



## **COMMENT ON OMB REGULATION FOR FEDERAL FINANCIAL ASSISTANCE**

The Stand Up for Science Foundation (SUFS) is issuing our comment on the proposed Rule “Regulation for Federal Financial Assistance” (OMB-2026-0034) posted on May 29, 2026, proposing to revise parts of the OMB Guidance for Federal Financial Assistance located in title 2 of the Code of Federal Regulations (CFR) (the Rule).

### **Executive Summary**

As further discussed here, the Rule is fundamentally flawed, internally inconsistent, and will expose the government to numerous, expensive and time consuming lawsuits that could halt its implementation. It introduces language that violates free speech rights and will distort empirical observations to conform with political ideology. It makes assertions of biological realities that conflict with the real, lived experiences of humans. It will force decoupling of the United States from our foreign partners, and position the recipients of federal grants in ways that increase the risk of national security incidents. It conflicts with legislative prohibitions on the introduction of restrictions on foreign collaborations.

Our comment is not exhaustive; rather, it seeks to highlight significant ways in which language in the proposed regulation is fundamentally flawed and should be withdrawn.

### **About the Stand Up for Science Foundation**

SUFS is a non-profit 501(c)(3) founded in 2025 whose mission is to works to educate the public about science and science policy, protect scientific integrity in our public institutions, strengthen accountability, and ensure that evidence-based science drives policies that serve the people.

Our experience includes expertise in drafting, negotiating, and commenting on federal regulations and laws, navigating the Legislative Referral Memorandum process managed by the Office of Management and Budget (OMB), experience with export control restrictions for large international collaborations, involvement in regulatory discussions of trade negotiations, direct experience managing compliance with the Wolf Amendment in the Office of Science and Technology Policy, drafting the research security requirements established under National Security Presidential Memorandum 33<sup>1</sup> and the CHIPS and Science Act of 2022,<sup>2</sup> extensive knowledge of the activities of

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<sup>1</sup> <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-united-states-government-supported-research-development-national-security-policy/>

<sup>2</sup> <https://www.congress.gov/bill/117th-congress/house-bill/4346>

governments like the People's Republic of China in classified and unclassified settings, and drafting the current restrictions on collaboration between U.S. government entities and the Russian Federation.<sup>3</sup>

Our staff have extensive experience with implementing federal research regulations inside the government as well as navigating similar requirements (and their effect on U.S. researchers) that have been implemented by foreign governments. Likewise, we have consulted with organizations with experience in federal litigation in the development of this comment.

## Key Concerns

### 1) **Disparate Impact theory restriction violates free speech rights and is at odds with empirical reality<sup>4</sup>**

Section 200.218 of the Rule prohibits using Federal Awards to promote or support theories of disparate-impact liability. Disparate-impact liability creates liability for practices that have a disproportionately adverse effect on protected groups, even if the practices are facially neutral and lack discriminatory intent. Such practices and effects remain widespread.

Categorically prohibiting all awards to activities that support disparate liability theory plainly violates the free speech rights of researchers and other federal grantees. They must be allowed to go where the facts lead them. The Rule will force facts to be ignored and fabricated. Further, Senior administration officials have gone on the record that the National Institutes of Health “absolutely must” continue supporting research “that advances the health and well-being of minority populations.”<sup>5</sup>

The Rule could be viewed as extending to the results of studies, forcing individuals to alter their results or conclusions to not fall afoul of the Rule. Likewise, it is unclear how the recipient of a federal grant would prevent others from drawing a conclusion based on the result of a federally funded study that acknowledged that different outcomes exist in different populations<sup>6</sup> when the other individual looks for evidence that might support a disparate impact claim. As written, the Rule appears to create a significant warping effect on the

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<sup>3</sup> <https://bidenwhitehouse.archives.gov/ostp/news-updates/2022/06/11/guidance-on-scientific-and-technological-cooperation-with-the-russian-federation-for-u-s-government-and-u-s-government-affiliated-organizations/>

<sup>4</sup> This includes research previously published by senate-confirmed political appointees currently serving in this administration: <https://pubmed.ncbi.nlm.nih.gov/34390487/>

<sup>5</sup> <https://www.statnews.com/2025/08/01/nih-director-jay-bhattacharya-shifting-dei-record/>

<sup>6</sup> <https://www.sciencedirect.com/science/article/abs/pii/S0277953624000832>

speech of individuals and organizations to comply with the law, including the rejection or intentional silencing of empirical reality.<sup>7</sup>

Such a restriction could also be seen as preventing organizations from collecting the type of statistical information the Supreme Court established as necessary for disparate impact claims to succeed in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*.<sup>8</sup>

2) **Lack of evidentiary basis for banning awards not tied to “the biological reality of sex”**

Rule sections 200.205 and 200.300 prohibit funding awards “that deny the biological reality of sex or the sex binary in humans.”

The existence of significant variation in human chromosomal arrangements beyond male “XX” or female “XY” is well-established in the medical literature, including the extent to which the expression of specific genes at certain points in human development results in the manifestation of characteristics that do not conform to the regulation’s strict assertion of a sex binary. If the government were to look exclusively at biological determinants of sex in humans, it would be forced to recognize the multitude of conditions like XY complete gonadal dysgenesis<sup>9</sup> (where an individual is born with XY chromosomes yet develops female reproductive structures) exist and adjust accordingly. Such conditions can also have significant impacts on biological outcomes, such as the ability of an individual presenting as female to reproduce.<sup>10</sup> The assertion of biological reality contained in the rule is completely arbitrary.

The Supreme Court has already held in *Bostock v. Clayton County*<sup>11</sup> that discrimination on the basis of sexual orientation that does not conform to a sex binary is impermissible under Title VII. Likewise, Title IX of the Education Amendments of 1972 “prohibits discrimination based on sex in education programs and activities that receive federal financial assistance.”<sup>12</sup>

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<sup>7</sup> Again, see research co-authored by Dr. Jay Bhattacharya, currently serving as Director of the National Institutes of Health and Acting Director of the Centers for Disease Control and Prevention. <https://www.ahajournals.org/str/doi/10.1161/CIRCULATIONAHA.110.976811>

<sup>8</sup> <https://supreme.justia.com/cases/federal/us/576/519/>

<sup>9</sup> <https://medlineplus.gov/genetics/condition/swyer-syndrome/#synonyms>

<sup>10</sup> <https://my.clevelandclinic.org/health/diseases/swyer-syndrome>

<sup>11</sup> [https://www.supremecourt.gov/opinions/19pdf/17-1618\\_hfci.pdf](https://www.supremecourt.gov/opinions/19pdf/17-1618_hfci.pdf)

<sup>12</sup> <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination>

3) **Eliminates the “Fundamental Research Exclusion” for export controls for all federal research and development:**

Section 200.220 of the Rule introduces explicit restrictions on cooperation with foreign entities. The fundamental research exclusion protects research that is intended to be published and widely shared broadly within the research community provided that researchers have not accepted restrictions for proprietary or national security reasons.<sup>13</sup> All major scientific organizations rely on this exemption, and many of the nation’s top research institutions do not accept such restrictions.<sup>14</sup>

In accepting a federal award, 200.220 inherently introduces restrictions on dissemination and access that would disqualify research funded by the federal government from the fundamental research exemption. This could expose a vast amount of government research to new restrictions far beyond the intent of the Rule, undermine significant U.S. government investments (including Congressional appropriations and authorized funding) while placing additional burden on the State Department and Bureau of Industry and Security due to a significant increase in licensing activities. This would also significantly increase the cost and timeline (beyond project viability) associated with international collaborative activities supported by Congress while undermining legislation currently being proposed by the House Majority.

Additionally, the restriction on publication costs and open access fees in the Rule (200.461) could also be viewed as a restriction on the publication of federal research results, as it would prohibit publication in Open Access journals. Such access restrictions instituted by the Federal government could disqualify research activities from protection under the Fundamental Research Exclusion.

4) **Introduces new national security and safety risks**

Section 200.220 of the Rule introduces broad collaboration restrictions between foreign entities, including likely restrictions with the Chinese government and other governments. Some of these restrictions are likely to introduce new national security challenges. We have outlined some of those challenges in what we assess to be likely scenarios that may arise based on staff experience, including observations of how organizations interact with federal regulations in crisis scenarios.

**Scenario 1: Risks Involving Malign Foreign Objects in Outer Space:** Due to increasing space traffic, a U.S. government-funded satellite supported by a

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<sup>13</sup> <https://exportcontrol.lbl.gov/research-technology/fundamental-research-exclusion-exemption/>

<sup>14</sup> <https://research.mit.edu/security-integrity-and-compliance/export-control/key-concepts/fundamental-research>

federal award receives a conjunction data message (a notification of a potential collision or close approach between two space objects) involving a satellite funded by the People's Republic of China or Russian Federation. Under the update to 200.220, the U.S. operator appears to be prohibited from contacting the PRC partner to coordinate proper avoidance maneuvers. This would require the U.S. partner to unilaterally execute an avoidance maneuver, which could increase the risk of collision with the foreign satellite if not coordinated with the foreign partner while depleting fuel reserves on the federally-funded satellite.<sup>15</sup>

Given the behavior of certain foreign governments' space programs, and in particular with past attempts by the PRC Government to put the Office of Science and Technology Policy (OSTP) and NASA into noncompliance with the Wolf Amendment (such as the Chinese Embassy calling every phone line linked to OSTP in 2021 in what is best described as diplomatic trolling), it is possible (and even likely) that other governments may attempt risky orbital maneuvers with the objective of disrupting federally-supported space assets.

Given the increasing reliance of the U.S. government on commercial and other third-party satellites, the rapid expansion of the number of satellites in orbit, the number of existing conjunction data messages issued by Space-Track.org involving PRC satellites (based on prior knowledge gained in our previous positions), and the fact that a collision cascade could create unacceptable hazards in the orbital environment, the impact of 200.220 coupled with the rapid expansion of objects in outer space<sup>16</sup> could include the introduction of unacceptable risks to national security and the commercial space industry.<sup>17</sup>

**Scenario 2: Security Incidents in Contested Waters:** Similarly, if a U.S. research vessel operating in the South China Sea supported by a federal award were informed by a PRC patrol that they are operating in contested waters, the U.S. vessel may now be prohibited from responding to the Chinese vessel or de-escalating the situation, increasing the risk of a security incident.

**Scenario 3: Weather, Ocean, or Land Hazards Create Risk to U.S. Interests, Abroad:** Another common scenario, especially given hazards common to the Western Pacific ocean, would include ocean sensors or satellites detecting a storm, tsunami, or other hazard that might impact U.S. citizens or business interests in a foreign country, with the restrictions on foreign collaboration preventing scientists from taking action to mitigate such risks.

## 5) **Inconsistency with the CHIPS and Science Act international collaboration allowances**

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<sup>15</sup> <https://www.independent.co.uk/space/china-nasa-satellite-space-junk-b2860614.html>

<sup>16</sup> <https://spacenews.com/china-files-itu-paperwork-for-megaconstellations-totaling-nearly-200000-satellites/>

<sup>17</sup> <https://www.nsf.gov/mps/updates/jason-report-impacts-large-satellite-constellations>

As noted previously, Rule section 200.220 introduces broad collaboration restrictions between foreign entities, including likely restrictions with the Chinese government and other governments. These restrictions conflict with existing law.

Section 10632(d) of the CHIPS and Science Act<sup>18</sup>, which defines explicit carveouts for permitted collaborations with covered foreign entities, including “research projects or programs that involve open and reciprocal exchange of scientific information, and which are aimed at advancing international scientific understanding and not otherwise controlled under current law.”

The proposed Rule would preclude the participation of American scientists in high-value scientific activities. For instance, the presence of a PRC researcher in a multilateral research consortium could force federally funded researchers to abandon the collaboration, excluding the United States from access to the results or other benefits associated with the discovery. It is unreasonable to assume that foreign partners might be willing to collectively back out of collaborations in fields like physics, where it is not uncommon for collaborations to involve over a thousand international partners, or in collaborations where the U.S. government is not a dues-paying member that involve countries that include both U.S. allies and the Chinese government.<sup>19</sup>

Were this Rule previously in place, American scientists would have been unable to contribute to Nobel Prize-winning efforts like the discovery of the Higgs Boson particle<sup>20</sup> or images of black holes using the Event Horizon Telescope,<sup>21</sup> which was released during the first Trump Administration. It seems unlikely that OMB or the Department of Justice considered such scenarios when drafting the Rule.

### Request for 60 Day Extension of Comment Period

It is highly probable that the proposed Rule introduces significant new challenges for the recipients of federal awards that are likely to conflict with existing law, increase administrative burden, and introduce new challenges to national security and public wellbeing.

To better predict such unintended impacts, SUFS requests that OMB extend the comment period by 60 days so that the impacts of this wide-ranging proposed Rule

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<sup>18</sup> <https://www.congress.gov/bill/117th-congress/house-bill/4346/text>

<sup>19</sup> <https://www.skao.int/en/partners>

<sup>20</sup> <https://cerncourier.com/a/major-agreement-made-with-china/>

<sup>21</sup> <https://www.scmp.com/news/china/science/article/3005420/chinas-astronomers-helped-capture-photo-black-hole-couldnt-use>

might be better understood, and allow additional time for E.O. 12866 meetings where individual members of the public and other organizations can present their views.