American Public Transportation Association

July 13, 2026

The Honorable Russell T. Vought, Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

The Honorable Sean P. Duffy, Secretary
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Comment to Federal Register Notice, OMB-2026-0034, Regulation of Federal Financial Assistance

Dear Director Vought and Secretary Duffy:

The American Public Transportation Association (APTA) represents the $102 billion public transportation industry, which directly employs more than 450,000 people and supports millions of private-sector jobs. Our members deliver essential daily mobility to tens of millions of Americans and rely on financial support from a variety of Federal grant programs, particularly from the U.S. Department of Transportation (DOT) and several of its modal administrations, including the Federal Transit Administration (FTA) and Federal Railroad Administration (FRA).

APTA submits this comment to highlight its serious concerns with the Office of Management and Budget's (OMB) Notice of Proposed Rulemaking (NPRM) proposing to amend 2 CFR 200 (the "Proposed Rule") and other parts of 2 CFR. OMB should withdraw the Proposed Rule or abandon its efforts to convert the Uniform Guidance into a binding regulation. Federal agencies must retain the discretion to adopt the Uniform Guidance as appropriate in their unique circumstances.

Public transportation infrastructure investment involves a complex, multi-layered financial system already governed by various Federal statutes, regulations, and guidance documents. Major infrastructure construction, capacity expansions, and state-of-good-repair work rely heavily on Federal funding. Executing these projects requires predictable, stable cash flow, which the Proposed Rule threatens. For decades, DOT has served as a reliable partner to recipients pursuing major public transportation infrastructure projects. These projects often require multi-year investments that can eclipse hundreds of millions, if not billions, of dollars. When undertaking such projects, public transportation agencies rely on the security provided by an obligated Federal grant to secure local matching funds, including through financing, and enter into long-term agreements. Similarly, thousands of private-sector construction

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companies, manufacturers, and other businesses rely on the certainty of Federal financial commitments to function as effective partners to public transportation agencies and passenger railroads.

APTA members take their role as stewards of taxpayer funds seriously. For decades, APTA and its members have worked closely with DOT and its modal administrations to manage Federal funds responsibly. DOT has instituted robust grant management processes and has applied the guidance in 2 CFR part 200 where appropriate.

APTA has serious concerns about the Proposed Rule and urges OMB to withdraw or substantially revise it for several reasons:

- The Proposed Rule exceeds OMB's statutory authority and would upend the longstanding relationship between DOT and its recipients and subrecipients for managing and executing public transportation infrastructure projects.

- The Proposed Rule's termination and suspension provisions and undefined policy-based grounds for termination will harm the public transportation industry's ability to deliver complex, critical projects that improve communities, create jobs, and support American families.

- The Proposed Rule will create unnecessary uncertainty about the reliability and continued availability of Federal funding and will destabilize private-sector operations and investments. Private businesses enter into long-term contracts with public transportation agencies based on the certainty of Federal commitments that, in turn, enable them to make hiring decisions, capital investments, and manufacturing commitments. They also are contrary to law for multiple reasons.

- The Proposed Rule imposes significant administrative burdens, including new payment justification requirements, E-Verify compliance obligations, and other grant administration changes, which could delay projects and increase costs.

- The Proposed Rule fundamentally shifts the Federal Government's approach to administering Federal financial commitments yet fails to account adequately for the substantial costs or identify any meaningful countervailing benefits that will result from the disruptive changes proposed.

- The compressed proposed implementation timeline will compound harmful consequences by rushing recipients to deploy untested, complex internal controls, creating greater financial risk.

For these and many other reasons identified below, APTA urges OMB to withdraw the Proposed Rule, or, at a minimum, make major modifications and clarifications before issuing a final rule by severing or modifying the Proposed Rule's most burdensome and unauthorized provisions.

I. The Proposed Rule Exceeds OMB's Statutory Authority and Will Upset the Productive Relationship Between DOT and Its Grant Recipients. [200.102, 200.106, 200.110]

APTA and its membership are concerned that the Proposed Rule would upend DOT's approach to Federal grantmaking and disrupt the longstanding productive relationship between DOT and public transportation agencies.

Congress empowered DOT to manage, regulate, and execute public transportation and infrastructure grants. Congress has expressly granted the Secretary of Transportation general authority to "prescribe terms for a project that receives Federal financial assistance under this chapter"[1] and "to issue regulations as necessary to carry out the purposes of this chapter."[2]

OMB's proposed amendment to Section 200.110 would subordinate Federal awarding agencies by asserting they may deviate from OMB's finalized uniform rules only if required by statute or granted express approval by OMB. This exceeds OMB's authority and conflicts directly with DOT's statutory grantmaking authority.

Congress' assignment of responsibilities to DOT makes good sense. APTA members' longstanding experience with DOT has resulted in a collaborative relationship that supports safe and effective public transportation operations and project delivery. Public transportation agencies, States, municipalities, and private-sector businesses have structured massive, multi-year infrastructure pipelines based heavily on the stability of DOT's implementation of grant procedures. The industry relies on DOT to vet any future financial guidelines to ensure they comport with the logistical and physical realities the industry faces. Mandates that do not account for those realities will hamper progress in DOT's and the public transportation industry's shared goals, rather than support sound financial management.

For these reasons, Congress limited the scope of OMB's authority to promulgating guidance, not issuing binding regulations, on grantmaking. OMB asserts that its centralizing authority over Federal financial assistance stems primarily from the Chief Financial Officers (CFO) Act, which authorizes it to "[p]rovide overall direction and leadership to the executive branch on financial management matters by establishing financial management policies and requirements."[3] OMB supplements its claim with the Federal Grant and Cooperative Agreement Act (FGCAA), which authorizes OMB to "issue supplementary interpretative guidelines to promote consistent and efficient use of procurement contracts, grant agreements, and cooperative agreements."[4]

Neither of these statutes provides OMB authority to preempt DOT's own statutorily conferred rulemaking authority over its grants or authorizes OMB to prescribe substantive national policy conditions that have no relation to financial accounting. The CFO Act authorizes OMB to "[p]rovide overall direction," not rulemaking authority, and only for "financial policies and requirements," not government-wide policy. Similarly, the FGCAA grants OMB authority only to provide "interpretative guidelines," again not binding regulation.

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[1] 49 U.S.C. § 5334(a)(1).
[2] 49 U.S.C. § 5334(a)(11).
[3] 31 U.S.C. § 503(a)(2). The CFO Act was the primary legal justification for the original promulgation of the Uniform Guidance. "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 78 Fed. Reg. 78590, 78608 (Dec. 27, 2013).
[4] 31 U.S.C. § 6307(1).

Congress knows how to confer rulemaking authority upon Federal agencies, and it has not done so through either provision. Indeed, OMB has previously acknowledged each agency's power to autonomously deviate from the Uniform Guidelines through its own rulemaking processes. That longstanding interpretation of OMB's authority is correct and should be upheld.[5]

OMB should either withdraw the Proposed Rule or abandon its efforts to convert the Uniform Guidance to a binding regulation by removing all text suggesting that the Proposed Rule binds other agencies and restoring references to nonbinding guidance of the type that Title 2 of the CFR has historically used. Alternatively, DOT could withdraw its delegation of authority to OMB and decline to adopt the Proposed Rule for its funding and financing awards. Federal agencies must retain the discretion to adopt the Uniform Guidance as appropriate in their unique circumstances.

II. The Proposed Rule Will Dramatically Increase Costs and Uncertainty for Public Transportation Agencies, Passenger Railroads, Private Businesses, and Projects Nationwide.

The Proposed Rule will have tremendous real-world consequences for all Federal recipients. Because of the size and complexity of the projects that public transportation agencies and passenger railroads undertake, APTA members have significant concerns about the practical implications of this Proposed Rule at virtually every stage of the grant process. Taken together, the changes proposed will impose substantial administrative and compliance burdens on public transportation agencies and increase the costs and uncertainty associated with their operations and capital projects.

A. <u>The Proposed Rule's Termination and Suspension Provisions and Policy-Based Grounds for Termination Will Cause Uncertainty, Financial and Operational Risk, Needless Delay, and Increased Costs for Major Public Transportation and Passenger Rail Projects. [200.331, 200.340(a)(1), 200.343(a)(1)]</u>

The Proposed Rule contains a series of provisions that will put Federal grants at risk based on subjective and undefined criteria, including:

- Allowing, in the proposed revisions to Section 200.340, a Federal awarding agency to terminate discretionary grant funding if the agency determines doing so is "in the interest of the Federal agency . . . 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*."[6]

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[5] Courts typically greet with skepticism any agency claim to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy. *Utility Air Regulatory Grp. v. EPA*, 573 U.S. 302, 324 (2014). By attempting this shift, OMB is seizing an enormous and transformative expansion of its regulatory authority without clear congressional authorization.

[6] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198, 32258 (proposed May 29, 2026) [hereinafter NPRM], NPRM § 200.340(a)(2). For ease of reference, where a section of the Proposed Rule is referenced, this public comment will simply note "NPRM," followed by the proposed section number.

- Imposing grant conditions unrelated to the core purposes of transportation grants—including requirements to ban diversity, equity, and inclusion (DEI) initiatives,[7] restrict disparate impact liability theories,[8] and establish viewpoint-based prohibitions on private entities' organization of expressive activities[9]—that may serve as a basis for grant suspension or termination.

- Conditioning Federal awards on recipients ensuring that subrecipients not act in a manner that could damage the "reputation" of the pass-through entity, Federal agency making the award, or Federal Government.[10]

- Empowering Federal agencies to suspend a Federal award for up to 90 days, with no appeal rights, if the agency determines that doing so is in the interest of the agency, and to terminate an award by providing only "[a] brief summary of the reason or reasons for finding that termination is in the interest of the Federal agency."[11]

The termination and suspension provisions will leave public transportation agencies and their private-sector partners at the mercy of ever-changing priorities that need not even be tied to the relevant funding statute. If these changes were adopted, a Federal agency could determine that an earlier award is simply inconsistent with present-day priorities and unilaterally terminate the award, without any statutory basis under the funding program or any actual violation of the grant agreement itself. That is inconsistent with the purpose of a full funding grant agreement, which, unusually among Federal instruments, commits the Federal Government to a schedule of future reimbursements. That commitment is what allows a project sponsor to execute construction contracts worth billions of dollars and what gives lenders and private-sector businesses the confidence to price their work at reasonable rates.

Practically, the mere threat—let alone the actual imposition—of termination or suspension creates significant operational and financial uncertainty and increases project costs.

- The risk of sudden suspension or termination will be priced into every construction project, every vehicle manufacturing project, and even routine capital projects, driving up costs. Public transportation agencies rely on multi-year awards to hire staff, enter into contracts, and deliver projects. Private-sector businesses enter into long-term contracts with public transportation agencies based on the certainty of their public-sector partners' Federal commitments. They cannot readily absorb the risk of potential termination of a contract on the discretion of an agency and not grounded in a contractor's performance or compliance. Stripping Federal commitments of their guarantees will impose an uncertainty surcharge on every Federally supported project, large and small, in the form of higher bids and financing costs, with no corresponding public benefit and to the detriment of taxpayers. On projects, every day counts, even a modest risk premium translates

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[7] NPRM § 200.300.
[8] NPRM § 200.218.
[9] NPRM § 200.219.
[10] NPRM § 200.332(i).
[11] NPRM § 200.341(c)(1).

into substantial public cost, and the threat of losing funding for even a week, much less months or forever, can cost projects millions of dollars.[12]

- The lack of a reliable, stable funding source from the Federal Government will also create significant downstream risk for the U.S. public transportation manufacturing industry. Transit vehicle manufacturers must make long-term investments in domestic production capacity, workforce hiring, supplier agreements, tooling, engineering, and inventory based on agencies' Federally funded procurement programs. These investments are made based upon the reasonable expectation that, after Congress appropriates funding and Federal agencies obligate grants, Federal commitments are reliable and will remain in place absent recipient noncompliance. When grants may be suspended or terminated based on evolving policy priorities, rather than statutory or contractual performance, manufacturers lose the certainty necessary to make those investments and cannot efficiently plan production or make long-term capital investment. The result is reduced investment, delayed production, higher financing and manufacturing costs, increased pricing risk, delayed or reduced hiring, and reduced willingness throughout the supply chain to commit resources to future public transportation procurements. Those impacts extend beyond individual manufacturers, to reach thousands of American jobs across vehicle assembly, component manufacturing, steel fabrication, electronics, HVAC systems, seating, accessibility equipment, and other critical domestic industries. Increased uncertainty regarding Federal funding weakens this industrial base precisely when national policy has encouraged expanded domestic manufacturing and resilient American supply chains.

- These proposed changes will also impede public transportation agencies from effectively raising the non-Federal funds they need to support their projects and operations. Because Federal transportation grants require a local match, State and local grantees often must access additional financing by issuing municipal bonds. Credit agencies like Moody's have already raised the alarm that the Proposed Rule's expanded termination and suspension discretion introduces greater risk for transportation infrastructure projects attempting to secure this necessary financing.[13] Moody's has specifically identified FTA's Capital Investment Grant program as particularly at risk because the municipal bonds for those projects are underwritten based on the availability of stable, multi-year Federal funding.[14]

- Similar concerns will make it difficult for agencies to enter into public-private partnerships. Private partners will identify the same risk of arbitrary grant cancelations as lenders and may be unwilling to contract with Federal funding recipients. The Proposed Rule therefore threatens to cut off innovation in project delivery and hamper private investment in infrastructure.

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[12] The National League of Cities has echoed these concerns, stating that "[i]f funding is withdrawn midway through construction, communities could be left with unfinished projects while taxpayers shoulder unexpected costs." Caitlin Devitt, *Cities, States Warn of Credit Impact from Proposed Federal Grant Rule*, THE BOND BUYER, July 9, 2026, https://www.bondbuyer.com/news/cities-states-warn-of-credit-impact-from-proposed-federal-grant-rule.

[13] Caitlin Devitt, *Moody's Warns Proposed Political Review of Grants a Credit Negative*, THE BOND BUYER, June 15, 2026, https://www.bondbuyer.com/news/moodys-warns-proposed-political-review-of-grants-a-credit-negative.

[14] *Id.*

- The Proposed Rule will also impose significant administrative burdens on pass-through entities. The proposed requirement forcing recipients to ensure that subrecipients not take reputation-damaging action is a poor fit for public transportation agencies who frequently serve as pass-through entities to nonprofit subrecipients who provide workforce, housing, law enforcement, and social services. Those subrecipients often independently engage in other activities unconnected to the Federal award. APTA members lack the capacity to monitor those other activities. Even if they had the capacity, they could not do so, because the Proposed Rule does not provide any objective way to determine what actions are reputationally damaging.

- APTA is also concerned about the similar risks created by the combination of the requirement to classify each downstream entity as a contractor or subrecipient and the ability of the Federal agency to terminate Federal awards for a failure to report subawards on SAM.gov.[15] APTA requests that OMB eliminate these requirements or clarify that termination is not an appropriate remedy for SAM.gov classification or reporting errors. At minimum, a reasonable cure period for good-faith misclassifications is essential.

- Moreover, the constant possibility of discretionary suspension or termination of a grant creates problems in the Proposed Rule's retention of the provision, currently at Section 200.343(a) and proposed at Section 200.343(a)(1), disallowing costs resulting from financial obligations incurred "in anticipation" of a suspension or termination. With that possibility, recipients will never know when otherwise prudent spending on a project could be suddenly recharacterized as spending in anticipation of a suspension or termination and disallowed. This underscores the need to withdraw the proposed discretionary suspension and termination provisions. If they are not withdrawn, then OMB should revise the Proposed Rule to allow all costs properly incurred before a termination takes effect.

Furthermore, these proposals exceed OMB and DOT's statutory authority and are contrary to multiple constitutional and statutory requirements:

- In addition to OMB's general lack of authority to issue binding regulations, OMB lacks the authority to enact many provisions of the Proposed Rule, including those related to reputation and the national interest, because they are unrelated to financial management. As stated previously, the CFO Act authorizes OMB to establish an overall direction for financial management policies and coordinate managerial systems. The scope of activities OMB seeks to regulate on behalf of the undefined "national" interest and the "reputation" of the Federal Government extend far beyond the oversight of general financial management matters authorized by Congress. Moreover, the secondary statute OMB relies on for its rulemaking authority, 31 U.S. § 6307, has no bearing because it merely grants the agency power to promulgate financial "guidance" to the other agencies in their grant award programs. Neither Executive Order 14,332,[16] nor the December 2, 2025,

[15] NPRM §§ 200.331, 200.340(a)(1).
[16] NPRM, 91 Fed. Reg. at 32203.

Department of Justice's Office of Legal Counsel opinion,[17] can supply OMB with authority that it does not have, because "an executive order is not 'law' within the meaning of the Constitution."[18]

- OMB cannot implement such conditions through DOT's authorities either, as recent case law confirms that DOT lacks that power. Federal agencies may not "condition disbursement of funds in part on grounds not authorized by Congress, but rather on Executive Branch Policy."[19] Congress has not authorized DOT to condition disbursement of funds on grounds related to DEI, and so DOT—and OMB, if it is executing authority delegated to it by DOT—cannot do so.[20] OMB's attempt to insert these terms contravenes separation of powers concerns recently highlighted by multiple courts.[21]

- These proposals also raise concerns under the Spending Clause of the U.S. Constitution. If the Federal Government intends to impose a condition on the receipt of Federal funds, it "must do so unambiguously," and the condition must bear a direct relationship or nexus to the "federal interest in particular national projects or programs."[22] But OMB has not defined the national interest or explained what actions may damage the reputation of the Federal Government. Conditioning continued reimbursement on such a pliable concept cannot demonstrate the nexus and clarity required of a Federal grant condition.

- The proposed expansion of termination and suspension rights may authorize the unlawful impoundment of congressionally appropriated funds. Under the Impoundment Control Act of 1974,[23] the Executive Branch may not unilaterally cancel, withhold, or delay the obligation of duly appropriated funds to substitute its own policy preferences for those of Congress. The proposal to allow Federal agencies discretion to terminate or suspend awards based on vague "national policy requirements" creates a mechanism for impermissible *de facto* programmatic impoundment.

APTA urges OMB to delete subsections (a)(2) and (e) of the proposed Section 200.340, which are incompatible with sound financial planning and the Federal mission of supporting transportation projects. At a minimum, OMB must add more definite standards and appeal and remediation processes. OMB should also modify the proposed Sections 200.331, 200.340(a)(1), and 200.343(a)(1) as described above.

B. The Proposed Rule Would Disrupt Grant Awards. [200.205(b), 200.206(b)]

The new pre-issuance reviews proposed in Sections 200.205(b) and 200.206(b), where a senior appointee must ensure awards are consistent with agency priorities and the national interest and the Federal agency must evaluate a recipient's risk based on a recipient's affiliations and "[h]istory of questionable practices,"

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[17] *Id.*
[18] *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 908 (D.C. Cir. 2024) (internal quotes omitted).
[19] *King County v. Turner*, 785 F. Supp. 3d 863, 886 (W.D. Wash. 2025).
[20] *Id.* at 888.
[21] *See, e.g.*, *id.*; *City of Fresno v. Turner*, No. 25-cv-07070, 2025 U.S. Dist. LEXIS 167189, at *10 (N.D. Cal. Aug. 27, 2025) (collecting cases); *City of Seattle v. Trump*, 808 F. Supp. 3d 1204, 1214–17 (W.D. Wash. 2025).
[22] *South Dakota v. Dole, 483 U.S. 203, 212 (1987).*
[23] Codified at 2 U.S.C. §§ 681–699.

is unnecessary, disruptive, and insufficiently clear. As just one example, the FTA's Capital Investment Grant program has supported high-quality major public transportation capital projects for decades.[24] These projects are subject to a rigorous review process pursuant to clearly defined factors set forth in statute and FTA guidance. By the time they are awarded, FTA has ensured that they are a sound and justifiable use of Federal money.

Proposed Sections 200.205(b) and 200.206(b)(2) will needlessly interfere with well-functioning existing processes and introduce uncertainty and potential disruption.

- Additional review threatens to delay the grantmaking process, jeopardizing the steady flow of funds to public transportation projects.

- Additional review is unnecessary, given that FTA already has existing procedures to ensure that discretionary grants are awarded to technically sound projects that advance the Federal Government's interests.

- The proposal may conflict with various Federal transportation statutes, including 49 U.S.C. § 5309(c)(1), to the extent that the Proposed Rule requires FTA and DOT to take into account factors beyond those that Congress directed.

- Various risk review factors—such as the history of "questionable practices" and membership in organizations that "undermine public safety"—are unclear, which will make it difficult for grantees to comply.

- Certain of the questionable practices referring to activities inconsistent with civil rights or religious liberty laws also raise concern insofar as they may penalize applicants for failing to predict changes in those laws or their interpretation.

- The potential for affiliates of a grant applicant to create reputational risks also presents a problem for public transportation agencies given their distinctive governance structures. Specifically, because many public transportation agencies are overseen by a board with members who are either elected or appointed by elected officials, those board members may engage in political and expressive activities entirely separate from their board service, protected by the First Amendment, and potentially required by virtue of their principal office or employment. Public transportation agencies should not be penalized for their board members' separate political activities.

- The use of indirect costs as a review factor is inapplicable in the public transportation context. Large and small agencies have different rates of indirect costs based solely on their size. Indirect costs are, to an extent, outside of the control of public transportation agencies. Additionally, FTA has historically approved overhead rates for FTA-funded capital projects, and the use of an FTA-approved rate should not hurt Federal recipients going forward.

[24] *See* 49 U.S.C. § 5309.

APTA urges OMB to delete Section 200.205(b) from any final rule and not to modify the existing risk review under Section 200.206(b)(2). As an alternative to deleting Section 200.205(b), OMB should add a binding timeline to the pre-issuance review and provide clear standards that align with those set forth in statute. OMB should also clarify that Federal formula funding programs, such as FTA's Formula Grants for Rural Areas, are exempt from the pre-award review provisions. As an alternative to not modifying Section 200.206(b)(2), OMB should add safe-harbor provisions protecting compliance with Federal law as it was interpreted at the time of the action, provide more specific definitions of activities that "undermine public safety or national security," and limit the risk assessment to exclude public transportation board members' activities outside of their board service.

C. The Proposed Limitations on Reimbursable Expenses Will Hamper Public Transportation Development and Likely Increase Costs. [200.432, 200.444, 200.450, 200.454, 200.461]

The Proposed Rule imposes new limits on reimbursable expenses that are particularly impactful to transportation infrastructure projects.

- By restricting professional development and general cost of government expenses and requiring that a Federal agency approve a specific event at the time of issuance of an award,[25] the Proposed Rule threatens to erode the technical capacity of public transportation agencies. It is impossible for a public transportation agency to predict at the time of the grant application which technical symposiums its engineers will benefit from several years after starting the project. By freezing professional development at the outset of a project, the Proposed Rule prevents agencies from adapting to new developments, degrading quality, safety, and cost-effectiveness.

- The Proposed Rule's restrictions on using Federal funds for general costs of government and advertising introduce a severe risk of cost-shifting onto pass-through entities.[26] For major public transportation projects, the line between a direct project administrative cost and a general government expense can be tough to distinguish. Delivering a multi-billion-dollar public transportation expansion requires extensive internal staff time from State and local government on activities such as environmental impact reviews, rights-of-way acquisitions, specialized zoning coordination, and continuous public engagement. APTA and its membership strongly believe these activities ought to be reimbursable under Federal grants and are concerned the Proposed Rule, as written, lacks clarity as to whether critical cross-governmental activities inherent to public transportation projects will be treated as non-reimbursable "general costs of government."

- Certain entities may be constituted specifically to deliver a particular project and may have general costs of government that are, fundamentally, attributable to a Federal project. OMB should clarify that such costs are allowable.

[25] NPRM §§ 200.432, 200.454.
[26] NPRM §§ 200.444, 200.461.

- The Proposed Rule's restrictions on the use of funds for communications with the public and State government threaten to sweep too broadly.[27] Public transportation agencies must regularly communicate with State agencies and the impacted public to implement Federally funded projects. Routine project and program coordination communications with either group could be classified as prohibited advocacy if they touch on State policy questions. The Proposed Rule offers no workable standard for distinguishing between communications supporting public transportation service and "public messaging." The broad prohibitions will, in practice, be harder to implement and less effective than the specific terms of the current Uniform Guidance.[28]

If Federal agencies refuse to reimburse standard expenses to keep public transportation projects compliant and on schedule, public transportation agencies risk being forced to absorb these massive staffing costs locally. This would create, in effect, an unfunded Federal mandate.

APTA therefore seeks modification and clarification of Sections 200.432, 200.444, 200.450, 200.454, and 200.461.

D. <u>The Proposed Rule Would Introduce New Bottlenecks into the Grant Reimbursement Process. [200.305]</u>

The Proposed Rule's attempts to modify existing FTA processes will introduce inefficiencies. After an FTA grant is executed, recipients operate on a strict reimbursement basis. Federal funds are drawn down via the FTA's Electronic Clearing House Operation (ECHO) system. Under the existing framework, ECHO allows grantees to request reimbursements for incurred eligible costs, with automated processing delivering funds to the grantee rapidly. Instead of reviewing justifications with each payment, FTA reviews backup documentation for expenses during triennial audits. The speed of the reimbursement is critical to maintain the cash flow needed to pay contractors, subcontractors, and workers on schedule.

OMB proposes to unnecessarily modify this efficient model by adding a new section 200.305, which could introduce two bottlenecks into the payment process.

First, Section 200.305 would require that all payment requests from non-State recipients include a "brief, written justification" describing the specific purposes and reward-related work for every single payment request.[29] The requirement to justify every payment could, if interpreted to require agencies to prescreen every reimbursement request, interfere with FTA's efficient and successful ECHO process. If FTA can no longer rely on its ECHO process, it will likely be unable to ensure the smooth flow of reimbursements to recipients, jeopardizing recipients' ability to pay contractors and subrecipients. APTA therefore requests that OMB clarify that the "brief, written justification" does not require manual review before a reimbursement is disbursed, to avoid jeopardizing relationships between agencies and their private-sector partners.

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[27] NPRM § 200.450(c)(1)(iv), (v).
[28] *See* 2 CFR § 200.450(c)(1).
[29] NPRM § 200.305.

Moreover, APTA sees potential capacity and redundancy problems in the requirement to justify each payment. If the justifications need not be more detailed than the justifications FTA requires in its triennial audits, then requiring them with each payment is duplicative and would upset an existing, well-functioning system. If OMB is seeking to implement stricter requirements, then APTA is concerned that many of its members do not have the administrative capacity to increase the amount of time they spend on justifying expenses. The NPRM fails to account for the impact on the accessibility of Federal grants to small agencies. The justification requirement should be withdrawn, or at a minimum clarified or modified to mitigate those impacts.

Second, the Proposed Rule would mandate that State recipients use the Department of the Treasury's Do Not Pay system or an alternative before payment disbursement to third parties.[30] The proposed new requirement ignores, however, that many FTA funding recipients already have strong procedures in place that do not rely on the Do Not Pay system in particular. Although the Proposed Rule states that alternative options may be acceptable, public transportation agencies need more clarity regarding acceptable options. Without guidance on what alternatives are acceptable, the option to use an alternative is not meaningful, because the risk of choosing an unacceptable alternative is too great.

APTA recommends that OMB modify Section 200.305 to eliminate these bottlenecks or make clear that existing FTA processes satisfy the new requirements.

E. <u>The Proposed Rule's E-Verify Mandates Are Unclear and Burdensome. [200.303]</u>

APTA likewise has concerns with the Proposed Rule's E-Verify mandates. The proposed revisions to Section 200.303 introduce requirements for recipients and subrecipients to participate in the Department of Homeland Security's E-Verify program. The application of this requirement to public transportation agencies introduces potentially significant bottlenecks and is not based on clear statutory authority.

Transportation infrastructure projects often rely on complex delivery structures involving many contractors and subcontractors, with hundreds or thousands of employees. If the requirement to participate in E-Verify to confirm the eligibility of all "contractors" is interpreted as covering numerous lower-tier subcontractors or suppliers, that burden could be massive. Moreover, the Proposed Rule shifts the burden of compliance monitoring onto public transportation agencies and prime contractors, rather than the Federal Government, which is charged with enforcing immigration law.

The problem is compounded by the scope of the mandate, which covers individuals "performing work . . . under a Federal award."[31] The Proposed Rule fails to define whether the E-Verify mandate applies solely to employees directly charging hours to the Federal grant, or if it applies to a recipient's entire workforce through commingled operations. Without precise definitions, risk-averse State agencies risk over-enforcing the provision, demanding E-Verify compliance from all tangential vendors and adding substantial administrative burden and cost to public transportation agencies and their projects.

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[30] NPRM § 200.303(g).
[31] NPRM § 200.303.

OMB should withdraw the proposed Section 200.303 because imposing broad E-Verify mandates is a significant policy, and not one that OMB has statutory authority to enact. At minimum, OMB should make clear that recipients are not responsible for monitoring E-Verify compliance of subcontractors,[32] and that only workers who work exclusively or predominantly on a Federal project are subject to the mandate.

F. The Prohibitions on DEI and Disparate Impact Liability Interfere with Statutory Mandates. [200.205, 200.218, 200.300]

In addition to lacking a lawful basis, the restrictions targeted at DEI or disparate impact liability in proposed Sections 200.205, 200.218 and 200.300 are overbroad. They ignore that Federal recipients are bound by statutory mandates. Already, recent regulatory changes have created substantial uncertainty in the public transportation industry, including with respect to planning requirements and routine monitoring of outcomes based on protected characteristics.

APTA members are bound by nondiscrimination law, along with statutes and regulations governing transportation planning. OMB's additional restrictions threaten to muddy the waters through prohibitions on amorphous concepts, making compliance with key civil rights laws more difficult.

The proposed prohibition on the use of funds to support DEI in Section 200.300(b) raises concerns for large public transportation agencies that conduct outreach and engagement efforts and partner with social service agencies to administer human services programs. OMB does not explain what it means to facilitate DEI practices or principles. Public transportation agencies that partner with social service agencies to administer housing assistance, homeless services, behavioral health, and public health programs use approaches tailored to the documented characteristics and needs of the populations the programs are authorized to serve.

OMB should therefore eliminate Section 200.218 and Section 200.205(b)(2), and either eliminate the references to DEI and DEIA in Section 200.300 or include in any final rule an express statement that culturally competent service delivery, language access services, and population-specific outreach are not prohibited by Section 200.300(b).

G. The Proposed Mandates Regarding First Amendment Activities Are Unclear. [200.219]

APTA seeks clarification regarding the proposed Section 200.219. Many APTA members are state actors bound by the First Amendment, and those APTA members take their responsibilities seriously. However, it is unclear whether the proposed Section 200.219 imposes requirements beyond that of the First Amendment.

If it does, the Proposed Rule imposes a burden on public agencies without any authorization for doing so. Notwithstanding the Federal Government's role in ensuring Federal grantees comply with civil rights law, including First Amendment protections, the First Amendment also prevents the Federal Government from

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[32] If OMB intends to impose such a requirement, it should permit recipients to monitor contractors' compliance through contractors' certifications, rather than through more intrusive and time-intensive means.

dictating others' speech policies. Nor does OMB have the statutory authorization to use Federal funding to promote speech beyond that which is constitutionally guaranteed.

APTA therefore requests that OMB, through additional explanation or the use of definitions or examples, explain what entities are "public" and "non-public," the authority for imposing speech mandates on non-public entities, the extent to which Section 200.219 reaches recipients' property unconnected to a Federal award, and what restrictions on expressive activities are permissible in the transportation context.

H. <u>Additional Provisions Require Substantial Modification.</u>

APTA has concerns with a number of other provisions in the Proposed Rule.

1. *The Conflict-of-Interest Provisions Are Overbroad and Unnecessary. [200.112]*

The proposed two-year conflict of interest restriction in Section 200.112 of the Proposed Rule reflects the pitfalls of setting government-wide policies without taking into account industry-specific needs. The proposed requirement to disclose former employees of a Federal agency ignores that those employees may have had no involvement with grantmaking in the Federal agency or the grant application within the applicant agency. This restriction could hamper recipients' ability to recruit qualified candidates from the Federal Government for key roles, including, notably, safety.

Those leaving Federal service are already bound by existing ethics policies that include conflict-of-interest restrictions. Those provisions are sufficient to ensure integrity in Federal grantmaking processes. OMB should not implement the additional two-year restriction. APTA requests that OMB remove or modify Section 200.112.

2. *The Proposed Rule's Prohibition on Certain Foreign Collaborations Presents Implementation Difficulties. [200.220]*

Section 200.220 of the Proposed Rule imposes a vague prohibition on Federal grantees that requires clarification. That section provides that "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." In the transportation context, Federal funds may be used by both recipients and contractors, because Federally funded transportation projects often involve complex procurement structures, including prime contractors, subcontractors, equipment manufacturers, technology providers, professional service firms, and suppliers of specialized rail components. If the prohibition also prohibits those counterparties from transacting with certain foreign entities, it could prove difficult to implement and monitor.

APTA therefore requests that OMB clarify that Section 200.220 does not bind contractors and vendors and does not impose monitoring requirements on recipients and subrecipients. In addition, APTA requests that the final rule include a reasonable implementation period to prevent disruption to ongoing procurements and projects.

3. *Recipients Should Not Be Required to Overhaul Internal Control Frameworks. [200.303(a)]*

The Proposed Rule eliminates references to "Standards for Internal Control in the Federal Government" and the "Internal Control-Integrated Framework" from Section 200.303(a). Those standards are widely recognized frameworks for internal controls that grant recipients, including APTA members, have relied on in designing their internal control systems. While APTA appreciates that the regulatory preamble allows Federal agencies and recipients to consider these frameworks as general reference points, to reduce the considerable uncertainty that recipients may face, APTA requests that OMB confirm within Section 200.303(a) that internal controls complying with these frameworks are sufficient, but not necessary, to meet that Section's requirements.

4. *The Provisions Regarding Private Causes of Action Would Undermine Established Dispute Resolution Procedures. [200.339(b)]*

APTA is concerned with revisions to Section 200.339(b) that would permit Federal agencies to cooperate with private causes of action against a Federal funding recipient. A Federal agency is invested in the success of a Federally funded project and in the enforcement of Federal law. While the Federal agency must be empowered to take action in response to a violation of Federal law or a grant agreement, it is improper for a Federal agency to work with third parties in a way that could undercut its contractual commitments to a Federal recipient. Moreover, the proposed provision contains no limits on the sharing of information that may have been provided to the Federal regulator with an expectation of confidence.

Federal agencies and recipients involved in disputes must adjudicate those disputes through the means set out in law and Federal grant agreements. Federal agencies should not be permitted to circumvent those procedures by supporting third parties. APTA therefore requests that OMB remove Section 200.339(b) from any final rule.

5. *The Prohibition on Fixed Amount Awards and Justification Requirements for Cost-Reimbursement Contracts Will Reduce Flexibility. [200.201, 200.320, 200.333]*

The prohibition on fixed-amount awards and subawards in the proposed revisions to Sections 200.201 and 200.333 and the "strong discourage[ment]" and justification requirement for cost-reimbursement contracts under Section 200.320 reduce important flexibility for Federal funding recipients. Public transportation agencies are aware of the incentives that cost-reimbursement contracts create for contractors, and nonetheless may choose to use such a contract where other considerations justify the risk. That choice should not be subject to Federal approval. Conversely, the ban on fixed-amount awards and subawards ignores that recipients may rely on fixed-amount awards and subawards for good reason, and that there are alternative ways to promote transparency and accountability. FTA ensures accountability through audits. Additional restrictions on fixed amount awards are unnecessary, or should at least be waivable with Federal approval.

Additionally, while APTA appreciates that the regulatory preamble notes that the restrictions on fixed-amount awards and subawards are not retroactive, APTA notes that a retroactive prohibition on cost-reimbursement contracts could necessitate complex renegotiations of existing third-party contracts. OMB should therefore withdraw the proposed restrictions on fixed-amount awards and subawards and on cost-reimbursement contracts, or, if it does not, clarify that the restrictions on cost-reimbursement contracts do not have retroactive effect, and allow fixed-amount awards and subawards with Federal agency approval.

III. The Unduly Rushed Proposed Implementation Timeline Heightens APTA's Practical Concerns.

The many practical harms of this Proposed Rule, as well as the confusion it will create, are compounded by the rushed proposed timeline for implementation. OMB's intent to finalize and implement a final rule by October 1, 2026, is unrealistic and ignores the realities of state and local government procurement and budgeting. That problem is exacerbated by a lack of clarity regarding the Proposed Rule's retroactive effect or lack thereof.

APTA members will face difficulties, which in some circumstances may be insurmountable, in overhauling their practices by October 1, 2026, to comply with new requirements. Public transportation agencies cannot overhaul their payment systems to interface with the Department of the Treasury's databases, re-engineer vendor onboarding workflows to mandate boundless E-Verify tracking across contracting tiers, and restructure their accounting divisions to support drawdown justifications within a window of only a couple of months following potential finalization of the rule.

Furthermore, forcing a truncated implementation timeline creates severe downstream risks for recipient stewardship of Federal funds. Rushing recipients to deploy untested, complex internal controls by October 1, 2026, will create much greater risk of systemic accounting, data-entry, and procurement challenges. Far from advancing OMB's stated goals of enhanced transparency and data integrity, this hurried rollout actively undermines long-term Federal oversight by potentially hardwiring instability into the foundation of the new regulatory framework.

These problems are even greater if compliance with a final rule would require APTA members to change their practices with respect to existing grant agreements, or to announced awards and pending applications. The Proposed Rule is unclear regarding which provisions, if any, will apply to preexisting grant agreements.[33] Such retroactive effect would be concerning for two reasons. First, it is doubtful that OMB has the authority to issue a rule with such retroactive effect.[34] Second, projects slated for FY 2027 funding or applying for a grant have been actively designed, budgeted, and locally funded or financed over the preceding years through statutorily prescribed processes. Project sponsors have extended substantial resources in finding non-Federal funding sources, completing environmental reviews, and making at-risk expenditures under FTA pre-award authority or letters of no prejudice. By failing to expressly exempt active and pending grants and cooperative agreements from the proposed regulatory changes, the Proposed

[33] All ongoing and renewable grant agreements cannot be affected by the Proposed Rule as written should it go into effect on October 1, 2026, unless recipients subsequently agree to the terms of the Proposed Rule. While Congress—through Federal agencies—may condition funding, a recipient must "voluntarily and knowingly assent to those conditions for them to bear any legal force." *West Virginia v. B.P.J.*, 609 U.S. __ (2026) (slip op. at 1) (Gorsuch, J., concurring) (quoting *Pennhurst State School and Hospital v. Halderman*, 451 U. S. 1, 17 (1981)). Additionally, it is doubtful that assent is voluntary when a recipient amends an active grant agreement, as recipients cannot easily abandon such agreements.

[34] *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("[A] statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.").

Rule creates significant uncertainties regarding recipients' obligations. This may force agencies to pause procurement and attempt (with little leverage) to renegotiate existing contracts. If a rule with retroactive application is adopted, agencies would lack the capacity needed to amend all of their active agreements within a 90-day window.

Four months between issuance of a NPRM and a final rule's effective date is highly unusual and would carry the potential for disruption in any context, let alone government-wide funding requirements. OMB should withdraw the Proposed Rule. At minimum, OMB should: (1) clarify that this rule will not apply to existing grant agreements, announced awards, or grant agreements resulting from pending applications; (2) extend the implementation timeline to give Federal funding recipients 18 months from the final rule's publication; and (3) consider phasing in portions of the final rule that are more complex to implement and providing safe harbors for good-faith attempts to comply during a transition period.

IV. OMB Has Not Engaged in Reasoned Decision-Making Supported by Cost-Benefit Analysis to Arrive at Its Burdensome Proposals.

APTA has serious concerns about the NPRM's failure to discuss, let alone quantify, the Proposed Rule's massive transitional and administrative costs. These omissions are a fundamental defect in the rulemaking process itself. Rather than evaluating the actual costs of forcing a nationwide infrastructure pivot in four months, the Proposed Rule ignores them.

The Regulatory Impact Analysis (RIA) expressly does not model the likely financial effects of the Proposed Rule, and instead seeks to rely solely on public comment submitted after the NPRM's publication.[35] When promulgating a rule of this magnitude, an agency must produce a rigorous economic analysis that adequately quantifies costs or adequately explain why those costs are unquantifiable, in order to "pay[] attention to the advantages *and* the disadvantages of agency decisions."[36] The RIA for this NPRM does not do so.

While the RIA discusses certain provisions expected to generate economic costs, it overgeneralizes and underestimates the costs themselves. For instance, the RIA expects the costs associated with changes to payment systems to be "minimal to modest" in most cases.[37] The report defines "minimal" as "[b]arely perceptible,"[38] and characterizes "modest" as "[s]mall but noticeable; limited scope or duration."[39] In reality, the mandates of the Proposed Rule will require public transportation agencies, passenger railroads, and the industry's private-sector businesses to undertake extensive, permanent, and resource-intensive overhauls of accounting and internal control systems.

And the consequences will have significant ripple effects throughout the construction and manufacturing industries, equipment and materials supply chains, and regional economies. Every Federally funded public transportation investment supports a broader ecosystem of American manufacturers, suppliers,

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[35] NPRM, Regulatory Impact Analysis [hereinafter RIA], at 17.
[36] *Michigan v. EPA*, 576 U.S. 743, 753 (2015) (emphasis in original).
[37] RIA at 13.
[38] *Id.* at 30.
[39] *Id.*

engineering firms, construction companies, and skilled workers that collectively depend on stable and predictable Federal investment. Introducing uncertainty into obligated Federal grants will increase costs throughout this ecosystem, discourage long-term private investment, and ultimately reduce the purchasing power of every Federal transportation dollar.

This failure to take a hard look at the economic impact of the Proposed Rule extends to the Small Entity Analysis (SEA) as well. OMB's assertion that the impact of tens of thousands of small business contractors transitioning to E-Verify is "modest and primarily administrative in nature" defies belief and demonstrates a failure to evaluate the true burden on small businesses in the transportation industry.[40]

V. Conclusion

The Proposed Rule would undercut the efficient delivery of public transportation projects and operations of local, regional, and national importance. The complex administrative mandates, coupled with the October 1, 2026, effective date, place a cumbersome compliance burden on public transportation agencies. The Proposed Rule likewise introduces uncertainty that may create a tangible economic risk, chilling the municipal bond market and complicating public transportation agencies' efforts to secure statutorily required non-Federal funding and financing. The Proposed Rule does all this with insufficient statutory authority and inadequate analysis of costs and benefits. Accordingly, OMB should either withdraw the Proposed Rule or substantially modify it, including but not limited to abandoning efforts to convert the Uniform Guidance into a binding regulation. Federal agencies must retain the discretion to adopt the Uniform Guidance as appropriate in their unique circumstances.

APTA appreciates the opportunity to comment on this Proposed Rule. If there are any questions regarding this comment, please contact APTA's General Counsel, Taria Barron, at tbarron@apta.com. Thank you for your consideration.

Sincerely,

Paul P. Skoutelas

Paul P. Skoutelas
President and CEO

cc: Mr. Joel Savary, Office of Management and Budget, Office of Federal Financial Management

Mr. Andrew Reisig, Office of Management and Budget, Office of Federal Financial Management

Dr. Anne Byrd, Assistant Secretary for Administration, Office of the Secretary, Department of Transportation

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[40] NPRM, Small Entity Analysis, at 4.

The Honorable David A. Fink, Administrator, Federal Railroad Administration, U.S. Department of Transportation

Mr. Matthew Cahill, Acting Deputy Administrator, Federal Transit Administration, U.S. Department of Transportation