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Office of Management & Budget
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**RE: Regulation for Federal Financial Assistance, OMB-2026-034
[Multiple RIN Numbers]**

Thank you for the opportunity to comment on the proposed regulations (“Proposed Regulations”) of the Office of Management and Budget (“OMB”), the Department of Health and Human Services (RIN 0991-AC35), the Department of Agriculture (RIN 0505-AA20), the Department of State (RIN 1400-AG22), the Agency for International Development (RIN 0412-AB19), the Department of Veterans Affairs (RIN 2900-AT02), the Department of Energy (RIN 1991-AC21), the Department of the Treasury (RIN 1505-AC92), the Department of Defense (RIN 0790-AM03), the Department of Transportation (RIN 2105-AF44), the Commerce Department (RIN 0605-AA85), the Department of the Interior (RIN 1090-AB34), the Environmental Protection Agency (RIN 2030-AB05), the U.S. International Development Finance Corporation (RIN 3015-AA00), the National Aeronautics and Space Administration (RIN 2700-AE90), the United States Agency for Global Media (RIN 3112-AA07), the Nuclear Regulatory Commission (RIN 3150-AL41), the Corporation for National and Community Service (RIN 3045-AA94), the Social Security Administration (RIN 0960-AJ11), the Department of Housing and Urban Development (RIN 2501-AE01), the National Science Foundation (RIN 3145-AA75), the National Archives and Records Administration (RIN 3095-AC31), the Small Business Administration (RIN 3245-AI70), the Department of Justice (RIN 1105-AB81), the Department of Labor (RIN 1291-AA53), the Department of Homeland Security (RIN 1601-AB23), the Institute of Museum and Library Services (RIN 3137-AA31), the National Endowment for the Arts (RIN 3135-AA36), the National Endowment for the Humanities (RIN 3136-AA47), the Department of Education (RIN 1801-AA30), the Export-Import Bank (RIN 3048-AA03), the Office of National Drug Control Policy (RIN 3201-AA03), the Peace Corps (RIN 0420-AA37), the Election Assistance Commission (RIN 3265-AA00), the Gulf Coast Ecosystem Restoration Council (RIN 3600-AA05), the Federal Communications Commission (RIN 3060-AM35), the Consumer Product Safety Commission (RIN 3041-AE26), the Delta Regional Authority (RIN 4718-AA00), the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (RIN 3139-AA07), the Marine Mammal Commission (RIN 0415-AA00), the Millennium Challenge Corporation (RIN 0414-AA00), and the National Credit Union Administration (RIN 3133-AG07), regarding changes to the Federal awards system and grantmaking process. See 91 Fed. Reg. 32,198 (May 29, 2026).

The undersigned are legal and social science scholars affiliated with the Williams Institute at the University of California, Los Angeles School of Law. The Williams Institute is dedicated to conducting rigorous and independent research on sexual orientation and gender identity law and public policy.¹ Our portfolio of work includes extensive research and publications on LGBT demographics, mental health, well-being, violent victimization, and poverty.² We have also published extensive research on the experiences of sub-groups of LGBT people including transgender people, LGBT immigrants and LGBT people of color.³

Research is essential to furthering our understanding of the characteristics, health, safety, and economic conditions of the U.S. population, and for policymakers to allocate resources to meet their needs.⁴ LGBT people make up a sizable portion of the overall population in the United States, and transgender, nonbinary, and intersex people, immigrants, and LGBT people of color are sub-populations with unique characteristics and well-documented disparities areas across many domains. The undersigned scholars write to raise the concern that the Proposed Regulations could substantially restrict or eliminate essential research into these sub-populations and may have the collateral effect of jeopardizing other research conducted by research institutions. These actions are grandiose in scope and may not be supported by statutory or Constitutional authority. Therefore, we recommend reconsideration of the Proposed Regulations.

¹ *About*, WILLIAMS INST. <https://williamsinstitute.law.ucla.edu/about/who-we-are/> (last visited July 6, 2026).

² See e.g. ANDREW R. FLORES & KERITH J. CONRON, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/publications/adult-lgbt-pop-us/>; ILAN H. MEYER, BIANCA D.M. WILSON, & KATHRYN K. O'NEILL, WILLIAMS INST., LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES (2021), <https://williamsinstitute.law.ucla.edu/publications/generations-transpop-toplines/>; ILAN H. MEYER & ANDREW R. FLORES, ANTI-LGBT VICTIMIZATION IN THE UNITED STATES 3 (2025), <https://williamsinstitute.law.ucla.edu/publications/anti-lgbt-victimization-us/>; BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

³ See, e.g., JODY L. HERMAN & ANDREW R. FLORES, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2025), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Aug-2025.pdf>; JODY L. HERMAN & KATHRYN K. O'NEILL, WILLIAMS INST., WELL-BEING AMONG TRANSGENDER PEOPLE DURING THE COVID-19 PANDEMIC (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pulse-Toplines-Nov-2022.pdf>; SHOSHANA K. GOLDBERG & KERITH J. CONRON, WILLIAMS INST., LGBT ADULT IMMIGRANTS IN THE U.S.(2021), <https://williamsinstitute.law.ucla.edu/publications/lgbt-immigrants-in-the-us/>; BIANCA D.M. WILSON, LAUREN J.A. BOUTON, & CHRISTY MALLORY, WILLIAMS INST., RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE US (2022), <https://williamsinstitute.law.ucla.edu/publications/racial-differences-lgbt/>.

⁴ See, e.g., E.C. Long et al., *A New Measure to Understand the Role of Science in US Congress: Lessons Learned from the Legislative Use of Research Survey (LURS)*, 17 EVID. POL. 689 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9109878/pdf/nihms-1744426.pdf>. (In a survey of 80 congressional staffers testing a quantitative measure for use of research in policymaking regarding issues affecting children and families, a “...majority of participants reported using research often or all the time to develop policy (80.0%), understand how to think about an issue (78.8%), and consider policy implementation (71.3%); ...[t]he majority also agreed that research evidence should be used to decide about the content or direction of a policy (93.8%), [to] write legislation (88.8%), and... as a basis for decisions (87.5%)”); CECI VILLA ROSS, U.S. CENSUS BUR., USES OF DECENNIAL CENSUS PROGRAMS DATA IN FEDERAL FUNDS DISTRIBUTION: FISCAL YEAR 2021 (2023), <https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf>.

I. LGBT People Are a Sizeable Subset of the American Population

LGBT people have a sizeable presence in the United States. For example:

Using federal data, we have estimated that approximately 5.5% of the U.S. adult population identifies as lesbian, gay, bisexual, or transgender (“LGBT”).⁵ Applying these figures to the U.S. population, we estimate that approximately 14 million adults in the U.S. identify as LGBT.⁶ This includes 4.7 million young adults aged 18-24 in the U.S. who identify as LGBT.⁷ We have also estimated that at least 2 million youth aged 13-17 in the US identify as LGBT.⁸

Transgender people are, by definition, those whose gender identity, or internal sense of their own gender, is incongruous from the sex that was assigned to them at birth.⁹ We estimate that approximately 2.1 million adults in the U.S. aged 18 and older identify as transgender.¹⁰ We estimate that approximately 724,000 youth in the U.S. aged 13-17 identify as transgender.¹¹ Approximately 1.2 million LGBT adults identify as nonbinary in the U.S.¹² Nonbinary refers to a gender identity that is not strictly “Male” or “Female.”¹³

“Intersex” refers to people whose sex characteristics do not fall into the typical binary categories of male and female.¹⁴ Although data are limited and further research is needed to better understand the size of this population, the best available estimate suggests that intersex

⁵ ANDREW R. FLORES & KERITH J. CONRON, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES (2023), <https://williamsinstitute.law.ucla.edu/publications/adult-lgbt-pop-us/>.

⁶ *Id.*

⁷ *Id.*

⁸ KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES (2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-youth-pop-us/>.

⁹ See, e.g., J. White Hughto, S.L. Reisner, & J.E. Pachankis, *Transgender Stigma and Health: A Critical Review of Stigma Determinants, Mechanisms, and Interventions*, 11 SOC SCI MED. 147 (2015). <https://doi.org/10.1016/j.socscimed.2015.11.010>

¹⁰ JODY L. HERMAN & ANDREW FLORES, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? (2025), <https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/>.

¹¹ *Id.*

¹² Press Release, Williams Inst., 1.2 Million Adults in the U.S. Identify as Nonbinary (June 21, 2021), <https://williamsinstitute.law.ucla.edu/press/lgbtq-nonbinary-press-release/>; See also BIANCA D.M. WILSON & ILAN MEYER, WILLIAMS INST., NONBINARY LGBTQ ADULTS IN THE U.S. (JUNE 2021), <https://williamsinstitute.law.ucla.edu/publications/nonbinary-lgbtq-adults-us/>. This study used data sources from both cisgender and transgender LGBTQ community members.

¹³ *Id.*

¹⁴ See *What is Intersex?*, INTERACT, <https://interactadvocates.org/faq/> (last visited July 7, 2026); *Understanding the Intersex Community*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/understanding-the-intersex-community> (last visited July 7, 2026).

people make up 1.7% of the U.S. population.¹⁵ The Department of Health and Human Services estimated in 2025 that up to five million people in the U.S. may be intersex.¹⁶

Research examining outcomes by sexual orientation and gender identity (“SOGI”) has revealed that LGBT people in the United States experience disparities across multiple domains when compared with non-LGBT people.¹⁷ For example, research using the Centers for Disease Control and Prevention (“CDC”)’s Behavioral Risk Factor Surveillance System (“BRFSS”) has consistently demonstrated higher levels of poverty among LGBT people when compared to non-LGBT people across nearly a decade of data, with the highest levels reported by transgender people and cisgender bisexual women.¹⁸ In terms of health, research has shown that LGBT adults experience poorer outcomes across many physical and mental health indicators compared with the general population.¹⁹ Additionally, one population-based study conducted by scholars at the Williams Institute found differences within LGBT groups, with transgender people and cisgender bisexual women reporting poor or fair health at higher rates than cisgender gay men.²⁰ Research using the same dataset found that LGBT adults in general were more than twice as likely to have been unhoused during their lifetimes, and transgender people were eight times as likely to have been unhoused in the last 12 months, when compared to cisgender, heterosexual adults.²¹ Furthermore, research using data from the National Crime Victimization Survey (“NCVS”) has demonstrated that LGBT people are four times more likely to experience violent victimization compared to cisgender non-LGB people; among LGBT respondents, these rates were highest for Black LGBT people and Hispanic LGBT people.²² Finally, although research on intersex experiences is limited, studies have found unique characteristics among intersex-identified people, including health disparities, that merit further study.²³

¹⁵ M. Blackless et al., *How Sexually Dimorphic Are We? Review and Synthesis*, 12 AM.J. OF HUM. BIOLOGY 151-66 (2000).

¹⁶ U.S. DEP’T. OF HEALTH & HUM. SERVS., OFF. OF THE ASSISTANT SEC’Y FOR HEALTH, ADVANCING HEALTH EQUITY FOR INTERSEX INDIVIDUALS (2025), <https://interactadvocates.org/wp-content/uploads/2025/01/intersex-health-equity-report.pdf>.

¹⁷ See generally, CONG. EQUALITY CAUCUS, INAUGURAL REPORT ON THE CONDITION OF LGBTQ+ PEOPLE IN THE UNITED STATES (2022), <https://equality.house.gov/sites/evo-subsites/equality.house.gov/files/evo-media-document/cec-inaugural-report-on-the-condition-of-lgbtq%2B-people-12.15.22.pdf>.

¹⁸ BIANCA D.M. WILSON ET AL., WILLIAMS INST., LGBT POVERTY IN THE UNITED STATES 1-2 (2023), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>; See also M.V. Lee Badgett, Soon Kyu Choi & Bianca D.M. Wilson, Williams Inst., LGBT Poverty in the United States (Oct. 2019), <https://williamsinstitute.law.ucla.edu/publications/lgbt-poverty-us/>.

¹⁹ See, e.g. JENNIFER KATES ET AL., KFF, HEALTH AND ACCESS TO CARE AND COVERAGE FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) INDIVIDUALS IN THE U.S. (2018), <https://files.kff.org/attachment/Issue-Brief-Health-and-Access-to-Care-and-Coverage-for-LGBT-Individuals-in-the-US>

²⁰ See MEYER, WILSON, & O’NEILL, *supra* note 2.

²¹ BIANCA D.M WILSON, ET.AL, HOMELESSNESS AMONG LGBT ADULTS IN THE US, WILLIAMS INSTITUTE, (May 2020), <https://williamsinstitute.law.ucla.edu/publications/lgbt-homelessness-us/>.

²² ILAN H. MEYER & ANDREW R. FLORES, ANTI-LGBT VICTIMIZATION IN THE UNITED STATES (2025), <https://williamsinstitute.law.ucla.edu/publications/anti-lgbt-victimization-us/>.

²³ See, e.g., Amy Rosenwohl-Mack et al., *A National Study on the Physical and Mental Health of Intersex Adults in the U.S.*, 15 PLOS ONE 10 (2020); Laetitia Zeeman and Kay Aranda, *A Systematic Review of the Health and Healthcare Inequalities for People with Intersex Variance*, 17 INT’L. J ENV’T. RSCH. & PUB. HEALTH 6533, 3 (2020);

These are just a few, non-exhaustive examples of insights gained from rigorous research on LGBT populations—this body of evidence has deepened our national understanding of LGBT and intersex communities and shed light on myriad ways that sexual orientation and gender identity correlate with different life experiences.²⁴ These findings can be used to guide specific, tailored responses to address disparities and allocate resources fairly and effectively.²⁵ They have also helped shape a robust and comprehensive agenda for future research.²⁶

II. Federal Funding Crucially Expands Our Understanding of Disparities Among U.S. Populations

Federal investment is crucial to expanding our awareness and understanding of health and economic disparities affecting U.S. populations. A substantial portion of federal investment into SOGI-focused research has come through the National Institute of Health (NIH). One analysis of NIH grantmaking found that between 2012 and 2022, spending on LGBT-focused research constituted less than one percent (0.8%) of the overall NIH research grant portfolio.²⁷ And yet, this small amount of the overall budget made possible a tremendous amount of LGBT research: during this time period, the agency funded 1,093 awards concerning SOGI-focused research, totaling \$491.7 million in first-year funding.²⁸ Over 65% of NIH research on LGBT-related topics during this time period focused on HIV/AIDS prevention, an area affecting both LGBT and non-LGBT populations.²⁹ However, the 2025 cancellation by the federal government of \$806 million in NIH grants—including at least 323 grants relating to LGBT health—has essentially halted much of this broad and crucial research.³⁰

See also U.S. DEP'T. OF HEALTH & HUM. SERVS., OFF. OF THE ASSISTANT SEC'Y FOR HEALTH, ADVANCING HEALTH EQUITY FOR INTERSEX INDIVIDUALS, *supra* note 16.

²⁴ *See, e.g.*, NAT'L ACAD. OF SCI., ENG'G., AND MED., UNDERSTANDING THE WELL-BEING OF LGBTQI+ POPULATIONS (2020), <https://www.nationalacademies.org/projects/DBASSE-CPOP-17-05/publication/25877>.

²⁵ *See, e.g.*, OFF. OF DISEASE PREVENTION & HEALTH PROMOTION, U.S. DEP'T. OF HEALTH & HUM. SERV., HEALTHY PEOPLE 2030: LGBT; <https://odphp.health.gov/healthypeople/objectives-and-data/browse-objectives/lgbt>.

²⁶ *See, e.g.*, NAT'L SCI. & TECH. COUNCIL, FEDERAL EVIDENCE AGENDA ON LGBTQI+ EQUITY (2023), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf>.

²⁷ Ben C.D. Weideman et al., *Research Funded by National Institutes of Health Concerning Sexual and Gender Minoritized Populations: A Tracking Update for 2012 to 2022*, 115 AM. J. OF PUB. HEALTH 374, 376 (2025). 1,093 of a total of 142,280 awards (\$491.7 million out of \$60.1 billion in awards) were for research on LGBT health.

²⁸ *Id.*

²⁹ *Id.* The report documents 765 awards totaling \$339.8 million in this category.

³⁰ *See* Benjamin Mueller, *Trump Administration Slashes Research Into L.G.B.T.Q. Health*, N.Y. TIMES (May 4, 2025), <https://www.nytimes.com/2025/05/04/health/trump-administration-slashes-research-into-lgbtq-health.html>. Terminated grants across the Department of Health and Human Services include those to the following studies: Interpersonal Protective Factors and Mental Health Symptom Self-Management Among Black Transgender Women; An intersectional approach linking Minority Stressors Experienced by Transgender and Gender Diverse Adults to Alcohol and Drug Use and comorbid Mental and Physical Health Outcomes; The Impact of Early Medical Treatment in Transgender Youth; Low Dose Computed Tomography (LDCT) Eligibility and Outcome differences between Sexual and Gender Minorities and their Sexual and Gender Majority Counterparts. *HHS Grants Terminated*, HHS TAGGS (2025), https://taggs.hhs.gov/content/Data/HHS_Grants_Terminated.pdf (last visited July 7, 2026).

Moreover, federally *collected* data has historically played an enormous role in understanding LGBT populations. Data from federal surveys have enabled countless studies aiming to understand the LGBT population. For examples, as referenced above, CDC’s BRFSS and Youth Risk Factor Surveillance System (“YRBSS”) have been key for understanding the size of LGBT populations and economic conditions, and the NCVS has been vital for understanding rates of violent victimization.³¹ Additionally, data from the Census Bureau’s Household Pulse Survey were used in studies showing disparities in economic, food, and housing security, particularly during the COVID-19 pandemic.³² An analysis of National Health Interview Survey (“NHIS”) data has found disparities in physical and mental health and healthcare insurance,³³ and the National Survey of Family Growth has been used in studies about LGBT parenting.³⁴ However, with the enactment of Executive Order 14168, large swaths of data were suppressed, and gender identity measures, along with sexual orientation measures in some cases, were categorically removed from prospective collections.³⁵ As these essential federal agency sources of data on LGBT and intersex populations have been taken offline, research by nongovernmental entities – much of which is federally funded – is more important than ever.

III. The Proposed Regulations Are Likely to Have a Devastating Effect on LGBT-Related Research in the United States

The primary purpose of the Proposed Regulations articulated by OMB and the above-named agencies is “to improve and clarify government-wide policies and requirements related to the management of Federal financial assistance.”³⁶ While the rationales offered for the changes include the need to remediate “wasteful spending;” the preamble also opines that changes are necessary because “Federal awards [under President Biden] were often used during those years to promote a ‘woke’ policy agenda...,” and because federal funds had been used for “questionable projects that promoted diversity, equity, and inclusion (DEI) tenets...” and “far

³¹ See FLORES & CONRON, *supra* note 5; HERMAN & FLORES, *supra* note 3; MEYER & FLORES, *supra* note 22; see also BRAD SEARS, NATHAN CISNEROS, & JET HARBECK, WILLIAMS INST., FOOD INSECURITY AND RELIANCE ON SNAP AMONG LGBT ADULTS (2025), <https://williamsinstitute.law.ucla.edu/publications/lgbt-food-insecurity-snap/> (BRFSS data on LGBT food insecurity and SNAP utilization).

³² See, e.g., WILSON ET AL., *supra* note 2; KERITH J. CONRON, RUBEEN GUARDADO & KATHRYN K. O’NEILL, WILLIAMS INST., FOOD INSUFFICIENCY AMONG LGBT ADULTS DURING THE COVID-19 PANDEMIC (2022), <https://williamsinstitute.law.ucla.edu/publications/lgbt-food-insufficiency/>; BIANCA D.M. WILSON, KATHRYN K. O’NEILL, & LUIZ VASQUEZ, LGBT RENTERS AND EVICTION RISK (2021), <https://williamsinstitute.law.ucla.edu/publications/lgbt-renters-and-eviction-risk/>;

³³ See, e.g., Mai-Han Trinh et al., *Health and Healthcare Disparities Among U.S. Women and Men at the Intersection of Sexual Orientation and Race/Ethnicity: A Nationally Representative Cross-Sectional Study*, 17 BMC PUB. HEALTH 964 (2017).

³⁴ See, e.g., Caroline J. Violette et al., *Expectations for Family Building, Assisted Reproduction, and Adoption Among Lesbians in the National Survey of Family Growth, 2017–2019*, 4 F&S REPORTS 190 (2023).

³⁵ Exec. Order No. 14168, 90. Fed. Reg. 8615 (Jan. 30, 2025); LAUREN J.A. BOUTON & ELANA REDFIELD, WILLIAMS INST., REMOVAL OF SEXUAL ORIENTATION AND GENDER IDENTITY FROM FEDERAL DATA COLLECTIONS (2026), <https://williamsinstitute.law.ucla.edu/publications/sogi-data-collection-removal/>.

³⁶ 91 Fed. Reg. 32199.

left perspectives.”³⁷ One such viewpoint -- characterized as impermissible for federal grantees throughout the Proposed Regulations -- is the perspective that transgender, nonbinary, or intersex people exist.³⁸ The regulations also seek to consolidate regulation of federal funding within OMB.³⁹ Accordingly, the major revisions in the Proposed Regulations center on updating the Guidance for Federal Financial Assistance, 2 C.F.R. 200 -- which lays out how federal funding, such as research grants, may be distributed, regulated, and terminated -- to coordinate the enforcement of the current administration’s policy priorities and ideological points of view.

As currently drafted, the Proposed Regulations may effectively end federally funded research on transgender, nonbinary, and intersex communities, and are likely to substantially impact LGBT research in general, including research on sub-populations like LGBT immigrants and LGBT people of color. Several sections of the Proposed Regulations in particular are likely to directly, explicitly, and negatively impact SOGI-focused research. As described above, this research is highly valuable to researchers and policymakers because provides insights into needs and disparities experienced by a substantial portion of the U.S. population.

A. Section 200.300 of the Proposed Regulation Explicitly Eliminates Federal Funding for Many Topics Crucial to Understanding LGBT Communities

i. *The Proposed Regulations Will Broadly Limit Urgently Needed Research about LGBT Communities*

Section 200.300(b)(1-3) states that federal funding will be cut off “to the maximum extent permitted by law” if being used to “fund, promote, encourage, subsidize, or facilitate” any of the following:

- “DEI” / “DEIA,” including racial preferences or activities where race or its proxies will be used as a selection criterion for employment or program participation.
- “Gender ideology,” defined to include the endorsement of the idea that sex is a chosen or mutable characteristic or that sex is not a binary.⁴⁰

Implementing this revision has the potential to disrupt or permanently shut down federally funded research not only directly concerned with, but merely connected to, transgender or intersex populations, and could indirectly implicate research on a broad range of topics related to LGBT communities.

³⁷ 91 Fed. Reg. 32200.

³⁸ 91 Fed. Reg. 32215 (Gender ideology is a prohibited category -- “[g]ender ideology includes 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...”).

³⁹ *Id.*, citing 31 U.S.C. § 503(a)(2).

⁴⁰ § 200.300(b), 91 Fed. Reg. 32253.

Additionally, § 200.300(b)(1) would make a project ineligible for federal funding when “race... will be used as a selection criterion for... program participation.”⁴¹ This criterion could make it difficult to study racial disparities, by preventing researchers from selecting participants based on race/ethnicity, even where research solutions are needed to address known disparities or urgent needs. Research has already demonstrated that LGBT people of color and LGBT immigrants experience outcomes different from White and non-immigrant LGBT people across a range of domains; this regulation could operate to make future intersectional research impossible using federal funds.

ii. The Proposed Regulations Will Limit or Prohibit Necessary Research About Gender-Affirming Care

§ 200.300(b)(3), which categorizes gender-affirming care for those under the age of 19 as “chemical and genital mutilation,” is likely to restrict a crucial avenue of necessary research for transgender youth.⁴² This provision cites Executive Order 14187 to prohibit funds from being used to “fund, promote, encourage, subsidize, or facilitate” gender-affirming care for people under the age of 19.⁴³

Gender-affirming care commonly refers to health services that support a person to live in alignment with their gender identity when it differs from their sex assigned at birth.⁴⁴ For transgender youth, this care may include the use of puberty-blocking medication and gender-affirming hormone therapy to promote the development of secondary sex characteristics that are consistent with their gender identity.⁴⁵ While existing data are limited, it is clear from non-government research that a substantial number of transgender youth and adults do access gender-affirming hormone therapy and, among youth, puberty-blocking medication.⁴⁶

⁴¹ *Id.*

⁴² Proposed § 200.300(b)(3), 91 Fed. Reg. 32253.

⁴³ *Id.*; Protecting Children from Chemical and Surgical Mutilation, Exec. Order 14187, 90 Fed. Reg. 8771 (Feb. 3, 2025). The specific language used in the Proposed Regulations is “The so-called “transition” of a child under 19 years of age from one sex to another, including the chemical and surgical mutilation of children.”

⁴⁴ See generally, E. Coleman et al., Standards of Care for the Health of Transgender and Gender Diverse People, Vers. 8, 23 INT. J. TRANSGEND. HEALTH S1 (2022) (also known as the “World Professional Association for Transgender Health Standards of Care”).

⁴⁵ For example, the Endocrine Society recommends puberty-blocking medication and hormone use for youth with a diagnosis of gender dysphoria who have entered puberty. See Wiley C. Hembree et al., *Endocrine Treatment of Gender-Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guideline*, 102 J. OF CLINICAL ENDOCRINOLOGY & METABOLISM 3869 (2017).

⁴⁶ See e.g. Robin Respaut and Chad Terhune, *Putting Numbers On the Rise of Children Seeking Gender Care*, REUTERS (Oct. 6, 2022), <https://www.reuters.com/investigates/special-report/usa-transyouth-data/> (Non-representative analysis of insurance claims regarding gender-affirming care for minors); S.E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 99-100 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (49% of respondents had accessed hormone therapy in their lives; four percent (4%) had accessed hormone therapy before the age of 18).

Misinformation about gender-affirming care, and lack of information, have affected the ability of transgender youth to access care. For example, twenty-seven states and Puerto Rico have banned access to some or all gender-affirming treatments for youth, in some cases specifically asserting that there was not sufficient information to understand the benefits and risks.⁴⁷ The U.S. Department of Health & Human Services also published a report in 2025 which asserted that the current quality of evidence was of low certainty.⁴⁸ Although substantial evidence contradicts these assertions, more research about the impacts of gender-affirming care, especially for youth, is absolutely essential to improving certainty in treatment outcomes, resolving outstanding clinical questions, and informing social and policy disputes.⁴⁹ One group of nationally recognized experts on gender-affirming care recommended that these information gaps could most effectively be addressed through “systemic” approaches including health system-based studies, clinic-based studies, and venue-based studies, all of which would be compromised by the Proposed Regulations.⁵⁰

Additionally, gender-affirming care for minors is not prohibited at the federal level. Approximately half of youth ages 13 to 17 who identify as transgender (360,8000) live in states where access to puberty-blocking medication and gender-affirming hormone therapy is protected by law, or where it is neither protected nor prohibited.⁵¹ Theoretically, essential research on the

⁴⁷ JOSHUA ARRAYALES & ELANA REDFIELD, WILLIAMS INST., THE IMPACT OF 2025 ANT-TRANSGENDER LEGISLATION ON YOUTH (2025), <https://williamsinstitute.law.ucla.edu/publications/anti-trans-legislation-youth/>; *Bans on Best Practice Medical Care*, MAPRESEARCH.ORG, <https://mapresearch.org/equality-map/bans-on-best-practice-medical-care-for-transgender-youth/> (last visited July 6, 2026). In the majority opinion in *U.S. v. Skrametti*, U.S. Supreme Court Chief Justice John Roberts cited a Swedish source for the proposition that “the evidence on treatment efficacy and safety is still insufficient and inconclusive” and a Norwegian source for the proposition that “the ‘research-based knowledge’ for hormonal sex transition procedures is ‘insufficient,’” *U.S. v. Skrametti*, 605 U.S. 495, 505 (2025). Justice Roberts also noted that a U.K. study reasoned that “‘current understanding of the long-term health impacts of hormone interventions is limited and needs to be better understood....’” *Skrametti* at 524. Although these studies are all from non-U.S. jurisdictions and do not reflect the breadth of U.S. and international research on the efficacy of gender-affirming care, the Court’s assertion that evidence on outcomes is conflicting or insufficient might be most effectively addressed with new and better research studying those outcomes.

⁴⁸ See EVGENIA ABBRUZZESE, DEP’T HEALTH & HUM. SERVS., TREATMENT FOR PEDIATRIC GENDER DYSPHORIA: REVIEW OF EVIDENCE AND BEST PRACTICES (2025), <https://opa.hhs.gov/sites/default/files/2025-11/gender-dysphoria-report.pdf>.

⁴⁹ See Meredith McNamara et al., *An Evidence-Based Critique of “The Cass Review” on Gender-Affirming Care for Adolescent Gender Dysphoria*, INTEGRITY PROJ., https://law.yale.edu/sites/default/files/documents/integrity-project_cass-response.pdf (last visited July 7, 2026); Ayden Scheim & Elana Redfield, *The Harm of Banning Care for Trans Youth*, N.Y. TIMES (March 15, 2026), <https://www.nytimes.com/2026/03/15/opinion/trans-youth-care.html>.

⁵⁰ See Sari L. Reisner et al., *Advancing Methods for US Transgender Health Research*, 23 CURRENT OP. ENDOCRINOLOGY, DIABETES & OBESITY 198 (2016) (describing the types of research needed to better understand the effects of gender-affirming care, including “four main systematic approaches: 1) general population-based, 2) health systems-based, 3) clinic-based, and 4) venue-based.”); The study also recommended population-based studies, which may be increasingly difficult in light of the administration’s removal of data elements used to identify transgender people. However, a series of studies on gender-affirming care using population-based data in Australia yielded promising results. See, e.g., Karinna Saxby et al., *Mental Health Treatment Among Transgender and Gender Diverse People Following Gender Affirming Hormone Therapy: Evidence from Whole-of-Population Australian Administrative Data*, 92 ECLINICALMEDICINE 103765 (2026).

⁵¹ ARRAYALES & REDFIELD, *supra* note 47, at 7; additional calculations by authors.

effects of gender-affirming care can continue in those states. However, the Proposed Regulations are likely to result in the termination of a substantial amount of research funding in these states. For example, one study found that in the wake of the 2025 federal cancellation of NIH grants, 41 grants related to the research of gender-affirming care were terminated, resulting in a loss of approximately \$22 million to researchers, many of whom were also providers of care.⁵² In 2025, Fenway Health, a federally qualified health center (“FQHC”) and source of research on gender-affirming care in Massachusetts –where this care is protected --stopped providing gender-affirming care to those under 19 years of age due to HHS funding restrictions.⁵³ The Proposed Regulations are likely to exacerbate this problem by further restricting funding for research institutions to provide and study gender-affirming care for youth, and because they may restrict SOGI research more generally.

B. The Proposed Regulation’s Merit Review and Discretionary Termination Provisions Could Substantially Burden Researchers and Institutions

The Proposed Regulations greatly expand § 200.205 beyond its existing scope. As it stands, § 200.205 consists of a single subpart, which provides general standards for conducting a merit review - “an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency.”⁵⁴ The revised § 200.205(b), as described in the Proposed Regulations, outlines a new pre-issuance review process of discretionary awards intended to limit funding to proposals” consistent with... the national interest.”⁵⁵ Furthermore, awards must, “where applicable, demonstrably advance the President's policy priorities.”⁵⁶ In its parameters, proposed subsection § 200.205(b)(2) explicitly targets research with a focus on transgender, nonbinary or intersex individuals, and other SOGI-adjacent sub-populations:

- (2) Discretionary awards must not be used to fund, promote, encourage, subsidize, or facilitate:
 - (i) Racial preferences or other forms of racial discrimination by the recipient, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation;
 - (ii) Denial by the recipient of the sex binary in humans or the notion that sex is a chosen or mutable characteristic;
 - (iii) Illegal immigration; or

⁵² Amitai S. Miller et al., *Termination of Gender-Affirming Care Grants at the National Institutes of Health*, 180 JAMA PEDIATR. 83 (2025). (The 27 U.S. institutions in the study included several hospitals affiliated with universities. The majority of terminated grants were in states the researchers determined to be protective of gender-affirming care; the researchers tracked 14 non-terminated grants in states that were determined to be outside of protective states. *Id.* at 85).

⁵³ Press Release, Jordina Shanks, CEO, Fenway Health, Sharing an Update About Our Care for Trans Health Patients Under 19 years of Age (Oct. 21, 2025), <https://fenwayhealth.org/sharing-an-update-about-our-care-for-trans-health-patients-under-19-years-of-age/>; About, FENWAY HEALTH, <https://fenwayhealth.org/about/> (last visited July 10, 2026).

⁵⁴ 2 C.F.R. § 200.205.

⁵⁵ Proposed § 200.205(b), 91 Fed. Reg. 32249.

⁵⁶ Proposed § 200.205(b)(1), 91 Fed. Reg. 32249.

(iv) Any other initiatives that compromise public safety or promote anti-American values.⁵⁷

The new pre-issuance review process described in the Proposed Regulations marks a substantial increase in oversight on the part of the federal government that could allow even generally SOGI-inclusive policies of researchers to affect eligibility for grants. Under the merit review process as it stood before the Proposed Regulations, agencies had greater freedom to design and execute reviews of recipients' likely success; agencies were also encouraged to "provide opportunities for a diverse group of participants, including those representing underserved communities."⁵⁸ The Proposed Regulations' mandate of a pre-issuance review as part of the overall merit review process could result in the pre-emptive denial of funding to any studies concerning transgender, intersex, or other SOGI-related subjects, as well as any other subjects that are presumed to conflict with administration priorities, including research on racial disparities or disparities experienced by immigrants or other LGBT subgroups.

At the same time, the Proposed Regulations appear to downplay the significance and compromise the integrity of the peer review process. Peer review is the process by which scholarly work is evaluated by experts in that work's field, encouraging high standards of rigor and reproducibility.⁵⁹ In the Proposed Regulations, § 200.205(d) notes that "peer review recommendations remain advisory:"

(d) Use of peer review. Nothing in this part must be construed to discourage or prevent the use of peer review methods to evaluate proposals for discretionary awards or otherwise inform agency decision making, provided that peer review recommendations remain advisory and are not ministerially ratified, routinely deferred to, or otherwise treated as de facto binding by senior appointees or their designees. Further, nothing in this part must be construed to create any rights to any particular level of review or consideration for any funding applicant except as consistent with applicable law.⁶⁰

Adherence to the peer review process is a trusted mechanism for ensuring the highest degree of rigor and reducibility in research.⁶¹ Softening the role of peer review in relation to agency discretion by deeming it "advisory" and discouraging "deference" downplays the voices of experts and may result in highly meritorious research not being funded.

⁵⁷ Proposed § 200.205(b)(2), 91 Fed. Reg. 32249.

⁵⁸ 2 C.F.R. § 200.205.

⁵⁹ See Jacalyn Kelly et al., *Peer Review in Scientific Publications: Benefits, Critiques, & A Survival Guide*, 25 J. OF THE INT'L FED. OF CLINICAL CHEMISTRY AND LABORATORY MED 227 (2014).

⁶⁰ Proposed § 200.205(d), 91 Fed. Reg. 32249.

⁶¹ See generally, *Peer Review in Scientific Publications: Benefits, Critiques, & A Survival Guide*, supra note 59.

The proposed regulation also expands § 200.340 with new discretionary termination provisions:

The Federal agency or pass-through entity, to the extent permitted by law, may terminate a Federal award in part or its entirety if the Federal agency or pass-through entity determines that a termination is in the interest of the Federal agency or pass-through entity, including 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.⁶²

These proposed changes could be interpreted to permit the Federal agency or pass-through agency broad and unfettered discretion to terminate grants. The Proposed Regulations appear to prioritize executive branch priorities without accounting for the scope or limitations of congressional intent when creating, empowering, or funding executive branch agencies.⁶³ The language proposed could also be interpreted so broadly as to conflict with the general principle of contracting that grantees must consent to terms of the grant agreement, including the terms under which an agreement can be terminated.⁶⁴

C. The Proposed Regulations Burden Parent Organizations, Not Just Researchers

In this proposed regulation, § 200.206(b), focusing on risk review, has been heavily revised with new subsections added. Currently, § 200.206(b) provides the categories that should be taken into account during a risk review: the applicant's financial stability, the quality of management systems, the applicant's management of other Federal awards, audit reports and findings, and ability to implement requirements effectively.⁶⁵ The proposed regulation revises the consideration of an applicant's performance history and adds new items including "History of questionable practices" and "Memberships and affiliations," broadening the risk assessment beyond the scope of Federal awards and their management.⁶⁶ These revisions are likely to substantially burden if not categorically restrict research into LGBT communities.

⁶² Proposed § 200.340 *et seq.*, Proposed § 200.340(a)(2), 91 Fed. Reg. 32258; c.f. 2 C.F.R. § 200.340 (2026).

⁶³ See Jared P. Cole & Daniel T. Shedd, *Organizing Executive Branch Agencies: Structure and Delegations of Authority*, CONG. RSCH. SERV. (May 5, 2025), <https://www.congress.gov/crs-product/R48523> (citing Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., for the proposition that "agencies are creatures of statute" and "possess only the authority that Congress has provided." 595 U.S. 109, 117 (2022); however, the authors do distinguish specific allocations of executive power, such as lump-sum appropriations, citing for example *Lincoln v. Vigil*, 508 U.S. 182, 192–93 (1993) (explaining that an agency's allocation of funds from lump-sum appropriations are "committed to agency discretion")); See also Eloise Pasachoff, *Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut-Off*, 124 Yale L.J. 248 (2014).

⁶⁴ In a recent case discussing Spending Clause legislation, Supreme Court Justice Neil Gorsuch wrote for the majority: "Time and again, our precedents have stressed the centrality of consent to this field." See *Landor v. La. Dep't. of Corrections & Pub. Safety*, 609 U.S. ____ (2026).

⁶⁵ 2 C.F.R. § 200.206(b).

⁶⁶ Proposed § 200.206(b)(2), 91 Fed. Reg. 32249.

Under proposed part (b)(2)(iv), grantees of federal awards will be evaluated based on their “record of managing previous and current Federal awards,” including the positive or negative outcomes of that research.⁶⁷ This could chill exploratory research if the outcomes have not been “positive” or replicable as defined by the administration.

Part (b)(2)(vii) calls attention to an applicant’s history of “questionable practices,” which include what the Proposed Regulations describe as “non-replicable” and “highly misleading” studies.⁶⁸ The same “questionable practices” provision also encompasses alleged inconsistencies with other laws, including nondiscrimination and constitutional protections.⁶⁹ Read in conjunction with the other provisions of the Proposed Regulations, these terms appear broad, vague and highly subjective.⁷⁰ For example, these provisions could be understood to permit denial of funding where researchers have previously examined the effects of gender-affirming care, bias or discrimination, and disparities affecting LGBT sub-populations like LGBT people of color or LGBT immigrants, particularly if findings conflict with the subjective viewpoints of the current administration. These sections also apply to “the applicant or its staff,” which raises a question as to the scope of the proposed regulation; this section could be interpreted to apply to research activity outside of the specific grant application and could even implicate research broader than that which is exclusively within the control of the applicant.

Part (b)(2)(viii) is proposed to include “membership in or affiliation with” other organizations that “violate federal law, undermine public safety or national security,” without further definition, as a marker of increased risk.⁷¹ Although the research discussed herein should not empirically trigger this subsection, the vagueness of the provision leaves open the possibility of broad interpretation. This section may also have the effect of tying grant outcomes for a particular research project to outcomes for a parent or affiliated organization. This could have a broad and devastating chilling effect on universities and other research organizations if research involving SOGI that is conducted by one entity can be used as a basis for denial of funding for unrelated research being conducted by an affiliated entity.

IV. The Proposed Regulations Are Likely Conflict with Multiple Provisions of Law

It is likely that several sections of the Proposed Regulations, if not the Proposed Regulations categorically, may conflict with the Administrative Procedure Act (APA), the First and Fifth Amendments to the U.S. Constitution, the Constitution’s guarantee of Separation of Powers, and other provisions of law.

⁶⁷ Proposed § 200.206(b)(2)(iv), 91 Fed. Reg. 32249.

⁶⁸ Proposed § 200.206(b)(2)(vii)(B), 91 Fed. Reg. 32249. The preamble cites to Restoring Gold Standard Science, Exec. Order 14303, 91 Fed. Reg. 22601 (May 29, 2025); 91 Fed. Reg. 32200.

⁶⁹ Proposed § 200.206(b)(2)(vii) (C).

⁷⁰ For example, the new proposed language addressing peer review could be in conflict with this provision, as it could reduce reproducibility of federal funded studies. *See* discussion of Proposed § 200.205(d), *supra*.

⁷¹ Proposed § 200.206(b), 91 Fed. Reg. 32250.

The APA governs the regulation-making procedures that federal agencies must follow, and grants federal courts oversight over all agency actions.⁷² The APA's provisions are designed to ensure due deliberation and fairness in agency actions.⁷³ Described by the senator who co-sponsored the bill as “a bill of rights for the hundreds of thousands of Americans whose affairs are controlled or regulated,” the APA ensures public transparency, input, and accountability in the rulemaking process.⁷⁴ Courts reviewing agency actions (such as proposed regulations) under the APA will examine the agency’s justification to ensure it is not, inter alia, “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁷⁵ Courts may also find agency action unlawful when they are “contrary to constitutional right, power, privilege, or immunity,” or “in excess of statutory jurisdiction, authority, or limitations...”⁷⁶ Pursuant to the Supreme Court decision in *Loper Bright v. Raimondo* (2023), agency interpretations of statutory authority are no longer afforded deference when their actions are subject to judicial review.⁷⁷

Recent litigation challenging actions by the administration suggest that funding restrictions like those in the Proposed Regulations may exceed the President’s powers and conflict with other statutory or Constitutional rights. For example, in *San Francisco AIDS Foundation v. Trump* (N.D. Cal. 2025), a coalition of LGBT-serving organizations challenged actual and prospective termination of their federal grants under several executive orders, including 14168.⁷⁸ Plaintiffs successfully moved for a preliminary injunction on Fifth Amendment Equal Protection, First Amendment, and Separation of Powers claims.⁷⁹ On Equal Protection grounds, the Judge reasoned that the government’s purpose under Executive Order 14168 – “disapproval of transgender people” – was “facially discriminatory” and could not survive even the most deferential standard of scrutiny.⁸⁰ On First Amendment grounds, the court reasoned that the funding conditions related to “gender ideology” were a form of viewpoint discrimination, which was unlikely to survive Constitutional inquiry.⁸¹ Finally, the court found that with respect to some of the federal grants at issue, Plaintiffs had sufficiently alleged facts to show a Separation of Powers violation.⁸² The district court extensively examined other aspects of the funding terminations pursuant to Executive Order 14168 and other Executive Orders,

⁷² 5 U.S.C. §551-9; see also *Summary of the Administrative Procedure Act*, U.S. ENV’T PROT. AGENCY (July 9, 2025), <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act>

⁷³ *United States v. Mead Corp.*, 533 U.S. 218, 230 (2001) (quoting *Smiley v. Citibank (S.D.)*, N.A., 517 U.S. 735, 741 (1996)).

⁷⁴ Virginia Huth, Celebrating the 75th anniversary of the Administrative Procedure Act, U.S. GEN. SERV. ADMIN. (June 11, 2021).

⁷⁵ 5 U.S.C. § 706(2)(A).

⁷⁶ 5 U.S.C. § 706(2)(B); 5 U.S.C. § 706(2)(C).

⁷⁷ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

⁷⁸ Order Granting in Part and Denying in Part Motion for Preliminary Injunction, *San Francisco AIDS Foundation et al., v. Trump*, Case No. 25-cv-01824-JST (N.D. Cal. June 9, 2025); c.f. *Nat’l Urb.League v. Trump*, No. CV 25-471 (TJK), 2025 WL 1275613, at 3 (D.D.C. May 2, 2025).

⁷⁹ *Id.*

⁸⁰ *Id.* at 25-26.

⁸¹ *Id.* at 30-31.

⁸² *Id.* at 48.

including the scope of the terminations and the potential impact outside of the specific grants being terminated. In summarizing the decision, the judge opined that “[w]hile the Executive requires some degree of freedom to implement its political agenda, it is still bound by the Constitution.”⁸³

Other cases may be instructive. In a separate case dealing with grants terminated under Executive Order 14168, a Maryland district court granted a preliminary injunction after finding that the plaintiffs were likely to prevail on claims that the termination of grants by the National Institutes of Health pursuant to Executive Order 14168 likely violated the Equal Protection component of the Due Process Clause of the Fifth Amendment.⁸⁴ In a related case, *Rhode Island Latino Arts et al., v. Nat’l. Endowment for the Arts*, plaintiffs challenged the application of Executive Order 14168 to grantmaking by the National Endowment for the Arts (“NEA”).⁸⁵ The district court judge ordered summary judgment to the plaintiffs on several grounds: first, that the NEA’s notice that it would apply the executive order to grant determinations was a viewpoint-based restriction on private speech in violation of the First Amendment; and second, that the NEA’s enforcement of the executive order violated the APA because it was in excess of statutory authority, arbitrary and capricious, and because the action violated a Constitutional right (First Amendment Free Speech).⁸⁶

In light of the above case developments, and the historic body of laws surrounding the exercise of executive power, it is likely several provisions of the Proposed Regulations could be struck down as currently written. Provisions of particular concern include (but are not limited to):

- § 200.205(b) of the proposed regulation outlines a pre-issuance review process which explicitly categorizes “the notion that sex is a chosen or mutable characteristic” as well as “any other initiatives that... promote anti-American values” on behalf of the applicant to be reasons for denial of federal awards.⁸⁷ As discussed in *San Francisco AIDS Foundation* and *Rhode Island Latino Arts*, courts may consider this grant eligibility condition to be a viewpoint restriction in violation of the First Amendment.

⁸³ *Id.* at 2.

⁸⁴ Memorandum Op., *Am. Ass’n for Hum. Rights v. Nat’l. Inst. of Health*, No. 25-cv-01620-LKG (D. Md. Aug. 14, 2026). The district court also held in favor of the Plaintiffs on a claim under Section 1557, which incorporated the “Sex” nondiscrimination requirement of Title IX of the Education Amendments. *Id.* at 21. However, it is unclear whether the court would continue to apply the same rationale in light of the recently issued decision in *West Virginia v. B.P.J.*, which held that a ban on transgender athletes participating in girls’ and women’s sports did not violate Title IX. *West Va. v. B.P.J.*, 609 U.S. ____ (2026) (No. 24-43).

⁸⁵ Memorandum and Order, *Rhode Island Latino Arts et al., v. Nat’l. Endowment for the Arts*, 1:25-cv-00079-WES (D. R.I. Sept. 19, 2025).

⁸⁶ *Id.* at 30, 38, 40. Notably, the district court in this case ruled against the Plaintiffs on their Fifth Amendment Due Process Clause argument that the action was unconstitutionally vague. *Id.* at 40.

⁸⁷ Proposed § 200.205(b)(2)(ii), 91 Fed. Reg. 32249.

- § 200.205(b)(1) of the Proposed Regulations reads as follows: “Discretionary awards must, where applicable, demonstrably advance the President's policy priorities.”⁸⁸ While the President is allowed to express priorities through rulemaking, all such activities must be within the Presidents statutory or Constitutional authority, and must not conflict with existing provisions of law.⁸⁹ The provision in the Proposed Regulations could potentially conflict with First Amendment or Separation of Powers requirements.
- § 200.206(b) potentially expands the scope permissible grant considerations, by considering an applicant’s history of “questionable practices” that may include “[d]iscredited or non-replicable studies published by the applicant or its staff,” and “the applicant’s membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security...”⁹⁰ These conditions are vaguely defined. In *San Francisco AIDS Foundation*, the district court emphasized the Supreme Court’s reasoning in *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, that “570 U.S. 205, 214 (2013) that “‘a funding condition can result in an unconstitutional burden on First Amendment Rights’ if the condition ‘seek[s] to leverage funding to regulate speech outside the contours of the program itself’” and “where the government has ‘placed a speech condition on the *recipient* of the subsidy rather than on a particular program or service,’ that condition can violate the First Amendment.”⁹¹
- § 200.300(b)(1-3) states that federal funding will be cut off “to the maximum extent permitted by law” if being used to promote “DEI” / “DEIA” or “gender ideology.”⁹² As the district court reasoned in *San Francisco AIDS Foundation*, such provisions may be found to violate Free Speech protections under the First Amendment and Equal Protection protections under the Fifth Amendment to the U.S. Constitution. In fact, the district court judge reasoned that where grant provisions commanded the action to terminate funding related to “gender ideology” in contradiction with existing statutes, the defense could not rely on the qualifier “to the maximum extent required by law” as a marker of a general directive.⁹³

⁸⁸ Proposed § 200.205(b), 91 Fed. Reg. 32249.

⁸⁹ 5 U.S.C. § 706(2)(C); *See also* *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) (Holding that the President may not take possession of steel mills via executive order in absence of any statutory or constitutional authority to do so) (“The President’s power, if any, must stem either from an act of Congress or from the Constitution itself.”).

⁹⁰ 91 Fed. Reg. 32249-32250.

⁹¹ *San Francisco AIDS Foundation et al., v. Trump*, *supra* note 78 at 26-27.

⁹² § 200.300(b), 91 Fed. Reg. 32253.

⁹³ *San Francisco AIDS Foundation et al., v. Trump*, *supra* note 78 at 47-48.

- § 200.300(b)(3) categorizes gender-affirming care for those under the age of 19 as “chemical and genital mutilation” and prevents the use of federal funds any purpose related to such treatments, including research, citing Executive Order 14187.⁹⁴ Several cases have been filed challenging the termination of funds under this executive order.⁹⁵ For example, in *Washington et al v. Trump*, a challenge to funding cut-off pursuant to Executive Orders 14168 and 14187, the district court reasoned that, because Congress has not enacted legislation to authorize the suspension or termination of funds related to gender-affirming care, the actions violated the Separation of Powers guarantee of the Constitution.⁹⁶ The district court also found a violation of the Equal Protection component of the Due Process Clause of the Fifth Amendment.⁹⁷

V. Conclusion

Research on LGBT communities, including sub-populations such as transgender and nonbinary people, LGBT immigrants, and LGBT people of color, has demonstrated unique characteristics, needs, and disparities. Federal funding has made much of that research possible. Because LGBT people make up a substantial portion of the U.S. population, it is crucial that the U.S. government continue to fund and support research among these community members. However, the Proposed Regulations have the potential to severely curtail or prevent this necessary research from happening. They codify funding restrictions that have been challenged in court and may be found both unconstitutional and in violation of the Administrative Procedure Act because they exceed the scope of the executive branch’s authority, are arbitrary and capricious, and conflict with Constitutional rights. Accordingly, we request that OMB and the additional agencies named herein reconsider the devastating impact the Proposed Regulations may have on research in the U.S. and recommend that OMB and the additional agencies wait to see the outcome of the litigation challenging similar and related funding restrictions before promulgating final rules.

⁹⁴ Proposed § 200.300(b)(3), 91 Fed. Reg. 32253.

⁹⁵ See e.g. *PFLAG, Inc. v. Trump et al.*, 1:25-cv-00337-RDB (D. Md.); *State of Washington et al., v. Trump*, 2:25-cv-00244-LK (W.D. Wash. Feb. 02, 2025). This case is currently on appeal with a decision pending from the Ninth Circuit. *State of Washington et al., v. Trump*, 25-1922 (Ninth Cir. argued March 5, 2026).

⁹⁶ *State of Washington et al., v. Trump*, (W.D. Wash. Feb. 02, 2025), *supra* note 95, at 23.

⁹⁷ *Id.* at 46.

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