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

Re: 2026-10817 (91 FR 32198), Office of Management and Budget (OMB) "Regulation for Federal Financial Assistance"

To Whom It May Concern:

The American Musicological Society (AMS) and the Society for Music Theory (SMT) represent members and constituents dedicated to the study and teaching of music history, theory, culture, economics, law, and industry. Our shared mission is to advance the study and teaching of music, and to represent the interests of the professionals who do this work and the public that relies on and supports it.

We write today to provide comments on the proposal to revise the Office of Management and Budget's (OMB) "Regulation for Federal Financial Assistance" located in title 2 of the Code of Federal Regulations (CFR), subtitle A. Although we support the rule's stated principle of strengthening "transparency, accountability, and oversight for Federal awards across the Federal Government," we believe that many aspects of the proposed revision to the OMB's "Regulation on Federal Financial Assistance" will have the opposite effect. Taken together, they will undermine the Congressional goals behind much federal funding and weaken the vibrancy of music research and education in the United States.

This opinion is founded on substantial experience and evidence. The American Musicological Society (founded in 1934) and the Society for Music Theory (founded in 1977), are among the United States' oldest and most well-known learned societies dedicated to music research, theory, and pedagogy. Our shared community includes thousands of music scholars, students, performers, cultural professionals, and enthusiasts, and together we have a fifty-year history of receiving and administering federal grant funding for music research and education. This experience tells us that, if implemented as written, the proposed rule will disrupt and render infeasible many music education programs that have long sustained the cultural life of the nation and contributed immeasurably to the global dominance of the American music performance and recording industries.

As small nonprofit organizations that utilize federal grants to bring important cultural and educational programs to communities in every corner of the country, we are particularly concerned that the proposed revisions will: 1) greatly increase compliance costs and operational uncertainty; 2) substantially reduce support for vital communications and outreach work (i.e., publishing research findings, sharing findings at conferences, and promoting federally funded programs and opportunities); and 3) increase confusion among grantees about federal requirements and thereby reduce overall rates of effective compliance. Specifically, we are most concerned about the following provisions of the proposed rule:

Agency Discretion over Funding Decisions (§§ 200.202, 200.205, 200.206)

The proposed rule advances a number of changes regarding agency discretion over funding and award decisions. These changes deemphasize peer review and nonpartisan assessment measures in favor of expressly partisan and political goals and aims. In **§ 200.202 on Program Planning**

and Design, the proposed guidance states that federally funded award programs must be "aligned with administration policies and priorities." It further goes on to state (**§ 200.202 Federal Agency Review of Merit of Proposals**) that determination of whether specific awards and programs conform with "administration policies and priorities" should be conducted under a "pre-issuance review" in which "senior appointees" are required to independently "ensure that proposals selected for funding are consistent with applicable law, Federal agency priorities, and the national interest."

The aim of the change is clear: Peer review is to be made merely advisory (**§ 200.205 [d]);**[1] agency discretion, informed by partisan political considerations, is to be paramount. As the text states: "Consistent with the Executive order [14332], senior appointees must conduct these reviews and apply specific principles when evaluating proposals. These principles include ensuring that discretionary awards advance the *President's policy priorities*, prohibit the use of funds for discriminatory or otherwise impermissible purposes, and emphasize ensuring compliance with applicable law." [emphasis added]

The proposed rule further indicates that the basis for discretionary denial of funding is not limited to the prospective grantee's current proposed project, but may be extended to a review of the *entire history* of an applicant's "questionable practices." As **§ 200.206 Federal Agency Review of Risk Posed by Applicants** puts it, "agencies may consider an applicant's history of questionable practices based on publicly available and verifiable information" in making a funding determination; this review may include consideration of "an applicant's affiliations with organizations engaged in activities that violate Federal law, undermine public safety or national security, or advocate for the overthrow of the United States Government."

This expansive discretionary authority is deeply concerning because it is unconstrained, undisclosed, and unreviewable. In short, it makes no allowances for due process or disclosure. Thus, when exercising this authority, agency heads are not required to document the reasons for their denial of funding nor to provide applicants with an opportunity to correct the public record or appeal their decisions. Instead, this discretionary authority, which is to be based on an agency review of the *public* record, comes with no recognition that the public record is often littered with inaccurate information. Since the right of appeal and correction of agency records are both rights protected under the Administrative Procedure Act, the implementation of the proposed rule as written also risks conflicts and inconsistencies with a Congressionally passed law, and thus is likely to invite substantial litigation.

Recommendation: We recommend withdrawing or revising the sections cited above which provide expansive agency discretion over the denial of funding awards. In their place, we urge the OMB to reinstate reliance on peer review and nonpartisan scientific or program merit as the primary basis for funding decisions. Short of this, we recommend implementing a transparent process in which agency refusals to fund based on political or other considerations are publicly disclosed and in which the agency in question provides grantees an opportunity to correct the record or appeal potentially inaccurate or unlawful determinations by agency heads.

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[1] **§ 200.205 Federal agency merit review of proposals.** "(d) Use of peer review. Nothing in this part must be construed to discourage or prevent the use of peer review methods to evaluate proposals for discretionary awards or otherwise inform agency decision making, provided that *peer review recommendations remain advisory and are not ministerially ratified, routinely deferred to, or otherwise treated as de facto binding by senior appointees or their designees*." [emphasis added]

Allowable Costs and Required Cost Approvals (§§ 200.421, 200.432, 200.454, 200.461, 200.467)

The proposed rule makes a number of changes to the list of costs that would be allowable under the Regulation for Federal Financial Assistance and to the requirements for line-item cost approvals. The stated purpose of these changes is to spare American taxpayers from footing the bill for costs that are likely to be unconnected with or unnecessary to achieving the goals of federal funding programs. We understand and approve this stated purpose, but believe the revisions proposed have classified costs as unallowable that are, in fact, *central* to achieving the goals of many federal grant programs. The revised rule also institutes requirements for line-item approvals or pre-authorizations that not only greatly increase compliance burdens, but are in many cases impractical and thus effectively render certain types of costs unallowable (even where they are technically permissible under the rule).

For example, **§ 200.421 Advertising and Public Relations** specifies that "all advertising and public relations costs are unallowable with limited exceptions" and **§ 200.467 Selling and Marketing Costs** that marketing costs "are unallowable unless expressly included in the Federal award and necessary to meet the requirements of the Federal award." Since "advertising" and "marketing" are overlapping concepts and categories of activity, these sections of the rule are confusing and potentially in conflict. However, even if this were not the case, the attempt to restrict spending on the promotion of federally funded programs seems directly contrary to the goals of Congress in providing such funding and the American people in supporting it. These provisions of the proposed rule create a situation in which the Federal government could provide funding for important programs that may benefit the public, but grantees be hindered or discouraged from promoting those programs so that interested members of the public may participate in them.

Likewise, **§ 200.461 Publication and Printing Costs** makes publication costs (not specifically required by statute) equally unallowable. This means that federal grants would no longer be able to fund the costs of printing or otherwise publishing online or elsewhere the results of federally funded research or program work, including in the form of open-access articles or reports. For music scholars and educators, like those whom the AMS and SMT support and represent, this means that great works of American music could be researched, but <u>not</u> shared with the American people via print or digital publication. Such a result is in plain conflict with Congress's purpose in establishing funding for a wide variety of research, fieldwork, or other intellectual and cultural programming.

Furthermore, these provisions come along with revisions to the allowability of conference costs **(§ 200.432)**: Conference costs are allowable *only* if expressly approved at the point of the award, and this even if the award is a multiyear grant determined years before individual conferences or other convenings are announced. The rule also institutes new restrictions on the allowability of memberships, subscriptions, and professional activity costs **(§ 200.454)**: These are allowable only if they are necessary to fulfill the requirements of the grant and require specific prior approval from the relevant agency. This is a significant new compliance requirement that will disproportionately adversely impact small organizations like the AMS and SMT, as well as smaller government agencies, like the National Endowment for the Humanities (NEH) and National Endowment for the Arts (NEA), which are likely to struggle to keep up with the flood of requests for approval of small-dollar membership, subscription, and professional activity costs that are essential to effectively running any research-oriented program.

Recommendation: We recommend withdrawing or revising the sections cited above and restoring policies that treat the promotion and publication of research and cultural programming funded by the US government as central to the purpose of funding programs that support research, education and cultural programming. The Societies also recommend that the OMB step back from trying to defund participation in learned and professional society activities and conferences. Learned and professional societies are a key component of America's educational, research, and scientific infrastructure. The programs run by societies like the AMS and SMT, small and large, are crucial to sharing research, publishing findings, and connecting with colleagues. Attempting to defund the work and activities of learned and professional societies through restrictions on conference attendance, membership fees, publication subscriptions, and the like will simply limit access to necessary research resources and starve the academic and professional communities from which the federal government draws experts to implement its own programs and initiatives.

Suspension, Revision, and Termination of Awards (§§ 200.340–41, 200.342, 200.343)

Existing federal rules already provide expansive agency authority for the suspension or termination of federal awards for noncompliance, mutual agreement, recipient withdrawal, or where an award no longer effectuates program goals or agency priorities. However, the proposed revised OMB rule goes even further. In **§ 200.340 Termination and Suspension**, the proposed revisions further expand agency authority to terminate awards where an agency head determines that it "no longer advances [Federal] agency priorities or the national interest." Specifically, the revised guidance would institute a "new discretionary termination provision to provide that the Federal agency or pass-through entity, to the extent permitted by law, may terminate a federal award in part or its entirety if the Federal agency or pass-through entity determines that a termination is in the interest of the Federal agency or pass-through entity." And it further clarifies that in these terminations "the relevant 'agency priorities' would be those of the *Federal* agency that is *politically accountable* at the national level for implementing the Federal program under which the award was made." [emphasis added]

As with the pre-issuance discretionary award denial provisions discussed earlier, the suspension and termination of federal awards under the revised rule would also be immune from review or appeal. As stated in **§ 200.342 Opportunities to Object, Hearings, and Appeals**, "An agency, in its discretion, *may* elect to engage with recipients through some form of administrative review process before or after a discretionary termination or suspension, but would *not* be required to except as necessary to provide notice, determine allowable costs, and implement other sections of the regulatory text." [emphasis added] This language gives politically appointed agency heads a new, entirely unreviewable termination power in the administration of federal grants: a power that recognizes no other public interest or ethical principle than national-level political accountability. And although the revised rule recognizes the possibility that grantees who have their awards suspended or canceled *might* be eligible to receive some reimbursement of their termination costs, vague language in **§ 200.343 Effects of Suspension and Termination** makes it difficult to determine whether and how grantees adversely affected by a discretionary termination would be eligible to apply for termination costs as part of the termination process.

The American Musicological Society and Society for Music Theory have grave concerns about this expanded suspension and termination power (which appears to also include the right to summarily revise the terms of grants already awarded). Small nonprofit organizations, like the

AMS and SMT, are often cash poor and cannot survive the summary termination or suspension of expected funding, nor advance funds in support of federally funded programs without certainty of reimbursement. The government has every right to determine the conditions of awards when they are made and accepted by grantees, but the summary suspension, revision, and termination of awards for no stated reason, without appeal and without notice, including the possibility of up to ninety-day stop-work orders, could be crippling for many organizations. Just the prospect of a sudden suspension or termination of federal funding might very well deter thousands of organizations from even seeking federal funding on the grounds that they could not survive the fiscal uncertainty to which that funding might be subject.

Moreover, we note that this expansive discretionary power to terminate federal awards is likely invalidated by the Administrative Procedure Act, which was recently a significant basis of judicial findings of invalidity in the summary termination of federal grants by the Department of Government Efficiency (see *American Council of Learned Societies et al. v. Adam Wolfson* and *The Authors Guild v. National Endowment for the Humanities*).

Recommendation: We recommend withdrawing or revising the sections cited above and scaling back the expansive discretionary power to terminate or suspend grants being given to political appointees of federal agencies. Federal agencies already have quite expansive power to terminate or suspend awards and the additional power being sought will likely undermine the goals of many Congressionally approved funding programs by discouraging organizations from partnering with the federal government in the provision of programs and services.

Fixed Amount Subawards (§ 200.333)

The proposed rule would significantly impact the management of federal grant sub- and pass-through awards in ways that are likely to greatly increase compliance costs. Currently **§ 200.333 Fixed Amount Subawards** permits fixed-amount subawards of up to $500,000 with prior written federal approval. The proposed rule would, however, eliminate fixed-amount subawards entirely, unless authorized by statute, and in the process greatly undermine collaborative grant programs.

Why is this? Fixed-amount subawards allow partnering organizations to make standardized subgrants for predetermined activities and costs. Thus, the proposed change would convert future fixed subawards to reimbursement grants which require considerably more paperwork for cost tracking, invoicing, and audit trails. For small institutions like the AMS and SMT, which have limited administrative capacity, this shift could greatly increase the burdens of administering federally funded grants. This would discourage partnerships and the sharing of information and resources, while likely reducing the overall participation of smaller institutions in federal grant programs. Indeed, this change, along with other aspects of the proposed rule, could result in greatly increased compliance costs and thus represents a departure from recent laudable government efforts to reduce administrative burdens and costs.

Recommendation: If the OMB feels strongly that fixed amount subawards should be reined in to increase transparency, we recommend lowering the fixed-amount subaward threshold from $500,000 to $100,000, rather than doing away with it entirely. A lowered threshold would allow for greater transparency for *most* fixed awards, but also provide a reasonable limit on the amount of paperwork that grantees are expected to keep. Often fixed grants are quite small: just a few thousand dollars. Requiring reimbursement documentation for subawards that are very small will simply create a flood of paperwork, without greatly improving cost-effectiveness.

Thank you for considering our comments and possible solutions. We believe the recommendations provided above are consistent with the rule's text and purpose and accord with existing federal laws. We welcome the opportunity to further advise the Office of Management and Budget on ways the "Regulation for Federal Financial Assistance" located in title 2 of the Code of Federal Regulations (CFR), subtitle A, may be revised to accommodate the goals of the administration, while also better serving nonprofit educational and cultural organizations that support the work of the United States' music students, musicians, music educators, and other music professionals.

Signed,

American Musicological Society (AMS)
Society for Music Theory (SMT)