CONSORTIUM FOR CONSTITUENTS WITH DISABILITIES

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Submitted via www.regulations.gov &
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Russell T. Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Joel Savary
Andrew Reisig
Office of Federal Financial Management
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Proposed Regulation for Federal Financial Assistance [2 CFR §§ 200.205, 200.300, 200.340-200.343, 200.421, 200.450]
91 Fed.Reg. 32198 (May 29, 2026); RIN OMB-2026-0034-0001

Dear Director Vought and Messrs. Savary and Reisig:

The undersigned members of the Consortium for Constituents with Disabilities (CCD) Developmental Disabilities, Autism and Family Support, Health, Housing, Long Term Services and Supports, and Rights Task Forces, and allies, write to express our strong opposition to the Office of Management and Budget (OMB)'s Proposed Regulation regarding federal financial assistance. If finalized, the rule would alter the requirements for recipients of federal financial assistance from more than 40 federal agencies.

Among other harms, the rule would purport to prohibit recipients from using funds to promote or support "theories of disparate impact liability," or "diversity, equity, inclusion, and accessibility" (DEIA) policies, principles, or practices." But under federal disability rights laws, including Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), the Individuals with Disabilities Education Act (IDEA), Section 1557 of the Affordable Care Act, and the Fair Housing Act Amendments (FHAA), recipients of federal financial assistance must and should take numerous affirmative steps to identify, include, and serve people with disabilities on an equal basis with others. Recipients would struggle to follow the rule and comply with federal disability rights laws simultaneously. The rule should be discarded or substantially changed to take into account the affirmative obligations required by recipients subject to federal disability rights laws.

CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society.

Recipients of Federal Financial Assistance Are Covered by Federal Disability Rights Laws.

The proposed rule would cover recipients of federal dollars from more than 40 federal agencies, including the Department of Education, Department of Health and Human Services, Department of Housing and Urban Development, Department of Justice, and Department of Transportation. Grant recipients are covered not only by Section 504 of the Rehabilitation Act – which by its terms covers recipients of federal dollars – but by additional federal disability rights laws.

For example, public schools receive federal financial assistance and are covered by the ADA, Section 504, and the IDEA.[1] Healthcare systems, federally funded via Medicare and Medicaid (and often other federal dollars), are covered by the ADA, Section 504, and Section 1557.[2] Housing programs that receive federal dollars are covered by Section 504 and the FHAA, and aspects of housing are covered by the ADA.[3] State courts are covered by Section 504 and the ADA.[4] Transit systems are covered by Section 504 and the ADA.[5]

Nonprofit organizations that receive federal dollars are covered by Section 504 and typically also

[1] U.S. Dep't of Educ., Frequently Asked Questions: Disability Discrimination (June 15, 2026), https://www.ed.gov/laws-and-policy/civil-rights-laws/disability-discrimination/frequently-asked-questions-disability-discrimination; U.S. Dep't of Educ., About IDEA, https://sites.ed.gov/idea/about-idea/; Education Data Initiative, U.S. Public Education Spending Statistics (Feb. 17, 2026), https://educationdata.org/public-education-spending-statistics.

[2] U.S. Dep't of Health & Hum. Servs., Discrimination on the Basis of Disability (July 25, 2025), https://www.hhs.gov/civil-rights/for-individuals/disability/index.html; Juliette Cubanski, What Does the Federal Government Spend on Health Care?, KFF (Feb. 24, 2025), https://www.kff.org/medicaid/what-does-the-federal-government-spend-on-health-care/.

[3] U.S. Dep't of Hous. & Urb. Dev., Reporting Housing Discrimination, https://www.hud.gov/reporthousingdiscrimination; Yonah Freemark and Amanda Hermans, How Does the Federal Government Support Housing? An Overview of Federal Supports for Housing Finance, Construction, and Affordability, Urban Institute (Oct. 29, 2025), https://www.urban.org/research/publication/how-does-federal-government-support-housing.

[4] U.S. Dep't of Justice, State and Local Governments National Center for State Courts, https://www.ada.gov/topics/title-ii/; National Center for State Courts, Funding insights for treatment courts (Oct. 25, 2025), https://www.ncsc.org/resources-courts/funding-insights-treatment-courts.

[5] U.S. Dep't of Transp., Frequently Asked Questions on Incorporating Accessibility in Transportation Projects (Jan. 24, 2025), https://www.transportation.gov/grants/dot-navigator/frequently-asked-questions-incorporating-accessibility-transportation-projects; U.S. Dep't of Transp., Fed. Transit Admin., Americans with Disabilities Act (Apr. 4, 2025), https://www.transit.dot.gov/ADA; U.S. Dep't of Transp., Fed. Transit Admin., Grant Programs, https://www.transit.dot.gov/grants.

Title III of the ADA.[6] Many nonprofit organizations support disabled people in accessing the programs and services of entities covered by federal disability rights laws.

These are just examples. Extensive sectors of society are made up of federally funded entities subject to federal disability rights laws.

<u>The Proposed Rule Is Overly Broad and Would Implicate Federal Disability Rights Laws That Require Affirmative Steps to Ensure the Inclusion of Children and Adults with Disabilities</u>.

By its terms, the proposed rule would prohibit recipients from using funds to promote or support "theories of disparate impact liability," or "'[d]iversity, equity, and inclusion' (DEI) or 'diversity, equity, inclusion, and accessibility'' (DEIA) policies, principles, or practices."

The proposal describes "disparate impact liability" broadly to include the idea that a "facially neutral policy or practice" that causes disparities in outcomes may be unlawful discrimination. It describes "disparate impact liability" as an approach to nondiscrimination that "mandates consideration of federally protected characteristics," regardless of the intent of the entity, and is thereby "contrary to principles of equal treatment."[7]

OMB's proposed prohibitions would cause massive confusion regarding recipients' compliance with federal disability rights laws because "consideration of federally protected characteristics" (that is, disability) is exactly what these laws require. Specifically, recipients must take affirmative steps to include children and adults with disabilities. The following representative affirmative steps required by federal disability laws demonstrate this principle:

- The obligation of states and public school districts under the IDEA to identify children with disabilities who need special education (Child Find).[8]

- The obligation of states and public school districts under the IDEA and Section 504 to provide children with disabilities with access to a free and accessible public education in the least restrictive environment (FAPE), including by:

    - Providing eligible children with disabilities an Individualized Education Program (IEP) that sets out required services and supports.[9]

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[6] U.S. Dep't of Justice, Guide to Disability Rights Laws (Feb. 28, 2020), https://www.ada.gov/resources/disability-rights-guide/; National Council of Nonprofits, Advocating for Federal Spending: A Practical Guide for Nonprofits (2026), https://www.councilofnonprofits.org/advocating-federal-spending-practical-guide-nonprofits.

[7] The proposed rule provides that prohibited DEI and DEIA are those that "violate any applicable Federal anti-discrimination laws." But this category would be uncertain to recipients, particularly given other provisions in the rule including the definition of "disparate impact."

[8] 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111.

[9] 20 U.S.C. § 1414(d)(2); 34 C.F.R. § 300.320.

  - Conducting and paying for evaluations of eligible disabled children.[10]
  - Providing all students with disabilities accommodations and supports needed to ensure access to FAPE.[11]

- The obligation of entities covered by federal disability laws to provide reasonable accommodations and reasonable modifications to people with disabilities.[12]

- The obligation of entities covered by Section 504, Title II of the ADA, and Section 1557 to ensure effective communication with members of the public with disabilities.[13]

- The obligation of entities covered by Section 504, Titles II and III of the ADA, and Section 1557 to provide services in the most integrated setting appropriate to the needs of the person with a disability.[14]

- The obligation of entities covered by Section 504, Titles II and III of the ADA, the IDEA, and Section 1557 to ensure that new construction and alterations comply with federal access standards.[15]

OMB must revise the rule to take such obligations into account. It must clarify that recipients of federal dollars that serve people with disabilities – virtually every recipient – must continue to comply with federal disability rights laws.

Last year, the District of New Hampshire reviewed and blocked a state law that barred schools and public entities from engaging in "diversity, equity, and inclusion," which was defined as including any program, training, or policy that "classifies individuals" based on a protected characteristics "for the purpose of achieving demographic outcomes, rather than treating individuals equally under the law." The prohibitions contained in the New Hampshire law substantially mirror those in the proposed federal rule here.

The federal judge enjoined the anti-DEI state law on several bases, including because it conflicts with federal laws that require individualized treatment of people with disabilities, including the affirmative obligation to provide reasonable accommodations under Section 504 and the ADA, and the IDEA's requirements, including Child Find and the provision of an IEP to guarantee

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[10] 20 U.S.C. §§ 1414(a)(1), (2), 1415(b)(1); 34 C.F.R. §§ 300.301, 300.303, 300.502.

[11] 29 U.S.C. § 794(a); 34 C.F.R. § 104.33.

[12] 29 U.S.C. § 794(a); 42 U.S.C. §§ 3604(f), 12112(b)(7), 12131(2), 12132, 12182(b)(2)(A)(ii), 18116(a); 24 C.F.R. § 100.204; 28 C.F.R. §§ 35.130(b)(7), 36.302; 29 C.F.R. § 1630.9; 34 C.F.R. § 104.44; 45 C.F.R. §§ 84.68(b)(7), 92.205.

[13] 29 U.S.C. § 794(a); 42 U.S.C. §§ 12131(2), 12132, 18116(a); 28 C.F.R. § 35.160; 45 C.F.R. §§ 84.77, 92.202.

[14] 29 U.S.C. § 794(a); 42 U.S.C. §§ 12132, 12134(b), 12182(b)(1)(B), 18116(a); 28 C.F.R. §§ 35.130(d), 36.203, 41.51; 45 C.F.R. §§ 84.76, 92.207(b)(6).

[15] 20 U.S.C. § 1404; 29 U.S.C. § 794(a); 42 U.S.C. §§ 12132, 12134(b), 12183, 18116(a); 28 C.F.R. §§ 35.151, 36.401-36.406, 41.58; 45 C.F.R. §§ 84.23, 92.203.

FAPE. *Nat'l Educ. Ass'n-New Hampshire v. N.H. AG*, 806 F. Supp. 3d 166, 203-06 (D.N.H. 2025). The court wrote:

> [T]he ADA and Section 504 require covered entities to treat qualified individuals with disabilities differently than how they treat individuals without disabilities when such differing treatment is reasonable and necessary to permit individuals with disabilities to access the covered entity's programs or services. This necessarily entails that the covered entity "classif[y] individuals" based on one of the characteristics forbidden in the anti-DEI laws – disability "for the purpose of achieving demographic outcomes," i.e., providing disabled individuals with an opportunity to access the benefits of a covered entity's programs or services. The ADA and Section 504 require schools to treat disabled students differently in order to achieve disability-related outcomes, yet the anti-DEI laws forbid this same conduct.
>
> The ADA and Section 504 expressly require that covered entities treat children with disabilities differently than children without disabilities when differing treatment is necessary to prevent exclusion on the basis of disability. Indeed, the entire "point of an 'accommodation'" is that "children with disabilities receive different treatment." "By definition, any special 'accommodation' requires the [covered entity] to treat an [individual] with a disability differently, i.e., preferentially." Thus, "preferential treatment of [individuals with disabilities] is necessary to effectuate the ADA," and, by extension, Section 504.
>
> As with the ADA and Section 504, … the IDEA requires conduct that the anti-DEI laws forbid: classifying students based on disability in order to improve outcomes for students with disabilities. Schools must classify students with disabilities pursuant to the child find system, then develop individualized education plans for such students in order to guarantee a free, appropriate public education suited to their unique needs.

Id. (citations omitted).

This reasoning applies with equal force here. As written, the proposed rule would cause confusion and uncertainty regarding the obligation of recipients to comply with federal disability rights laws. Recipients could face conflicts between the rule's broad prohibitions and the affirmative requirements of federal disability law.

<u>The Proposed Rule Would Harm Nonprofit Recipients That Serve People with Disabilities</u>.

The proposed rule would cause disruption, uncertainty, and administrative burdens for nonprofit recipients that serve people with disabilities, making it much more difficult to serve constituents. The proposal would grant near-total discretion to the federal administration to withhold, suspend, or terminate grants, or change terms and conditions mid-performance without effective recourse for recipients. This would make it impossible for nonprofits serving disabled people to plan and provide programs and services over time.

The proposal adds terms and conditions to federal grants beyond those that Congress has authorized. For example, agencies could terminate grants if subrecipients "damage the reputation" of the federal government, a term that is not defined. The proposal directs agencies to consider a recipient's "affiliation" with other organizations that "undermine public safety or national security." Federal agencies could withhold discretionary grants indefinitely, if the agency determines that the grant does not "advance the president's policy priorities." These provisions would allow the administration to disqualify a recipient based on political disfavor rather than performance, contrary to Congressional direction.

As described, the proposed rule would prohibit recipients – including nonprofit recipients serving people with disabilities – from considering disparities in outcomes caused by "facially neutral policy or practice" related to "federally protected characteristics." But under federal law, recipients must accommodate disabled people and provide them with effective communication to ensure equal opportunity to benefit from their programs and services. The rule would harm recipients that seek to comply with federal disability rights law.

The proposal would impose ambiguous prohibitions regarding immigrants, people of color, transgender people, and languages other than English. Constituents with disabilities include immigrants, people of color, transgender people, and people with limited English proficiency. Disability nonprofits advance their missions by serving disabled people who have multiple statuses – and who may need more support. The proposed changes would force nonprofits to choose between applying for critical federal resources and their deeply held values and beliefs.

The proposal would prohibit "viewpoint discrimination" and the "suppression of speech protected by the First Amendment" at events and meetings sponsored or hosted by nonprofit recipients. Under this provision, recipients could not direct and maintain attention at events and meetings dedicated to providing services and supports for constituents.

The rules would impose unnecessary and burdensome administrative requirements on recipients that serve people with disabilities, including the elimination of "fixed amount" awards, and increased reporting and monitoring requirements. This would impose unnecessary administrative and financial reporting burdens on recipients.

The rule should not be finalized as written.

<u>The Comment Period for the Proposed Rule Should be Extended 90 Days</u>.

The text of the proposed rule raises many troubling questions regarding its lawfulness under the U.S. Constitution, including the separation of powers between Congress and the presidency, and federal statutory law.

The comment period should be extended by 90 days.

Sincerely,

Access Ready, Inc.
The Advocacy Institute
Alliance of and for Visually Impaired Texans (AVIT)
American Association of People with Disabilities
American Foundation for the Blind
American Music Therapy Association
American Network of Community Options and Resources (ANCOR)
American Physical Therapy Association
American Therapeutic Recreation Association
The Arc of the United States
ASK Resource Center, Inc.
Association for Special Children and Families
Association of Assistive Technology Act Programs
Association of People Supporting Employment First (APSE)
Autism Society of America
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
The Center for Learner Equity
Center for Medicare Advocacy
Center for Public Representation
CommunicationFIRST
Council of Parent Attorneys and Advocates (COPAA)
Deaf Equality
DeafBlind Community of Texas
Disability Belongs
Disability Rights Education and Defense Fund
Division for Early Childhood of the Council for Exceptional Children
Easterseals, Inc.
Family Voices National
Family Voices NJ
FIRSTwnc
Huntington's Disease Society of America
INCLUDEnyc
Justice in Aging
The Kelsey
Mississippi Coalition for Citizens with Disabilities
Muscular Dystrophy Association
National Association of Councils on Developmental Disabilities
National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD)
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network (NDRN)

National Down Syndrome Congress
National Family Association for DeafBlind
National Health Law Program
National PLACE
National PLAN Alliance (NPA)
National Rehabilitation Association
National Respite Coalition
Parent Education and Advocacy Leadership (PEAL) Center
Parent to Parent of Georgia
The Partnership for Inclusive Disaster Strategies
PAVE
PEATC (Parent Educational Advocacy Training Center)
SPAN Parent Advocacy Network
Stone Soup Group
United Spinal Association
World Institute on Disability