



Re: Education Department General Administrative Regulations, Docket ED-2026-OPEPD-2542

Dear Secretary McMahon:

On behalf of Research!America, thank you for the opportunity to comment on the Department of Education's proposed amendments to the Education Department General Administrative Regulations (EDGAR). Research!America is a nonprofit, nonpartisan alliance dedicated to making research and innovation a higher national priority and accelerating medical progress. Our members include patient advocacy organizations, academic medical centers, universities, research institutes, scientific societies, public health organizations, philanthropies, and private-sector innovators across the United States.

Research!America is concerned that several provisions of the proposed rule would introduce significant uncertainty and instability into federal support for research and higher education, making it more difficult for institutions to plan, sustain multi-year projects, and make long-term commitments to students, researchers, faculty, staff, and their communities. These challenges would fall particularly heavily on smaller and less-resourced colleges and universities, which have less capacity to absorb unreimbursed costs or withstand unexpected disruptions in federal funding. The result could be fewer opportunities for students, disruption of important research and education programs, and harm to the communities these institutions serve.

Among the provisions giving rise to these concerns are proposed authority to terminate awards "for convenience of the Secretary," a competitive preference for applicants willing to accept less than their federally negotiated indirect cost rates, and new requirements governing personnel and participation in grant-funded activities.

Proposed Termination-for-Convenience Authority Would Undercut the Outcomes Federal Awards Are Intended to Achieve

Research!America opposes the authority proposed in §75.901 to terminate an award "for convenience of the Secretary." Federal awards support work intended to achieve specific public purposes, often over multiple years. Terminating an otherwise compliant award before that work is complete can strand work already underway, waste federal and recipient resources already committed, disrupt partnerships and staffing, and prevent projects from delivering the outcomes for which federal funding was awarded. Federal award recipients that remain in compliance with the terms and conditions of their awards should not face termination based on considerations unrelated to the basis on which the award was made.

The breadth of the proposed authority is particularly concerning. Proposed §75.901 would authorize termination "for convenience of the Secretary or pass-through entity," without requiring noncompliance by the recipient, or any other identified substantive predicate for terminating an otherwise compliant award. It does not even require a change in agency priorities, or a determination concerning the national interest.

The Department draws an analogy to termination for convenience in federal procurement. But grants and contracts serve different purposes, are governed by different regulations, and create

different relationships between the federal government and recipients. Federal grants support activities Congress and agencies have determined advance a public purpose, whereas contracts procure specific goods and services for the benefit of the government. Recipients rely on grants and cooperative agreements to hire personnel, establish partnerships, undertake research and other long-term projects, and make commitments necessary to carry out the work for the public's benefit.

The federal government absolutely should take appropriate action when continued performance of an award would violate federal law, breach the terms and conditions of the award, or implicate legitimate national security concerns. The question presented by the proposed rule is therefore not whether the government should be able to respond to legitimate legal, compliance, or national security concerns. It is whether the Department should have broad new authority to terminate an otherwise compliant award simply for the "convenience of the Secretary."

Department programs often support multi-year education research, research training, institutional capacity, and other long-term activities. Research projects may require institutions to hire and support researchers and trainees, establish partnerships and data arrangements, and undertake work extending over multiple years. Institutions participating in other Department programs similarly make commitments to students, personnel, partner organizations, and communities based on the funding the federal government has awarded. A blanket "termination for convenience" provision will disrupt these programs.

For research, the consequences of expanded discretionary termination authority are particularly significant. As Research!America noted in our comments on the National Science Foundation's draft Guidance on Financial Assistance, long-term scientific research depends on stable and predictable funding. Expanded discretionary termination authority increases uncertainty, discourages ambitious and longer-term research, and makes complex, multi-year projects more difficult to undertake, ultimately reducing the return taxpayers receive from federally supported research.

Specifying circumstances that constitute "convenience" cannot resolve our underlying concern. The problem is not simply the absence of defined standards; it is the creation of new discretionary grounds for terminating an otherwise compliant grant or cooperative agreement for reasons unrelated to the terms and conditions under which it was made.

For these reasons, Research!America strongly opposes the proposed termination-for-convenience authority.

Continuation of Multi-Year Awards Should Not Depend on an Inherently Vague "Best Interest of the Federal Government" Standard

Research!America is also concerned by proposed §§ 75.252 and 75.253, which would condition continuation of multi-year projects on a determination that continuation of the project is "in the best interest of the Federal Government." That determination would be required in addition to the grantee demonstrating substantial progress toward project goals and performance targets, submitting required reports, maintaining eligibility, and satisfying applicable financial and administrative requirements.

A recipient could therefore satisfy the established requirements of its award, make substantial progress toward its approved goals, and remain fully compliant, yet still lose the next year of

funding based on a separate, inherently vague determination that continuation is no longer in the “best interest of the Federal Government.”

This provision would make continuation funding contingent on a determination concerning the federal government’s “best interest.” a determination made after a multi-year award is underway, based on considerations that may have changed since the award was made.

For research and other long-term activities, that uncertainty can be highly disruptive. Institutions undertake multi-year projects based on the objectives established when an award is made. They hire and support personnel, establish partnerships and data arrangements, make commitments to students and trainees, and undertake work that may not produce its intended results within a single budget period. Interrupting a multi-year project can waste prior federal expenditures, disrupt research and education activities, and prevent the government and taxpayers from realizing the full benefit of work already underway.

Continued funding should turn on clear, objective, and previously established requirements, including recipient performance and compliance, rather than an inherently vague determination that could change during the course of an award.

The Proposed Indirect Cost Preference Would Disadvantage Institutions With Fewer Resources

Proposed §75.228, which would permit a competitive preference for applicants willing to accept less than their federally negotiated indirect cost rates, is also problematic.

The quality and potential impact of the proposed work, not an institution’s capacity to absorb federally attributable costs, should determine which applications receive federal support.

Negotiated indirect cost rates reflect legitimate costs associated with carrying out federally supported work, including facilities, administration, information technology, regulatory compliance, and other shared infrastructure. An institution’s agreement to forego federal reimbursement does not eliminate those costs; it simply shifts responsibility for paying them elsewhere.

A competitive preference based on accepting lower reimbursement would therefore introduce an applicant’s financial capacity to otherwise subsidize federally supported activities into the competition for grants and cooperative agreements. Institutions with substantial unrestricted resources may be better positioned to absorb those costs than institutions with fewer resources. The latter should not be placed at a competitive disadvantage for proposing equally or more meritorious work simply because they are less able to subsidize the federal government’s share of legitimate project costs.

New Grant Conditions Raise Questions About Clarity, Objectivity, and Compliance

Several sections of the proposed rule, including §75.210(e)(2)(vi), §75.500(f), and §76.500(f), would also establish new requirements affecting hiring, admissions, promotions, compensation, and participation in activities supported by Department grants.

Research!America strongly supports the principles that federal funding should be awarded and administered based on merit and that federally supported institutions must comply with applicable nondiscrimination requirements. Our concern is that grant conditions should provide recipients with

clear and objective standards for determining what compliance requires. Terms such as “merit,” “high standards,” and “proxies” for protected characteristics can carry significant consequences when incorporated into conditions governing federal awards. Ambiguous requirements risk leaving universities and other recipients uncertain about whether otherwise lawful institutional practices could place federal funding at risk.

This concern becomes particularly significant when new grant conditions operate alongside expanded authority to discontinue or terminate awards. Recipients should be able to determine at the outset what conditions govern an award and should be able to rely on compliance with those conditions as the basis for carrying out federally supported work.

Any requirements governing personnel, admissions, or participation in grant-funded activities should be clearly defined, tied to applicable statutory authority, and implemented in a manner that provides recipients with meaningful notice of what compliance requires.

OMB Should Complete Its Consideration of Public Comments Before Agencies Advance Parallel Policies

The ongoing OMB rulemaking provides an additional and important reason not to proceed. OMB asked the public to comment on proposed changes to the government-wide grant framework, including policies closely related to several of those advanced by the Department, and has not yet completed its consideration of that input. Individual agencies should not move forward with substantially similar policies before OMB has determined whether and how those policies should become part of the government-wide framework.

Public comment is intended to inform the government’s decision about whether and how proposed policies should proceed. That process is diminished if individual agencies establish substantially similar policies before OMB has completed its consideration of the comments it solicited. It also risks creating agency-specific requirements that may ultimately differ from the government-wide framework OMB adopts.

For these reasons, we respectfully request that the Department of Education withdraw and revisit the proposed rule. Thank you again for the opportunity to comment and for your consideration of Research!America’s views.

Respectfully submitted,

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Research!America