

Summary

Proposed "reforms" of federal research funding seem to be at odds with the law governing the National Science Foundation.

Last week, I [posted](#) about a proposed new rule that would limit the role of merit in decisions about research grants and expand the political element. I suggested that the Office of Management and Budget (OMB) probably didn't have authority to issue the regulation. Individual funding agencies like the National Science Foundation (NSF) may have greater power. However, as I noted, laws applying to individual agencies vary greatly, and there has been no consideration of agency-specific issues.

Today's post develops that argument by taking a close look at a single agency, the NSF. The statutory framework applying to the NSF takes up Chapter 16 of Title 42 of the U.S. Code. It's quite extensive and detailed. I'm not an expert on this statute or on NSF funding regulations, so I've phrased my comments as questions rather than arguments. To survive the inevitable lawsuits, any rule will need to give reasoned answers to these and similar questions relating to agency missions.

Below, I identify some key requirements of the new rule and look at how they line up with what Congress has said in Title 16.

OMB: Awards must not promote DEI.

Title 16: In terms of DEI, section 1862p-14(7) says that one factor in assessing grants is "expanding participation of women and individuals from underrepresented groups in STEM." Section 1885a also authorizes the NSF to support activities to encourage women to qualify for and then pursue careers in STEM. Section 1885b contains similar language about the "participation of minorities" in science.

Q: How is the ban on DEI consistent with these provisions? If not, does the agency now believe these provisions are unconstitutional and if so, on what grounds?

OMB: Administration priorities will be implemented in the grant process. Political appointees must "use their own judgment" in reviewing all grants. Awards must not "promote anti-American values" or "gender ideology."

Title 16: Section 1862s(4) declares that “the Foundation’s contributions to scientific advancement, economic growth, human health, and national security, its peer review and merit review processes have identified and funded scientifically and societally relevant basic research and should be preserved.”

Q: Is encouraging political appointees to make their own technical judgments and to hunt out “anti-American values” consistent with preserving merit review of proposals?

OMB: Grants can be suspended and terminated at any time if they don’t fit current government priorities or “the national interest.” Only a brief explanation is to be provided.

Title 16: Section 1862s(1) declares that “sustained, predictable Federal funding of basic research is essential to United States leadership in science and technology.”

Q: Are having virtually unlimited government termination and suspension rights consistent with the statutory goal of sustained, predictable funding?

OMB: Foreign collaboration is disfavored strongly.

Title 16: Under section 1862(a)(3), one of NSF’s functions is to “to foster the interchange of scientific and engineering information among scientists and engineers in the United States and foreign countries.”

Q: Doesn’t a severe restriction on international collaboration hamper this function?

Maybe there are defensible answers to these questions. But NSF will have to address them if it wants the proposed regulations to survive judicial review. As it is, there is a huge gap between the role that Congress has assigned to NSF and OMB’s proposal.