

Summary

The government's new proposed regulations for research grants will politicize the process and downgrade the search for scientific excellence. America's standings in science and engineering will be the victims.

Is OMB's [proposed rewrite](#) of federal grant regulations as bad as it sounds? Sadly, the answer is yes. Below, I take a close look at some key provisions in the regulations. Some raise constitutional problems. Others are merely bad policy. The proposed rule undermines merit review, deters valuable research, and skews research toward the politics of the moment.

Section 200.205(b). Federal agency merit review.

This section is somewhat misleadingly titled, since it has key provisions that undermine merit review. First, it requires grants to “demonstrably advance the president’s policy priorities.” Second, it prohibits any grant that would “compromise public safety” or “promote anti-American values,” whatever that means. Third, it requires every grant award to be reviewed by a senior political appointee, who is cautioned to use “independent judgment” and not to overly defer to peer reviewers.

Independent review by the political appointee seems to include even technical judgments about complex scientific matters where a political appointee may have little expertise. And of course the political appointees are also supposed to implement the President’s priorities and decide if a project might promote “anti-American values,” judging grants based on ideological rectitude rather than scientific merit.

You might hope that the senior appointee would have some technical knowledge, but that’s not something one can count on. The possibility of RFK Jr. reviewing individual biomedical grants cannot be easily dismissed.

Even putting aside the quality of these independent reviews, they are bound to massively slow the process. In 2024, for example NIH and NSF combined issued about 70,000 grants of various kinds, each of which would require individualized review. We saw what happened when Kristi Noem required personal sign-off on all significant FEMA grants.

Section 200.206(b)(2)(4). Risk Evaluation of Applicants.

This subsection provides that, in assessing “applicant risk,” the agency may consider “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.”

This provision is probably unconstitutional. To begin with, freedom of association protects membership even in organizations that themselves violate federal law, so long as the person in question does not intend to further illegal activities. (Otherwise, to take one example, the NRA’s possible tax violations could make membership illegal.) Advocating overthrow of the United States government can be illegalized only in specific circumstances, and again the taint does not extend to members of an organization without proof of their own culpability. Being disqualified from a federal grant is a lesser penalty but still a serious one.

Penalizing membership in organizations that “undermine public safety or national security” goes well past First Amendment boundaries and is also unconstitutionally vague. Some readers might put any group that opposed climate action in that category. Other people — including the President — might say the same about any group that favors climate action. This is a clearly illegitimate test for eligibility for government funding.

Section § 200.218. Prohibition on disparate-impact liability.

Subsection (b) requires agencies to ensure that “Federal awards are administered in a way that does not promote or support the use of disparate impact liability,” which includes “ensuring ... that Federal awards are not used in support of disparate-impact studies, disparate impact litigation, or other related activities.”

This section defines disparate impact liability as an absolute or nearly absolute presumption that unequal effects on different groups proves discrimination. This is a common conservative framing that doesn’t correspond to reality, since disparate impact lawsuits are not easy for plaintiffs to win. Plaintiffs have to show that racial or gender differences in outcomes aren’t due to legitimate factors that happen to correlate with race or gender. Even if they do, the defendant can still win by showing that its hiring standards are needed for business reasons.

Putting that aside, the ban on using grants to support “disparate-impact studies”

could block empirical research into racial disparities or prevent researchers from making their work available to public interest litigants.

Section § 200.300. Statutory and policy requirements.

Under this provision, agencies must ensure that awards are not used to fund, promote, encourage, subsidize, or facilitate “gender ideology” or a minor’s gender transition. “Gender ideology” is defined to include “theories or ideologies that deny the biological reality of sex or the sex binary in humans, or endorse or advocate for the notion that sex is a chosen or mutable characteristic.” Encouraging gender transitions by minors is also forbidden.

The breadth of this provision is a particular concern, accentuated by the fact that it seeks to ban specific viewpoints. “Promote” and “encourage” are particularly broad terms. What does it mean to “promote” impermissible DEI practices, or perspectives on gender? Suppose a study of the effects of gender transitions by minors came up with favorable results or failed to show unfavorable ones. Would publication of the study violate this provision? What about an NEH-funded artwork that could be construed to suggest ambiguities about gender? Or an economic study that showed affirmative action programs now banned by the Supreme Court had had beneficial effects? Putting aside whether these restrictions violate the First Amendment, they certainly have the potential to chill artistic creativity and scholarly research. An additional worry is that the Administration’s view of which DEI practices are illegal goes far beyond the views of many experts in discrimination law.

An additional worry relates to the indirect cost (or overhead) portion of a grant. It is not hard to imagine the Administration arguing that this component of funding supports everything a university does. On that theory, a university with any federal grant funding would be responsible for blocking all faculty scholarship advocating these forbidden ideas, even by scholars who hadn’t received any direct federal funding. This would be an aggressive interpretation of the regulation, but this Administration has never shied away from aggressive legal positions.

Section 200.340 Termination and suspension.

Under subsection (a), grants can be terminated for noncompliance with grant conditions such as the DEI ban. They can also be terminated, with little explanation

and no procedural protections, under subsection (b)(2). That subsection authorizes termination if the agency determines that termination “is in the interest of the federal agency” or if “a Federal award does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination.”

This provision is bound to chill projects that might be vulnerable to changing political winds. It means that no one can ever be confident that a grant will continue when a new Administration takes office. Every time the White House changed hands, researchers would be at risk of the kinds of mass termination of grants that we saw in 2025. This will particularly chill research on topics that are politically salient like global climate change, vaccines, and AI safety. OMB argues that many government contracts contain termination clauses. The difference is that contractors can price in the additional risk associated with a project, while grantees cannot.

Even if we could be sure that all Presidents and their appointees were thoughtful and reasonable, the provisions that I’ve discussed would raise serious concerns. In today’s hyper-polarized world, it is hard to make that assumption. We know how this regulation would be implemented because we have already seen the same ideas in action. In 2025, we experienced the chaos and political litmus tests embedded in this proposed regulation. This regulation seeks to make such political disruptions a permanent state of affairs.