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Subject: Comments on the Notice of Proposed Rulemaking: Regulation for Federal Financial Assistance

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1. Introduction

Dear OMB Desk Officer:

On behalf of Legal Insurrection Foundation (LIF), a nonprofit that, among other things, seeks to ensure equal protection under the law and opposes unlawful discrimination in all forms, and the Defense of Freedom Institute for Policy Studies (DFI), a nonprofit dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace, we respectfully submit these comments regarding the Office of Management and Budget's (OMB) proposed Regulation for Federal Financial Assistance (91 Fed. Reg. 32198, Document No. 2026-10817).

We fully support OMB's efforts to restore transparency, accountability, and merit-based decision-making in Federal grantmaking.

We recommend that OMB expressly address **intersectionality** in the regulatory text. The proposed rule properly targets unlawful identity-based diversity, equity, and inclusion (DEI) policies, proxies for protected characteristics, and disparate-impact frameworks, but it does not name the framework that often links and operationalizes those practices. As LIF and DFI explain in our report, "Intersectionality: The Rise of a Dangerous Anti-American Ideology and How to Stop It," intersectionality classifies individuals by overlapping identity categories and uses those categories to justify differential treatment. In practice, it displaces merit and equal protection with group-based preference.

Unless OMB identifies **intersectionality** expressly, agencies and recipients of Federal financial assistance may continue using composite or rebranded terminology to preserve the same identity-based preferences the rule is designed to end.

Below, LIF and DFI describe the dangers posed by the application of intersectionality in Federal agencies and Federally funded programs, examples of its widespread use for Federally funded projects, and the reasons why OMB should address the unlawful implementation of this framework in its final rule. **Appendix A** provides a section-by-section comparison of the current regulations, the proposed OMB rule, and recommended revisions to incorporate this clarification.

2. Intersectionality as an Analytical Framework

Intersectionality is an analytical framework that interprets social dynamics through overlapping identity categories, including race, gender, sexuality, class, religion, immigration status, and others. It views those categories primarily through the lens of privilege and oppression. The framework presumes that combinations of identities inherently produce systemic inequality or discrimination. It then operationalizes that assumption by merging characteristics into composite classifications used to assess "marginalization," define "priority populations," and justify differential treatment.

The intellectual roots of intersectionality lie in collectivist, anti-Western, and anti-American strands of socialist and Marxist thought. Those traditions conceptualize society chiefly as a struggle between "oppressor" and "oppressed" groups. As a result, intersectionality promotes ideological and practical approaches that conflict with U.S. law and with principles of individual rights, equal treatment, and merit-based achievement. When such frameworks influence Federally funded activities, they may also raise broader public-safety and national-security concerns warranting careful scrutiny.

Importantly, intersectionality functions as the unifying mechanism through which disparate identity-based ideologies converge and reinforce one another. For example, a program may begin with separate commitments to racial equity, gender equity, climate justice, disability justice, or LGBTQ+ inclusion, and then combine those concepts into an "intersectional" priority for persons or communities said to experience multiple overlapping forms of marginalization. That formulation can transform several otherwise distinct policy preferences into a single composite preference that operates across program design, eligibility, scoring, reporting, and compliance. Even when a rule addresses individual ideological components, intersectionality can preserve and expand them by recasting protected characteristics as overlapping "lived experiences," "equity lenses," or "priority population" factors within the broader system of identity-based activism.

Because intersectionality serves as the principal conceptual mechanism enabling identity-based preferences in modern programs, its omission from the proposed rule creates a significant risk. A prohibition on explicit classifications may not be sufficient if agencies or recipients can avoid direct racial or sex-based labels while still assigning weight to those same characteristics through composite categories. For example, a NOFO might avoid saying that race or sex receives a preference but instead award priority points for serving "women of color," "LGBTQ+ immigrants," "BIPOC persons with disabilities," or "communities experiencing intersecting forms of marginalization." In each case, the protected traits remain operative, but they are embedded within a multi-factor framework rather than stated as stand-alone classifications. OMB should therefore make clear that identity-based classifications are prohibited not only when used explicitly, but also when aggregated, relabeled, or operationalized through intersectional, composite, or multi-factor methodologies.

3. Evidence of Prior Federal Spending on Intersectionality-Related Grants

In addition to the conceptual concerns outlined above, OMB should recognize that the Federal government has already expended substantial taxpayer funds on intersectionality-related research, programming, and training. Many of these expenditures appear to have little or no connection to statutory program purposes.

Examples of Prior Spending:

- **2018 – National Science Foundation (NSF):** Heather Mac Donald examined a half-million-dollar NSF study on intersectionality in the STEM fields, premised on the claim that intersectional oppression explains the lack of diversity in STEM disciplines.
- **2014–2018 – NSF under Director France A. Córdova:** The *Washington Free Beacon* analyzed NSF-funded studies involving "intersectionality" during the tenure of its director France A. Córdova (appointed by President Barack Obama). The analysis identified 101 projects totaling $62,553,718, revealing an escalating number of studies on gender, race, inclusivity, and microaggressions.
- **Multiple Agencies:** Various Federal departments have paid consultants to deliver intersectionality workshops, "equity audits," and DEI-related assessments under diversity initiatives.
- **2010–Present – Federal Grant Awards:** A targeted search of Federal grant awards using the keyword "intersectionality" identified 245 Federally funded projects across multiple agencies. Based on agency-reported obligation totals, these awards represent a combined Federal investment of approximately $300 million.
    - Funding was concentrated within the Department of Health and Human Services (HHS), which accounts for the majority of total obligations, followed by substantial contributions from the NSF.
    - Additional support came from the Departments of Labor, Justice, Defense, Commerce, and State, as well as the U.S. Agency for International Development (USAID) and the Institute of Museum and Library Services (IMLS).
    - The largest spending occurred between 2022 and 2024, averaging $70–$80 million per year.

These expenditures demonstrate that intersectionality is not merely a hypothetical risk for the misuse of Federal funds. It has already been used to justify significant Federal spending on ideological, discriminatory, and non-statutory activities. Without an explicit prohibition, agencies may continue to employ intersectionality as a mechanism for reintroducing DEI-based preferences under rebranded terminology. This spending pattern confirms that intersectionality is already functioning as a *de facto* policy framework within multiple agencies. Its explicit identification in the regulation is therefore essential to prevent continued misuse of Federal funds.

Accordingly, OMB should expressly identify **intersectionality** as an ideological framework that may not be used to justify Federal spending, program design, scoring criteria, or reporting requirements. This clarification is especially important where such requirements impose unnecessary administrative burdens or enable identity-based decision-making.

4. Burden Reduction

Intersectionality-based grant requirements also create avoidable administrative burdens for recipients. These burdens include:

- Specialized consultants, training, and internal review processes
- Subjective reporting obligations tied to ambiguous terminology
- Diversion of staff time and resources from core program delivery

Removing these requirements would advance OMB’s burden-reduction goals. It would also refocus Federal awards on measurable statutory outcomes.

5. Alternative Approaches

OMB can preserve equal opportunity and program integrity by directing agencies to use:

- Identity-neutral, merit-based selection criteria
- Objective performance metrics
- Statutory and capacity-based needs assessments
- Clear, plain-language program requirements

These tools advance statutory objectives without relying on intersectional or other identity-based frameworks.

6. Conclusion

Thank you for the opportunity to comment on this important rulemaking. We support OMB’s efforts to restore lawful, transparent, and merit-based Federal grantmaking. To prevent circumvention of these critical efforts, OMB should expressly address intersectionality as a framework that can implement identity-based preferences in program design, selection criteria, analytical methodologies, and funding conditions.

As noted above, **Appendix A** provides a section-by-section comparison of the current regulations, the proposed OMB rule, and recommended revisions to incorporate this clarification.

We would welcome the opportunity to discuss these comments further.

Respectfully submitted,

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Appendix A—Regulatory Comparison Table

Table A-1:

Current CFR—Versus Proposed OMB Rule—Versus Recommended Revisions

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Section	Current 2 C.F.R. Text	Proposed OMB Rule (May 29, 2026)	Recommended Addition
§ 200.202 Program Planning and Design	eCFR :: 2 CFR 200.202 -- Program planning and design.	91 Fed. Reg. 32247	**Add sentence at the end of (c)**: "Federal agencies must not structure program design, eligibility criteria, or priority populations using identity-based classification systems that rely on race, sex, or other protected characteristics, including intersectional or other composite or multi-factor methodologies that function as proxies for such characteristics."
§ 200.204 Notices of Funding Opportunity	eCFR :: 2 CFR 200.204 -- Notices of funding opportunities.	91 Fed. Reg. 32248	**Add new subsection:** "(g) Prohibition on identity-based proxy criteria. NOFOs must not include evaluation criteria, priority factors, or eligibility conditions that rely on identity-based classifications, whether expressed directly or through proxy or composite terminology. Terms such as "intersectional equity," "communities with intersecting forms of marginalization," or similar multi-factor formulations shall be treated as proxies for protected characteristics when used to guide funding decisions and must not be used except where expressly authorized by Federal statute."
§ 200.205 Merit Review	eCFR :: 2 CFR 200.205 -- Federal agency review of merit of proposals.	91 Fed. Reg. 32249 200.205(2)(iv): Any other initiatives that compromise public safety or promote anti-American values.	**Add at the end of 200.205(2)(iv), after "values.":** "Federal agencies must ensure that merit review criteria do not incorporate analytical frameworks or classification systems that combine or aggregate protected characteristics, including intersectional or multi-factor methodologies, where such approaches result in preferential or adverse treatment based on those characteristics."
§ 200.206 Risk Review	eCFR :: 2 CFR 200.206 -- Federal agency review of risk posed by applicants.	91 Fed. Reg. 32250 "(b)(2)(vii)… history of questionable practices… including… (C) Engaging in activities… inconsistent with Federal civil rights laws… including… unlawful discrimination…"	**Revise 200.206(b)(2)(vii)(C) as follows:** "Engaging in activities, initiatives, or identity-based classification systems that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination;"

§ 200.208 Specific Conditions	eCFR :: 2 CFR 200.208 -- Specific conditions.	91 Fed. Reg. 32250	**Add clarifying sentence after § 200.208(f):** "Federal agencies must ensure that specific conditions and performance expectations for Federal awards are consistent with §§ 200.202, 200.205, and 200.206, including prohibitions on identity-based classifications and analytical frameworks that result in preferential or adverse treatment based on protected characteristics."
§ 200.211 — Information Contained in a Federal Award	eCFR :: 2 CFR 200.211 -- Information contained in a Federal award.	91 Fed. Reg. 32251	**Add clarifying sentence after § 200.211(c)(1)(v):** "Federal awards must include terms and conditions ensuring compliance with §§ 200.202, 200.205, and 200.218, including prohibitions on identity-based classifications and analytical frameworks that result in preferential or adverse treatment based on protected characteristics."
§ 200.218 Disparate-Impact Prohibition	*(No current provision)*	91 Fed. Reg. 32252 "(a)… Federal agencies must eliminate the use of disparate-impact liability… (e) Disparate-impact liability… presumption of unlawful discrimination… based on outcome disparities…"	**Add clarifying sentence after 200.218(e):** "Composite or multi-factor analytical frameworks—including those described as 'intersectional'—that aggregate protected characteristics and use outcome disparities to infer systemic discrimination shall be considered to be within the scope of disparate-impact-based methodologies for purposes of this section."
§ 200.300 Statutory and National Policy Requirements	eCFR :: 2 CFR 200.300 -- Statutory and national policy requirements.	91 Fed. Reg. 32253: "(b)… Federal awards… must not be used to fund, promote, encourage, subsidize, or facilitate: (1) 'DEI'… practices that violate… anti-discrimination laws, including… racial preferences… or proxies for race…"	"**Add after 200.300(b)(3):** (4) Program requirements, evaluation criteria, reporting obligations, or activities derived from identity-based classification systems, including composite or multi-factor frameworks (commonly referred to as "intersectional" methodologies), that result in differential treatment based on protected characteristics, except where expressly authorized by Federal statute."
§ 200.403 Factors Affecting Allowability of Costs	eCFR :: 2 CFR Part 200 Subpart E - Basic Considerations: "A cost is allowable only if it is necessary, reasonable, and allocable…"	91 Fed. Reg. 32261: "(g) Be adequately documented…" (No new DEI-specific cost restriction added in regulatory text)	**Add after 200.403(h):** "(i) Costs for training, consulting, audits, program design, or related activities are unallowable to the extent they apply classification systems based on protected characteristics, including composite or multi-factor methodologies and intersectional frameworks, where such activities result in differential treatment inconsistent with applicable Federal anti-discrimination laws, unless expressly required by Federal statute."