July 13, 2026

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

Submitted electronically via www.regulations.gov

Re: NSAC Comments on Regulation for Federal Financial Assistance Proposed Rule, 91 Fed. Reg. 32198 (May 29, 2026); Docket No. OMB-2026-0034

I submit the following comments on the Office of Management and Budget (OMB) *Regulation for Federal Financial Assistance* Proposed Rule on behalf of the National Sustainable Agriculture Coalition (NSAC). NSAC is deeply concerned by the uncertainty and risks this proposed rule will inject into an already fragile agricultural sector.

For more than 35 years, NSAC has engaged legislators and administrative agencies in Washington, D.C. to advance the sustainability of agriculture, food systems, natural resources, and rural communities. NSAC's more than 170 farm, conservation, rural, and food system member organizations directly support well over 100,000 farmers and reach over 2 million food and farm stakeholders nationwide. Collectively, we represent a core constituency within the U.S. farm system that is often left behind, despite being among the first to experience the impacts of federal food and farm policy.

From farmers and farmworkers to farmers' market operators, the people who make up our food and farm system strive daily not just to make ends meet, but to innovate—to find new markets around the corner or across State lines, to enhance productivity and soil health through on-farm conservation, and to take proactive measures to mitigate loss from economic risks and extreme weather through market, product, crop, and production system diversification. Yet, too often, federal policy can stifle economic opportunity and innovation.

NSAC's decades-long work with Congress on farm bill reauthorizations and subsequent implementation of farm bill programs at the U.S. Department of Agriculture (USDA) has yielded numerous programs that catalyze investments to build strong local and regional food economies, expand access to critical conservation programs, and reach farmers previously left behind. NSAC members across the country have leveraged these USDA programs, services, and resources to help

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farmers build environmentally resilient and economically viable businesses, strengthen local and regional supply chains, and grow the next generation of farmers and ranchers.

Many—if not all—of these programs stand to be impacted by this proposed rule, severely destabilizing the longstanding partnership farmers and farmer-serving organizations have held with USDA and undermining USDA's ability to meet its mission.

Given the breadth of the proposed rule, the many constitutional and compliance concerns it raises, the statutory and regulatory conflicts identified between this proposed rule and USDA programs and operations, the new burdens it places on USDA funding recipients, and the short period of time for public comment, this comment does not provide an exhaustive list of all of our concerns. However, it is clear that without opportunity for meaningful stakeholder input on the impacts of this rule on USDA programs, clarity in scope and definitions, and parameters that set reasonable limits on USDA's discretionary suspension and terminations authority, this proposed rule will severely undermine confidence in USDA as a trustworthy business partner, to the detriment of farmers and communities nationwide. We therefore respectfully request OMB rescind this rule.

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I. Overarching Concerns with OMB's Authority to Issue this Proposed Rule

The Constitution requires federal agencies, including OMB, to follow statutory mandates and congressional policy directives. "Under Article II of the Constitution and relevant Supreme Court precedent, the President must follow statutory mandates so long as there is appropriated money available and the President has no constitutional objection to the statute."[1] A policy objection does not rise to the level of a constitutional objection. In the D.C. Circuit's *Aiken* decision, Supreme Court Justice Brett Kavanaugh (then serving as a circuit court judge) explained that it's a "settled, bedrock principle[] of constitutional law" that neither the President nor his "subordinate executive agencies" may "decline to follow a statutory mandate or prohibition simply because of policy objections."[2] And yet, OMB proposes to do just that throughout this rule. The most blatant example of this is the newly required pre-issuance review of awards to ensure political alignment with *Presidential* priorities, as opposed to the priorities articulated by Congress and that the Constitution requires the agencies to implement. But other examples abound in the conflicts between OMB's proposed rule and USDA's governing laws.

[1] In re Aiken Cnty., 725 F.3d 255, 259 (D.C. Cir. 2013).
[2] Id.; see also U.S. Const. art. I., §§ 1, 9, cl. 7; U.S. Const. art. II, § 3.

The many statutory and regulatory conflicts between OMB's proposed changes to 2 CFR Part 200 and USDA's governing statutes raise significant questions about OMB's legal authority to impose such changes. OMB may attempt to disregard the legal conflicts created by the proposed rule by repeatedly conditioning 2 CFR Part 200's requirements as only applying "to the extent permitted by law." However, prior courts have declined to interpret similar caveats as giving agencies carte blanche to impose widespread requirements that conflict with an existing regulatory scheme.[3] Such is the case here. OMB's repeated assurance that 2 CFR Part 200 will only apply "to the extent permitted by law" is insufficient to remedy the many conflicts this rule would create.

It is incumbent upon the agencies to do the work to identify where such standards cannot apply rather than leaving such vagaries open to interpretation. By failing to provide that clarity, OMB and USDA shift the burden of navigating complex legal interpretation questions onto the recipients of USDA's federal financial assistance. An administrative scheme rife with statutory and regulatory conflicts places the individual, organization, or government entity receiving federal assistance in the position of navigating complex conflicts of laws and new, undefined standards of conduct, all while facing the threat of losing access to critical funding or even liability under the False Claims Act for failing to successfully do so.

Ultimately, OMB cannot remedy these deficiencies through minor amendments to the proposed rule—the agency must withdraw the rule and limit further efforts to amend 2 CFR Part 200 within the bounds of its statutory and constitutional authority. Failure to do so will significantly increase the legal and administrative costs required to administer a federal award and the risk that awardees face if USDA or OMB deem them out of compliance with these unnavigable, conflicting awards requirements.

A. OMB's Proposed Changes Raise Due Process Concerns by Creating Unnavigable Legal Conflicts and Liabilities for Program Participants

By establishing new liabilities for awardees while simultaneously failing to define what is required of them under the law, this proposed rule raises serious First Amendment and Fifth Amendment vagueness concerns. The Fifth Amendment guarantees due process of law, and a fundamental aspect of due process is that government-imposed obligations must be stated with sufficient clarity to provide fair notice and prevent arbitrary enforcement. Government regulatory enforcement is void for vagueness if it (1) does not provide a person of ordinary intelligence fair notice of what is prohibited or (2) risks arbitrary application.[4] A regulatory regime that only provides open-ended

[3] See, e.g., City of Fresno v. Turner, No. 25-CV-07070-RS, 2025 WL 2721390, at *10 (N.D. Cal. Sept. 23, 2025) ("Additionally, as already discussed, savings clauses such as '... which violate [relevant federal] law' or 'to the maximum extent permitted by law' do not magically ensure that the conditions incorporating that language only operate in so far as they are within Congress's grant of authority.")
[4] Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972); FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012); U.S. Telecom Ass'n v. FCC, 825 F.3d 674 (D.C. Cir. 2016); Timpirano v. SEC, 2 F.3d 453, 460 (D.C. Cir. 1993).

terminology that allows for "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings" violates due process.[5]

Here, OMB seeks to significantly expand False Claims Act liability for recipients and subrecipients of federal financial assistance. Under the proposed section 200.113, any applicants, recipients, or subrecipients must "promptly disclose whenever… it has credible evidence of the commission of a violation of Federal criminal law… or a violation of the Federal civil False Claims Act (31 U.S.C. 3729-3733)." Any agency that receives notice of such violation would be required to refer the report to the United States Attorney's Office of the District of Columbia within 10 days. Despite the severity of this threatened liability, OMB and USDA do nothing in this proposed rule to provide the public with a commensurate level of clarity in what actions OMB considers a reportable violation. These undefined terms and conflicts are discussed in more detail below in Section III.

B. USDA's Similar General Terms and Conditions are Currently Being Challenged in Federal Court

Farmers, ranchers, food and agriculture organizations, local governments, States and Tribes have already experienced the uncertainty and risk associated with new, vague requirements like those now proposed by OMB. On December 31, 2025, USDA instituted new General Terms & Conditions that, like the current proposed rule, vastly expanded the scope of False Claims Act liability for grant and cooperative agreement award recipients. Like the OMB Proposed Rule, USDA only provided vague, undefined examples of the types of claims it would consider a false claim warranting civil liability. Due in part to the vague bounds of this new liability, USDA was enjoined by the Massachusetts District Court from applying these new terms & conditions in 23 States.[6] The concerns raised by those States echo the concerns facing funding recipients under today's proposed rule as well:

> The 2026 Conditions do not provide guidance as to what conduct would be captured by the facially broad language of the Challenged Conditions, nor do they place a limit on what antidiscrimination "policies"—present or future—a recipient would be required to comply with. The lack of clarity, when paired with USDA's many indications of its intention to aggressively enforce adherence to the executive orders underlying the Challenged Conditions, is untenable. In other words, even if Plaintiff States could agree to comply with the Challenged Conditions, they may still unwittingly commit what USDA considers violations.[7]

OMB's proposed rule exponentially amplifies the uncertainty and risk posed by USDA's Terms & Conditions. The proposed rule indicates a willingness to consider past actions under *past* awards as

[5] United States v. Williams, 553 U.S. 285, 306 (2008); Coates v. City of Cincinnati, 402 U.S. 611, 611-14 (1971); Smith v. Goguen, 415 U.S. 566, 573-77 (1974).
[6] Commonwealth of Massachusetts v. U.S. Department of Agriculture, 1:26-cv-11396, (D. Mass.).
[7] Id., Compl. ¶ 230.

violations of *current* policy priorities or new legal interpretations of civil rights laws and equal protections (regardless of whether such policies or legal interpretations were in place at the time the action was taken). For example, proposed changes to section 200.206(b) require agencies to conduct a risk assessment to evaluate the risks posed by applicants prior to issuing federal awards. As part of that risk assessment, OMB requires agencies to consider an applicant's "record of… engaging in activities or initiatives that are inconsistent with Federal civil rights laws, including the equal protection principles of the U.S. Constitution and prohibitions on unlawful discrimination" as well as "the applicant's membership in or affiliation with organizations engaged in activities that violate Federal law."[8]

As discussed in Section III(C) of this comment, these requirements could place liability on organizations who have previously been funded by USDA for programs statutorily established to fund the very activities that this current Administration now attempts to characterize as violations of Federal civil rights laws or equal protection principles. In sum, the constitutional deficiencies in this proposed rule strongly indicate OMB should withdraw the proposal.

II. Concerns with the Application of the Proposed Rule at USDA

With the minimal time provided to review, analyze, and comment on a proposed rule of this magnitude, we are limiting our comments to the provisions that cause the greatest concern for NSAC and other USDA funding recipients. This includes the new and expanded discretionary suspension and termination authority; legal and compliance concerns regarding vague and undefined terms; added burdens on funding recipients and particularly on partnership projects; politicization of grant review and funding decisions; and an overall lack of clarity regarding scope and applicability to USDA grantees. Each of these concerns alone are significant enough to warrant substantial revision of the relevant provision; taken cumulatively, they illustrate the dire need to rescind the proposed rule in its entirety and restart the rulemaking process from the beginning, offering multiple meaningful opportunities to effectively solicit and integrate agency-specific facts, legal authorities, and stakeholder input.

A. Broad Termination Authority Destabilizes Longstanding USDA Partnerships

One of the most troubling aspects of the proposed rule for farmers and farmer-serving organizations is the new and expanded discretionary suspension and termination authority in proposed sections 200.211, 200.340–343. The expanded language would permit termination of a signed agreement at any time if the agency determines "it is in the interest of the Federal agency or pass-through entity, including if a Federal award does not effectuate program goals, Federal agency priorities, or the national interest as they exist at the time of the termination." This is an incredibly permissive standard, and one that largely ignores Congress' role in establishing agricultural program goals and priorities through the Farm Bill. The proposed rule does not define "national interest,"

[8] §§ 200.206(b)(vi)(C) and 200.206(b)(viii).

which is often used interchangeably in the rule with "public interest," which is also undefined. The proposed rule also adds a new authority to temporarily suspend program funding "at any time" and for any reason where it determines suspension is "in the interest of the Federal agency."

These unbounded authorities to terminate or suspend lawfully signed agreements are unquestionably one of the most destabilizing aspects of the proposed rule. Farmers, farm service providers, and countless others across the food and agricultural supply chain rely on USDA to uphold their end of an agreement. As we have already seen since January 2025, sudden funding freezes,[9] unanticipated grant terminations,[10] and abrupt full program cancellations[11]—not to mention a woefully understaffed USDA[12]—have upended farmers' business plans and planting decisions, delayed and prevented farmland purchases, prompted layoffs, and left farmers in the lurch awaiting reimbursements for purchases made under duly executed agreements. Agriculture will always have disruptive events, from market disruptions and natural disasters to pandemics and pests. Yet, the structure of federal policy determines the impact of those disruptions on farm families, their communities, the land, and the country. The federal government should be offering more, not less, certainty and stability for farmers already confronting the compounding impacts of increasing production costs, decreasing income, rising land prices, lost markets, and evolving pest pressures.

We agree with the proposed rule's preamble that multi-year project funding offers more stability for grantees and can enable "long-term planning and execution of complex projects." (Proposed Rule § 200.202(f).)[13] However, this intention is directly undercut by the expanded discretion to terminate a project at any time. USDA operates numerous multi-year funding programs, from five-year Regional Conservation Partnership Program (RCPP) projects to help farmers apply regionally-relevant conservation practices in targeted areas, to three-year Beginning Farmer and Rancher Development Program (BFRDP) grants to support trainings for next-generation farmers, to multi-year research projects on cover cropping systems through the Sustainable Agriculture Research and Education (SARE), to grants designed to support meat processing capacity expansion, and many more.

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[9] National Sustainable Agriculture Coalition (NSAC), Broken Promises: Over 30,000 Farmers Denied Funds (February 26, 2025), https://sustainableagriculture.net/blog/trump-denies-over-2-billion-in-payments-owed-to-30000-farmers/; NSAC, Farmers Speak Out on the Devastating Impact of USDA Funding Freeze (March 20, 2025), https://sustainableagriculture.net/blog/farmers-speak-out-on-the-devastating-impact-of-usda-funding-freeze/.

[10] NSAC, Release: NSAC Responds to USDA Announcement on Partnerships for Climate-Smart Commodities Program (April 14, 2025), https://sustainableagriculture.net/blog/release-nsac-responds-to-usda-announcement-on-partnerships-for-climate-smart-commodities-program/.

[11] NSAC, Release: NSAC Responds to Termination of Critical Local Food Funding, Envisions Future for Popular Program (March 11, 2025), https://sustainableagriculture.net/blog/release-nsac-responds-to-termination-of-critical-local-food-funding-envisions-future-for-popular-program/; NSAC, Comment: NSAC Condemns USDA's Withdrawal of Support for Next Generation Farmers (April 1, 2026), https://sustainableagriculture.net/blog/comment-nsac-condemns-usdas-withdrawal-of-support-for-next-generation-farmers/.

[12] NSAC, USDA Staffing Crisis: Nationwide Losses (June 11, 2026), https://sustainableagriculture.net/blog/usda-staffing-crisis-nationwide-losses/.

[13] See, Preamble to Proposed Rule at 91 FR 32211 (discussing OMB rationale for proposed revisions to § 200.202(f)).

It can take years to get these multi-year research and partnership projects off the ground due to the time and effort involved in the lead up to and during the application process, and in the post-award agreement negotiation. It is unconscionable to expect USDA partners to expend that degree of effort to design, launch, and implement a project while the agency maintains wide latitude to terminate the project at any time, and without notice or opportunity to adjust the project prior to termination. The preamble to the proposed rule suggests that the mere fact of knowing that your project could be terminated at any time sufficiently prepares a grantee for termination[14]—as though knowing that locusts exist prepares you for the moment they decimate your crop just before harvest. Rather than providing sufficient notice, the proposed rule enshrines a regulatory system that unfairly penalizes projects that were selected in accordance with USDA's own NOFOs, that have maintained compliance throughout the project, and are meeting project deliverables—leaving them with no recourse. The full impact of such terminations on the partners—including but not limited to foregone opportunities, sunk costs, and reputational damage—and on the farmers lined up to participate, not to mention the lost community and public benefits that these projects are designed to yield, is nearly impossible to measure and impossible to fully recover under these proposed rules.

It is also worth noting that USDA's attempts at broad discretionary termination has been challenged in the courts by both organizations[15] and States[16] whose funding was abruptly canceled, with early indications of a likelihood of success on the merits in at least one case.[17] It seems unwise to proceed in codifying such unfettered authority while these legal challenges proceed.

Putting aside whether such broad termination authority is lawful or wise, the proposed rule would do away with farmers' and organizations' right to administratively appeal such a termination (Proposed Rule § 200.342), foreclosing the opportunity to challenge a decision made in error, explain the project's alignment with the agency's newly identified priorities, or identify a pathway to make any necessary changes to the project to support alignment. Moreover, the proposed rule does not appear to account for the statutory right to appeal certain USDA agency decisions to USDA's National Appeals Division. In Section III(C), we provide more details on this potential conflict.

Ultimately, rather than retaining the termination option as a last resort, this proposed rule would make it the norm. This all but guarantees uncertainty at best and chaos at worst for USDA-funded projects—particularly when projects span changing Administrations—penalizing farmers for shifts in national political leadership that are well beyond their control. Farmers and farmer-serving organizations depend on a stable business relationship with the USDA. The unbounded ability to suspend or terminate duly executed funding agreements any time a President or political appointee

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[14] See, Preamble to Proposed Rule at 91 FR 32225-27 (discussing OMB rationale for proposed revisions to § 200.202(f)).
[15] Urban Sustainability Directors Network v. U.S. Department of Agriculture, 1:25-cv-01775, (D.D.C.)
[16] State of New Jersey v. U.S. Office of Management and Budget, 1:25-cv-11816, (D. Mass.)
[17] FarmSTAND, Stopping Illegal Grant Terminations (Urban Sustainability Directors Network v. USDA), https://farmstand.org/case/stopping-illegal-grant-terminations-urban-sustainability-directors-network-v-usda/.

changes their priorities—particularly without any obligation for USDA to seek modification first before terminating and without any opportunity to appeal the decision—erodes confidence in USDA as a trustworthy business partner and severely undermines the agency's mission.

B. *Vague and Undefined Terms Raise Constitutional and Compliance Concerns*

An equally concerning aspect of the proposed rule for agricultural stakeholders is the codification of prohibitions on certain activities based on undefined terms like "illegal DEI," "gender ideology," and actions that could "significantly damage the reputation" of the federal government. These prohibitions are troubling for several reasons.

First, through new department-wide General Terms and Conditions, USDA has already taken steps to limit the kinds of activities that projects might undertake to expand equitable access to opportunity for all farmers, and particularly for the farmers, ranchers, and communities that have historically been—and in many cases continue to be—underserved by USDA resources.[18] USDA's Terms and Conditions have generated significant stress and confusion among agricultural grantees due to their breadth and the vague terms they contain related to DEI, gender, and civil rights compliance. Several of these new Terms and Conditions have already been challenged in court,[19] with the plaintiff States recently receiving a preliminary injunction given the impacts of these terms on their funding and the States' likelihood of success on the merits.[20] It seems unwise to attempt to codify across the government the same kinds of conditions that are currently being challenged in federal court before any final decisions have been made on the merits.

Second, as noted above, USDA has used "DEI" as grounds to terminate agreements already, and the courts have not upheld that authority. In fact, grantees whose Increasing Land Capital and Market Access projects were terminated earlier this spring on such grounds just received a preliminary injunction enjoining that termination. In granting that injunction, the court found USDA's actions "suspect" and questioned USDA's ability to "terminate grants for the very reason that the grants further the aims Congress explicitly instructed [USDA] to pursue."[21] USDA has targeted projects and programs for cancellation based on the faulty rationale that anything supporting specific groups of underserved farmers must somehow be illegal, even when: caselaw does not support such a determination; Congress has recognized the need for and directed USDA to prioritize support for underserved groups; providing targeted support does not prohibit participation by farmers not belonging to the priority group; and USDA has a long history of

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[18] Union of Concerned Scientists and HEAL Food Alliance, Leveling the Fields, (Jun. 17, 2020), available at https://www.ucs.org/resources/leveling-fields.
[19] Commonwealth of Massachusetts v. U.S. Department of Agriculture, 1:26-cv-11396, (D. Mass.).
[20] Order Granting Prelim. Inj., Jun. 5, 2026, Id.; see also, David Thomas, Judge blocks Trump administration's attempt to link USDA funds to compliance with other policies, Reuters (Jun. 5, 2026), available at https://www.reuters.com/legal/government/judge-blocks-trump-administrations-attempt-link-usda-funds-compliance-with-other-2026-06-06/.
[21] Mem. Op. on Mot. Am. Compl. and Mot. Prelim. Inj. at 21, 34, June 30, 2026, Urban Sustainability Directors Network v. U.S. Department of Agriculture, 1:25-cv-01775, (D.D.C.)

implementing programs to prioritize tailored project outreach to groups for whom federal funding will provide the greatest benefit.

According to USDA's 2022 Census of Agriculture, 95.4% of all farmers in the United States are White, while only 3% are Hispanic, 1.2% are Black, 0.7% are Asian, 1.8% are American Indian or Native Hawaiian, and 0.9% identify as Mixed Race.[22] When compared to the overall demographics of the United States population, this shows how severely underrepresented non-White racial and ethnic groups are in agriculture.[23] This underrepresentation is due in no small part to the longstanding, well-documented structural and institutional racism that has excluded Black, Indigenous, Hispanic, and other racial and ethnic minority groups from fair access to land, financial resources, information, political standing, and educational and professional opportunities.[24] Therefore, it is unsurprising (and indeed warranted) that Congress and USDA have prioritized resources towards remedying barriers to access and increasing representation in agriculture from these groups. Such support can be provided without running afoul of civil rights laws, with many community organizations merely seeking to optimize their services to best meet the needs of the farmers present in their local communities. However, during the past 18+ months of terminations, USDA has proven consistently incapable of making legally-sound determinations when given vague and undefined terms as political directives.

One of the longstanding benefits of USDA's approach to partnership has been deferring to State and local assessments of what is most needed for farmers and rural communities on the ground.[25] The vague and undefined terms proposed in the rule run the risk of suppressing lawful activities designed to support farmers and rural communities, whether through misapplied standards by agency staff with minimal knowledge of local needs or conditions, or by chilling the lawful activities of farmers and farmer-serving groups out of fear of losing access to critical funds. Section III(B)(1) below provides additional details regarding specific Congressional priorities that target services within USDA programs that conflict with this proposed rule.

Finally, putting aside the lawfulness of using these terms to make funding decisions, the restriction of activities based on vague or undefined terms poses compliance challenges and increases administrative burdens for grant recipients. Grant recipients are also responsible for ensuring any

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22 USDA National Agricultural Statistics Service, 2022 Census of Agriculture Highlights—Farm Producers, Feb. 2024, available at https://www.nass.usda.gov/Publications/Highlights/2024/Census22_HL_FarmProducers_FINAL.pdf.

23 U.S. Census Bureau, "QuickFacts: Population Estimates, July 1, 2025", https://www.census.gov/quickfacts/fact/table/US/PST045225 (showing that, as of July 1, 2025, the U.S. population was 56.1% White alone (Not Hispanic or Latino); 20.5% Hispanic or Latino; 13.5% Black; 6.9% Asian, 4.9% Mixed Race, and 2.4% American Indian, Alaska Native, or Native Hawaiian).

24 Union of Concerned Scientists and HEAL Food Alliance, Leveling the Fields, (Jun. 17, 2020), available at https://www.ucs.org/resources/leveling-fields.

25 See, e.g., 7 U.S.C. 3861 (establishing State technical committees to assist the Secretary "in the considerations relation to implementation and technical aspects of the conservation programs"); see also, U.S. Department of Agriculture, "State Technical Committees"(last accessed July 13, 2026), https://www.nrcs.usda.gov/our-agency/state-technical-committees.

subawardees are complying with these vague terms, including a new responsibility for grantees to ensure subawardees are not taking any action that would "damage the reputation" of the Federal government. If such damaging action is determined by the Federal government to have happened, they can direct the grantee to terminate the subaward or decide to terminate the award in its entirety. No guidance is offered in the proposed rule explaining what kinds of activities would be considered damaging, nor how a lead grantee is supposed to verify compliance, increasing uncertainty, administrative burdens, and legal and financial risk for grantees, especially those engaged in partnership projects. In the following section and Section III(B)(2) below, we provide additional details on the burdens this rule places on partnership projects, which are common in USDA grant programs and even statutorily designed as such. Challenges and uncertainty for partners and lead applicants in partnership projects will undermine the USDA's ability to fulfill statutory mandates to effectively administer these programs.

C. *New Burdens on Grantees & Partnership Projects*

We are also concerned about the additional administrative and compliance burdens the proposed rule places on grantees, and in particular on grantees involved in projects that involve multiple partners or subawardees. Numerous USDA programs are statutorily designed as partnership projects, and partnerships are often encouraged and prioritized as part of grant application review processes. The uncertainty and increased compliance obligations posed by these new provisions stand to severely undermine USDA's ability to implement these congressionally-directed programs (which are further detailed in Section III(B)(2) below). In addition to the foregoing, the following provisions should be significantly revised to reduce risk and burden for agricultural grantees, or rescinded altogether.

<u>Elimination of fixed amount subawards:</u> the rule proposes to eliminate fixed-amount subawards (Proposed Rule §§ 200.201, 200.333), unnecessarily limiting an otherwise valuable tool for managing multi-partner projects, including those where dozens if not hundreds of farmers may be directly involved. For example, USDA cooperative agreement funds have been used to provide micro-grants for farmers as a complement to the technical and business planning assistance provided by cooperators. Such small-sum grants can lead to sizable impacts, and can encourage smaller-scale producer participation in grant-funded programs, bridging gaps between those who traditionally have easy access to USDA funding through commodity program payments and those who do not, like smaller-scale and specialty crop producers. Similarly, minimum payment amounts for producers enrolling in certain conservation programs has improved program reach to smaller-scale and diversified farm operations.[26] Unnecessarily restricting this tool may impact the ability to reach

[26] NSAC, Newly Updated Farmers' Guide to the Conservation Stewardship Program Available (April 11, 2025), https://sustainableagriculture.net/blog/newly-updated-farmers-guide-to-the-conservation-stewardship-program-available/.

smaller-scale producers through USDA programs, despite many instances where Congress has clearly directed the agency to prioritize support for small and mid-sized farms.[27]

Discretion to add or change terms throughout the period of performance, require additional justification for reimbursement requests, and shift from advance payment to reimbursement during the grant project – after budgets and scopes of work have been approved (Proposed Rule §§ 200.208 and 200.305). Farming is a profession that requires significant planning and upfront investments, and operates on extremely tight margins. Between purchasing seeds and other inputs, making planting decisions, lining up contracts, and ensuring appropriate staffing, farmers and farmer-serving organizations build plans around the certainty established when USDA approves the budget and scope of work for federally-funded projects, including having the advance payment option remain available throughout the life of the project.

Especially for farmers and lower-resourced or community-based organizations, advance payments offer a critical way to procure the goods or services necessary to carry out the work funded under the agreement. In fact, some farm bill programs—like the Environmental Quality Incentive Program (EQIP)—have advance payment options explicitly authorized by statute. Examples of these programs are discussed in greater detail in Section III(A) below. For programs where advance payments are not statutorily mandated, the ability of USDA to midway switch to a reimbursement method, require additional justifications, or add or change terms of the agreement could have significant budgetary and programmatic impacts for farmers and organizations that develop (and receive USDA approval for) project budgets years in advance. These changes create unnecessary and additional burdens on farmers and farmer-serving organizations, and build upon the uncertainties discussed above.

D. *Political vs Objective Review of Applications*

The rule also seeks to codify efforts to entrust funding decisions not to knowledgeable career agency personnel and expert peer reviewers adhering to well-defined scoring rubrics, but with political appointees (Proposed Rule § 200.205). These appointees would now have the ability to pre-screen applications and remove them from consideration altogether if they fail to "advance the President's priorities" or are determined to "promote anti-American values." These terms are undefined, leaving grantees uncertain as to whether developing a proposal that addresses the goals outlined in the program's Notice of Funding Opportunity (NOFO) is sufficient to be eligible for funding. It also opens the door to abuse of discretion, and creates the potential to conflict with the underlying

[27] See, e.g., Section 501(a) of the Rural Development Act of 1972 (7 U.S.C. § 3661) ("It is further the purpose of this title to… expand small farm research and extend training and technical assistance to small farm families in assessing their needs and opportunities and in using the best available knowledge on sound economic approaches to small farm operations…. [T]he goals of this title are to… increase income and improve employment for persons in rural areas, including the owners or operators of small farms, small businesses, and rural youth."); see also, 7 U.S.C. §§ 347a, 1308a, 1522, 1627c, 1632a, 2008w, 2204h, 2271, 3121, 3124a, 5926, 6934, 6934b, 6971, 7333, and many others throughout titles 7, 16, and 42 of the U.S. Code.

congressionally-defined purpose and goals for USDA programs. As discussed in Section I above, the Executive Branch's political priorities cannot replace Congressional mandate.

E. Uncertain Scope: Failure to Consider Unique USDA Financial Arrangements

The lack of clarity regarding how these rules will apply across the many programs USDA offers exacerbates the uncertainty regarding the impacts of this proposed rule.

The proposed rule applies to federal financial assistance agreements, including agency grants, cooperative agreements, and "other agreement[s] for assistance," leaving many questions regarding applicability across USDA's varied program offerings. The rule differentiates between "discretionary" and "non-discretionary" awards, signaling that programs like ARC/PLC or other direct payments are unlikely to be covered. It is equally clear that traditional competitive grants—like the agriculture research and farmer training programs administered by the National Institute of Food and Agriculture and the market development and supply chain programs administered by the Agricultural Marketing Service—fall under its purview. But the proposed rule offers no specificity with regard to the unique agreements that USDA enters into with farmers to carry out programs like the Natural Resources Conservation Service Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP), Farm Service Agency agricultural credit programs like Farm Ownership and Farm Operating Loans, and other discretionary agreements. Indeed, our analysis of relevant definitions and the general applicability of 2 CFR leads us to the conclusion that many programs that directly extend funding to farmers—EQIP, CSP, ACEP, farm ownership loans, farm operating loans, emergency loans, value-added producer grants, the voluntary public access and habitat incentive programs, indemnity programs, block grants, and rural development programs—are most certainly covered by the proposed rule changes, with significant new burdens and potentially devastating impacts for farmer recipients.

For example, EQIP and CSP are highly popular, voluntary conservation programs that consistently experience greater demand than available funding. The kinds of practices that can be funded through these programs are identified at the local level. Contract length can vary; CSP contracts typically last 5 years, and EQIP contracts can last up to 10 years. Under these proposed rules, not only can these farmer agreements be terminated at any point during the life of the contract if they are no longer determined to be in the "national interest"—which is troubling as a threshold matter and may conflict with the underlying statutory authorization for the programs—but such "national interest" rationale for termination conflicts directly with the locally-led decision-making that identifies the priorities that successful applications must address to be considered for funding in the first place. Surely USDA cannot intend such an outcome, leading us to believe that the proposed rule must not have fully considered applicability to USDA financial agreements with farmers.

Similarly, USDA's Rural Development Mission Area and Farm Service Agency operate a significant number of loan programs, most of which fall within the scope of OMB's proposed revisions to 2

CFR Part 200. The proposed rule fails entirely to explain how its new compliance requirements, domestic purchasing requirements, pre-issuance reviews, and discretionary terminations will be applied in the context of a long-term loan program. Applying these proposed changes to farm loans and rural development loans adds instability to a critical USDA resource for farmers and rural communities.

Farming is one of the hardest careers to pursue, in-part due to high startup and land costs. Access to credit through FSA farm operating loans allows farmers to purchase the supplies they need and to get crops in the ground before the fruits of that labor become available. It also makes land ownership a possibility. Rising land prices, limited access to traditional credit, and high down payment requirements put land ownership out of reach for many farmers. FSA farm ownership loans help farmers who want to expand or secure their agricultural operations. As the average age of American farmers increases, hundreds of millions of acres of farmland is estimated to be passed on or sold as farmers retire. Beginning farmers and small to mid-sized farms with limited assets face particular challenges that prevent them from accessing credit from traditional lending institutions; USDA serves a critical role as a "lender of last resort" for these farmers.

Adding the ability of USDA to change its mind and discretionarily suspend or terminate a loan agreement on top of the risk a farmer is already assuming in taking out the loan in the first place is grievously unethical. We do not believe USDA intends for this to be the outcome of the proposed rule. But without clarity regarding scope, the full impact is unknown. Ultimately, the broader the reach of these rules, the more instability it adds to an already destabilized agricultural sector, and the more damaging the impacts when USDA freely exercises its "discretionary termination" authority.

III. Specific Concerns Regarding Statutory and Programmatic Conflicts

OMB's proposal to convert 2 CFR Part 200's requirements from nonbinding guidance to binding regulation upends the status quo in which USDA could implement the portions of 2 CFR Part 200 that improved administration of agency programs. USDA previously was able to apply the portions of Part 200 that align with and improve the administration of programs, but exclude the portions that conflict with or create uncertainty considering USDA's authorizing statutes.

What follows is an initial assessment of the statutory conflicts created by OMB's (A) proposed restrictions on advance payments (Proposed Rule § 200.305), (B) limitations on undefined "DEI" activities (Proposed Rule §§ 200.205 and 200.300), and (C) limitations to administrative appeals for award terminations (Proposed Rule § 200.342). Given the compressed comment window, this is not an exhaustive analysis, but should be viewed as an initial assessment of the types of conflicts that OMB and USDA cannot remedy through mere revisions to the proposed rule.

A. Eliminating Advance Payments Conflicts with Existing USDA Statute

OMB proposes to provide Federal agencies greater authority to add specific additional requirements to awards following an individual assessment of "risk" posed by the award recipient to the program's integrity. (Proposed Rule § 200.208.) Such "risk" shall be determined, in part, based on an expansive risk assessment conducted under proposed section 200.206(b). One such specific condition an agency may require of a given award recipient is that all payments be made as reimbursements rather than as advance payments. Several of USDA's authorizing statutes explicitly allow its agencies to provide advance payments for awards out of recognition of the otherwise prohibitive costs associated with undertaking the activities funded through those programs. A nonexhaustive list of the potential statutory conflicts this creates with USDA's statutory authorities are the following:

- Section 522 of the Federal Crop Insurance Act (7 U.S.C. § 1522), the Board of the Federal Crop Insurance Corporation[28] is approved to provide advance payments to cover a portion of the research and development costs required for individuals, approved insurance providers, institutions of higher education, cooperatives or trade associations to develop and submit proposals for additional crop insurance policies and provisions of policies to the Corporation.
- Section 10(a) of the Bankhead-Jones Act (The Act of June 29, 1935) (7 U.S.C. § 3105(a)) authorizes the Secretary to enter into contracts with private and public organizations and individuals in order to "carry out further research on utilization and associated problems in connection with the development and application of present, new, and extended uses of agricultural commodities and products" and to disseminate the information created through such research. In those contracts, the Secretary is explicitly authorized to make advance progress or other payments without regard to the other binding requirements on advance payments under 31 U.S.C. §§ 3324(a) and (b).
- Section 204 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. § 7508) requires the Secretary to allocate funds appropriated to TEFAP for a given fiscal year to States "on an advance basis." This section also requires States, which serve as pass-through entities for a portion of TEFAP funds, to likewise make the funds allocated to them by USDA for a fiscal year available to emergency feeding organizations in their State "on an advance basis."
- Section 11 of the Soil Conservation and Domestic Allotment Act of 1936 (16 U.S.C. § 590k) establishes the basic requirements for the funding of county committees that provide the technical assistance and program implementation support required to deliver farm and conservation programs to agricultural producers across the country. Section 11 authorizes the Secretary to allot the funds appropriated for soil conservation activities "to the bureaus and offices of the Department of Agriculture and for transfer to such other agencies of the Federal or State Governments, or to local public agencies" to carry out soil conservation

[28] The Federal Crop Insurance Corporation is a body corporate established as an agency of and within the Department of Agriculture by section 503 of the Federal Crop Insurance Act (7 U.S.C. § 1503), and therefore also falls within the scope of this proposed rule.

activities and to pay county committees and "associations of producers in any region or regions." In allotting those funds, the Secretary is explicitly authorized to make such payments in advance of determination of performance.

- Section 5 of the Watershed Protection and Flood Prevention Act (16 U.S.C. § 1005) establishes the Secretary's authority to provide advance payments to local organizations with an approved work plan. Advance payment can be for up to 5% of the estimated installment cost of the selected work of improvement and may be used to secure professional engineering and other technical services to begin awarding contracts and construction The "works of improvement" funded under this program related to flood prevention, the conservation, development, utilization, and disposal of water, and the conservation and proper utilization of land.
- Section 1234(e)(2) of the Food Security Act of 1985 (16 U.S.C. § 3834(e)(2)) authorizes all payments made under the Conservation Reserve Program to be made in advance of determination of performance.
- Section 1240B(d)(4)(B) of the Food Security Act of 1985 (16 U.S.C. § 3839aa-2(d)(4)(B)) creates an option for certain producers participating in the Environmental Quality Incentives Program to elect to receive at least 50% of their award amount as an advance payment to cover all costs related to purchasing materials or contracting. If the producer elects to receive this advance payment, the Secretary is required to provide it to them.
- Section 13 of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1761) establishes the requirements for the Summer Food Service Program for Children. Subsection (d) requires the Secretary to send each State an advance program payment by certain deadlines to allow States to pay for meals served for each month the State operates the program. Subsection (e) also establishes deadlines by which the Secretary must forward advance program payments to service institutions to provide the monthly meal service.
- Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1766) establishes the requirements for the Child and Adult Food Care Program. Subsection (f) governs the State agency's disbursements of program funds to institutions and paragraph (4) requires the State to provide advance payments for a given month to each approved institution by the first day of that each month the institution operates the program.

Under section 200.305(b), OMB proposes requiring every non-Federal and non-State recipient and subrecipient of a discretionary award to provide written justification for every submitted payment request, which also conflicts with existing USDA programmatic requirements that USDA streamlined contracting processes under certain programs. Examples of programs with this requirement include Environmental Quality Incentives Program (16 U.S.C. § 3839aa et seq.), Conservation Stewardship Program (16 U.S.C. § 3839aa-21 et seq.), Agricultural Conservation Easement Program (16 U.S.C. § 3865 et seq.), Regional Conservation Partnership Program (16 U.S.C. § 3871 et seq.), Noninsurance Crop Assistance Program (7 U.S.C. § 7333), and the Rural Energy Savings Program (7 U.S.C. § 8107a), among many others.

B. Additional Conflicts with Existing USDA Statutory Program Purposes and Priorities

In addition to creating conflicts in procedure, like providing advance payments, OMB's revisions to 2 CFR Part 200 also conflict with the purposes and priorities Congress established for USDA programs. Particularly concerning are the conflicts this rule creates with (1) Congressional directives that USDA tailor its programs to benefit particular sub-groups of producers and (2) USDA programs that prioritize partnerships.

As discussed in Section II(B) above, USDA has a demonstrated interest in ensuring that its programs effectively reach groups that are currently underrepresented in the agricultural industry. This interest is particularly acute given that the U.S. Senate Committee on Aging reported in 2025 that American farmers are the nation's oldest workforce.[29] In the interest of focusing limited federal resources where they can make the greatest improvement to supporting farm business development, land access, regional market expansion, the adoption of conservation practices, and support for the next generation of farmers, Congress has directed USDA to prioritize program delivery and engage in strategic partnerships to improve outreach, education, and technical assistance tailored to different types of farmers.

Yet, OMB's proposed revisions would cast confusion on and even prevent USDA from providing the prioritized and partnership-focused program delivery that Congress demands. This places both program administrators and applicants in a position of heightened financial and legal risk for complying with programmatic requirements Congress itself put in place. This risk is further intensified by other proposed revisions like the mandatory disclosures and expansive False Claims Act Liability (Proposed Rule § 200.113), pre-award risk assessments (Proposed Rule § 200.206), and authority to impose specific conditions on specific awardees (Proposed Rule § 200.208).

1. Congressional Intent that USDA Prioritize Service Delivery In Programs

The proposed rule fails to illuminate how the expansive restrictions on activities that do not align with "Presidential priorities" should be interpreted by career employees implementing USDA programs. The proposed rule requires mandatory reporting of activities inconsistent with Federal civil rights laws, equal protection principles, or in violation of the False Claims Act, but does not define what activities it considers violations of those laws. Likewise, it does not define what it considers "unlawful DEI practices," "anti-American ideologies," "neo-Marxist perspectives about enduring class struggle," or "promotion of gender ideology."

USDA is already applying an expansive interpretation of such terms, as evidenced by the history of individual grant and full program terminations issued since January 2025. Yet, these actions are

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[29] U.S. Senate Committee on Aging, America's Aging Farm Workforce: Why Vanishing Family Farms are a Growing Threat to U.S. Food Security and Rural Communities, March 31, 2025, available at https://www.aging.senate.gov/press-releases/chairman-scott-releases-report-on-americas-aging-farm-workforce.

currently under legal review in federal district court. USDA is currently enjoined from terminating 24 federal awards that it sought to eliminate en masse based on unsubstantiated claims that such awards were "illegal DEI" and were riddled with "waste, fraud, and abuse."[30] Such allegations ignored entirely that awardees were fulfilling requirements Congress itself established for the program and were delivering services USDA funded them to provide. Due to the compressed timeline of this comment period, we cannot provide a comprehensive list of the programs at USDA for which this statutory conflict exists, but point to USDN v. USDA,[31] New Jersey v. OMB,[32] and Massachusetts v. USDA[33] as examples of how USDA's policy and practice of expansively defining "unlawful DEI" already drove mass discretionary terminations of existing federal awards over the last 18 months.

Ultimately, this proposed rule could place farmers and farmer-serving organizations at risk of being trapped into complying with an existing statute while simultaneously having that compliance reported as a violation of the False Claims Act due to purported "unlawful" behavior. Other Congressional priorities in USDA programs are also at risk based on the laundry list of vague, politicized terms targeted by OMB's proposed rule. Will an application to USDA's Rural Housing Service Programs to provide loans and loan guarantees to very low to moderate income communities evidence a rural community's "neo-Marxist perspectives about enduring class struggle"? What about a Risk Management Education Partnership that develops tools to ensure that small-scale, beginning, and other underserved farmers and ranchers can access crop insurance that best fits their operations?

Congress has long-recognized that farmers and ranchers face different barriers to success based on farm size, financial resources, geography, production type, level of access to educational materials about USDA services, and other demographic characteristics. Programs throughout USDA focus on characterizing and overcoming the primary barriers to success across those factors. USDA's ability to deliver effective programs and fulfill its statutory mandates is hindered if employees and eligible program participants do not know how to judge compliance with vague, administratively-imposed requirements regarding racial and ethnic identity, gender, political priorities, economic theories, or "Anti-American ideologies."

2. USDA's Statutory Mandates to Prioritize Partnerships

The risk created by the statutory conflicts outlined above is further exacerbated by OMB's proposed compliance requirements for any programs that operate through partnerships. Proposed revisions to sections 200.330-332 increase awardees' oversight and monitoring responsibilities for partners, including requiring awardees to interpret whether their partners comply with the same broad,

30 Urban Sustainability Directors Network v. United States Department of Agriculture, 1:25-cv-01775, (D.D.C.).
31 Id.
32 State of New Jersey v. U.S. Office of Management and Budget, 1:25-cv-11816, (D. Mass.)
33 Commonwealth of Massachusetts v. U.S. Department of Agriculture, 1:26-cv-11396, (D. Mass.)

undefined terms they may struggle to navigate, including "illegal DEI," "gender ideology," "anti-American values," or actions that could "significantly damage the reputation" of the federal government. The legal risk of determining compliance with such terms by subrecipients is significant, and securing the necessary administrative support to certify such compliance would be expensive. However, this proposed rule does not acknowledge the increased indirect administrative costs such compliance would require applicants to incur.

The risk and expense of these new compliance requirements would be prohibitive to operating USDA programs that prioritize partnerships, particularly programs intended to support local governments or organizations with limited resources. Such requirements fail to consider where Congress itself has required USDA to prioritize partnerships in the delivery of its programs, or how new requirements would affect the ability of USDA's program recipients to continue their participation in its critical programs.

As one example, USDA's Rural Development Mission Area operates over a hundred programs intended to support rural municipalities with economic development, energy access, water and wastewater utilities, and housing. One of the mission area's foundational legal authorities, the Rural Electrification Act of 1936, requires the Secretary of Agriculture to operate rural economic development programs to "promote local partnerships and other coordination between borrowers… and community organizations, States, counties, and other entities, to improve rural development."[34] That requirement is reiterated and emphasized throughout the statutory authorities that govern the mission area's activities.
While this list is non-exhaustive, the following are several examples of USDA's broad community- and partnership-focused financial assistance authorities:

- The Consolidated Farm and Rural Development Act authorizes the Secretary to "make or insure loans to associations, including corporations not operated for profit, Indian tribes on Federal and State reservations and other federally recognized Indian tribes, and public and quasi-public agencies" for a wide range of uses, including establishing soil conservation practices, changing land uses, managing water, installing water and wastewater facilities, recreational and community facilities developments, and to provide "financial assistance and other aid in planning projects for such purposes."[35]
- The same act also authorizes the Secretary to provide predevelopment planning grants to support "financially distressed communities in rural areas with populations of 2,500 or fewer inhabitants" for "feasibility studies, design assistance, and technical assistance…for water and waste disposal projects" funded by Rural Development.[36]
- In operating the Innovative Broadband Advancement Program, the Secretary is required to "give priority to proposals for projects that… involve partnerships between or among

[34] 7 U.S.C. § 950aa(6).
[35] 7 U.S.C. § 1926(a)(1).
[36] 7 U.S.C. § 1926(a)(2)(C).

multiple entities."[37]

- The Secretary may make and insure loans to "farmers and ranchers, including farm cooperatives and private domestic corporations, partnerships, joint operations, trusts, limited liability companies, and such other legal entities as the Secretary considers appropriate" for
  - purposes of purchasing a farm;[38]
  - the annual costs of operating a farm or ranch;[39] or
  - that have been substantially affected by a "quarantine imposed by the Secretary under the Plant Protection Act or the animal quarantine laws…, a natural disaster…, or a major disaster or emergency designated by the President[.]"[40]
- The establishment provision for the Local Agricultural Marketing Program requires that the Secretary "connects and cultivates regional food economies through public-private partnerships" and authorizes the Secretary to provide funds to "support local and regional food business enterprises that engage as intermediaries in indirect producer-to-consumer marketing" and "facilitate regional food chain coordination and mid-tier value chain development."[41]
- The Regional Food System Partnership Program authorizes the Secretary to provide grant funds to "support partnerships to plan and develop a local or regional food system" and requires the Secretary to give priority to applications that are submitted by "multiple entities and partners in a partnership." In addition, the statute requires the Secretary to create a "simplified application form" for partnerships funded through this program that apply to other USDA-funded programs.[42]
- The Regional Conservation Partnership Program is a public-private partnership program that funds adoption of conservation practices and the establishment of agricultural conservation easements and wetland reserve easements at the watershed scale through partnership agreements among a wide range of potential applicants. Recipients of an award under this program could range from a single agricultural producer association to a State, local, or Tribal government, to an institution of higher education, or a municipal water or wastewater treatment entity.[43]
- The Healthy Food Financing Initiative requires the Secretary to support efforts to provide access to healthy food in underserved areas and revitalize low-income communities by providing loans and grants to eligible fresh, healthy food retailers and enterprises operating through partnerships.[44]

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[37] 7 U.S.C. § 950bb-2(d).
[38] 7 U.S.C. § 1922.
[39] 7 U.S.C. § 1941.
[40] 7 U.S.C. § 1961(a).
[41] 7 U.S.C. § 1627c(b).
[42] 7 U.S.C. § 1627c(e).
[43] 16 U.S.C. § 3871.
[44] 7 U.S.C. § 6953.

The Farm Service Agency, Agricultural Marketing Service, Natural Resources Conservation Service, Forest Service, National Institute of Food and Agriculture, and Food and Nutrition Service also have programs intended to provide strategic investments or access to capital to entities where that assistance can have the greatest possible benefit. In many cases, that includes prioritizing partnerships or other associations of entities as award recipients to ensure that federally-funded programs are delivered in a coordinated manner.

OMB's proposed rule fails to consider how its new requirements will apply differently across the different types of entities that participate in USDA programs—including individuals, cooperatives, nonprofit organizations, for-profit entities, local governments, special governmental units like conservation districts, State governments, or Tribal governments—and the complexity that each of those entities face in tracking compliance by all of the subrecipients or partners of the complex funding mechanisms that exist at USDA. The uncertainty of how requirements will apply will undoubtedly limit USDA's ability to carry out its statutory mandates from Congress.

C. Right to Appeal Funding Terminations

OMB proposes to expand the authority of federal agencies to discretionarily terminate awards "if an award no longer effectuates the program goals and agency priorities" and then not require those agencies to provide opportunities for "objections, hearings, or appeals related to any reason for termination other than termination for noncompliance." (Proposed Rule §§ 200.340, 200.342.)

Limiting the grounds on which an awardee may appeal directly conflicts with both bedrock legal principles of fairness as well as USDA's statutory requirements under the Department of Agriculture Reorganization Act of 1994.[45] Under this Act, a participant in USDA programs operated by the Farm Service Agency, Commodity Credit Corporation, Farmers Home Administration, Federal Crop Insurance Corporation, Rural Development Administration, Natural Resources Conservation Service, and State, county, and areas committees, or their successors, has the right to appeal any "adverse decision" to the National Appeals Division.[46] An adverse decision is "an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant." That definition is notably *not* limited only to adverse decisions related to a participant's compliance with program requirements.

In the last 18 months, the National Appeals Division at USDA has been flooded by appeals over discretionary terminations of awards based on changes in departmental policy, many of which are arguably in conflict with a program's underlying statutory mandates. The National Appeals Division (NAD) is the first and primary forum most USDA program participants have to seek remedy for the harm they suffer following an adverse decision by an agency. The Director of the Division has the authority to provide appellants with equitable relief in instances where they have suffered

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[45] 7 U.S.C. § 6901 et seq.
[46] 7 U.S.C. § 6991.

detrimental reliance based on good faith efforts to participate in USDA programs.[47] Without access to administrative appeals through the National Appeals Division, USDA program participants—many of them farmers, ranchers, community organizations, and rural municipalities—are limited to filing challenges to agency decisions in federal court, which for most is cost-prohibitive and unreasonably burdensome.

Moreover, one of the benefits of and reasons why NAD exists is to provide timely review of adverse agency decisions. This ensures that farmers and others impacted by an adverse agency decision may still be able to proceed with their farmland purchase or their conservation planning or their on-farm energy installation in the case the agency erred in making its decision. Leaving litigation in federal court as the only option for grantees—whether farmers or farmer-serving organizations—is not only cost-prohibitive and burdensome, but also it removes the possibility that the decision will be resolved in a timely manner and allow funding recipients to continue their work as uninterrupted as possible. The length of time the typical federal court case takes to arrive at resolution means that a farmer whose farm ownership loan was erroneously denied can lose out on a purchase opportunity, or whose farm operating loan that comes in after the planting season may fall into contract breach with a supplier. With farm bankruptcies on the rise,[48] farmers and farmer-serving organizations need swift resolution of appeals to protect against financial and legal liability and loss of land and legacy. Removing options for administrative appeal does not enable USDA to better serve its customers. Rather, it does the opposite by creating potentially devastating and unrecoverable impacts for those USDA is intended to serve.

IV. Concluding Recommendation

For these and the foregoing reasons, we strongly recommend OMB rescind this proposed rule. Given the breadth of the proposed rule, the many constitutional and compliance concerns it raises, the statutory and regulatory conflicts identified between this proposed rule and USDA programs and operations, and the new burdens it places on USDA funding recipients, we could not provide an exhaustive set of recommendations on the proposed rule in the short period of time provided for public comments. Without opportunity for meaningful stakeholder input on the impacts of this rule on USDA programs, clarity in scope and definitions, and parameters that set reasonable limits on USDA's discretionary suspension and terminations authority, this proposed rule will severely undermine confidence in USDA as a trustworthy business partner, to the detriment of farmers and communities nationwide.

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[47] 7 U.S.C. § 6998(d).
[48] American Farm Bureau Federation, Farm Bankruptcies Continued to Climb in 2025 (Feb. 9, 2026), https://www.fb.org/intel/markets/farm-bankruptcies-continued-to-climb-in-2025.