July 9, 2026

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

Re: Regulation for Federal Financial Assistance (91 FR 32198) Published May 29, 2026, in the *Federal Register*.

Dear Mr. Reisig and Mr. Savary,

Please accept the comments of the National Indian Child Welfare Association (NICWA) regarding the Office of Management and Budget (OMB) Regulation for Federal Financial Assistance, 2026-10817 (91 FR 32198). NICWA is a private, nonprofit Native organization headquartered in Portland, Oregon. We are dedicated to the well-being of American Indian and Alaska Native (Native) children and families and carry out our mission through public policy and advocacy, research, community development, and training and technical assistance with Tribal, state, federal, and private agencies. We have extensive knowledge and expertise in federal child welfare programming.

NICWA appreciates that OMB is trying to standardize grant procedures to make it easier for potential grantees and understands that, to the extent permitted by law, every administration sets its own priorities. Nonetheless, we believe that certain changes and clarifications are needed to ensure that the regulation is not misinterpreted, particularly in terms of grants and contracts involving Tribal Nations and urban Native organizations that support Native people, and do not create uncertainty and greater burdens for grantees, as opposed to the intended purposes of providing greater certainty and reduced administrative burdens.

The proposed changes apply new requirements and prohibitions to all federal agencies with additional changes specific to individual federal agencies. NICWA's comments will focus on the general changes to requirements and prohibitions across federal agencies, and specific changes proposed for agencies under the Department of Health and Human Services (HHS), the Department of the Interior (DOI), the Department of Justice, and more.

Prohibition on "Diversity, Equity, and Inclusion" (DEI)

Our greatest concern is that the regulation does not make it clear that certain laws and regulations that separately identify Tribal Nations and their members and provide grants or standards specifically for Native people or Tribes are based upon political status and not race (Morton v. Mancari, 417 U.S. 535 (1974)). Indeed, in many federal statutes, Tribal Nations are eligible separate and apart from states, see, e.g., 42 U.S.C. 679c (Tribal Nations are eligible for direct funding under Title IV-E of the Social Security Act), which is a recognition of their unique political status within the United States constitutional framework. Just recently, in Haaland v. Brackeen, 599 U.S. 255 (2023), the United States Supreme Court recognized the authority of Congress to enact laws specific to Tribal Nations on a broad range of topics "including criminal law, domestic violence, employment, property, tax, and trade", as well as child welfare. Thus, it should be made clear that when the regulation refers to "racial preference" or "racial discrimination" (e.g., section 200.205(b)(2)(i)), "activities or initiatives that are inconsistent with…equal protection principles" (e.g., section 200.206(b)(2)(vii)(C)), disparate impact analysis (section 200.218), or promoting DEI (section 200.300), these references are not relevant or applicable to grants or contracts with Tribal Nations or urban Native organizations, nor grants or contracts that are in furtherance of the legal trust and treaty obligations of the federal government to Native peoples. Our concern is amplified because of the consistent challenges Tribal Nations and Native organizations face in educating political appointees about the unique political status of Tribal Nations and Native people. These education efforts are often followed by agency actions that characterize Tribal Nations and Native people as just another racial group, causing undue hardship for Tribal Nations and Native serving organizations.

Additional Pre-Award Review, Changes to Merit Review and Award Selection

This proposed rule calls for changes to the pre-issuance review process that comes with selection of grantees across federal agencies. Specifically, it calls for OMB to revise section 200.205 to "strengthen requirements for agency merit review" and to "establish a new pre-issuance review process", both of which are consistent with Executive Order 14332, "Improving Oversight of Federal Grantmaking". This executive order changes elements of the processes of reviewing federal grants. Specifically, the order outlines that "Discretionary awards shall not be used to fund, promote, encourage, subsidize, or facilitate: racial preferences or other forms of racial discrimination by the grant recipient, including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation." Implementation of this executive order means that during the pre-issuance review for federal grants, agencies must ensure that proposals for funding are "consistent with applicable law, federal agency priorities, and the national interest" [200.205]. This could impact Tribal Nation human service funding if Tribal Nations' programs are misconstrued to be promoting DEI or racial preference, instead of meeting the needs of Tribal Nations in accordance with federal trust and treaty obligations.

The pre-issuance review outlined in this proposed rule also states that "All else being equal, preference for discretionary awards should be given to institutions with lower indirect cost rates." [200.205] This consideration would impact Tribal Nation human service funding because Tribal Nations, especially those that are more geographically remote, tend to have higher infrastructure costs that affect their indirect cost rates, and basing the review for whether a Tribal Nation can receive a competitive grant on an indirect rate would not allow Tribal Nation human service funding to be appropriately or sufficiently funded. These higher infrastructure costs should be taken into consideration and indirect cost rates should not be a basis of determining if discretionary awards are afforded to Tribal Nations.

We also have concerns with the proposed granting of discretion to federal agencies to not award funding due to "low-quality proposals," which raises questions about how federal agencies will determine what a "low-quality proposal" is and how this decision will be implemented across different federal agencies, all who have legal obligations to fund Tribal Nation human service programs. Additionally, Tribal Nation human service agencies depend upon federal agencies to provide technical assistance and training on the development and submission of federal assistance applications, but with the elimination of half of the federal regional offices and their workforce, securing appropriate and timely federal technical assistance and training has never been more difficult.

Elimination of Fixed Amount Awards and Subawards

This proposed rule also outlines that OMB proposes to revise section 200.201(b) to eliminate the use of fixed amount awards unless otherwise authorized by federal statute. The rule states that "OMB is concerned that use of this type of award can limit transparency and hinder effective oversight, and believes the limited standards for fixed amount awards in part 200 remain inadequate to address these concerns" and that this proposed change "will ensure increased consistency across federal agencies in the execution and implementation of federal financial assistance and promote greater transparency and oversight" [200.201]. In attempting to standardize grant and contract procedures, OMB should recognize that agencies need to have the discretion to adopt variations to these otherwise standardized procedures to address the unique status and needs of Tribal Nations and their members. In particular, HHS and DOI provide extensive funding in this area and have developed expertise that allows them to craft grant requirements in an appropriate manner. Federal statutes often specifically authorize agencies to modify requirements otherwise applicable to states that address the unique needs of Tribal Nations, see, e.g., 42 U.S.C. 629b(b)(2)(A) which allows the Secretary of HHS to exempt a plan submitted by an Tribal Nation or Tribal consortium from the certain requirements of Title IV-B, Part 2 of the Social Security Act "to the extent that the Secretary determines those requirements would be inappropriate to apply to the Indian Tribe or Tribal consortium, taking into account the resources, needs, and other circumstances of the Indian Tribe or Tribal consortium." A similar provision should be included in subsection 200.101(d)(2) of the proposed rule, recognizing that regulations to address the unique needs of Tribal Nations and their members (as provided in 42 U.S.C. 629b for example) are an example of an instance where an agency might need to deviate from the otherwise uniform OMB requirements.

NICWA is concerned about deletion of provisions that reflect the unique status and needs of Tribal Nations. For example, the deletion of section 200.444 which currently allows "Indian Tribes and Councils of Governments [to]…include up to 50 percent of salaries and expenses directly attributable to managing and operating federal programs by the chief executive and their staff in the indirect cost calculation without documentation." Tribal Nations have a unique, government-government relationship with the federal government based on histories of trust and treaty obligations, and this is directly applicable to the ways in which Tribal Nations are eligible for, and obligated to, federal grant assistance, which should be reflected in language regarding grant review and application.

Another purpose of the regulations is to simplify requirements for grantees. Yet, the prohibition of fixed cost awards in section 200.201 could have the opposite effect. NICWA understands that for large contracts or grants the federal government wants to ensure that the funds being allocated are being spent for the purposes of the grant or contract. However, for smaller grants, we believe that the benefits to the federal government do not exceed the burdens placed upon the grantees and that in the case of small grants imposing strict standards of documentation may cause significantly less money to be available for the purposes of the grant itself. As an example, Congress recently provides that in the context of the Title IV-B, Part 1 of the Social Security Act, the Secretary of HHS shall, in consultation with the affected Tribal Nations, "modify any reporting requirement imposed by or under this part on an Indian Tribe, Tribal organization, or Tribal consortium if the total of the amounts allotted to the Indian Tribe, Tribal organization, or Tribal consortium…is not more than $50,000…" (42 U.S.C. 628(b)). This was a recognition that the administrative burden for such small grants was excessive, and prohibitive for smaller Tribal Nations and Tribal organizations. NICWA asserts that allowing for fixed cost awards if those grants or contracts are below a certain dollar amount can be an effective way to reduce unnecessary administrative burdens and increase money available for legitimate federal purposes.

Broader Suspension and Termination Authority

NICWA is also concerned about the provision that would allow federal agencies to terminate grants and contracts before their completion for several new reasons. For example, termination that is permitted if it “is in the interest of the federal agency …or the award does not effectuate program goals, federal agency priorities, or the national interest” [200.340]. Many grantees, including Tribal Nations and urban Native organizations, prepare budgets based in part upon the grants they are receiving, including federal grants. This would give agencies broad discretion to cancel grants based upon actions that a Tribal Nation or urban Native organization might not even know would affect their grant—creating substantial uncertainty and making it more difficult for those organizations to hire people to fulfill the functions of the grant. Not only will this harm the Tribal Nations and urban Native organizations, but it will make it more difficult for them to achieve the presumably legitimate federal purposes that are the purposes of the grant. Thus, NICWA proposes that the regulations require that any termination of a grant or contract be based upon the failure to perform the functions and activities required by the grant or contract, fiscal mismanagement, or based upon specific criteria clearly set out in the grant itself when awarded. By providing this certainty, the interests of both the grantee and the federal government will be best served.

Prohibition on “Disparate-Impact Liability”

Tribal Nation human services programs and staff could be greatly impacted by the section 200.218 prohibition of using federal awards to support disparate-impact liability. This proposes to ensure that administered awards do not “promote or support” theories of disparate-impact liability in accordance with Executive Order 14281 “Restoring Equality of Opportunity and Meritocracy.” Reduction in the ability to identify and file cases related to discrimination at work has the potential to impact anyone of a marginalized group who, without the ability to work with the Equal Employment Opportunity Commission on a case of disparate-impact liability, may face discrimination at work or in the hiring and firing processes in their job without a clear or accessible process to challenge this discrimination. This change in the way disparate-impact cases are processed at the federal level could impact Native employees who work for the federal government if they face discrimination at their jobs, and therefore the economic security of themselves and those around them. Federal agencies should be maximizing their efforts to recruit and retain employees with the expertise required to effectively serve communities in Tribal Nations. Yet, by heightening barriers to challenging discrimination in federal workplaces, these positions become far less appealing and accessible to individuals whose lived experience and professional background position them as strong candidates for roles supporting Tribal Nation human services programs.

Proposed Revisions Regarding Health and Human Services

Many federal agencies and their grant distribution process affect Tribal Nation human services ability to provide needed services and general administrative functions. One example in which these changes could impact Tribal Nation human services is the HHS provisions on placement preferences that emphasize the importance of religious liberty. This proposed rule emphasizes that all federal agencies must comply with Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb) that prohibits discrimination on the basis of religion, and emphasizes that "in managing and administering federal awards, no person otherwise eligible will be excluded from participation in, unlawfully denied the benefits of, or otherwise subjected to unlawful discrimination in the administration of federal programs, activities, projects, assistance, and services" [section 200.IX]. This language, when concerning discrimination on the basis of religious beliefs, is often used to emphasize that potential out-of-home placements for children cannot be denied because the prospective foster or adoptive parents' religious beliefs do not support lesbian, gay, bisexual, trans, queer, intersex (LGBTQI+) identity or allow for gender-affirming language or treatment. It is in the best interest of youth who identify as LGBTQI+ to be able to exist in environments that are safe and accepting of their identities. This is especially pertinent for LGBTQI+ youth of color, and in Native communities, that extends to youth who identify as Two-Spirit, an identity that is culturally significant in Native communities across the country. Recognition of gender identity and gender-affirming language is directly correlated to the well-being of LBGTQI+ youth in out-of-home care[1]. NICWA recognizes the religious liberty of all foster parents, and also underscores that LGBTQI+ and Two-Spirit children must be placed in homes where their identities are respected, supported, and given the care they need to thrive in out-of-home care and remain connected to their families, communities, and cultures. We also note that religious liberty concerns also exist for Native children and youth whose religious beliefs and practices may be compromised if placed in out-of-home placements that do not fully support or allow expression of their Native religious beliefs and practices.

Conclusion

Federal grants are a vital part of supporting Tribal Nation human service programming, and the administration of these grants are rooted in federal trust and treaty responsibilities between the federal government and Tribal Nations. Many provisions in this proposed rule could significantly hinder the ability of federal agencies to adequately administer federal assistance to Tribal Nations and the communities they serve, which could lead to disruptions to the delivery of essential services in Tribal communities, including child

[1] Poirier et al. (2018). *Jim Casey Youth Opportunities Initiative: Experiences and Outcomes of Youth who are LGBTQ*. Child Welfare Vol.96, No.1, Special Issue: Sexual Orientation, Gender Identity/Expression, and Child Welfare. Child Welfare League of America.

welfare, housing, community development, health, education, food, shelter, community services, disaster recovery, and other vital community programs. NICWA requests the Administration consider and appropriately apply reforms that recognize and apply the unique political status of Tribal Nations and the legal trust and treaty obligations the federal government has to Tribal Nations when it comes to the processes of reviewing, awarding, and terminating federal grants. Section IX of the proposed rule clarifies that OMB will initiate formal Tribal consultation before a final rule is promulgated, and NICWA encourages meaningful Tribal consultation on this rule, meaning that consultation is in-person, interactive, pre-decisional, informational, and transparent. NICWA also calls on OMB to extend the comment deadline for this proposed rule pending Tribal consultation, as meaningful consultation is pre-decisional and consultation was not conducted prior to the development of this rule. With meaningful consultation, Tribal Nations can fully discuss the broad impacts these changes may have on their communities and collaborate with OMB and individual federal agencies on solutions that reflect the needs and priorities of Tribal communities nationwide—ensuring Tribal Nations can continue to access federal grant funding that supports the delivery of critical services to their communities.

Thank you for your attention to these comments.

Sincerely,

David Simmons, Director of Government Affairs and Advocacy

National Indian Child Welfare Association