



July 13, 2026

Electronic Submission

Andrew Reisig,
Office of Federal Financial Management
Office of Management and Budget
725 17th St., NW,
Washington, D.C. 20503

Re: Office of Management and Budget (OMB) Proposed Regulation for Federal Financial Assistance (OMB-2026-0034)

Dear Mr. Reisig:

Thank you for providing the public with an opportunity to offer feedback regarding the Office of Management and Budget (OMB)'s Proposed Regulation for Federal Financial Assistance. The Southern Education Foundation (SEF) is the nation's longest-standing education opportunity organization, committed to advancing education policies and practices that elevate learning for students from low-income families and students of color in the South. Since 1867, SEF has worked to build educational opportunities by offering technical assistance, building the capacity of school district leaders, advancing research-based solutions, and influencing public policy. SEF works across the entire education continuum, from early learning through postsecondary completion, to ensure every student, regardless of race, income, or zip code, receives a high-quality education that unlocks opportunity and success.

Consistent with this mission, SEF now hosts the Equity Assistance Center-South (EAC-South), one of four regional Equity Assistance Centers (EACs) (previously referred to as Desegregation Assistance Centers) in the United States created under Title IV of the Civil Rights Act of 1964 to help school districts and states resolve longstanding and current-day school desegregation issues.

Relevant Background

Until 1954, racial segregation in public facilities, including public education, was permitted by law. However, in 1954 the U.S. Supreme Court ruled that assigning students to schools based on race is a violation of the Fourteenth Amendment of the U.S. Constitution.¹ Between 1954 and 1965, Southern states enacted many laws to evade the Court's landmark decision in *Brown v. Board of Education*. As a result, when Congress passed the Civil Rights Act of 1964 it included a provision advancing the equal protections guaranteed for students under the U.S. Constitution.

In particular, Title IV of the Civil Rights Act of 1964 prohibited discrimination in public education. To fully implement desegregation in public education, Sections 403, 404, and 405 of Title IV specifically authorize the Commissioner of Education in the Department of Health, Education, and Welfare (the Secretary of Education's predecessor) to fund resolutions to segregation. This distinct funding was created for technical assistance

¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 495, 74 S. Ct. 686, 692 (1954).



involving “problems incident to desegregation.”² Those sections of Title IV led to the funding of EACs to deliver school desegregation technical assistance to school districts and states.

Hence, EAC-South is statutorily obligated to provide technical assistance related to unresolved desegregation cases in the South. The need for technical assistance is unmistakable when considering EAC-South's region is home to 130 open federal court desegregation cases, comprising nearly all of the open desegregation cases in federal court today. Due to the very existence of these ongoing cases and the inequities they obviously indicate to federal courts across the South, now is not the time to terminate the funding Congress authorized to resolve desegregation cases. Terminating this integral funding now will significantly hamper efforts to desegregate schools.

SEF’s Concerns with OMB’s Proposed Rule:

Even though SEF only recently took on the work to manage technical assistance for the resolution of open federal desegregation cases, we are committed to using this federal funding as Congress authorized. As a result, we have several concerns regarding proposal No. OMB-2026-0034, *Proposed Regulation for Federal Financial Assistance*.

Concern #1: The proposed rules would prevent EAC-South from conducting its congressionally mandated duty under Title IV of the 1964 Civil Rights Act.

[§200.300] and [§200.205(b)(2)]

The OMB’s proposed rules would directly prohibit the development of resolutions to resolve federal court desegregation cases, at a time when we have 130 cases open in federal courts across the South. Section 200.300(b)(1) of the proposed rules prohibits federal awards from being used to “fund, promote, encourage, subsidize, or facilitate” diversity, equity, and inclusion (DEI) work, including “activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation.”³ Similarly, Section 200.205(b)(2) prohibits discretionary awards from being used for corresponding functions of race-related program participation.⁴

Although SEF does not perform DEI work—but instead protects civil rights as a part of our larger mission of advancing education—we nonetheless anticipate that this proposed rule would prohibit resolving open desegregation cases in federal courts. SEF is concerned that these sections of the proposed rule could prohibit the EAC-South from fulfilling its work of addressing open federal desegregation cases in southern school districts. Section 405 of Title IV of the 1964 Civil Rights Act expressly authorizes paying grants for “in-service training in dealing with problems incident to desegregation” and “employing specialists to advise in problems incident to desegregation.”⁵ This explicit authorization to fund “in whole or in part,” efforts to desegregate public schools would be prohibited by the OMB’s proposed rules. EAC-South is lawfully authorized to support grants and programs that consider race, because the lawful segregation Congress sought to eliminate through the Civil Rights Act of 1964 was segregation based on *race*. The consideration of race, alongside other federally protected characteristics where permitted by law, is essential for EAC-South to fulfill its federal statutory mission. Therefore, OMB is prohibiting the very work Congress authorized to address findings of segregation in public schools. Accordingly, restricting the use of federal funds for these purposes would directly undermine EAC-South’s ability to carry out the responsibilities Congress assigned to it in connection with the 130 federal desegregation cases open today.

² Civil Rights Act of 1964, 42 U.S.C. §§ 2000c - 2000c-9.

³ Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026).

⁴ *Id.*

⁵ 42 U.S.C. § 2000c-4.



Concern #2: The proposed rules would unlawfully restrict disparate-impact analysis, which is still permitted under federal law, and undermine EAC-South’s ability to fulfill its technical assistance responsibilities.

[§200.218(b)(1)]

The OMB’s proposed rules attempt to limit the use of disparate-impact analysis, the use of which federal courts have continued to allow. Section 200.218(b)(1) of the proposed rules prohibits the use of federal awards for promoting disparate-impact studies.⁶

SEF is deeply concerned about this potential ban on disparate-impact analysis and research, because it is lawfully recognized and still intact, according to the U.S. Supreme Court.⁷ Additionally, EAC-South relies upon some disparate impact analysis in formulating strategies to dismantle segregation in public schools. This proposed rule interferes with our ability to provide the technical assistance needed to address the open federal desegregation cases. Section 403 of Title IV of the 1964 Civil Rights Act expressly gives the Department of Education—and EACs—authority to “render technical assistance to [school districts] in the preparation, adoption, and implementation of plans for the desegregation of public schools.”⁸ Section 403 also describes that technical assistance may include “making available to [school districts] *information regarding effective methods of coping with special educational problems occasioned by desegregation....*”⁹

According to the Civil Rights Act of 1964, technical assistance includes providing *effective* methods for carrying out desegregation. Invariably, to provide this assistance, EAC-South conducts disparate-impact analysis and research to examine what methods of desegregation are effective. Often, this entails EAC-South researching racial disparities among students, in order to best advise school districts on reaching unitary status and effectuating federal court ordered desegregation. Since “[t]he transition to a unitary, nonracial system of public education was and is the ultimate end to be brought about,”¹⁰ the federal government must not inhibit EAC-South from assisting school districts in reaching that ultimate end. As a result, the OMB’s proposed rules prohibiting disparate-impact analysis would chill the development of resolutions to vestiges of segregation that can be accepted by the court to address the remaining open federal court cases. We must conduct disparate impact analysis to identify specific areas of the education system that led to federal courts finding the presence of racial segregation in the first place. Only then is it possible to address the foundational elements of segregation in public education and address the remaining open federal desegregation cases.

Concern #3: The proposed rules are vague and create uncertainty for grantees.

[§200.205(b)] and [§200.340]

The OMB’s proposed rules would place vague restrictions on federal grantees and create uncertainty on what constitutes lawful compliance. For example, Section 200.205(b)(2) prohibits discretionary awards from being used to “promote anti-American values.”¹¹ However, “anti-American values” are not defined in these proposed rules, which leaves ambiguity for grantees on how to comply with this. Additionally, Section 200.205(b)(1) states that

⁶ Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026).

⁷ *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009) (observing that disparate treatment and disparate impact are both prohibited under Title VII of the Civil Rights Act of 1964).

⁸ 42 U.S.C. § 2000c–2.

⁹ *Id.* (emphasis added).

¹⁰ *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430, 436 (1968).

¹¹ *Id.*



“discretionary awards must, where applicable, demonstrably advance the President’s policy priorities.”¹² However, this section creates uncertainty because policy priorities change based on the administration in office, and thus are difficult to track for grantees.

Similarly, Section 200.340(a)(2) of the proposed rules permits the termination of federal awards if the federal agency “determines that a termination 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.”¹³ This means that federal agencies can terminate awards at their discretion, if a grantee’s work no longer aligns with the priorities or goals of a new administration. This proposed section would undoubtedly create uncertainty for grantees because a change in political administration could mean a change in their funding, at any time. As a result, the OMB’s proposed rules could leave federal grantees like EAC-South left to guess whether our work is within compliance of undefined values and policy priorities that are prone to change.

SEF’s Recommendations:

In light of our concerns, SEF respectfully submits the following recommendations for OMB’s proposed rules:

Recommendation #1: Since the proposed rules directly undermine Title IV of the 1964 Civil Rights Act, OMB should withdraw these proposed rules.

These rules would restrict the use of EAC-South’s federal funds and would prohibit the uses Congress authorized in the Civil Rights Act of 1964. Since desegregation assistance inherently considers race, these proposed rules will effectively void EAC-South’s ability to fulfill its federal statutory mandate and resolve the 130 open federal desegregation cases in the South. Additionally, by prohibiting disparate-impact analysis, which is allowed by federal courts, the OMB’s proposed rules attempt to strip EAC-South of a tool permitted by federal courts to provide “effective” technical assistance.

Even though the OMB states that these proposed rules would “prevent wasteful spending,” the consequences of these rules will reflect a different reality. The rules would target efforts to eliminate segregation in public schools that are under federal school desegregation orders. SEF believes that using federal funds to desegregate public education—as Congress lawfully authorized—is far from “wasteful.” Indeed, SEF believes that eliminating funds for the desegregation of public schools will result in continued harm to the students of those school districts with open desegregation court cases. Therefore, OMB should withdraw these proposed rules in its entirety.

Recommendation #2: If the OMB chooses to maintain these proposed rules, they should explicitly allow for the funding of programs and activities that are authorized under federal law.

At a minimum, the OMB should explicitly state that the proposed rules do not seek to limit funding, programs, activities, conduct, or speech that is protected by, or necessary under, the Constitution, federal law, or federal court orders, like the open federal desegregation cases in the South. As mentioned above, Title IV of the Civil Rights Act of 1964 calls for the desegregation of public schools as a remedy to past lawful racial discrimination in education. Title IV allocates funding to EACs such as the EAC-South, to provide technical assistance in order to achieve desegregation in public education. While the proposed Section 200.101(d) states that “[f]ederal statutes govern in any circumstances

¹² Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026).

¹³ *Id.*



where they conflict with the provisions of this [proposed rule],”¹⁴ this still lacks clarity regarding desegregation efforts in public schools. Since desegregation efforts for public schools usually originate as federal court orders, by not explicitly carving out an exception for federal court orders in addition to federal statutes, Section 200.101(d) could create uncertainty about desegregation in public education. Therefore, if the OMB moves forward with these proposed rules, which we strongly oppose, OMB should provide an exception that expressly allows for funding legally permissible programs, statutes, and federal court ordered activities.

Conclusion:

The proposed rules, as currently written, would undermine current efforts to resolve open federal desegregation cases and end the vestiges of segregation in public education. At a moment when 130 federal desegregation court cases remain in the South, it is essential for the federal government to strengthen the ability of school districts and technical assistance providers, such as SEF, to meet their legal obligations to achieve unitary status by resolving open federal court cases. Accordingly, SEF respectfully recommends that OMB withdraw the proposed rules in their entirety or, at a minimum, adopt an explicit exemption that preserves the legally authorized programmatic funding used to resolve longstanding desegregation cases.

We appreciate your consideration and stand ready to collaborate in ensuring that federal grant administration remains aligned with the Constitution, with Congressional intent, and with the nation’s ongoing commitment to civil rights. If you have any questions about the content of this letter, please contact the Southern Education Foundation, at info@southerneducation.org.

Respectfully,

A handwritten signature in blue ink, which appears to read "Raymond C. Pierce". The signature is fluid and cursive, with the first name "Raymond" being the most prominent part.

Raymond C. Pierce
President and CEO

¹⁴ Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (proposed May 29, 2026).