American Council on Education

September 23, 2026

Zachary Rogers
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

RE: Proposed Rule on Education Department General Administrative Regulations (EDGAR), Docket No. ED-2026-OPEPD-2542

Dear Mr. Rogers:

On behalf of the American Council on Education (ACE) and the undersigned higher education associations, we write to share our significant concerns with the proposed revisions to the Education Department General Administrative Regulations (EDGAR).[1] These revisions would incorporate and expand many problematic provisions that were included in the May 2026 Office of Management and Budget (OMB) proposed rule on Uniform Guidance,[2] codifying historic and harmful changes to how the U.S. Department of Education (the Department) operates, competes, and funds its competitive and formula grants.

Over nearly 70 years, Congress has established and funded foundational programs in higher education, career and technical education, and workforce innovation to support college access and success for all students, and to support colleges and universities in serving their campus communities. As part of sustaining the strong framework of higher education and workforce development programs that Congress creates and funds, the Department has a statutory obligation to faithfully uphold congressional intent in program implementation.

Through EDGAR, the Department establishes the foundational regulations for the administration of grant programs. Over the past 50 years, these rules have periodically been updated to better align with statutory changes to grant programs as authorized by Congress. However, the Department's proposed revisions would instead incorporate and build upon the recently proposed OMB rule on Uniform Guidance, codifying a range of harmful changes that would weaken selection criteria based on objective merit, create significant financial risks for institutions of higher education, diminish transparency in grantmaking, and create misalignment between grant selection criteria and the purposes of programs authorized and funded by Congress. It appears the Department is

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[1] U.S. Department of Education. (2026, August 24). Education department general administrative regulations. *Federal Register, 91*(162), 54666–54683. https://www.federalregister.gov/documents/2026/08/24/2026-17239/education-department-general-administrative-regulations.

[2] Office of Management and Budget. (2026, May 29). Regulation for federal financial assistance. *Federal Register, 91*(103), 32198–32305. https://www.federalregister.gov/documents/2026/05/29/2026-10817/regulation-for-federal-financial-assistance.

inappropriately incorporating and implementing parts of the OMB rule in direct opposition to recent actions by Congress blocking implementation of the rule until December 11, 2026.

Taken as a whole, the proposed changes would negatively impact the ability of our nation's colleges and universities to support their students, advance their education and research missions, and support their broader communities. We urge the Department to respect congressional intent and pause any revisions to EDGAR, including those provisions aligned with OMB's proposed rule.

EDGAR Revisions Incorporating the OMB Proposed Rule

Given the overwhelmingly negative response to the May 2026 OMB proposed rule on Uniform Guidance, it is concerning that the Department's proposed rule mirrors some of the most concerning elements, including:

- **New suspension and termination authority and secretarial discretion in continuing multi-year awards** (Secs. 75.901 and 75.253). These revisions mirror OMB's proposed changes to 2 CFR 200, which would require final funding decisions on grants to be made by senior political appointees rather than the current merit review process.[3] This proposal would introduce instability into the grant process and expand agency authority to arbitrarily suspend or terminate awards based on shifting priorities, program goals, or political determinations.
- **Competitive preference for lower indirect cost rates** (Sec. 75.228). The Department's proposed rule would create a new allowance for the Secretary to provide "competitive preference to applicants who propose to charge lower indirect costs than their negotiated rate." This also aligns with the OMB proposed rule, which seeks to implement a preference for proposals from institutions with lower indirect cost rates.[4] We strongly oppose this change, which would undermine the current process of prioritizing the applicants best qualified to meet a program's goals. Additionally, this provision would undermine existing indirect cost rates that institutions have independently negotiated with the federal government to support the cost of doing research at an institution.

Additional Proposed Changes of Concern

The Department's proposal would also codify many of the harmful actions the agency has taken over the past 18 months that have caused confusion for institutions, faculty, students, and communities. This has included sudden changes to established grant priorities, as well as the sudden termination of existing grants.[5] Within the proposed rule, this includes:

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[3] See § 200.205—Federal Agency Review of Merit of Proposals: Office of Management and Budget. (2026, May 29). Regulation for federal financial assistance. *Federal Register, 91*(103), 32198–32305. https://www.federalregister.gov/documents/2026/05/29/2026-10817/regulation-for-federal-financial-assistance.

[4] Ibid.

[5] American Council on Education. (2026, July 13). *ACE, COE warn proposed TRIO changes would undermine decades of college access success.* https://www.acenet.edu/News-Room/Pages/ACE-COE-TRIO-Grant-Competition-Changes.aspx; American Council on Education. (2026, July 31). *Comments on Title VI international education*

- **Changes to general selection criteria for grants** (Sec. 75.210). The Department proposes adding as a criterion for grant selection: "The extent to which the proposed project demonstrates that admissions, promotion, or participant selection decisions made under the grant are based on academic excellence and high standards, without consideration of race, color, religion, sex, national origin." This language is both ambiguous in terms of operationalization and appears to conflict with the statutorily-mandated scope and purpose of many, if not most, higher education programs administered by the Department. We have significant concerns about the vagueness and misalignment of this criterion with the Department's grant programs and the unnecessary confusion for any grantee attempting to operationalize these provisions.

- **Constitutional rights, freedom of inquiry, and federal statutes and regulations on nondiscrimination** (Sec. 75.500, 76.500). This proposed change would require recipients of competitive grants and state-administered formula grants "to ensure that hiring, admissions, promotions, and compensation practices under the grant are based on merit and high standards, without regard to race, color, religion, sex, national origin, or proxies thereof." It is beyond the scope of the Department's authority to direct admissions, hiring, and employment practices through grant guidance. Further, for many institutions, hiring, promotion, and compensation policies are set by their state government, university system, governing board, or some combination of the three, and are not within the power of the institution to modify. Finally, without any definition of "merit" or "high standards," grantees will find it difficult, if not impossible, to implement these provisions with fidelity.

- **Compliance with executive orders** (Sec. 76.700). The proposed rule would also revise current regulations to require institutions that receive state-administered formula grants to comply with executive orders (EOs). EOs are not law, and many of the policy directives outlined in recent EOs go well beyond settled law, requiring endorsement of legal interpretations that in numerous cases have been rejected by courts. Further, many recent EOs contain provisions that directly conflict with existing state and local laws. While EOs may help provide context and understanding as to how the federal government may interpret the requirements of federal law, they do not supersede federal, state, and local law.

- **Eliminating the requirement to publish grant application notices and maximum award amounts in the Federal Register** (Secs 75.100 and 75.104). Federal Register notices are an important means for communicating grant opportunities to the higher education community and the public at large. This proposed change would decrease transparency and awareness of funding opportunities, not just for grantees, but for taxpayers interested

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programs. https://www.acenet.edu/Documents/Comments-on-Title-VI-Intl-Ed-Programs.pdf; Sanganeria, V. (2026, July 21). *Trump officials can't revoke federal education grants for anti-DEI priorities, judge rules*. EdSource. https://edsource.org/updates/trump-officials-cant-revoke-federal-education-grants-for-anti-dei-priorities-judge-rules.

in seeing how federal dollars are being spent and whether their government is following statutory requirements.

For these reasons, we remain concerned that the Department's proposed rule would inappropriately incorporate and build upon provisions from OMB's proposed rule, and that this approach would be contrary to the clear concern of Congress, as expressed by Congress's action to block the OMB rule until at least December 11, 2026. As drafted, the proposed rule would undermine the grant programs authorized and funded by Congress and would have a negative impact on overall postsecondary education in the U.S. It would codify in regulation processes that have led to the current state of confusion that characterizes the current federal grantmaking environment. This period has been marked by unexpected funding freezes and terminations, rapidly shifting grant priorities, and changing management and oversight of programs, to the detriment of students, institutions, and the broader public. We urge the Department to withdraw these proposed changes to EDGAR and to instead work with the stakeholder community to carry out any necessary technical changes.

Sincerely,

Ted Mitchell
President