly damage the reputation." We ask OMB to define these terms and to narrow the provision to the specific federally funded activity.
- **§ 200.340 Termination Standard:** We ask OMB to narrow the proposed "national interest as they exist at the time of the termination" standard, to codify Director Vought's June 30, 2026

[2] The White House, Improving Oversight of Federal Grantmaking, Presidential Actions, August 7, 2025, https://www.whitehouse.gov/presidential-actions/2025/08/improving-oversight-of-federal-grantmaking/

testimony protecting congressionally designated funding directly in the rule text, and to name, rather than only categorize, the specific programs that qualify for the block-grant, formula-grant and disaster-recovery exemption from discretionary termination.

- **Subrecipient Monitoring and E-Verify:** The proposed rule expands subaward and contractor classification to reach transfers to related or affiliated entities, and extends E-Verify participation to every contractor and subcontractor regardless of award size or risk. These expanded monitoring and verification obligations would be especially burdensome for rural counties with limited grants staff. We ask OMB to scale both requirements to award size and risk.
- **SAM.gov Reliability:** The proposed rule increasingly relies on SAM.gov reporting as a trigger for subrecipient monitoring obligations and termination, notwithstanding GAO's documented, longstanding concerns about the accuracy, completeness, and timeliness of SAM.gov data. We ask OMB to commit to reviewing and improving SAM.gov usability and data accuracy before, or at minimum concurrently with, making SAM.gov reporting a basis for termination.

Part 1 (Revised), About Title 2 of the CFR and Subtitle A

OMB proposes to revise Part 1 in its entirety, restructuring it into three subparts and replacing references to “guidance” with “regulation” throughout, consistent with the reclassification discussed above. This is primarily a structural and navigational change.

- *Will OMB provide a crosswalk or navigational guide showing where existing Part 1 content has moved, so that county staff (including attorneys and auditors) who reference specific provisions in training materials and internal policies can update those references efficiently?*

§ 200.1 Definitions, Removal of “Protected PII”

The proposed rule eliminates the existing distinction between ordinary “Personally Identifiable Information (PII)” and the narrower, heightened category of “Protected Personally Identifiable Information (Protected PII),” which currently covers Social Security numbers, passport numbers, credit card and bank account numbers, biometrics and criminal, medical and financial records, the categories of information whose loss or disclosure carries the greatest risk of harm. The preamble states only that the existing Protected PII definition “is not necessarily consistent with other OMB guidance, which does not distinguish between PII and Protected PII.” That is a harmonization rationale, not a security rationale, and harmonization could equally have been achieved by extending the heightened standard to all PII rather than eliminating it. As caretakers of confidential information, we take seriously our responsibility to protect the privacy and security of PII and Protected PII that we collect and obtain from members of the public.

- *Why did OMB choose to remove the heightened protection standard rather than extend it to align the two definitions?*

- *How does OMB plan to ensure that data currently protected under the Protected PII standard, including Social Security numbers and financial account information that flow through our grant administration and, increasingly, through the Treasury Do Not Pay matching process, continues to receive a level of safeguarding consistent with the Privacy Act of 1974, once the* *regulatory category that names and requires that heightened protection no longer exists in 2 CFR?*

§ 200.101 Applicability

The proposed rule designates Subpart F (audit requirements) and § 200.340 (termination) as government-wide provisions that override any conflicting agency-specific regulation not otherwise required by federal statute, and removes references to fixed-amount awards consistent with their elimination elsewhere in the rule.

- *Since termination and general audit provisions will now override agency-specific rules, will OMB clarify, for a county managing awards across multiple federal agencies, which office or point of contact governs when an agency-specific rule appears to conflict with a Subpart F or § 200.340 requirement? And if so, at what frequency and how so?*

§ 200.106 Agency Implementation and Responsibilities

The proposed rule clarifies that federal agencies must implement OMB's Subtitle A regulations in their own Subtitle B regulations unless a different approach is required by statute or approved by OMB.

- *Will individual federal agencies (for example, but not limited to, HHS, USDA, DOT and HUD) issue their Subtitle B conforming updates on the same timeline as OMB's Subtitle A changes, and will we be notified directly when an agency we work with finalizes its own conforming regulation?*

§ 200.113 Mandatory Disclosures

The proposed rule requires that mandatory disclosures made to a federal agency's Office of Inspector General be transmitted to the United States Attorney's Office for the District of Columbia within 10 business days of receipt. We support strong fraud and integrity disclosure requirements. We ask OMB to clarify the purpose of routing all such disclosures through a single Department of Justice (DOJ) office nationwide, and what effect this routing is expected to have on the independence of the disclosure and investigation process across the wide range of federal agencies and grant programs to which it will apply.

§ 200.201 and § 200.333 Elimination of Fixed-Amount Awards and Subawards

The proposed rule eliminates fixed-amount awards and fixed-amount subawards except where expressly authorized by federal statute. We recognize the accountability rationale behind this proposal; however, fixed-amount arrangements have functioned as an effective, lower-burden tool for administering activities with clearly defined deliverables but variable underlying costs, particularly in partnership with local governments and nonprofit subrecipients with limited administrative capacity. Eliminating this tool entirely, rather than narrowing its use, will shift many of these arrangements to full cost-reimbursement administration, increasing documentation and monitoring burden for small rural counties, our subrecipients and federal agencies alike without a clear, corresponding accountability benefit.

- *Would OMB consider retaining fixed-amount awards and subawards below a defined dollar threshold, or for defined categories of programs where deliverables are clearly specified in advance?*
- *For existing fixed-amount subawards that are financially complete, fully expended and closed on the recipient's books, but remain contractually open through a future date, will these be grandfathered, or will they be subject to conversion under the final rule?*

§ 200.202 and § 200.204 Program Planning, Design, and Notices of Funding Opportunity

Counties support several of the proposed rule's burden-reduction provisions in this area, including the requirement for plain-language, 500-word executive summaries in NOFOs, the minimum 30-day posting requirement, and the encouragement of multi-year awards where consistent with program objectives. These changes respond to concerns counties, particularly small and rural counties with limited grants staff, have raised for years about an inconsistent and difficult-to-navigate federal grants landscape. We encourage OMB to preserve and, where possible, strengthen these provisions in the final rule. We also ask OMB to clarify the interaction between the multi-year award encouragement in § 200.202 and the annual federal appropriations cycle, since we rely on predictable, year-to-year confirmation of continued federal funding for multi-year budget and staffing decisions.

§ 200.205 Federal Agency Merit Review of Proposals

The proposed rule requires a senior political appointee at each federal agency to conduct a pre-issuance review of selected discretionary grant proposals. We have serious concerns with this process as proposed, given that it allows a merit-qualified application to be denied on grounds unrelated to program performance or compliance, with no defined criteria and no clear opportunity to be heard beforehand. This kind of unreviewable discretion to deny funding on grounds untethered to a program's statutory criteria appears to be what three federal circuit courts rejected in the Byrne JAG grant litigation. See *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018); *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020); *City of Philadelphia v. Attorney General*, 916 F.3d 276 (3d Cir. 2019); *City of Los Angeles v. Barr*, 941 F.3d 931 (9th Cir. 2019) (each holding that a political appointee cannot use control over federal grant funds to pursue executive branch policy objectives that Congress did not authorize, and that Congress does not confer sweeping new discretionary authority through general, ancillary statutory language). We ask OMB to clarify the published, objective criteria that will govern which applications are selected for this additional review, the maximum time this review may take before an award decision is finalized, and what recourse a county applicant has if a proposal that satisfies the ordinary merit review standards is denied at this additional stage.

- *Will OMB establish a formal appeal process specific to a denial at the pre-issuance review stage, separate from the appeal rights already provided for terminations based on noncompliance, given that a merit-qualified proposal could be denied on grounds unrelated to the applicant's own performance or compliance record?*

- *Given that federal courts have repeatedly held that an executive branch official cannot deny or condition federal grant funds based on policy objectives the authorizing statute does not itself establish, what statutory authority permits a political appointee's pre-issuance review to deny a proposal that satisfies a program's own statutory and merit-based eligibility criteria?*

§ 200.206 Federal Agency Review of Risk Posed by Applicants

The proposed rule expands the risk factors a federal agency may consider before making an award to include an applicant's "affiliations 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." We routinely partner with other entities including, hospitals, nonprofit organizations and community groups in the ordinary course of delivering federally funded services. Neither "affiliation" nor the standard for what "undermine[s] public safety or national security"" is defined in the proposed rule. We have serious concerns that, absent objective standards, this vagueness could be used to penalize counties for lawful partnerships and associations rather than for any genuine risk to program integrity.

- *Will OMB publish a defined standard for what constitutes a disqualifying "affiliation," sufficient for a county to evaluate its existing partnerships and subrecipient relationships in advance of applying for an award?*

- *Does the affiliation factor apply to a county's own risk profile based on the affiliations of its subrecipients and contractors, and if so, what visibility will a pass-through county have into those relationships before it becomes responsible for them?*

§ 200.208 Specific Conditions

The proposed rule establishes a new 15-day window for a federal agency to add or remove specific conditions on an existing award based on defined risk factors. We are concerned that this timeframe is unworkable for county government as structured. Unlike a private contractor, a county cannot unilaterally accept or modify the terms of a federal award. A material change to a grant's terms and conditions typically must be reviewed by the affected department, county counsel and the county executive or administrator before it reaches final approval, and in most counties, final approval rests with the county's governing elected body, whether a board of commissioners, board of supervisors or county council. Because governing bodies meet on a fixed schedule, often monthly, and require advance public notice and agenda placement before a vote, this review and approval chain routinely takes 30 days or longer from the time a proposed condition is received to the time it can be formally approved.

A 15-day window does not appear to account for this basic feature of local government decision-making, and we are concerned that it would put counties in the position of missing a federal deadline through no fault of their own, simply because their own legally required approval process cannot move that quickly. We ask that OMB extend the response window to no fewer than 60 days, or, at minimum, build in a mechanism for a recipient to request additional time when a proposed change requires governing-body approval.

- *What mechanism, if any, will OMB provide for a recipient to request additional time to respond to a specific condition when governing-body approval is legally required before the county can act?*

§ 200.213 Reporting a Determination That an Applicant Is Not Qualified for a Federal Award

The proposed rule requires a federal agency that determines an applicant lacks the integrity or business ethics necessary to receive a federal award to report that determination to the integrity and performance system accessible through SAM.gov. This matters to counties because that determination becomes a public, searchable record that every other federal agency can see and rely on in deciding future awards, not just the one at issue. The rule does not specify what standard or process an agency must follow before making that determination.

- *Will OMB provide guidance on the standards and process federal agencies must follow before making this determination, including advance notice and an opportunity to respond, given the far-reaching consequence of exclusion from future federal awards generally?*

§ 200.218 Prohibition of Using Federal Awards to Promote or Support Theories of Disparate-Impact Liability

Counties administer federally funded programs across a wide range of state legal frameworks, and in several states, state law affirmatively requires the kind of analysis this provision prohibits supporting. For example, New York's Public Health Law requires health care facilities to file a Health Equity Impact Assessment analyzing a project's effect on health disparities by race, income and other protected characteristics before certain health facility projects can proceed.[3] Similarly, in Iowa, a county applying to a state agency for a grant, including many state-administered federal pass-through programs, must include a Minority Impact Statement under state law analyzing any disproportionate impact of the proposed program on minority persons, and state guidance confirms the application cannot be funded without this completed analysis.[4] A county cannot simultaneously comply with a state-law duty to analyze disparities by race and other protected characteristics and this provision's direction not to use federal funds to support disparate-impact analysis.

- *How should a county reconcile this provision with a state-law requirement to conduct a disparities analysis, such as Iowa's Minority Impact Statement requirement or New York's Health Equity Impact Assessment requirement, and will OMB provide a safe harbor for counties acting in good-faith compliance with such state-law obligations?*

- *Does this provision reach a county pass-through entity's oversight of a local subrecipient's own disparate-impact practices, for example, a local nonprofit board administering CDBG-funded services, even where the subrecipient's practices are independent of any award-funded activity?*

§ 200.219 Prohibition of Discriminatory Event Services

We have significant concerns with this provision as written. The proposed rule requires viewpoint-neutral treatment of events, meetings and expressive activities on property controlled by a public entity receiving federal funds, *regardless of whether the specific event or facility is itself federally funded.* As drafted, this extends federal requirements to county property and programming that receive no federal funding at all, rather than tying the condition to the specific federally funded activity the award is

[3] Source: N.Y. Pub. Health Law § 2802-b, https://www.nysenate.gov/legislation/laws/PBH/2802-B.
[4] Source: Iowa Code § 8.11, https://www.legis.iowa.gov/docs/code/8.11.pdf.

intended to support. OMB's preamble grounds this provision's breadth in the fact that public entities are independently subject to the First Amendment, and states that this makes the provision's broad application "constitutionally permissible." Counties do not dispute that public entities are bound by the First Amendment. However, constitutional permissibility is not the same question as administrability – converting an existing constitutional obligation into a federal grant-compliance term, enforceable through termination of the recipient's entire award for conduct on property with no connection to the funded program, creates a new administrative and compliance risk that ordinary constitutional enforcement mechanisms do not carry. We also ask how this rationale applies within a pass-through funding structure: many counties distribute federal funds to private nonprofit subrecipients that operate their own facilities and are not independently bound by this same viewpoint-neutrality and First Amendment in the same way as a public entity. Does this provision reach a private subrecipient's facilities, and if not, how should a county acting as a pass-through entity reconcile monitoring for a viewpoint-neutrality standard that OMB states ties only to public entities, not private/non-public ones?

Counties operate a wide range of public facilities, libraries, fairgrounds, parks, convention centers, boat launches and community meeting spaces, that host hundreds, and in some counties thousands, of events annually, only a small fraction of which involve federal funding. Applying this condition to all county-controlled property, rather than to the specific federally funded activity, would require us to review and potentially revise long-standing local facility-use and security policies, including those developed for high-risk events, across our entire property portfolio. It would also create an ongoing compliance burden to track and monitor which of our hundreds or thousands of annual events fall within the scope of this requirement, given that only a small number are connected to a federal award.

We respectfully ask that OMB withdraw or narrow this provision to apply only to events, meetings or facilities that are themselves directly supported with federal funds. Should OMB decline to do so, we ask that it answer the following:

- *Does this provision require a county to evaluate the viewpoint or subject matter of a group's speech before setting security fees or facility-use terms, or may fees and terms continue to be set based on neutral factors such as anticipated attendance and security needs?*

- *Would a county's existing, neutrally applied facility-use and security policy satisfy this provision, or will OMB require us to adopt a new, specifically viewpoint-neutral policy meeting a federally defined standard.*

<u>§ 200.300(b) Statutory and National Policy Requirements</u>

The proposed rule establishes new, government-wide prohibitions on using federal award funds to fund, promote, encourage, subsidize or facilitate certain DEI/DEIA policies, "gender ideology," and related activities. We administer federally funded disaster, health, housing, workforce and human services programs under a wide range of state and local legal frameworks, and several operative terms in this provision, including "intentional proxies for race" and "gender ideology," are not defined with sufficient specificity for a county to determine, in advance, whether a given program activity is affected.

Counties have identified a number of concrete, unresolved questions in the course of reviewing this provision. A local proclamation referencing diversity, equity or inclusion is different in kind from an award-funded program activity, but the rule does not clarify whether or how far it reaches beyond award-funded activity. Similarly, many federally funded programs use income-based eligibility criteria, for example, housing programs limited to low- or moderate-income persons, or set-asides for economically disadvantaged populations, that are not themselves race- or sex-based, and the rule does not clarify whether such income-based criteria could be read as implicated by this provision.

- *Will OMB publish specific, operative definitions of the key terms in this provision, including "intentional proxies for race" and "gender ideology" as applied in the grants context, sufficient for us to conduct program-by-program compliance review before the effective date?*

- *Does this provision reach general local government communications and proclamations that are unconnected to any specific award-funded activity, or is it limited to the use of award funds themselves?*

- *Do income-based eligibility criteria and set-asides, which are not based on race or sex, fall within the scope of this provision?*

- *How will OMB address us operating in states where state law imposes nondiscrimination or equity-related obligations that intersect with this provision, and will a safe harbor be available for counties acting in good-faith compliance with such state-law obligations?*

§ 200.303(f) Internal Controls, E-Verify

The proposed rule requires recipients and subrecipients to participate in the U.S. Department of Homeland Security's E-Verify program to confirm the employment eligibility of all employees and contractors performing work under a federal award. Many counties already use E-Verify for our own employees; extending this requirement to every contractor and subcontractor performing work under a federal award, however, would impose a significant new administrative burden, particularly for counties that rely on a large number of smaller contractors and vendors across their federal grant portfolios. Counties have serious concerns about extending this requirement to every contractor and subcontractor regardless of award size or risk.

- *Would OMB consider an award-size threshold below which the E-Verify requirement does not extend to contractors and subcontractors?*

- *What is the anticipated cost and administrative burden of this expansion, and has OMB considered a phased implementation for existing multi-year awards with contracts already in place?*

§ 200.305 Federal Payment, Treasury Do Not Pay Integration

The proposed rule requires agencies and pass-through entities to verify recipient and subrecipient eligibility through the Department of the Treasury's Do Not Pay system before disbursing federal payments. This requirement is closely connected to a separate, recent Treasury action: on May 18, 2026, Treasury published a Federal Register notice (91 FR 28759) establishing a new computer matching program under the Privacy Act of 1974, authorizing roughly 40 Treasury programs, including the Coronavirus State and Local Fiscal Recovery Funds, Emergency Rental Assistance and the Homeowner Assistance Fund, all programs we have administered or supported, to compare applicant and recipient records against the Do Not Pay Working System through September 10, 2029. That notice states that these approximately 40 distinct Treasury programs and systems of records “constitute a single agency-wide matching program” for purposes of a Payment Integrity Information Act waiver of the Privacy Act's individualized matching-agreement requirement. Given that the Computer Matching and Privacy Protection Act of 1988 was enacted specifically to require individualized review of computer matching activity, we ask OMB and Treasury to clarify the statutory basis for treating dozens of programmatically distinct systems of records, each with a different original collection purpose, as a single matching program for purposes of that waiver.

- *What data will be shared with the Do Not Pay system for purposes of § 200.305 verification, and what liability does a pass-through county bear if it disburses a payment before an incorrect Do Not Pay match is identified and corrected?*

- *What dispute process will be available to a recipient or subrecipient to correct an incorrect Do Not Pay match, and how quickly must that dispute be resolved relative to a pending payment?*

- *Can OMB confirm that a compliance or payment action taken under § 200.305 will not rest on a matching determination whose own procedural basis remains subject to a separate, ongoing legal or public comment process?*

§§ 200.318, 200.320, 200.321, 200.322 and 200.323 Procurement Standards

The proposed rule makes a series of changes to the general procurement standards, procurement methods and domestic-preference requirements applicable to recipients. Among these, §200.321 removes the current requirement that recipients take affirmative steps to ensure small, minority-owned, and women-owned businesses are considered for contracting opportunities, replacing it with a hedged standard that recipients “'should ensure, when possible”' that small businesses generally are considered. OMB's preamble ties this change to the same “'merit-based opportunity”' framework underlying §200.300(b), discussed above.

- *Given the removal of the specific reference to minority-owned and women-owned businesses in §200.321, will existing county small, minority-owned and women-owned business contracting goals or programs still be permissible under the final rule including procurements unrelated to federal awards?*

§§ 200.329–200.332 Subrecipient Monitoring and Pass-Through Entity Requirements

Counties have serious concerns about the expansion of subaward and contractor determinations to reach transfers to related or affiliated entities. The proposed rule closes a distinction that previously allowed a county to treat a transfer to its own hospital district, housing authority, water district, or other affiliated entity as an internal allocation, exempt from formal classification and monitoring.

Under the proposed rule, these transfers must now be reviewed and classified as either a subaward or a contract like any other downstream relationship, triggering full SAM.gov reporting and subrecipient monitoring obligations for relationships that, in practice, involve county-controlled or closely governed entities rather than independent third parties. This adds a real monitoring burden without a corresponding change in the actual risk these transfers present, since the receiving entity remains under county or closely related governmental control.

The proposed rule also strengthens SAM.gov subaward reporting requirements generally and requires that pass-through entities ensure subrecipients do not take any action that "could significantly damage the reputation" of the pass-through entity, the awarding agency, or the federal government. This last standard is undefined, and the consequence of a federal agency's determination that reputational harm has occurred is potential termination of the county's entire federal award, not simply the affected subaward, regardless of the county's own compliance record.

Finally, the rule identifies a recipient's failure to report a subaward on SAM.gov as independent grounds for termination, with no specified cure period, at the same time that GAO has separately and repeatedly documented longstanding accuracy, completeness, and timeliness challenges with SAM.gov and USAspending.gov data. If SAM.gov reporting is going to carry the weight of a termination-triggering compliance obligation, the system itself should be reliable enough to bear that weight. We ask that OMB commit to reviewing and improving SAM.gov usability and data accuracy before, or at minimum concurrently with, making subaward and contractor reporting a basis for termination.

- *Will OMB exempt transfers to related or affiliated entities under common county governance from full subaward classification, or at minimum apply a lighter-touch monitoring standard given the reduced risk these transfers present compared to transfers to independent third parties?*

- *Will OMB define "significantly damage the reputation" with objective, measurable criteria, and will any resulting consequence be limited to the specific subaward at issue rather than a recipient's entire federal award?*

- *What transition period will we have to reclassify existing internal transfers to related entities as subawards or contracts?*

- *Will OMB provide a cure period to correct SAM.gov reporting errors before termination consequences apply, particularly given GAO's own documented findings regarding SAM.gov data-quality and usability challenges?*

§ 200.339 Remedies for Noncompliance

The proposed rule adjusts the framework of remedies, including withholding payments, disallowing costs, suspension or termination and debarment referral, available to a federal agency or pass-through entity in response to noncompliance.

- *Will OMB provide clear guidance on how an agency is expected to select among the available remedies for a given instance of noncompliance, so that we can better anticipate which tool is likely to apply to a given compliance issue?*

<u>§ 200.340 Termination and Suspension</u>

Counties explicitly support the proposed rule's exclusion of block grants, formula grants, and disaster recovery grants from the expanded discretionary termination authority – an exclusion that protects the substantial majority of federal funding we administer by volume. We ask OMB to go further and identify, by name and not only by category, which federal programs we administer or receive qualify as exempt under this provision. Category labels alone leave real, unresolved questions open: for example, the rule text does not address whether Federal Emergency Management Agency's (FEMA) pre-disaster hazard mitigation programs are treated the same as post-disaster recovery grants for purposes of this exclusion, even though both serve the same underlying statutory purpose of reducing disaster losses.

We ask OMB to confirm, by name, whether programs including the Community Development Block Grant, the Surface Transportation Block Grant, Title I of the Elementary and Secondary Education Act, the Child Care and Development Block Grant, Medicaid, the Supplemental Nutrition Assistance Program administrative funding, and FEMA public assistance and hazard mitigation grants fall within the exemption for block grants, formula grants and disaster recovery grants, so that counties are not left to guess whether the programs that make up the bulk of our federal portfolios are protected.

For the discretionary awards that remain subject to this authority, counties have serious concerns about the proposed discretionary termination standard: termination where an award no longer effectuates program goals, agency priorities, or "the national interest as they exist at the time of the termination." This standard evaluates a grant against conditions that did not exist when the award was made. We enter into multi-year contracts, coordinate with other local governments and contractors, and in many cases advance funds and seek reimbursement, based on the terms in effect at the time an award is obligated. A standard that measures compliance against conditions that can change unilaterally and without notice after obligation creates a level of fiscal uncertainty that counties cannot reasonably plan around. Compliance reviews and award administration should be evaluated against the rules in effect at the time funds were obligated, not against later, unrelated changes in agency priorities. Federal agencies have already sought to condition or withhold congressionally appropriated funds based on whether the funded program aligns with shifting executive branch priorities, rather than the terms Congress itself attached to the funding when it was appropriated. A standard built around the "national interest as they exist at the time of the termination" repeats that approach: it lets the government redefine, after the fact, whether a program still qualifies for funding Congress already committed, based on priorities that did not exist when the award was made.

This is not a hypothetical risk. In April 2025, FEMA announced the termination of the Building Resilient Infrastructure and Communities (BRIC) program, the nation's largest competitively awarded pre-disaster mitigation program, halting $3.6 billion in previously awarded funding and canceling an additional $882 million in planned funding. Twenty-two states and the District of Columbia sued, and a federal court ultimately ordered the funding restored, finding that the termination was unlawful because Congress had specifically appropriated the funds for that purpose. See Order Granting Summary Judgment, State of Washington v. FEMA, No. 1:25-cv-12006-RGS (D. Mass. Dec. 11, 2025) (Stearns, J.); Order to Enforce (D. Mass. Mar. 6, 2026).[5] We raise this example not to relitigate

[5] Source: U.S. District Court for the District of Massachusetts, *State of Washington v. FEMA* docket, Dec. 11, 2025. https://www.courtlistener.com/docket/70807946/parties/state-of-washington-v-federal-emergency-management-agency/

that specific dispute, but because it illustrates precisely the risk at issue here: a broad discretionary termination standard can be found unlawful only after extended litigation, during which we, our contractors and our residents bear the disruption and cost.

We appreciate the clarity that was provided at the June 30, 2026 hearing before the U.S. House Appropriations Subcommittee on Financial Services and General Government, where Director Vought confirmed that the rule is not intended to affect congressionally designated funding, stating that an earmark to a specific person or organization would be at the top of the list of funding that needs to be honored. The proposed rule as written, however, does not include language reflecting that assurance. We ask that OMB codify this commitment directly in the text of the final rule, so that the protection for congressionally designated projects does not depend on a statement made in testimony but is instead enforceable on the face of the regulation itself, giving counties administering a congressionally designated project a clear, citable basis for confirming that the project is protected.

This risk extends beyond the federal award itself. According to reporting by the Bond Buyer, Moody's Ratings has indicated that the expanded discretionary termination and suspension authority in this rule would be credit negative for entities with high dependence on competitive federal funding because it would materially weaken the reliability of multi-year discretionary funding commitments since bondholders and rating agencies price in the reliability of a government's revenue streams.[6] A rule that makes federal funding less predictable does not only put the federal award at risk; it can jeopardize or raise the cost of borrowing for the roads, water systems and public facilities counties finance in the capital markets, a cost that is ultimately borne by our residents and taxpayers.

This same unpredictability runs through the proposed rule’s new stop-work order authority, which permits an agency or pass-through entity to suspend a discretionary award for up to 90 days, with no defined standard governing when such an order may issue, no specified appeal process and no clarity regarding the treatment of costs incurred during the suspension period.

- *Will OMB publish a comprehensive, named list of the specific federal programs that qualify as exempt block grants, formula grants or disaster recovery grants under § 200.340(a)(2) and a defined process and timeline by which each federal awarding agency must confirm in writing, before the effective date, whether a specific county award falls within that exemption?*

- *Does the exemption for disaster recovery grants extend to pre-disaster hazard mitigation programs, or only to post-disaster recovery programs?*

- *What standards will govern when a stop-work order may be issued, what costs incurred during a suspension period will be reimbursable (including additionally accrued interest payments), and what appeal or cure process will be available before or during a suspension?*

- *Will recipients have a formal opportunity to object and an administrative appeal right before a discretionary termination becomes final, comparable to the appeal rights already provided for terminations based on noncompliance?*

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[6] Source: Caitlin Devitt, *Moody's Warns Proposed Political Review of Grants a Credit Negative*, Bond Buyer (June 15, 2026), https://www.bondbuyer.com/news/moodys-warns-proposed-political-review-of-grants-a-credit-negative.

- *Given that a federal award represents a commitment Congress made when it appropriated the funds, on what basis should a program's continued eligibility for that funding be measured against priorities that arose after the award was obligated, rather than the statutory terms in effect when Congress and the agency made that commitment?*

<u>§ 200.341 Opportunities to Object to and Appeal a Remedy for Noncompliance</u>

The proposed rule adjusts the procedural framework governing a recipient's opportunity to object to and appeal a remedy for noncompliance. As drafted, discretionary terminations under § 200.340(a)(2) do not appear to carry the same objection and appeal rights available for terminations based on noncompliance.

- *If a termination decision is discretionary rather than based on noncompliance, what appeal rights and process will be available to the recipient, and will they be comparable to those available for a noncompliance-based termination?*

<u>§ 200.343 Effects of Suspension and Termination</u>

The proposed rule requires a recipient or subrecipient, once an award is suspended or terminated, to make and document "all reasonable efforts" to discontinue, cancel, or mitigate ongoing financial obligations, and provides that costs resulting from a discretionary termination will be allowed only to the extent the awarding agency, in its discretion, determines appropriate. This compounds the concern already raised regarding §200.340: it is not enough for a county to know a discretionary termination is possible, since even the treatment of costs already incurred before the termination is left largely to the same agency's discretion, rather than governed by a predictable standard. County engineers and grant administrators have specifically raised this scenario for reimbursement-based road and bridge projects, where a county advances its own funds or incurs binding contractual obligations with contractors well before federal reimbursement arrives; a mid-project discretionary termination under this framework could leave a county holding costs with no guaranteed path to recovery.

- *If an award is suspended or terminated mid-project, how exposed is a county for costs already incurred but not yet reimbursed, particularly for reimbursement-based infrastructure and construction grants where a county may have already advanced funds or incurred contractual obligations with third parties?*

- *What standard will govern an agency's discretion in allowing costs following a discretionary termination under §200.340(a)(2), and will that standard be published before the effective date so counties can assess their exposure in advance?*

<u>§ 200.401 and Appendix VIII Nonprofit Cost-Principle Exemption</u>

The proposed rule narrows the existing cost-principle exemption for nonprofit organizations to those receiving 90 percent or more of their federal funding through contracts, or operating a Federally Funded Research and Development Center, and removes Appendix VIII in its entirety. Nonprofit subrecipients that currently rely on this exemption will need to transition to standard nonprofit cost principles under Subpart E at the same time they may be transitioning away from fixed-amount award structures under § 200.201 and § 200.333, discussed above. We ask OMB to provide these subrecipients, and us as the counties that pass funding through to them, adequate advance notice and a defined transition period before this change takes effect.

§ 200.403 Factors Affecting Allowability of Costs

The proposed rule provides that costs associated with activities deemed unallowable under §200.300(b), specifically the use of federal award funds to fund, promote, encourage, subsidize, or facilitate: (1) diversity, equity, and inclusion or diversity, equity, inclusion, and accessibility programs found to violate federal anti-discrimination law; (2) what the rule terms "gender ideology," as defined by reference to Executive Order 14168; and (3) gender-transition procedures for minors, as addressed under Executive Order 14187, become unallowable costs under §200.403. Because several of the operative terms describing these categories, including what qualifies as a DEI or DEIA program that violates federal law and what constitutes "gender ideology" in practice, are not clearly defined, as discussed above, this section compounds that concern by attaching a direct cost-disallowance consequence, including potential recovery of funds already spent, to a standard counties cannot fully evaluate in advance.

- *If an activity is later determined to violate one of these three prohibited categories under §200.300(b), would costs a county has already incurred in good faith become retroactively unallowable, and if so, is there a safe harbor for expenditures made before OMB defines the relevant terms?*

- *Will OMB define, in exact and specific terms, what constitutes a prohibited DEI or DEIA program, "gender ideology.," and each of the other prohibited activities referenced in §200.300(b), including an analysis on how these violate civil right laws, so that a county can determine in advance, and with certainty, whether a specific program or expenditure is affected, rather than learning after the fact through a cost-disallowance determination?*

§§ 200.421, 200.432, 200.442 and 200.454 Cost Principles, Advertising, Conferences, Fundraising, and Memberships

The proposed rule tightens allowability standards for advertising and public relations costs, requires express agency approval for conference attendance costs, requires prior written approval for fundraising and investment management costs and adds a prior-approval requirement for membership, subscription and professional activity costs. We ask OMB to clarify that dues paid to nonprofit and/or intergovernmental organizations whose membership is composed exclusively of governmental entities, including organizations that serve an essential coordination function for the administration of federally funded programs, remain allowable without requiring prior approval on the same basis as dues to private trade associations. We also ask OMB to clarify how a recipient is expected to anticipate, at the time a grant agreement is executed, a conference or training opportunity that could not have been foreseen in advance, given the requirement that such attendance be included in the award's terms and conditions.

§ 200.444 General Costs of Government

The proposed rule treats costs tied to the general activities of a government, including public safety, public information, and taxation functions not tied to a specific federal award, as unallowable unless expressly provided as a direct cost under the program statute or regulation. In practice, counties braid federal funds together with state and local dollars to deliver a single service, and separating a general government cost from an award-specific one is often not a clean or obvious line. For example, in a federally funded community policing program, it can be genuinely difficult to determine which portion of an officer's salary and benefits is attributable to the federal award as opposed to the county's general public safety function, and in a federally funded disaster-debris removal effort, it can be similarly difficult to separate debris cleared under the federal award from debris cleared using county funds alone.

This concern extends beyond direct service delivery to the oversight infrastructure that makes responsible stewardship of federal funds possible. Counties maintain extensive layers of checks and balances over all county funds, including federal awards, through elected and professional county attorneys, auditors, treasurers, and clerks, among others. A county attorney reviews and approves grant agreements and subaward contracts; an auditor conducts the internal control testing and reconciliation that underlies the county's Single Audit; a treasurer manages the cash disbursement and reconciliation processes that ensure federal draws are accurate and properly documented; a clerk maintains the official records those functions depend on. These internal controls are exactly what OMB's own stated goals for this rulemaking – transparency and accountability – depend on, and they are general government functions that support every program a county administers, not any single federal award.

- *Will OMB clarify whether the cost of these due-diligence and oversight functions should remain recoverable as program-supporting costs through negotiated indirect cost rates, rather than being treated as unallowable general government costs — and confirm that this approach is consistent with OMB's objective of strengthening, not weakening, the internal controls that safeguard federal funds?*

- *If OMB intends for some oversight costs to be treated as unallowable, will it provide concrete, program-level guidance on where that line falls, rather than leaving the distinction between a general government cost and an allowable direct cost to case-by-case interpretation that could vary by auditor or by agency?*

<u>§ 200.472 Termination and Standard Closeout Costs</u>

The proposed rule addresses which settlement and closeout expenses remain allowable following a termination. Given the expanded termination authority in § 200.340 discussed above, this section's practical significance for counties increases substantially.

- *If an award is terminated under the new § 200.340 standard, which specific closeout costs will remain recoverable, and on what timeline will a county receive a final accounting of allowable closeout costs?*

<u>§ 200.503 Relation to Other Audit Requirements</u>

We support this provision from an administrative-burden standpoint. Requiring a statutory basis before a federal agency, Inspector General, or GAO imposes additional audits beyond the Single Audit responds directly to concerns counties have long raised about duplicative audit and compliance review demands. We ask OMB to confirm, however, that this provision does not limit the ability of the GAO, an Inspector General, or another objective third party to conduct an independent evaluation of a federal agency's own decisions, as distinct from a recipient's compliance. For example, if an award is terminated under §200.340, would this provision restrict the GAO's or an Inspector General's ability to independently review whether that termination was properly exercised, separate from any audit of the recipient itself?

- *Will OMB confirm that this provision does not limit the GAO's or an Inspector General's independent statutory authority to evaluate a federal agency's own exercise of discretion, including a termination decision under §200.340, as opposed to a recipient's compliance with award terms?*

- *Will this limitation apply only to formal audits under the Single Audit framework, or could it also be read to reach independent evaluations or investigations that do not fit neatly within either the "audit" or "compliance review" categories used in this section?*

<u>§ 200.513 Compliance Supplement</u>

The proposed rule removes the requirement that the OMB Compliance Supplement be updated annually, without specifying an alternative cadence. The Compliance Supplement is the primary guide auditors and recipients use to prepare for and conduct the Single Audit each year. We ask OMB to commit to a predictable, published update cadence so that county officials, including our internal and external auditors, are not left to guess when a change in audit guidance will take effect.

- *If new major federal programs are implemented, would that trigger release of a new compliance supplement?*

- *If the compliance supplement is no longer updated annually, what will govern the effective dates of future supplements?*

- *Will the most recently issued compliance supplement remain in effect until a new one is published, whether that is in one year or five?*

<u>Additional Structural Observations, Subtitle B Conforming Regulations, Statutory Authority, Implementing Executive Orders, Joint Rulemaking Format, and Severability</u>

We raise three additional, structural observations that apply across the rule rather than to any single section.

- First, because more than 40 federal grantmaking agencies will each need to adopt OMB's Subtitle A regulations into their own Subtitle B implementing regulations, we will need to track conforming rulemakings across every agency from which they receive funding, not solely this rulemaking. We ask OMB to require and publish a single, consolidated timeline for agency-specific Subtitle B adoption so that we are not left to monitor dozens of separate agency dockets individually.

- Second, we note that OMB grounds its statutory authority for this rule principally in 31 U.S.C. § 503, 31 U.S.C. §§ 6101–6106, 31 U.S.C. § 6307 and 31 U.S.C. §§ 7501–7507. We ask OMB to specifically identify, for each substantive new policy provision in the rule, particularly §§ 200.218, 200.219 and 200.300(b), which of these authorities, or any other statutory authority, supports that specific provision, given that these are general financial-management and grants-administration statutes rather than statutes addressing civil rights, speech or the other substantive policy areas this rule reaches.

- Finally, the proposed rule implements a series of executive orders, including Executive Orders 14151, 14168, 14173, 14187, 14281 and 14332, as the policy basis for several specific provisions. We ask OMB to identify, section by section, which provisions rest on which executive order, so that we can track how a future change to, or legal challenge involving, a specific executive order would affect the corresponding regulatory provision.

County governments remain committed to the responsible administration of federal financial assistance and to the intergovernmental partnership that makes federally funded programs effective for the residents we serve together. We appreciate OMB's stated goals of improving transparency, accountability and efficiency in federal grants administration, and several of the proposed rule's provisions, including its burden-reduction measures for NOFO and its limitation on duplicative audit requirements, respond directly and constructively to concerns we have raised for years. At the same time, the concerns and questions outlined above reflect real, practical obstacles that our counties face in implementing a rule of this scope and complexity within the proposed timeline. We appreciate OMB's consideration of these comments and for our request for a more formal consultation process with state and local governments as intergovernmental partners.

Counties stand ready to provide additional information or to meet with OMB staff to discuss any of the issues raised in this letter in greater detail. If you have any questions, please contact Legislative Director Jeffrey Thorsby at *jthorsby@naco.org* or 530-913-3578.

Sincerely,

Matthew Chase
Executive Director/CEO
National Association of Counties