COMMENTARY: OPPOSITION TO OMB PROPOSED MODIFICATIONS TO REGULATIONS FOR FEDERAL GRANTS

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The following is my personal opinion and does not represent the view of the Planetary Science Institute and does not make any representations of behalf of the Planetary Science Institute.

I have been an active planetary scientist for 45 years, funded by federal awards primarily from NASA. I have served on numerous NASA advisory groups and panels, including advising on the grant selection process of a number of NASA programs. I have been a community advocate for federal funding of planetary-related grant programs and have testified before Congress on the subject. I have been a community leader, chairing the Division for Planetary Sciences of the American Astronomical Association. For more than 20 years, I was CEO of the Planetary Science Institute, during which I built it into one of the largest private employers of planetary scientists in the world. I retired from that position a little more than a year ago. As a "soft-money" institution, PSI depends upon being successful in the competitive acquisition of grant and contract awards. In that position I became quite familiar with the Uniform Guidance (2CFR200) and its antecedent regulations. I am consequently alarmed by the OMB proposal "Regulation for Federal Financial Assistance" and feel that it should be withdrawn or otherwise rejected in its entirety.

This proposal reflects anti-American and anti-science (equivalent to anti-God) values, it reduces the return on investment in federally funded science to the American taxpayer, it encourages corruption, it decreases transparency to the public, it cripples important international collaborations, and it is fundamentally uninformed and poorly crafted. The consequences to organizations like PSI and American science in general will be devastating. Even if a new Administration comes in two years from now and reverses everything, the damage will continue to be felt for years to come, and perhaps be irreversible.

Comments on some specific proposed provisions (not exhaustive) reinforce this perspective (provisions listed in the above Federal Register link):

§200.202(a) **Elements of program design.** ***The Federal agency must design a Federal program and create an Assistance Listing before announcing the Notice of Funding Opportunity. A Federal program must be designed:***

(iii) Align with administration policies and priorities;

For the American people to get the maximum return on their tax dollar investment in science programs, federal grant programs cannot be designed around politics reflected in administration policies and priorities as articulated to date. This is regardless of party.

§200.202(c) **Limitations on authorized use of Federal program funds.** ***Federal agencies must develop Federal programs and implement activities under those programs in a manner that ensures compliance with all applicable restrictions on the use of Federal funds, including ensuring that Federal program funds are only used for public purposes of support authorized by law. For example, Federal agencies must ensure that Federal program funds are not used to promote, subsidize, or support political activities or initiatives unrelated to authorized public purposes, such as political advocacy, lobbying, or any attempt to influence legislation, elections, or government officials. Federal programs should be developed to avoid even the appearance of supporting such prohibited activities to ensure that all activities performed under Federal awards are authorized by law.***

This is largely redundant with existing agency policies and practice. However, "appearance" is a completely suggestive term that is inappropriate here. A program that "appears" by someone to be supportive of a prohibited activity that is in fact authorized by Federal law should be allowed.

§200.202(d) **Eligibility of nonprofit organizations.** ***To the extent permitted by law, when a Federal agency determines it is necessary to restrict eligibility among different types of nonprofit organizations, the notice of funding opportunity must specify the applicable Internal Revenue Code designation for eligible nonprofit organizations (for example, 501(c)(3) organizations) and expressly state that other types of nonprofit organizations not specifically identified are ineligible (for example, 501(c)(4) organizations). When eligibility is restricted among different types of nonprofit organizations, the Federal agency is not required to list every type of ineligible organization, but should ensure that eligibility information is sufficiently clear for prospective applicants. Federal agencies should consider exercising such discretion when warranted by statute, program objectives, or risk considerations.***

Existing cost-principles in the Uniform Guidance prohibit any organization of any type from using funds from a financial assistance award for unallowable activities like political advocacy (this includes indirect costs generated by such an award). Different types of non-profit institutions should not be excluded per se.

§200.202(e) **Eligibility of entities for research and development awards.**

§200.202(e)(1) To the extent permitted by law, Federal awards for research and development must be made to entities that are organized under the laws of the United States, a State, or Tribal government. Federal agencies may not issue Federal awards for research and development to foreign entities except where expressly authorized by statute or where a compelling interest exists for the agency's mission, the administration's priorities, and for the United States, as determined by the agency's senior appointee.

An agency senior appointee (aka political officer) should not have the authority to authorize federal awards for research and development to foreign entities otherwise statutorily ineligible for such awards. The judgement of Congress should govern.

§200.202(e)(2) When designing research and development programs, and evaluating applications, Federal agencies must apply a domestic-first framework, under which international elements may be included only if the Federal agency determines that such elements are justified, consistent with program objectives, and in the national interest of the United States.

"Domestic-first" is very vague and provides no guidance. "International elements" is overly vague and would even include collaborations on a no-exchange-of-funds basis. In 200.205(e)(5), "international elements" would include an American scientist attending a scientific conference outside of the US, making all this exceptionally burdensome. This does not appreciate that American science has and continues to greatly benefit from international collaborations.

§200.202(e)(3) Federal agencies should consider, as applicable, the following factors when determining whether an international element is warranted:

(i) The extent to which the proposed international element is necessary to achieve the scientific or technical objectives of the project and is integral to the scientific rationale of the program.

(ii) The extent to which the international element provides access to unique expertise, facilities, data, study populations, environmental conditions, or other resources that are not reasonably available within the United States.

(iii) The likelihood that the proposed international element will enhance the scientific enterprise of the United States, including through the development of new knowledge, methodologies, technologies, or collaborative networks that can be applied domestically.

(iv) The adequacy of the facilities, equipment, personnel, and administrative capacity at the international site, or of any foreign entities that would perform work, to carry out the proposed scope of work under the Federal award at a level comparable to that of a domestic recipient performing similar activities.

Assessments of foreign element value (if legal) are already part of the peer-review process. Outside of the peer-review process, this would add a lot of unnecessary burden to the agencies.

§200.202(e)(4) Nothing in this paragraph (e) prohibits the participation of foreign entities as subrecipients or contractors under a research and development award made to an eligible U.S. entity.

This is already governed by statute.

§200.202(e)(5) For the purposes of this section, international elements may include performance of activities under the Federal award outside of the United States or by a foreign entity.

This is overly broad and would include normal research related activities such as participating in scientific conferences and other meetings outside of the US.

§200.202(f) **Multi-year awards.** ***When consistent with program objectives, and subject to restrictions in law, Federal agencies are encouraged to design Federal programs to allow for multi-year awards with budget periods longer than one year, rather than issuing separate notices of funding opportunities on an annual basis. Such Federal awards must be designed to comply with all applicable funding limitations and must not be administered in a manner that would result in a violation of the Antideficiency Act.***

The vast number of federal grant awards (certainly by NASA and NSF) are multi-year. Of course, this means that notifications of awards are necessarily made prior to the appropriation of funds within most of the years of an award and agencies necessarily make their best guesses as to how much funding would be available in these future years. However, the agencies had long had the authority to cancel or modify awards as circumstances require. For instance, because of an unexpected funding shortfall, NASA in the past has reduced existing grant awards by a given percentage and had even announced that notifications of awards to be funded were to be rescinded (causing much consternation at the time!).

§200.204(a) **In general.** ***The Federal agency must publicly announce funding opportunities for all discretionary awards. As appropriate and consistent with authorizing law, funding opportunities may allow for open competition, limited competition, or selection on a non-competitive basis. See the definition of*** **discretionary award** ***in § 200.1. In developing notices of funding opportunities (NOFOs) for discretionary awards, Federal agencies must:*** **In general.** ***The Federal agency must publicly announce funding opportunities for all discretionary awards. As appropriate and consistent with authorizing law, funding opportunities may allow for open competition, limited competition, or selection on a non-competitive basis. See the definition of*** **discretionary award** ***in § 200.1. In developing notices of funding opportunities (NOFOs) for discretionary awards, Federal agencies must:***

> ***(1) Post the NOFO on*** **Grants.gov.** ***A Federal agency head (or designee) may approve exceptions to this requirement when the agency determines that publicly announcing an opportunity would pose a risk to national security or is in the national interest of the United States. The Federal agency may either post the entire notice or a link to the entire notice;***

Exempting grant competitions from public notice for "a risk to national security" or being "in the national interest of the United States" is extremely problematic and invites corruption. While one could imagine a narrow carve-out for national security exception when export control laws may be involved, "national interest" is so broad that it invites corruption by allowing limiting knowledge of a competition to favored entities.

(2) Require applicants to apply using* Grants.gov*, unless a program specific exception is expressly authorized by Federal statute or approved by the Federal agency head (or designee)

NASA utilizes the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES), which has been developed over decades. Only a small percentage of proposals are submitted through Grants.gov. From my discussions with NASA officials over time, problems with Grants.gov include the inability to communicate to proposers through Grants.gov (like NSPIRES emails) and its inability to properly handle International Traffic in Arms Regulations (ITAR).

§200.205 **Federal agency merit review of proposals.**

§200.205(a) **In general.** ***Unless prohibited by Federal statute, the Federal agency must design and execute a merit review process of applications for all discretionary awards. See the definition of* discretionary award *in § 200.1. The objective of a merit review process is to select recipients most likely to be successful in delivering results based on the program objectives as outlined in § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with the written standards of the Federal agency. These standards should identify the number of people the agency requires to participate in the merit review process. The merit review process explained in this section, including the pre-issuance review described in paragraph (b) of this section, must be described or incorporated by reference in the applicable NOFO. The pre-issuance review described in paragraph (b) may form the basis of a decision not to select an applicant to receive a Federal award. See § 200.204 and appendix I to this part. The Federal agency must also periodically review its merit review process.***

§200.205(b) **Pre-issuance review.** ***As part of the merit review process, Federal agencies must perform pre-issuance reviews to ensure that Federal award proposals selected for funding are consistent with applicable law, Federal agency priorities, and the national interest. In doing so, Federal agencies heads must designate one or more senior appointees to conduct a pre-issuance review of all discretionary awards. As part of this pre-issuance review for discretionary awards, senior appointees (or their designee) must, as relevant and to the extent consistent with applicable law, apply the following principles when reviewing Federal award proposals:***

Subjecting federal award proposals to pre-issuance review by "senior appointees" (again, political officers) to ensure compliance with and the advancement of presidential policy priorities is completely adverse to making awards on the basis of scientific merit. It is soviet-style interference that makes support for the inferred principles underlying "gold standard science" a sham. "Gold standard science" as given in Executive Order 14303 is insufficiently detailed in its applicability to be used as a practical basis of assessment for any proposal as far as its science is concerned.

§200.205(b)(1) Discretionary awards must, where applicable, demonstrably advance the President's policy priorities.

Grant awards should never be political. This undermines the value to the American taxpayer of the science in which they are investing.

§200.205(b)(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

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

This is totally vague and wildly inappropriate (whose American values?). Implementation in other government areas has had ridiculous results (*e.g.*, scrubbing Enola Gay from government websites). The government at any time can bring action against any entity or person for which it has reasonable grounds that an illegal act has been committed. It is designed solely to encourage anticipatory compliance. In my opinion, this and other like sections promote anti-American values.

§200.205(b)(3) All else being equal, preference for discretionary awards should be given to institutions with lower indirect cost rates.

There should always be an assessment of cost-effectiveness and maximizing return on investment. Indirect cost is just a part of this. I have been an open critic of NASA removing consideration of this from its peer-review of grant proposals. Higher indirect cost rates often would translate to lower cost competitiveness, which tended to decrease awards to institutions with higher rates. Focusing on indirect cost rates alone undermines assessing the cost-effectiveness of an award. Subject matter experts comprising peer review panels are in the best position to make this assessment.

§200.205(b)(4) Discretionary awards should be given to a broad range of recipients. Research grants should be awarded to a mix of recipients likely to produce immediately demonstrable results and recipients with the potential for potentially longer-term, breakthrough results, in a manner consistent with the notice of funding opportunity.

This is nonsensical. The range of recipients has no predictable bearing on results and breakthroughs. Prospects for immediately demonstrable results and potentially longer-term breakthroughs are best assessed by the peer review process examining individual proposals. Given a group of similarly scientifically meritorious and cost-effective proposals as an outcome

of the peer review process, it would then make better sense for an agency to make the programmatic decision to award a diversity of institutions to support the expansion of those institutions involved with the programs (thereby increasing the health of those programs).

§200.205(b)(5) In performing activities under Federal awards, applicants should commit to complying with administration policies, procedures, and guidance respecting Gold Standard Science.

Proposed administration policy here already demonstrates a lack of support for Gold Standard Science (which, frankly is already "standard" across the science community).

§200.205(b)(6) Discretionary awards should include benchmarks for measuring success and progress towards relevant goals and, as relevant for awards pertaining to scientific research, a commitment to achieving Gold Standard Science. See also § 200.202(a).

Proposals already include benchmarks for achieving identified scientific goals and objectives, and their assessment is a standard part of peer-review.

§200.205(b)(7) To the extent institutional affiliation is considered in making discretionary awards, agencies should prioritize an institution's commitment to rigorous, reproducible scholarship over its historical reputation or perceived prestige. For science grants, agencies should prioritize institutions that have demonstrated success in implementing Gold Standard Science.

Institutional affiliation should not be considered in making discretionary awards except as a part of formal risk assessment. Scientific merit and cost-effectiveness as determined by peer-review should be the primary considerations in making an award. No standards are provided for determining what constitutes a commitment to "rigorous, reproducible scholarship", suggesting that prioritization on that basis will be arbitrary and capricious.

§200.205(c) **Procedure for pre-issuance review.** ***When conducting a pre-issuance review, senior appointees (or their designee) must not ministerially ratify or routinely defer to the recommendations of others, but must instead use their independent judgment when evaluating Federal award proposals.***

See response to §200.205(a)&(b). Senior Appointees are singularly incompetent to be a part of this process.

§200.205(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.***

This is historically ignorant. Peer review has always been advisory, but it has significant weight because these reviews are done ostensibly by subject-matter experts while program officers and other administrators have necessarily limited expertise. Therefore, program officers seek to be maximally informed about the merits of proposals and (in the past for NASA) their cost-effectiveness.

This is also internally inconsistent with the use of political officers (senior appointees) in the award process and the a priori discrimination among proposing institutions by their political standing with the government.

§200.205(e) **Agency discretion to reissue funding opportunities.** ***A Federal agency is not required to issue a discretionary award as a result of a NOFO if doing so would fund low-quality proposals or be inconsistent with the principles of this part. The agency may, at its discretion, repost a funding opportunity.***

To my knowledge, no federal agency has ever been required to issue a discretionary award if the response to a NOFO has inadequate merit, even if it means no awards are made.

§200.206 **Federal agency review of risk posed by applicants.**

§200.206(b)(2) Risk assessment. Items for consideration. In evaluating risks posed by applicants, the Federal agency should consider the following items:

> ***(vii)*** **History of questionable practices.** ***Based on publicly available and verifiable information, the applicant's record of:***
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> > ***(A) Plagiarism in studies or papers published by the applicant or its staff;***
> >
> > ***(B) Discredited or non-replicable studies published by the applicant or its staff;***
> >
> > ***(C) Engaging in activities or initiatives that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions against unlawful discrimination; or***
> >
> > ***(D) Engaging in activities or initiatives that are inconsistent with religious liberty laws.***

This is exceptionally overbroad. A grant to a large university could be denied because of an instance of plagiarism by a professor in an unrelated department. Who can discredit a study? How is replicability determined and who makes the determination? Who judges violations of civil rights laws? This administration is long on allegations and short on due process.

> ***(viii)*** **Memberships and affiliations.** ***Based on publicly available and verifiable information, the applicant's membership in or affiliation with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government;***

This is a violation of the 1st Amendment, and due process under the 5th and 14th amendments. The application would be arbitrary and capricious, targeting perceived political enemies.

§200.218. **Prohibition of using Federal awards to promote or support theories of disparate-impact liability.**

§200.218 (a) **General prohibition.** ***To the maximum extent permitted by law, Federal agencies must eliminate the use of disparate-impact liability in all contexts relevant to Federal awards. Disparate-impact liability imperils the effectiveness of civil rights laws by mandating, rather than proscribing, discrimination.***

§200.218 (b) **Federal agency and pass-through entity responsibilities.** ***To the maximum extent permitted by law, to avoid violating the Constitution and Federal civil rights laws, the Federal agency or pass-through entity must:***

> ***(1) Ensure that Federal awards are administered in a way that does not promote or support the use of disparate-impact liability. This includes ensuring, unless expressly required by law, that Federal awards are not used in support of disparate-impact studies, disparate-impact litigation, or other related activities; and that Federal award activities based on the assumed risk of disparate-impact liability are not allowed;***
>
> ***(2) Not adopt, issue, or enforce terms and conditions, guidance, or other policies and procedures related to Federal financial assistance that promote, support, or otherwise include the use of disparate-impact liability; and***
>
> ***(3) Review terms and conditions, guidance, and other policies and procedures related to Federal financial assistance to ensure alignment with this paragraph (b).***

§200.218 (c) **Recipient and subrecipient responsibilities.** ***To the maximum extent permitted by law, to avoid violating the Constitution and Federal civil rights laws, recipients and subrecipients must:***

> ***(1) Not adopt, issue, or enforce disparate-impact liability standards in administering programs or activities supported by a Federal award; and***
>
> ***(2) Review their policies and procedures related to Federal financial assistance to ensure alignment with this paragraph (c).***

§200.218 (d) **Exception for analysis for internal use.** ***Nothing in this section prohibits a recipient or subrecipient from conducting statistical or demographic analysis for internal program evaluation, research, or other purposes, provided that Federal award funds are not used for conducting such analysis, and the results of such analysis are not used in connection with or applied to activities under the Federal award, such as:***

(1) Treating individuals unequally based on federally protected characteristics, such as race or sex, regardless of individual strengths, effort, or achievement; or

(2) Adjusting activities or performance under the Federal award based on theories, or the assumed risk of, disparate-impact liability.

§200.218 (e) **Definition of disparate-impact liability.** ***For the purposes of this section,*** **disparate-impact liability** ***means a theory under which a facially neutral policy or practice (for example, a merit-based employment policy or practice) gives rise to an automatic or near-insurmountable presumption of the existence of unlawful discrimination on the basis of federally protected characteristics (such as race or sex) where there are any differences or disparities in outcomes (for example, disproportionate effects) among different races, sexes, or similar groups. Under a theory of disparate-impact liability, this presumption would apply even if there is no facially discriminatory policy or practice, there is no discriminatory intent involved, and equal opportunity is provided. Discriminatory intent is irrelevant in a disparate-impact claim. Disparate-impact liability effectively mandates consideration of federally protected characteristics, such as race or sex, and incentivizes racial balancing, contrary to principles of equal treatment and merit-based opportunity.***

The rules against using federal funds to promote or support theories of "disparate-impact liability" in programs and projects are highly polemical and vague. It is not clear what is being covered. Excluding all demographic analysis in federally supported research is absurd. For instance, the development of effective education techniques would likely have important demographic correlations. Likewise for medical treatments.

As the CEO of a non-profit science institution, I can say that I have never seen any evidence of one racial, sexual, or other group having intrinsic capabilities superior or inferior to another. However, there is great benefit in science of maximizing the diversity of the workforce engaged in that activity and that actions to advance that are not necessarily in conflict with principals of "equal treatment and merit-based opportunity". There is also a historical record of actual discrimination against groups in educational and other resources that has minimized their participation in various areas of science. So, preferentially making investments to increase their opportunities to participate in those areas of science is of great value in building a more vibrant and productive workforce without at all undermining any standards of excellence (science is a process by which excellence is always rewarded).

§200.220 **Prohibition of using Federal funds for covered foreign collaborations.**

§200.220 (a) **General prohibition.** ***Except as provided in paragraph (c) of this section, Federal funds may not be obligated or expended by a recipient or subrecipient to support a bilateral or multilateral collaboration, agreement, program, or activity with a covered foreign country or covered foreign entity.***

This is, in a word, insane.

In this day and age, science is a highly international, collaborative activity. Almost every NASA mission, for instance, has foreign instruments and foreign science collaborators. The US often provides instruments on foreign missions and have scientists participating on them. This is a means of accomplishing far more science for the investment of American tax dollars than would be possible if we were limited to US only missions and collaborations.

This flows from the "Wolf Amendment" which restricts NASA dollars from being used in support of bilateral collaborations with China. This restriction, first passed in 2011, has long outlived its usefulness. China today is achieving accomplishments in space that exceed our accomplishments (they will likely return a sample from Mars before the US, and they will likely return humans to the surface of the Moon before we do). We have good export control laws to protect our national security interests. It is US scientists that are losing the opportunities to participate in cutting edge work with China that other nations are embracing. Trying to expand this failing strategy to all nations in all combinations of collaborations will guarantee the quick decline of American science to second tier.

§200.220 (b) **Scope.** ***The prohibition in paragraph (a) of this section applies regardless of whether Federal funds are used for direct programmatic activities, research, technical assistance, travel, or indirect costs allocable to such collaborations.***

See above. This is just the nail in the coffin.

§200.220 (c) **Exceptions.** ***A Federal agency may authorize an exception to this section when expressly authorized by Federal statute or the Federal agency head (or designee) determines that the activity does not pose a risk to national security and is in the national interest of the United States.***

The international collaborations in American science are so pervasive that the amount of exception activity required would be amazingly burdensome for agencies. There is no demonstrated need for this.

§200.220 (d) **Definitions.** ***For purposes of this section:***

> ***(1)*** **Covered foreign country** ***means any country designated by statute, Executive order, or other Federal law as:***
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> > ***(i) A foreign adversary;***
> >
> > ***(ii) A country of particular concern; or***
> >
> > ***(iii) A country subject to sanctions or restrictions relating to national security, defense, or intelligence activities.***
>
> ***(2)*** **Covered foreign entity** ***means:***
>
> > ***(i) An entity owned or controlled by, or acting on behalf of, a covered foreign country;***

(ii) An entity identified as an "entity of particular concern" on a list maintained by a Federal agency pursuant to statute (including lists maintained under a National Defense Authorization Act or the International Emergency Economic Powers Act); or

(iii) An entity affiliated with the military, intelligence, or security services of a covered foreign country.

Restrictions on the use of federal funds for bilateral or multilateral collaboration with "covered foreign countries" or entities affiliated with them should be restricted to federal statutes. To extend this to executive orders, subject to political whims (e.g., like the targets of tariffs), would be unpredictable and significantly disruptive of ongoing and future international scientific collaborations. The chaos and damage to US science would be incalculable.

§200.300 Statutory and national policy requirements.

§200.300 (a) **In general.** ***The Federal agency or pass-through entity must manage and administer the Federal award to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution and applicable Federal statutes and regulations—including provisions protecting free speech and religious liberty, and those prohibiting discrimination—and the requirements of this part. Consistent with Federal law, this includes managing and administering the Federal award to ensure that no person otherwise eligible will be unlawfully excluded from participation in, unlawfully denied the benefits of, or otherwise subjected to unlawful discrimination in the administration of Federal programs, activities, projects, assistance, and services. The Federal agency or pass-through entity must communicate to a recipient or subrecipient all relevant requirements, including those contained in general appropriations provisions, and incorporate them directly or by reference in the terms and conditions of the Federal award and all subawards.***

Awardees can be sued and prosecuted under existing statues for engaging in discriminatory behavior and other illegal behavior. Since the release of Executive Order 14151, the federal government has been unable to provide any detailed guidance on how discrimination was to be determined, independent of a court of law, making implementation of the EO impractical. It could be reduced to a single statement: "obey all laws." However, it appears that the desire here is to keep things uncertain and ambiguous with the intent of motivating organizations to engage in "anticipatory compliance" which is in itself potentially discriminatory.

§200.300 (b) Limitations on authorized use of Federal award funds. In administering Federal awards, to the maximum extent permitted by law, the Federal agency or pass-through entity must ensure that Federal awards and subawards are not used to fund, promote, encourage, subsidize, or facilitate:

(1) "Diversity, equity, and inclusion" (DEI) or "diversity, equity, inclusion, and accessibility" (DEIA) policies, principles, or practices that violate any applicable Federal anti-discrimination laws. This includes racial preferences or other forms of racial discrimination used by the recipient or subrecipient that violate any applicable Federal anti-discrimination laws, including activities where race or intentional proxies for race

will be used as a selection criterion for employment or program participation. See also § 200.218;

(2) Gender ideology as defined in Executive Order 14168. Gender 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; or

(3) 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. The term "chemical and surgical mutilation" has the meaning provided in Executive Order 14187.

It is not possible for an organization (or agency) to ensure prospectively that behaviors will not be conducted when those behaviors are vague or poorly defined and no detailed guidance is given to how a given behavior is to be assessed in that context.

American science is harmed to the extent that its regulation is based on uninformed polemic.

§200.300 (c) **Non-discrimination against faith-based organizations.** ***Federal agencies and pass-through entities may not discriminate against or in favor of an applicant on the basis of the organization's religious character, affiliation, exercise, or lack thereof, nor on the basis of conduct that would not be considered ground to favor or disfavor a similarly situated secular organization. Faith-based organizations are eligible to apply for Federal financial assistance on the same basis as any other eligible organization. Applicants that meet all eligibility requirements may be considered for a Federal award under a notice of funding opportunity.***

Having served on numerous proposal review panels over decades and being familiar with what proposals from what organizations were funded, I have never seen an example of a scientifically meritorious proposal being denied funding because it came from a religious institution. Likewise, having had leadership positions in our professional societies, I have heard of no such discrimination – which would have been taken very seriously and acted on with dispatch.

§200.340 Termination and suspension.

§200.340(a) **Termination provisions.** ***The Federal award may be terminated in part or its entirety as follows:***

(2) **At the discretion of the Federal agency or pass-through entity.** ***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.***

Grant termination at the discretion of the Federal agency or pass-through entity is allowed "to the extent permitted by law" (which might also be considered "to the extent not excluded by law").

This is an unacceptable broadening of the current language “to the extent authorized by law”. The current language makes the arbitrary and capricious cancellation of grants more difficult.

§200.421 Advertising and public relations.

§200.421 (a)* In general.** ***Except as provided in paragraph (b) of this section, advertising and public relations costs (including those related to magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals) are unallowable under Federal awards and may not be charged directly, indirectly, or through another cost allocation methodology.

§200.421 (b)* Exceptions.** ***The only exceptions to paragraph (a) of this section are for advertising and public relation costs specifically required by Federal statute or advertising costs which are solely for:

> ***(1) The procurement of goods and services for the performance of a Federal award;***
>
> ***(2) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or***
>
> ***(3) Program advertising and outreach (for example, recruiting project participants) and other specific purposes necessary to meet the Federal award requirements.***

Of particular note is the removal of

[CURRENT] §200.421 (d) The only allowable public relations costs are:

> *(1) Costs specifically required by the Federal award;*
>
> *(2) Costs of communicating with the public and press about specific activities or accomplishments which result from the performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or*
>
> *(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities or financial matters.*

With this exclusion, the OMB proposes to ban communication with the public “about specific activities or accomplishments which result from the performance of the Federal award” and to ban “conducting general liaison with news media and government public relations officers” on matters of public concern. This undermines transparency altogether. The public has a right to know how their tax dollars are being used and with what results, and they have a right to know who is doing this work and to engage them directly or through media representatives.

§200.432 (b) **Conferences.** ***The costs for attending conferences are allowable only if participation in the conference is expressly approved by the Federal agency and included in the terms and conditions of the Federal award. See § 200.475.***

Requiring each and every conference be expressly approved by the federal agency and included in the terms and conditions of the award is impractical and very burdensome to the agency. While there are some regular and predictable annual conferences, few conferences (especially of topical interest that would be of significant value to a funded project) are known more than a year out. Some have much shorter notices. In a multi-year award (common for NASA and NSF), a previously unidentified conference in, say, Year 2, would require not only agency approval, but require the agency to make a formal award modification (a time consuming and cumbersome process). This alone would significantly increase program management costs, reducing the amount for awards. There is no need to modify the existing Uniform Guidance language on conferences.

§200.450(c)(1)(iv) **Lobbying.** ***Engaging in issue advocacy or public messaging that promotes or opposes a particular social, political, or public policy position unrelated to the statutory objectives or performance requirements of the Federal award, including messaging designed to influence public attitudes on matters not necessary to accomplish the purpose of the Federal award;***

The restriction against "issue advocacy or public messaging" that "promotes or opposes" certain kinds of political positions is very broad and subject to unknowable interpretation by the government. Researchers could be exposed to punishment for purely academic discussion of their research results without any intention of being controversial. Science often informs discussions of issues, but to suppress science in anticipation (correctly or incorrectly) of how it might inform a discussion of an issue is in opposition to our national interests.

§200.454(b). **Memberships, subscriptions, and professional activity costs.** ***Costs of the recipient's or subrecipient's subscriptions to business, professional, academic, and technical periodicals are unallowable.***

This reverses the existing language in the Uniform Guidance. Subscriptions by individuals and institutions to journals and technical periodicals are essential for much scientific research work. This reversal is nonsensical.

§200.461 Publication and printing costs.

§200.461(a) **In general.** ***Except as provided in paragraph (b) of this section, publication costs (including page charges, article processing charges (APCs), or similar fees such as open access fees for professional journal publications and other peer-reviewed publications) are unallowable under Federal awards. Printing costs (including distribution and general handling) are allowable.***

This is nonsense. It is critical that federally funded research be published in peer-reviewed journals and that costs associated with publications continue to be allowable. It is a critical

component of validating that research. It is essential for federal open access mandates and critical for transparency to the public.

§ 200.461 (b) **Exceptions.** ***The only exceptions to paragraph (a) of this section are for publication costs that are specifically required by Federal statute or approved in advance by the Federal agency on a case-by-case basis. A general requirement to make results publicly available must not be construed as authorizing publication costs.***

The numbers of publications (journal papers and conference abstracts) by NASA alone are in the thousands. Agency approval on a case-by-case basis would be wildly impractical.

Final Comment:

In my opinion, the damage to American science and the consequent damage to the American economy and position in the world that would arise from the implementation of these recommendations are not accidental. This was not written by ignorant buffoons who have no grasp of what is necessary to maintain what has been a vibrant accomplishment of the United States, making it the top destination for science in the world and driving our economy forward for more than 80 years. The damage is the thoughtful and thorough intent of its authors.