

Public Comment on the Proposed Regulation for Federal Financial Assistance

Docket: OMB-2026-0034

Rule: Regulation for Federal Financial Assistance (revision of 2 CFR Part 200, the Uniform Guidance, renamed the Uniform Grants Regulation), 91 Fed. Reg. 32,198 (May 29, 2026)

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Executive Summary

Public funds serve their public purpose only when the rules that govern them keep the money directed to public ends. The proposed rule breaks that link. It makes every discretionary award contingent on the approval of a single official, and subject to termination by the agency at any time, with only a summary explanation and no appeal. It subordinates the merit review, published criteria, stated reasons, and right of recourse that are the anti-corruption architecture of public spending, and raises over them, by the rule's own terms, priorities of its own definition. Whether that power is abused is a question about the people who hold it; that the rule strips away every check built to prevent abuse is a question about the rule.

The Rule Subordinates Merit-Based Processes with a Political Gate

Today, federal grants use published criteria and expert evaluation to ensure funding continues as long as recipients meet established terms. The proposed rule upends this by placing a political appointee at the gate. No award may be issued without this official's approval, and an award once made may be cancelled by the agency at any time without appeal. This reaches a vast array of critical programs:

- Emergency services and local police departments relying on equipment and hiring grants.
- Agriculture and rural development programs keeping operations and infrastructure viable.
- Health centers, Head Start classrooms, and homeless veteran shelters providing essential community services.
- Infrastructure projects and tribal programs building clinics, schools, and aging bridges.

- Scientific research and laboratories working toward the next vaccine or breakthrough.

The objection is not that one person decides rather than several. The merit process is the coordinated exercise of expertise no individual holds, applying criteria that carry the purposes Congress enacted; the rule overrides that whole structure by a single will that holds neither the expertise nor the mandate it displaces.

The Rule Asserts a Power the Constitution Withholds from the President

The power over public funds belongs to the public. Congress holds this authority only as an elected representative, bound by the accountability of the Appropriations Clause. It cannot sever this link by handing absolute authority to an officer who answers to no one. A power to cancel any award, for reasons it need not substantiate and no one may test, places the disposition of public money beyond the reach of the law.

Under this rule, funding decisions become the President's direct acts. The appointees who exercise the power act under criteria he set by executive order and are removable at his will; the agencies that terminate awards exercise the same executive power. That the executive power is the President's alone, and that those who wield it act as extensions of his will, is the administration's own theory of executive power, which the Supreme Court has lately affirmed in *Trump v. Slaughter*. This unites the power to fund with the power to execute, a concentration the separation of powers was built to prevent. By claiming an item-level cancellation power, the executive negates completed appropriations without the qualified, public process the Presentment Clause requires.

This differs fundamentally from normal administration. Genuine discretion is bounded by criteria, based on a record, and subject to review. This rule creates a veto that is absolute, standing, and unreviewable. In *Clinton v. City of New York*, the Court struck down similar item-level cancellations because the President cannot unmake what Congress has enacted. The executive cannot seize by regulation what Congress could not grant by law.

OMB's Responsibility Is Economy and Efficiency, and the Proposed Rule Defeats It

OMB's statutory charge is to improve economy and efficiency. In public spending, efficiency means achieving intended purposes at the least cost. Competitive merit review is the primary tool for this task, as it evaluates proposals against cost and quality. By subordinating merit review to political approval, the rule sets OMB against its own charge: it undermines the very mechanism by which economy and efficiency are identified, by an amount the rule does not limit. Making awards revocable at will compounds the harm, degrading their value to the strongest applicants, who may avoid the federal system entirely, and so distorting the stewardship of public funds.

The Rule's Stated Basis Fails on Its Own Terms

The rule's stated basis fails on two independent grounds, each sufficient by itself. First, OMB lacks the authority to pronounce on the public will or the ideological character of research; its mandate is fiscal and managerial. Second, it has not substantiated its claims that past spending served hidden agendas, and under the APA an unsupported factual premise is arbitrary. A further duty compounds these: because the rule overturns decades of settled, merit-based practice, OMB must give a reasoned explanation that confronts the earlier findings rather than restating its own premises.

OMB's Own Rules Require Independent Expert Peer Review of the Rule's Factual Claims

The rule relies on influential factual claims that require independent peer review under the Information Quality Act and OMB's own Bulletin. OMB must certify compliance for claims involving public will, research portfolios, and the efficacy of political review. A proper review requires independent experts in:

- Survey methodology and public opinion research.
- Science policy and scientometrics.
- Metascience and research economics.

Bypassing this process is arbitrary. In *American Academy of Pediatrics v. Kennedy*, the court enjoined political appointees from overhauling expert committees without evidence-based justification. OMB cannot exempt its own assertions from the standards it imposes on others.

Applied to Scientific Inquiry, the Rule Substitutes Fiat for Evidence

Science depends on evidence weighed by competent peers, not on official assent. By placing scientific funding under political approval, the rule introduces a factor that inquiry cannot answer. This severing of funding from scientific standards prevents researchers from following the evidence, ultimately harming the public that relies on scientific discovery for health and economic progress.

The Rule Would Place Beyond Review a Practice Courts Have Found Unlawful

Over the past year, courts have repeatedly found the arbitrary termination of active grants by the NIH, EPA, and other agencies to be unlawful. These decisions highlight that the government cannot disregard reliance interests or provide explanations "bereft of reasoning."

This rule attempts to circumvent those defeats by declaring that no substantiated reason is required for termination. This contradicts the principle that agency action is reviewable so that its legality can be measured against statutes and the Constitution.

By removing reviewability, the rule does not cure the illegality identified by courts; it merely prevents its detection. The law withholds such exemptions to ensure the executive is not the sole judge of its own acts.

Conclusion and Requested Relief

This rule is a single act, defective on several independent grounds, each sufficient on its own: it subordinates merit-based stewardship to unreviewable political say-so, asserts a power the Constitution withholds, defeats OMB's own economy-and-efficiency charge, rests on declarations OMB has neither the authority to make nor any record to support, ignores the peer review its own rules require, and places beyond review a practice courts have found unlawful. To ensure the integrity of federal financial assistance, WHN requests the following relief:

- Remove the provisions for pre-issuance political approval and at-will termination (§§ 200.205, 200.340).
- Preserve competitive merit review as the governing standard for awards.
- Remove the position-conditioning provisions (§§ 200.218, 200.219, 200.300) and the requirement that awards advance the President's priorities (§ 200.205(b)).
- Require independent peer review of the rule's influential factual claims.
- Extend the comment period to allow meaningful public participation, and respond to significant comments on the record.
- Delay the effective date and bar the retroactive application of new terms to awards already made.

These are the principal instances, not a complete catalogue. The rule is defective on multiple independent grounds, each requiring its own answer, and the same recurring defect runs through provisions the comment does not individually name; the burden of justifying every provision that conditions, screens, suspends, or terminates an award on these grounds rests with OMB, provision by provision and on the record, not with the public to identify them one by one.

Main Text: Comment on the Proposed Regulation for Federal Financial Assistance

Public funds serve the public good to the extent that they are spent for public purposes. The rules that govern how they are awarded determine the actual outcome: whether they keep public money directed to public ends, or allow it to be turned to other purposes.

The Rule Makes Every Discretionary Award Contingent on the Say-So of a Single Official

Today, federal grants are awarded and renewed through a process that involves evaluation of competing proposals based upon merit. An agency sets published criteria, experts and staff evaluate applications on the merits that are relevant to that domain, and an award, once made, continues as long as the recipient meets its terms; funding can be ended for cause, where there is reason to do so, and a recipient is informed why and can contest it. The proposed rule changes this directly. For discretionary awards across a wide range of domains, and whether the recipient is an individual, an institution, or a business, it places a single political appointee at the gate: no such award may be issued until that official approves it, and an award once made, any grant or agreement, may be canceled by the agency at any time, for any reason, on a summary explanation and with no appeal.

Before elaborating on what is wrong with the rule, it is worth being plain about whom it reaches, because the scale is easy to lose inside the phrase "federal financial assistance." The rule governs the grants and cooperative agreements through which the federal government funds a great deal of ordinary American life. It is government-wide, and reaches the recipient directly, as well as through every state, county, and city that passes the money along.

Consider who lives on that money.

- The volunteer fire department applying for a grant to buy trucks and turnout gear. What it can equip its firefighters with now waits on an official's approval, and a grant it already holds can be ended before the equipment arrives.
- The farmer applying for a conservation or rural development grant to keep the operation viable. Whether the award comes, and whether it survives once made, now turns on a judgment he cannot contest.
- The community health center that keeps a rural county within reach of a doctor. Its funding is awarded at the agency's discretion, so it now passes through one official's approval before it is granted and remains revocable after.
- The police department seeking officers through a federal hiring grant. The positions it can fill are contingent on that same approval, and the grant can be withdrawn mid-hire.
- The Head Start classroom, and the families and teachers in it. The award that runs the program is discretionary, which now means it can be denied by an official's say-so or revoked at any time by the agency, regardless of the merits that led to it.
- The program that houses homeless veterans on a competitive federal grant. Continued shelter for those veterans depends on the award continuing, and the award can now be ended at will.
- The food bank and the charity that runs the shelter, many of them faith-based, funded by competitive service grants. The help they can offer is contingent on money that no longer stays put.

- The county competing for a grant to repair an aging bridge or water main, and the local crews it hires to do the work. The project stands only so long as the award does, and the award is now cancellable after the contract is signed.
- The tribal nation competing for a grant to build a clinic or a school. The facility depends on funding that now runs through the same unreviewable approval.
- And the cancer researcher, the university laboratory, the scientist working toward the next vaccine. Their work is funded by highly competitive awards, and now scientific evaluation no longer governs the outcome.

The common thread is not that any of these will be cut. It is that none of them now stands on the merits that led to its award. Every new award, and each further installment of funding under it, must first pass the say-so of one official, and the award remains cancellable at will thereafter. What made a federal grant something a fire chief or a farmer or a scientist could plan around, the fact that it was won on stated criteria and could not be taken away without cause and without recourse, is gone. In its place is funding that can be granted at the pleasure of an official, or withdrawn at the pleasure of the agency, regardless of the merits that led to it.

Notice what the rule leaves alone. The money it exempts is the money owed by law: the entitlement, the formula grant, the disaster-recovery fund, each fixed in advance. The money it reaches is the money that can be allocated to advance the government's purposes, so that those public goals are achieved, and under the current framework that allocation is decided on the merits, by which proposal will best achieve them. That is the very judgment the rule removes: it replaces the question of which use best achieves the goal with the approval of a single official and self-defined priorities.

This matters because the safeguards the rule removes are not bureaucratic friction. Merit review, published criteria, open competition, stated reasons, and the right to be told why and to contest it are the anti-corruption architecture of public spending. Each exists for a single purpose: to keep public money tied to public benefit, and to make it hard to move for any other reason. The rule does not reform that architecture. It overrides it, putting a single official's will above it, owing no reason it must substantiate, and answering to no appeal.

The objection is not that one person decides rather than several. The merit process is not merely a number of people; it is the coordinated exercise of expertise no single person holds, applying criteria that carry the purposes Congress enacted into law. To place an award in the hands of one official's approval is to override that whole structure, the distributed competence and the embodied law together, with a single will that holds neither the expertise nor the mandate it displaces. That is what "a single official" means throughout this comment: not one reviewer in place of many, but a decision removed from the process that carried the law's purpose and the field's knowledge. It rests instead on a purpose of the decider's own definition.

Whatever the intent behind it, the effect is to make continued federal support turn on the favor of those who hold the power to grant and withdraw it, rather than on the merit or performance that earned it. Whether that power is abused is a question about the people who happen to hold it. That the rule strips away every check built to prevent abuse, and makes favor the currency of

federal support, is a question about the rule. It is the one that matters, and it is the rule's central act, not a byproduct of it.

The Rule Asserts a Power the Constitution Withholds from the President

Authority over public funds rests with Congress but does not originate in Congress. It belongs to the public, whose money it is, and Congress holds it only as the public's elected representative, answerable through election for how it is used. That accountability is not a feature added to the power; it is the condition on which the power is held. What reaches Congress arrives already bound to the people it came from, and Congress cannot cut that binding by handing the power to an officer who answers to none of them. A standing authority to approve, veto, or cancel any award, at any time, for any reason it need not substantiate, and with no appeal, does exactly that. It is not merely an unwise grant of discretion. It is a grant Congress lacks the authority to make in this form, because it would sever the disposition of public money from the accountability that made the power legitimate in the first place.

What legitimates a public funding decision is not the wisdom or good faith of the person who makes it, but the process that connects the decision back to the public it serves: published criteria, merit-based review, established rules, transparency, and the right to be told the reason and to contest it. This is the ordinary meaning of a government of laws rather than of individuals. A power that answers to no standard but its own and permits no appeal meets none of these conditions. It places the disposition of public funds beyond the reach of the accountability that is supposed to govern it, and it fails in exactly the same way whoever holds it, because the defect is in the power, not the person. Oversight is not a refinement of this design. It is the design.

Under the proposed rule, these decisions, to approve, veto, or cancel each award, are not the scattered judgments of many administrators. They are the President's. The rule's own structure settles this. At issuance the officer who exercises the power is the President's appointee, acting under criteria he set by executive order, subject to his direction and removable at his will. At termination the actor the rule names is the agency, and agency action is executive action. That the executive power is the President's alone, and that those who wield it act as extensions of his will, is the theory the administration itself advances, and the Supreme Court has lately affirmed it in *Trump v. Slaughter*. On the administration's own account, then, these are the President's acts. That theory forecloses the defense that this is merely dispersed agency administration. It is not available to argue in one breath that the President must be able to command and remove these officers because the executive power is indivisibly his, and, in the next, that their and their agencies' funding decisions are matters of independent administrative discretion rather than his own act. The two positions cannot both stand. The administration has chosen the first, and the first is dispositive: the power asserted here is the President's power, exercised through his appointees, to approve, veto, or cancel any federal award at will. That is what must be

measured against the Constitution, and it is the one officer the Constitution most deliberately kept from commanding the disposition of public funds.

It is no answer that the President is elected as well. The Constitution does not distribute the power over public funds to whichever official can claim the broadest mandate. It assigns that power by a specific mechanism: money is drawn from the Treasury only in consequence of appropriations made by law, and the making of law is Congress's. The executive's constitutional role is to carry those appropriations into effect, faithfully, not to decide whether the spending Congress has commanded will occur or to what end. That the President is nationally elected is precisely why the design withholds this power from him. Uniting the power to fund with the power to execute in a single elected officer is the concentration the separation of powers was built to prevent, and a standing power to veto or cancel any award at will unites them. The officer's mandate is not a reason to trust him with the power. It is the reason the structure keeps it out of his hands.

The rule's defenders will say these actions are not vetoes at all, but ordinary administration of funds Congress left to the executive to manage. That recharacterization is the whole of their case, and it fails. What makes an act a veto is not its name but its function: the power to nullify a decision that has already completed the process the Constitution assigns to it. When Congress has appropriated, and an award has been found warranted under Congress's own criteria, the spending decision is complete, and an agency that can then stop it for any reason is not administering that decision but negating it. The Court has never allowed the constitutional character of an act to turn on the label the actor prefers. In *INS v. Chadha*, it held that an act altering legal rights was legislative in substance and bound by the rules for legislation, whatever Congress chose to call it. The same principle governs here. Nor can the rule take shelter in the language of discretion, because it has removed everything that makes discretion lawful. Genuine administrative discretion is bounded by the criteria Congress set, exercised on a record, and subject to review for whether it was exercised reasonably. This power is bounded by nothing, answers to no standard but its own, and permits no appeal. A power that answers to none of the standards that define administration is not administration. It is the negation of a completed appropriation, which is to say a veto, and it must answer to the limits the Constitution places on that power.

The Constitution does give the President a veto, and its limits are the point. The veto in Article I is qualified, not absolute: Congress can override it. It is exercised once, at the moment a bill is presented, on the entire bill. The framers weighed an absolute veto and refused it. What this rule creates is a veto stripped of every one of those limits. It is not overridable but final, subject to no appeal. It is not a single act at presentment but a standing power exercisable at any time. It does not operate on whole bills but reaches into each individual grant and contract. It is, in substance, the absolute item-by-item veto the Constitution withholds. The Supreme Court has already addressed the nearest version of this. In *Clinton v. City of New York* it struck down the Line Item Veto Act because the Presentment Clause gives the President no power to cancel individual items of spending after they are enacted into law, even when Congress passed a statute purporting to grant exactly that power. This rule claims the same item-level cancellation power over enacted appropriations, reaching individual awards one at a time, with no statute

granting it. Congress decides the allocation: it appropriates funds for a purpose and the programs that carry it. An award made on the merits is that allocation executed, the purpose Congress set being carried into effect, and an allocation carried into effect is not the executive's to unmake. The power is at its starkest in the authority to terminate awards already made, where the decision being undone is unmistakably complete, but it operates the same way at issuance. What Congress could not hand the President by law, the executive cannot seize by regulation.

OMB's Responsibility Is Economy and Efficiency, and the Proposed Rule Defeats It

The Office of Management and Budget exists to steward the government's use of public funds. The purpose the budget laws assign is a specific one. Carried forward from the Act that created the budget office in 1921, and still the source of OMB's basic authority, the law directs that this function be exercised to improve economy and efficiency in the government's handling of public funds, and it pairs that charge with a duty of accountability over the receipt, disbursement, and application of those funds. Economy, efficiency, and accountability are the stated ends. This rule invokes that same vocabulary, presenting itself as a measure to discipline spending and reduce waste.

But economy and efficiency are not aims a rule can secure by asserting them. Efficiency in public spending means one thing: achieving the intended public purpose at the least cost. The instrument that identifies it is competitive merit review, which evaluates each proposal against that purpose, on cost and quality. Accountability, in turn, means answerability to that purpose, which is what stated criteria, recorded reasons, and the right to contest enforce. Merit review is not a rival to economy and efficiency, nor an obstacle to them; it is the mechanism by which they are produced. The rule keeps that mechanism and then subordinates it, placing above it a separate decision—approval at the gate, termination after—answerable not to the purpose merit review measures but to grounds the rule leaves the decider to define. In doing so the rule sets OMB against its own charge: it displaces the one instrument by which economy and efficiency can be identified, by an amount the rule does not limit.

An award's reliability is itself part of its value. Support that is granted on the merits and cannot be withdrawn without cause is something a scientist, a builder, or an institution can build on and plan around; support revocable at any time, for undisclosed reasons and without recourse, is worth less to any recipient who has alternatives, and the recipients with the best alternatives are the ablest ones. By making every award contingent on say-so, the rule not only degrades which proposal is chosen; it degrades whether the strongest applicants apply at all, and an instrument the ablest have reason to avoid is, by that fact, a less effective instrument of public purpose.

That is why the rule cannot claim the mantle of efficiency while doing what it does. Substituting one official's approval, on grounds that need not be substantiated and cannot be appealed,

does not make the allocation of public funds more efficient. It undermines the only mechanism by which efficiency can be identified or accountability enforced, and puts in its place a judgment answerable to no purpose but its own. And what approval withholds at the outset, termination removes after the fact: even an award selected on the merits can be ended on self-identified grounds, so efficiency is defeated not only in the choosing but in the keeping. Measured against the economy-and-efficiency purpose the budget laws exist to serve, the rule does not advance that purpose. It dismantles the means of achieving it, under the banner of its name.

The Rule's Stated Basis Fails on Its Own Terms

The proposal does not confine itself to managing federal awards. Throughout its text it declares what the American people want and casts the government's past spending as the service of a hidden ideological agenda, and it presents these declarations as the reason the rule is needed. They cannot carry that role. They fail on two independent grounds, each sufficient by itself: OMB has no authority to make such declarations, and, authority aside, it has asserted them rather than proved them. A rule cannot stand on either footing.

Before a rule can be justified based upon such claims, there is a prior question of authority. An agency holds only the powers Congress has given it, and OMB's authority over federal financial assistance is fiscal and managerial: to see that awards across the government are administered uniformly, soundly, and in accordance with law. Congress did not authorize OMB to determine what the American people want, or to pronounce on the ideological character of the research and programs the government has funded. Those are not functions of budget management. They are claims about the public will and about the purposes of public institutions, and nothing in OMB's mandate empowers it to make them. On this ground the declarations fail before they are examined at all. An office asserting what it has no authority to assert does not acquire that authority by the assertion, and a rule that rests its case on such assertions rests on a foundation its author was never empowered to lay.

Even if these declarations were within OMB's authority to make, they would still have to be true, and shown to be true. Authority to speak is not proof of what is spoken.

A rule is judged by the reasons it gives for itself. When the proposal fills its space with declarations of what the public wants, and with characterizations of past spending as ideologically driven, those passages are not preamble. They are the stated basis of the rule, and the stated basis is what the law examines. A claim is not established by being asserted. An agency that rests a rule on a factual premise must support that premise in the record and connect it rationally to the action it takes, and an assertion offered without that support is arbitrary on its face. Repetition does not cure it. The burden belongs to the agency, and it belongs there whether or not anyone comes forward to contradict the claim. It is not for the public to disprove the agency's account of the public's own wishes, or to rebut its charge that established programs served a hidden agenda. It is for the agency to substantiate what it has

chosen to assert. Where it cannot, the assertion is not a finding but an opinion, and an opinion is not a lawful ground for a rule.

This duty has added weight because the rule overturns settled practice. Merit-based, expert-driven review is not a casual custom. It rests on a considered judgment, held across administrations, about what produces sound and trustworthy results. An agency may change course, but when it does it must acknowledge that it is changing course and confront the findings the earlier practice was built on. It cannot displace a long-standing, evidence-based judgment by announcing a contrary preference and treating the question as closed. And the obligation runs through both stages of this process. The agency must answer the substantial objections raised in this comment period rather than restate its premises against them, and it must be able to defend its stated grounds afterward on the record it actually assembled. Both are the agency's to carry. A justification built of declaration, that meets contrary argument with repetition, has not satisfied the standard. It has only restated the question it was required to answer.

OMB's Own Rules Require Independent Expert Peer Review of the Rule's Factual Claims

The rule's declarations about public will and the character of past federally funded research are not only unsupported. They are the kind of information the government's own rules forbid an agency to disseminate in support of a regulatory action without independent expert peer review.

Under the Information Quality Act, Section 515 of Public Law 106-554, OMB issued the Final Information Quality Bulletin for Peer Review. It requires peer review of influential scientific information, and heightened external peer review of any highly influential scientific assessment. An assessment is highly influential when its dissemination could have an impact of more than \$500 million in a single year, or when it is novel, controversial, or precedent-setting. A rule revising the government-wide framework for more than a trillion dollars in annual Federal financial assistance satisfies that standard on every branch of the definition. OMB has itself determined the rule to be a significant regulatory action under Executive Order 12866, and its own Regulatory Impact Analysis estimates a \$300 million annual effect from a single cost provision alone.

The Bulletin does not govern the policy choice. It governs the underlying factual and scientific information on which the choice rests, which is exactly what is at issue. The claim that the public wants this, the claim that prior grants were awarded to serve a concealed ideological agenda, and the claim that review by political appointees produces sound or superior science are each empirical assertions offered as a basis for the rule. Under OMB's own Bulletin, information of this kind, relied on in support of a regulatory action, must be peer reviewed by reviewers who possess the necessary expertise, who are independent of the agency, and who are free of disqualifying conflicts of interest, and the agency must place in the administrative record a

certification explaining how it complied with the Bulletin and the Information Quality Act. The record discloses no such peer review, and no such certification appears.

The requirement is not a technicality here. It is the rule's own contradiction. The central act of this rule is to demote scientific peer review in grantmaking, reducing the judgment of qualified experts to advice that political appointees may disregard. Yet OMB is bound to obtain qualified, independent, conflict-free peer review of the very claims by which it justifies that demotion. It cannot strip the process from others while exempting its own assertions from it.

The expertise requirement can be made concrete. A peer review adequate to the factual claims this rule advances would require, at a minimum, reviewers drawn from the following fields, each matched to the claim it would evaluate:

- Survey methodology and public opinion research, for the claim about what the American people want.
- Science and technology policy, research-portfolio analysis, and scientometrics, for the claim that prior grants were awarded to serve an ideological agenda.
- Metascience and research-evaluation methodology, for the claim that peer review is dispensable and that political-appointee review yields sound or superior science.
- Regulatory, innovation, and health economics, for the claimed effects of the rule on the research enterprise and the economy.
- Subject-matter scientists in each field the rule singles out, for any empirical claim made about the research conducted in that field.

Reviewers of this kind, independent and screened for conflicts, are the opposite of the arrangement the rule installs, in which alignment with the administration's priorities defines the standard of merit.

The teeth of this requirement are not in the Bulletin alone but in the Administrative Procedure Act, and a court has recently applied them to precisely this kind of maneuver. In *American Academy of Pediatrics v. Kennedy*, a federal court reviewed and enjoined the decision of political appointees at HHS to overhaul the childhood immunization schedule and reconstitute the CDC's expert advisory committee, finding that they had bypassed the established evidence-based process. The court held the action reviewable, found it likely arbitrary and capricious, and stressed that the government offered no real justification for abandoning decades of settled expert process beyond following a presidential directive. It further held that a committee stripped of the required expertise could not meet the law's demand for balanced, qualified judgment. The parallel is close: political appointees displacing established expert scientific process, justified by presidential direction, is the same defect, and courts are prepared to reach it. The Bulletin supplies the government's own definition of the expert review these claims require; the APA supplies the remedy when that review is skipped.

Measured against OMB's own published standard for what adequate support requires, and against a recent decision enforcing expert process in a closely analogous setting, the factual predicate of this rule rests on assertion alone.

Applied to Scientific Inquiry, the Rule Substitutes Fiat for Evidence

This rule places the funding of science under a power the rest of this comment describes: a single official may approve or deny each discretionary award, and cancel any award already made, on say-so that need state no reason and admits no appeal. Applied to science, that is not merely unwise. It defeats the reason the funding exists.

Science establishes what is true in one way: by evidence, tested through open inquiry and exposed to being shown wrong, weighed by those competent to judge it. Nothing in that process runs on approval. No official's assent makes a finding sound, and no official's objection makes it false. Validity is not the kind of thing authority can confer or withhold, and this is not a limitation of any particular official; it holds for anyone, because it follows from what science is.

To place a single official's say-so at the gate of that process is therefore to insert the one thing the process cannot answer to. Where funding turns on approval rather than on the evidence and the judgment of those competent to weigh it, the choice of what science is pursued, and what is allowed to continue, is severed from the standards that make science reliable. The damage does not require that any result be dictated. It is enough that the pursuit and continuation of inquiry now answer to a judgment that owes science no account, and that need give no reason for what it advances or ends.

The loss falls on the public that depends on scientific advances for everything from its technology to its economy to its health. The value of scientific inquiry is that it can tell us what we did not already know or believe, and sometimes what we did not expect; a process in which funding turns on official approval rather than open inquiry is one less able to warn us, to correct us, and to discover what we have not yet imagined. The same defect reaches any funded inquiry whose worth depends on following the evidence rather than an instruction, but it is clearest, and least deniable, in science, where validity has never been a matter of anyone's leave.

The law arrives at the same place by its own route. Courts have recognized that when public money supports independent inquiry rather than the government's own message, the government may not condition it on the conclusions the work is expected to reach. The principle is usually stated as a matter of free expression, but it rests on the point made here: inquiry that must clear an official's approval is no longer the independent inquiry the funding was meant to support. Whether or not a court reaches that question, a rule that places the funding of science at the discretion of a single unaccountable approval has already defeated the purpose for which the money was appropriated.

The remedy follows from the defect: scientific research should be removed from the reach of the approval this rule creates, and governed by evidence and competent review rather than by the say-so of a single official.

The Rule Would Place Beyond Review a Practice Courts Have Found Unlawful

This rule does not arise in a vacuum. Over the past year, agencies including the NIH, the NSF, the EPA, the NEH, and the Department of Education terminated large numbers of active grants by directive, on the ground that the work no longer matched the administration's priorities. Courts have repeatedly held those terminations unlawful. The U.S. District Court for the District of Massachusetts set the NIH directives aside as arbitrary and capricious, finding the agency's explanations "bereft of reasoning" almost in their entirety and its decisions made in disregard of reliance. Other courts set aside terminations by the NSF, the EPA, and the NEH; a court reviewing the cancellation of public-health funds to states and localities held that it violated the separation of powers; and when the government sought emergency relief in the NIH case, the Supreme Court left the arbitrary-and-capricious ruling undisturbed, staying only the order that reinstated the funds, on a jurisdictional ground rather than on the merits.

The bearing on this rule is direct, and it is the whole point. These defeats might be read as the mere absence of regulatory authority, which the rule now supplies by rewriting the grounds for termination. That reading is mistaken. Across these cases, courts found the terminations to violate the law: the Administrative Procedure Act, the mandates Congress attaches to the funds it appropriates, and the Constitution's allocation of the spending power that this comment has already addressed. It does not matter, for present purposes, which of these a given termination offended. What matters is that the rule's answer to all of them is the same: that a termination requires no reason it must substantiate, and permits no appeal. But whether a termination violates the APA, or a statute, or the Constitution is precisely the question that a stated reason and the possibility of review exist to answer, and a decision no one can test and no one can appeal places that question beyond reach.

OMB's impact analysis calls the termination provision a clarification of existing authority, citing language first inserted in 2020. The history refutes the label. That language entered as a bounded exception; the 2024 revision confined it to terms stated in the award itself; and when agencies wielded it as a general power over the past year, the courts held the terminations unlawful. At every step, the framework kept the exception subordinate to its safeguards: stated terms, stated reasons, and review. The rule does not clarify that exception; it makes the exception the design: mandatory in every award, extended to priorities of the agency's own definition "as they exist at the time of the termination," on a summary it need not substantiate, with no appeal. If the authority existed, its exercise has been held unlawful; if it is new, it must be acknowledged and justified, not relabeled.

The law does not leave that choice to the executive. Agency action is presumed to be reviewable, and an agency is required to state reasons a court can test, precisely so that its acts can be measured against the statutes and the Constitution that bind them. That is not an incidental feature of the system; it is how the separation of powers is enforced against a branch that cannot be the sole judge of the legality of its own acts. Review may sometimes be narrowed, but the presumption runs the other way, and the burden is on the agency to justify removing it, a burden this rule does not attempt to carry: it simply requires no reason a court can test. A rule that makes termination unreviewable therefore does not exercise a discretion the law confers; it asserts an exemption from review the law withholds. It does not cure the illegality the courts identified. It removes the ability to detect it, and ensures that when a termination is unlawful, at whatever level, that cannot be shown.

Conclusion and Requested Relief

This rule is a single act, and it is defective in several independent ways. It takes the discretionary award, the funding an agency grants on the merits to advance a public purpose, and makes it contingent on the say-so of a single official and cancelable at any time after by the agency. Those decisions are unreviewable, unappealable, and answerable only to priorities of the executive's own definition. That one act fails in what it does, removing the safeguards that tie public money to public purpose; in how it does it, asserting a power the Constitution withholds and placing the result beyond review; in the authority it claims, which OMB does not hold and has not supported with the review its own rules require; and in what it does to the ends the funding serves, most acutely in science, where it puts approval in the place of evidence. Each of these is an independent ground, sufficient on its own. OMB must answer each, not the group as one.

This comment does not seek withdrawal of the entire framework, and it does not object to the ordinary cost, audit, and burden-reducing machinery the rule carries forward. Its objection is to a defect that is not confined to a few provisions. The same defect recurs across the rule: discretionary control, exercised on say-so, largely without reasons it must substantiate or any appeal, and in many places conditioned on conformity to self-defined priorities. It appears in the pre-issuance appointee review (§ 200.205) and the termination and suspension powers (§ 200.340); in the expanded risk-assessment and affiliation screens (§ 200.206(b)); in the standing authority to add or remove specific conditions throughout an award's life (§ 200.208(b)), with program-level conditions operating notwithstanding the section's notification requirements (§ 200.208(f)); in the eligibility restrictions on international research collaboration (§ 200.202(e)); in the provisions conditioning award funds on approved positions (§§ 200.218, 200.300); in the agency-judged standards for a recipient's events and facilities (§ 200.219); and in the new authority for agencies to assist private parties pursuing causes of action against recipients (§ 200.339(b)). The provisions named above and below are the principal instances, not a complete catalogue. Where a provision installs this defect, it should be removed rather than narrowed. Specifically:

1. **Unreviewable single-official and agency control (§§ 200.205, 200.340).** The pre-issuance political approval of discretionary awards (§ 200.205) and the power to terminate active awards at will (§ 200.340) should not be adopted. They sever federal support from the merits on which it was granted, and replace a decision governed by criteria, reasons, and recourse with one governed by none.
2. **A grant Congress cannot make (§§ 200.205, 200.340).** A rule of this kind carries only the authority Congress has delegated; it cannot create a power greater than Congress could lawfully grant. A standing power to approve, condition, or cancel awards for reasons it need not substantiate severs the disposition of public money from the accountability on which the power depends, and Congress lacks the authority to grant it in this form. What Congress could not grant, the rule cannot create. This ground holds independently of who exercises the power; the provisions must be removed, not adjusted.
3. **A veto the President cannot hold (§§ 200.205, 200.340).** Because that same power places in a single officer, acting as the President, the authority to veto and to cancel spending already committed, a power the Constitution withholds from the President, it cannot be cured by adding reasons or process at the margin. It must be removed, not adjusted.
4. **Displacement of the merit review that is OMB's own instrument of economy and efficiency (§ 200.205; and the rule as a whole, § 200.100).** Because the mechanism displaces the merit review that is the instrument of OMB's own economy-and-efficiency mandate, any provision subordinating merit review to political approval should be struck, and merit review left governing rather than advisory.
5. **Declarations OMB has no authority to make (§ 200.100; §§ 200.205(b), 200.300).** OMB's mandate is fiscal and managerial and does not extend to declaring what the public wants or characterizing past spending as ideologically driven. Because the rule rests on those declarations and uses them to condition funding on approved positions, the value-conditioning provisions (§§ 200.205(b), 200.300) and the requirement that awards advance the President's priorities should be removed.
6. **Factual premises asserted without record support (§ 200.100).** Authority aside, OMB has no record to support the declarations of public will and the characterizations of past spending on which the rule relies, and under the Administrative Procedure Act an unsupported factual premise is arbitrary. The rule also reverses a long-standing, evidence-based practice without the reasoned explanation that reversal requires. An unsupported premise cannot carry a rule, and a reversal of settled practice cannot rest on assertion.
7. **Reliance on influential claims without the required peer review and certification (§ 200.205(d); § 200.100).** Because the rule relies on influential scientific claims without the review OMB's own Information Quality Bulletin requires, OMB should not finalize the rule until it has obtained qualified, independent peer review of those claims and placed the required certification in the administrative record. Nor should the rule reduce peer review to advisory (§ 200.205(d)) while exempting its own claims from it.
8. **The say-so mechanism applied to science (§§ 200.205, 200.340).** Because the say-so mechanism is incompatible with the way scientific validity is established, the

funding of scientific research should be removed from its reach and governed by evidence and competent review.

9. **Termination placed beyond review (§§ 200.340, 200.341).** Making termination require no reviewable reason and permit no appeal does not cure the illegality courts have found in priority-based terminations; it removes the ability to detect it. Agency action is subject to judicial review unless Congress has clearly provided otherwise, and an agency must give reasons a court can test, so that its acts can be measured against the statutes and the Constitution that bind them. Removing review is not the executive's to decree; the termination power (§ 200.340) and its notification requirement (§ 200.341) should preserve stated reasons and the possibility of review, not foreclose them.
10. **Inadequate comment period (§ 200.100).** The Administrative Procedure Act requires more than that a comment period occur; it requires a period that affords a meaningful opportunity to comment, adequate to the rule's scope and complexity, and a reasoned response to significant comments before the rule is finalized. A revision this broad, reworking the government-wide framework for federal financial assistance across every grantmaking agency and every class of recipient, cannot be meaningfully addressed by the public, or honestly answered by the agency, in the period allowed. OMB should extend the comment period, and should not issue a final rule until it has responded on the record to the significant comments the rule draws and completed the expert review described above. A rule finalized on an inadequate comment record is not merely rushed; it is procedurally vulnerable to being set aside.
11. **Premature effective date (§ 200.110).** The Administrative Procedure Act sets a default minimum before a rule may take effect precisely because those who must comply need time to conform, and that interest is not satisfied merely because the proposed date clears the minimum. The compliance burden falls on the recipients and institutions that administer federal awards, not on the agencies. Removing a safeguard takes the government no time; but this rule also imposes on recipients a substantial body of new obligations, new certifications and conditions, risk and affiliation attestations, revised cost-allowability rules, and new subaward, reporting, and audit requirements, each of which must be built into financial systems, award and subaward agreements, and institutional review before a recipient can comply. That conforming work is not instantaneous, and an effective date that disregards it fails to consider the compliance burden the rule creates. In any event, no effective date can precede a valid final rule, which requires the comment-and-response process the rule has not yet undergone. Any final rule should take effect only after a transition period adequate to the scale of the change.
12. **No retroactive reach to awards already made (§ 200.110).** Funding already committed to a recipient was granted on the terms then in force, and applying the rule's new approval, conditioning, and termination provisions to awards already in progress would give the rule retroactive effect. An agency has no power to make its rules retroactive unless Congress has expressly granted that power, and nothing in the statutes OMB invokes grants it here. Reaching awards already made would also disturb the reliance the earlier terms invited, the settled expectations on which recipients ordered their affairs, which an agency changing course must weigh rather than ignore. And where it

reached funds already obligated, it would raise the constitutional problem addressed above: the cancellation of support already extended. The proposed rule does not disturb existing fixed-amount awards; the same logic requires that no final rule reach any award already made. New terms, if adopted, should govern only new awards.

These are not the only provisions that require justification. The same defect, and the same unsupported factual predicate, run throughout the rule, and the burden of justifying each provision that conditions, screens, suspends, or terminates an award on these grounds rests with OMB, provision by provision and on the record, not with the public to identify them one at a time. A provision is not sound merely because this comment did not reach it. Every provision that makes federal support turn on an official's say-so, on conformity to an approved position, or on a standard no applicant can predict stands in the same need of justification as those named above, and the rule supplies it for none of them.

This comment is submitted by the World Health Network in the public interest and out of concern that the proposed rule would undermine the integrity of publicly funded science and the sound stewardship of public funds on which public health depends.

Appendix: Annotated Table of Authorities

This appendix accompanies the comment on the proposed Regulation for Federal Financial Assistance (Docket OMB-2026-0034). Each authority is listed with what it holds, how it is used, its scope or limits where relevant, and a link to a public source. Links point to official government sources where available (supremecourt.gov, govinfo.gov, the Federal Register, [Regulations.gov](https://www.regulations.gov), the eCFR, and the U.S. Code at house.gov) and otherwise to stable public repositories (Justia, the Cornell Legal Information Institute, Constitution Annotated, and the Civil Rights Litigation Clearinghouse).

The rule itself: **Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198 (May 29, 2026)** — [Federal Register PDF](#); [Regulations.gov document](#). Current Uniform Guidance being amended: [eCFR: current 2 CFR Part 200](#).

A. Whose power this is, and whose act

U.S. Const. art. I, § 9, cl. 7 (Appropriations Clause). No money is drawn from the Treasury but in consequence of appropriations made by law. *Use:* locates the spending power in Congress by mechanism, not by mandate; the answer to "the President is elected too." *Source:* [Constitution Annotated: Art. I, §9, cl. 7](#); [Cornell LII: Article I](#).

U.S. Const. art. II, § 3 (Take Care Clause). The President shall take care that the laws be faithfully executed. *Use:* the President's role as to appropriations is a duty to carry them into effect, not a discretion to decline them. *Source:* [Constitution Annotated: Art. II, §3](#); [Cornell LII: Article II](#).

Trump v. Slaughter, 609 U.S. ____ (2026) (No. 25-332) (6-3, Roberts). Held that for-cause removal protection for FTC commissioners violates the separation of powers, and overruled *Humphrey's Executor*. "What text, history, and structure settle, our precedent confirms—the President may remove his subordinates at will," and "Subordinates who exercise the President's power are subject to removal by him." *Use:* on the administration's own theory, the officials who approve, condition, and terminate awards act as the President: they apply his executive-order criteria and are removable at will. *Slaughter* affirms that the executive power they exercise is the President's alone, so their approvals and terminations are his acts, not dispersed agency judgments, and are subject to the same constitutional limits that bind the President. *Scope:* a removal-power decision, and a maximal statement of presidential control, establishing the principle that executive power is the President's, and so subject to the limits on that power. *Source:* [Supreme Court slip opinion \(No. 25-332\)](#).

Humphrey's Executor v. United States, 295 U.S. 602 (1935). Held that Congress could protect FTC commissioners from at-will removal. Overruled by *Slaughter*. *Use:* context; the precedent *Slaughter* overruled, noted to clarify the removal power associated to unitary power. *Source:* [Justia: 295 U.S. 602](#).

B. The action is a veto, and it is an unconstitutional one

U.S. Const. art. I, § 7, cl. 2 (Presentment Clause). The President's veto is qualified, not absolute: it can be overridden, is exercised once when a bill is presented, operates on the whole bill, and must be returned with objections stated. *Use:* the enumerated, bounded veto is the baseline against which the rule's veto is measured. *Source:* [Constitution Annotated: Art. I, §7, cl. 2](#); [Cornell LII: Article I](#).

Clinton v. City of New York, 524 U.S. 417 (1998) (6-3, Stevens). Struck the Line Item Veto Act. The Presentment Clause gives the President no power to cancel individual items of spending after they are enacted into law; a bill must be approved or returned in whole. The Court rejected the Government's argument that the cancellations were merely the power to decline to spend. *Use:* an item-by-item cancellation of enacted spending is unconstitutional even when Congress passed a statute purporting to authorize it; the rule claims the same power with no statute granting it. *Scope:* the argument rests on the allocation of purpose. Congress appropriates for a purpose; an award made on the merits executes that allocation; and an allocation carried into effect is not the executive's to unmake. The premise is strongest for the termination of awards already made, where the completed decision is undeniable, and it holds for the pre-issuance approval as well. *Source:* [Justia: 524 U.S. 417](#).

INS v. Chadha, 462 U.S. 919 (1983) (Burger). Struck the legislative use of the one-House legislative veto. An act that alters the legal rights and duties of persons outside the legislative branch is legislative in substance and must satisfy bicameralism and presentment, whatever the actor calls it. *Use:* the substance-over-labels principle; the constitutional character of an act turns on what it does, not its label, so recharacterizing a veto as "administration" does not escape the veto's limits. *Scope:* the direct holding concerns congressional action; the substance-over-labels principle applies generally, which Clinton itself affirms by citing Chadha. *Source:* [Justia: 462 U.S. 919](#).

C. The rule fails on its own stated terms, and its process obligations

Administrative Procedure Act, 5 U.S.C. § 706(2)(A). A reviewing court sets aside agency action that is arbitrary, capricious, or an abuse of discretion. *Use:* the standard under which the rule's stated basis is tested and under which its terminations are reviewed. *Source:* [Cornell LII: 5 U.S.C. §706](#).

Administrative Procedure Act, 5 U.S.C. § 553 and § 553(d). Requires notice-and-comment rulemaking and a meaningful opportunity to comment, a reasoned response to significant comments, and (in § 553(d)) a default minimum period before a substantive rule takes effect, reflecting the principle that those who must comply need time to conform. *Use:* grounds the closing requests for an extended comment period, a response on the record, and a delayed effective date; a comment period inadequate to a rule's scope, or an effective date that disregards compliance burden, is a procedural defect. *Source:* [Cornell LII: 5 U.S.C. §553](#).

Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29 (1983) (White). An agency must examine the relevant data and articulate a satisfactory explanation, including a rational connection between the facts found and the choice made; a court may not supply a reasoned basis the agency itself has not given; rescinding or changing a rule is reviewed under the same standard as issuing one. *Use:* the core of the substantiation argument and the effective-date arbitrariness point; an unsupported premise, or a failure to consider compliance and reliance, is arbitrary on its face. *Source:* [Justia: 463 U.S. 29](#).

FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009) (Scalia). An agency changing position must at least display awareness that it is changing position and show that there are good reasons for the new policy; a more detailed justification is required where the new policy rests on factual findings that contradict those underlying the prior policy, or where serious reliance interests are at stake. Unexplained inconsistency is arbitrary. The agency need not prove the new policy is better than the old, only that there are good reasons for it. *Use:* demoting long-standing merit and peer review is a change of course that must confront the prior evidentiary judgment and the reliance the earlier policy engendered. *Source:* [Justia: 556 U.S. 502](#).

Encino Motorcars, LLC v. Navarro, 579 U.S. 211 (2016) (Kennedy). Reaffirmed and applied Fox: an agency changing course must give a reasoned explanation, with heightened attention to serious reliance interests the prior policy engendered, and a conclusory statement does not suffice. *Use:* reinforces that changing settled award terms must weigh the reliance those terms invited, and supports the no-application-to-existing-awards point. *Source:* [Justia: 579 U.S. 211](#).

Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988) (Kennedy). An agency has no power to give its rules retroactive effect unless Congress has expressly granted that power. *Use:* the retroactivity ground for the no-application-to-existing-awards request; reaching awards already made would give the rule retroactive operation, which the statutes OMB invokes do not authorize. *Source:* [Justia: 488 U.S. 204](#).

D. OMB's own authority and founding purpose

Budget and Accounting Act of 1921, ch. 18, 42 Stat. 20; 31 U.S.C. § 1111; 31 U.S.C. § 712. The 1921 Act created the Bureau of the Budget, OMB's predecessor, and remains the source of OMB's basic budget authority under Title 31. Its purpose, now codified at 31 U.S.C. § 1111, is "To improve economy and efficiency in the United States Government," descended from the 1921 charge to conduct the public service "with a view of securing greater economy and efficiency." The companion audit function, 1921 Act § 312(a), directed investigation of "all matters relating to the receipt, disbursement, and application of public funds," now codified at 31 U.S.C. § 712(1) as the duty to "investigate all matters related to the receipt, disbursement, and use of public money." *Use:* establishes OMB's founding and continuing purpose—economical, efficient, accountable stewardship of public funds—against which the rule is measured; competitive merit review is the instrument by which economy and efficiency are realized, so removing it defeats the purpose OMB exists to serve. *Scope:* § 1111 assigns the function to "the President," exercised through OMB, so it is the purpose OMB was created to carry out rather than a freestanding statutory duty of OMB by name; this also reinforces that the President is the responsible actor. The operative codified language is "use of public money" (§ 712), which updates the 1921 original, "application of public funds." *Source:* [Cornell LII: 31 U.S.C. §1111](#); [Cornell LII: 31 U.S.C. §712](#).

31 U.S.C. § 503(a)(2); 31 U.S.C. § 6307. Section 503(a)(2) authorizes OMB to provide overall direction on financial management matters by establishing financial management policies and requirements; § 6307 authorizes the OMB Director to issue interpretive guidelines to promote the consistent and efficient use of grant and cooperative agreements. These are the authorities OMB cites for the Uniform Guidance and this rule. *Use:* the ultra vires point; the enumerated authority is fiscal and managerial and does not reach ascertaining the public will or adjudicating the ideological character of funded work. *Source:* [Cornell LII: 31 U.S.C. §503](#); [Cornell LII: 31 U.S.C. §6307](#).

Executive Order 14332, "Improving Oversight of Federal Grantmaking" (2025). The proposed rule is issued to implement this order. *Use:* the rule's own text ties it to the President's directive. The rule is therefore the President's order, and it can reach no further than the President may lawfully direct. What it directs, a standing framework for approving, conditioning, and terminating awards at will, is what the President may not do: an order that installs, as the general rule, the cancellation and redirection of spending Congress has enacted. The defect is not in any single application but in the framework the order establishes. *Source:* [E.O. 14332, "Improving Oversight of Federal Grantmaking" \(Aug. 7, 2025\) \(govinfo, DCPD-202500836\)](#).

E. Expert peer review of the rule's factual predicate

Information Quality Act, § 515 of Pub. L. 106-554 (44 U.S.C. § 3516 note); OMB Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664 (Jan. 14, 2005). The Act directs OMB to issue guidelines ensuring the quality, objectivity, utility, and integrity of information agencies disseminate. Under it, OMB's Peer Review Bulletin requires peer review of "influential scientific information" and heightened external peer review of a "highly influential scientific assessment," defined as one whose dissemination could have an impact of more than \$500 million in a single year, or that is novel, controversial, or precedent-setting. Reviewers must possess the necessary expertise, be independent of the agency, and be free of disqualifying conflicts; an agency relying on such information in support of a regulatory action must certify compliance in the administrative record. *Use:* supplies the government's own standard for the expert review the rule's factual claims require, and identifies the certification the record lacks. *Scope:* the Bulletin sets the requirements an agency must meet for the information it disseminates and relies on, including the peer review and the administrative-record certification the rule lacks. *Source:* Information Quality Act = § 515 of the Consolidated Appropriations Act, 2001, Pub. L. 106-554, codified as a note to [U.S. Code \(house.gov\): 44 U.S.C. §3516](#); [OMB Guidelines implementing the IQA \(2002\)](#). Bulletin: [Federal Register: Final Information Quality Bulletin for Peer Review, 70 FR 2664](#).

American Academy of Pediatrics v. Kennedy, No. 1:25-cv-11916-BEM (D. Mass. Mar. 16, 2026) (Murphy, J.) (preliminary injunction). The court stayed HHS's revision of the childhood immunization schedule and the reconstitution of the CDC's expert advisory committee (ACIP). It held the actions reviewable under the APA, rejecting the argument that they were committed to agency discretion; found the schedule change likely arbitrary and capricious because the agency bypassed its settled expert process and gave no reasoned explanation beyond compliance with a Presidential Memorandum; and found the committee's reconstitution likely to violate the Federal Advisory Committee Act's fair-balance requirement. It applied *State Farm, Encino Motorcars, and FCC v. Fox*, and held that following a presidential command does not exempt an agency from the reasoned-decisionmaking the APA requires. *Use:* recent, closely analogous authority that an agency's displacement of its established expert scientific process, justified only by presidential direction and without reasoned explanation, is reviewable and arbitrary under the APA; reinforces the reasoned-decisionmaking and reviewability points.

Scope: a district-court preliminary injunction, distinct from the court's earlier ruling in the same case ("AAP I," 2026 WL 33719 (D. Mass. Jan. 6, 2026)); decided under the APA and FACA.

Source: [govinfo: preliminary-injunction order, D. Mass. No. 1:25-cv-11916 \(Mar. 16, 2026\)](#).

USAspending.gov, Federal grant and cooperative agreement obligations. Official Government-wide spending data showing annual Federal financial assistance obligations exceeding one trillion dollars; the same source OMB's Regulatory Impact Analysis uses for its recipient analysis. *Use*: establishes the scale of assistance the rule governs, for the Bulletin's impact threshold. *Source*: <https://www.usaspending.gov>.

Regulatory Impact Analysis of Proposed Revisions to 2 CFR 200 (Docket OMB-2026-0034, supporting document). OMB's own analysis of the proposed rule: the preamble's procedural section states that OIRA determined the rule is a significant regulatory action under E.O. 12866; the RIA estimates an approximately \$300 million annual transfer effect from the publication-cost provision alone (§§ 8.6, 9); and it concedes that OMB "was unable to quantify the expected costs" and anticipates "minimal to modest to substantial short-term costs for recipients" (§ 9). *Use*: supports the Bulletin's impact threshold (this part); the unquantified-cost and "substantial short-term costs" concessions also support the effective-date point, and the RIA's characterization of the discretionary termination provision as clarifying existing authority bears on the change-of-course point (Part C). *Source*: Regulations.gov: RIA, Docket OMB-2026-0034-0038 (<https://www.regulations.gov/document/OMB-2026-0034-0038>).

F. The grant-termination litigation and the presumption of review

American Public Health Association v. NIH, No. 1:25-cv-10787-WGY (D. Mass. 2025); Commonwealth of Massachusetts v. Kennedy, No. 1:25-cv-10814-WGY (D. Mass. 2025) (Young, J.). The court declared unlawful and vacated both the NIH directives deprioritizing disfavored research and the resulting grant terminations, as arbitrary and capricious under 5 U.S.C. § 706(2)(A), finding the explanations "bereft of reasoning" and the decisions made in disregard of reliance, and in excess of statutory authority and contrary to regulation. *Use*: courts have already found this practice unlawful; the rule would authorize it prospectively and remove the reasoned-explanation requirement those courts applied. *Scope*: district-court judgments, on appeal to the First Circuit (Nos. 25-1611, 25-1612), so stated as "courts have held," with appeals pending. *Source*: [Clearinghouse: APHA v. NIH \(No. 25-cv-10787\)](#); [Clearinghouse: Massachusetts v. Kennedy \(No. 25-cv-10814\)](#); [ACLU: APHA v. NIH](#).

National Institutes of Health v. American Public Health Association, 606 U.S. ____ (2025) (Aug. 21, 2025) (No. 25A103). On the emergency docket, the Court stayed the judgments insofar as they reinstated terminated grants, reasoning that money claims founded on the grant

obligations belong in the Court of Federal Claims under the Tucker Act, but left undisturbed the vacatur of the guidance documents as arbitrary and capricious. *Use:* the Supreme Court's action did not vindicate the terminations on the merits; it left the arbitrary-and-capricious ruling standing and split off the money claims on jurisdictional grounds. *Source:* [Supreme Court order \(No. 25A103\)](#).

Department of Education v. California, 604 U.S. ____ (2025) (per curiam). Held that a district court likely lacked jurisdiction to order payment of terminated grant obligations, which belong in the Court of Federal Claims under the Tucker Act. *Use:* the jurisdictional predicate the Court applied in *NIH v. APHA*; explains why the stay was jurisdictional rather than a merits ruling on the terminations. *Source:* [Supreme Court slip opinion \(No. 24A910\)](#); [Justia: 604 U.S. ____ \(2025\)](#).

Abbott Laboratories v. Gardner, 387 U.S. 136 (1967) (Harlan, J.). Established the strong presumption that agency action is subject to judicial review, which yields only to clear and convincing evidence of a contrary congressional intent. As a general principle of administrative law, agency action is presumed reviewable, and an agency must state reasons a court can test, so that its acts can be measured against the statutes and the Constitution that bind them; this is how the separation of powers is enforced against a branch that cannot be the sole judge of the legality of its own acts (reason-giving: see *State Farm, Part C*). *Use:* grounds the litigation section's principle paragraph; the burden to remove review is the agency's, which the rule does not carry. *Source:* [Justia: Abbott Laboratories v. Gardner, 387 U.S. 136](#).