July 7, 2026

Office of Management and Budget
Office of Federal Financial Management
Attn: Uniform Guidance Rulemaking (Docket OMB-2026-0034)
725 17th Street, NW
Washington, D.C. 20503

Re: Comments of the Large Public Power Council on the Proposed Rule Revising the Guidance for Federal Financial Assistance (Uniform Guidance), 2 CFR Part 200, 91 Fed. Reg. 32198 (May 29, 2026), Docket OMB-2026-0034

Sent via the Federal eRulemaking Portal at https://www.regulations.gov/

Dear Sir or Madam:

The Large Public Power Council (**"LPPC"**) submits these comments on the Office of Management and Budget's (**"OMB"**) proposed rule revising the Guidance for Federal Financial Assistance, 2 CFR Part 200 (the **"Proposed Rule"**).

LPPC is a national organization comprising 29 of the nation's largest public power systems (the **"Members"**). LPPC's Members are state- and locally-owned, not-for-profit electric utilities, governed by local boards accountable to the public and operated for customers rather than shareholders. From New York to California and Washington State to Florida, LPPC Members provide reliable, low-cost electric service to more than 30 million Americans across 23 states and territories, owning approximately 80 gigawatts of electric generation capacity and operating more than 45,000 circuit-miles of high-voltage transmission. Public power utilities are essential infrastructure providers and frontline responders: when disaster strikes, our crews are among the first to restore service, often working under emergency conditions and relying on mutual aid from utilities across the country.

LPPC Members regularly receive federal financial assistance to build and harden critical electric infrastructure, including funding administered by the Department of Energy, the Federal Emergency Management Agency (**"FEMA"**), the Environmental Protection Agency, the Cybersecurity and Infrastructure Security Agency (**"CISA"**), and the Department of Transportation. We share the Administration's commitment to the integrity, accountability, and sound stewardship of federal funds that the Proposed Rule advances. We also recognize that many of its provisions implement Administration priorities that are likely to appear in the final rule. We offer these comments to identify specific provisions where targeted clarification or modest procedural safeguards would allow the rule to function effectively in the public power context, particularly in emergency power restoration, while still achieving the Administration's objectives.

These comments reflect input gathered directly from LPPC Members, including a structured member survey and individual member submissions. We focus on four provisions warranting comment, followed by one narrower request for clarification.

I. E-Verify for Assistance Recipients (Proposed § 200.303(f)) — Emergency Restoration

Proposed § 200.303(f) would, for the first time, require recipients and subrecipients of federal financial assistance to participate in E-Verify and confirm the employment eligibility of all employees and contractors performing work under a federal award. LPPC supports lawful employment and does not oppose the requirement as a general matter. We write because, as applied to emergency power restoration and mutual aid under FEMA Public Assistance awards, the requirement as drafted could delay the restoration of electric service after disasters. Our request is narrow and targeted to that context.

A. Mutual aid and emergency restoration

When a major storm or disaster strikes, federally funded restoration is principally supported through FEMA Public Assistance, and electric utilities restore service through mutual aid: crews deployed from other utilities, and specialized contractor crews (line, vegetation, and staffing), surge into the affected area under mutual assistance agreements and emergency contracts. Those crews remain employees of their home utility or contractor. E-verify processes are explicitly tied to the employer-employee relationship, including hiring documentation and Form I-9 obligations. A host utility receiving mutual-aid personnel does not employ those individuals either through joint employment arrangements or temporary transfers. As a result, the host utility has no corresponding hiring event, no associated I-9 responsibilities, and therefore no legal authority to initiate E-verify inquiries. Doing so would constitute misrepresentation within the E-verify system and violate program requirements. Read literally, the requirement that E-Verify cover "all contractors performing work under a Federal award" could be construed to direct a host utility to verify workers it does not employ. During an active restoration, it would serve no party's interest, and would directly harm the public, for a utility to turn away qualified, available crews over questions about another employer's enrollment status when every available resource is needed to restore power as quickly as possible.

FEMA has historically applied more flexible compliance expectations to emergency work than to planned work executed after an event, and the Proposed Rule's own procurement provisions recognize emergency exigency. An E-Verify accommodation for emergency mutual aid would be fully consistent with that established practice. We therefore request that OMB **waive the E-Verify requirement for contractor and mutual aid personnel deployed during declared emergencies**, and confirm, jointly with FEMA, that this treatment applies in the FEMA Public Assistance context. Such a waiver protects the integrity of the verification requirement for ordinary, planned work while ensuring it does not impede disaster response.

B. Implementation period and prospective application

The Proposed Rule defers its payment-justification requirement until agency systems are available, but provides no comparable runway for E-Verify enrollment and contractor flow-down tracking. Members confirm that enrollment status varies widely, and that even Members already enrolled often do not extend E-Verify to their contractors. A defined implementation period is needed so that large utilities can enroll and establish flow-down processes in advance, and be prepared to comply before a declared emergency arises rather than scrambling during one. We request a defined implementation period and prospective-only application to individuals hired after the effective date.

C. State-law conflicts

Some states restrict how E-Verify may be used, including by prohibiting employers from using it on existing employees. These restrictions create conflicts in three respects.

First, they impede mutual aid. When a utility in a state that restricts the use of E-Verify sends crews to assist a utility in another state, those crews remain existing employees of their home utility, and the home state's restriction can prevent the verification the Proposed Rule would require. The practical effect is that utilities in those states may be unable to send mutual aid to others, reducing the pool of crews available for emergency restoration and delaying the recovery that mutual aid exists to speed, including for utilities in states that impose no such restriction.

Second, they put disaster recovery itself at risk. A utility operating in a state that restricts the use of E-Verify may be forced to choose between complying with the federal award condition and complying with its own state's law. Because the Proposed Rule makes E-Verify participation a condition of the award, that conflict could jeopardize the utility's eligibility for FEMA Public Assistance, the grants that fund rebuilding the community after a disaster.

Third, the conflict extends beyond disaster recovery. The same condition could require such a utility to forgo federal funding generally, not only FEMA Public Assistance but any federal grant, including grants that further the Administration's own priorities. The result is that otherwise-eligible utilities could be excluded from federal programs because of a conflict between the federal condition and their state's law.

These conflicts reinforce the case for an emergency waiver as the cleanest resolution, and we also request that OMB address how recipients are to reconcile the federal requirement with conflicting state-law restrictions.

II. Procurement Methods — Cost-Reimbursement Contracts for Unscoped Technical Work (Proposed § 200.320)

Proposed § 200.320 would strongly discourage the use of cost-reimbursement contracts, requiring notice to the agency and written justification, and permitting agencies to require prior approval. LPPC understands and shares OMB's underlying concern: open-ended reimbursement of actual costs can reduce a contractor's incentive to control costs. We do not object to that principle as applied to

genuinely open-ended cost exposure. We write to identify a defined, legitimate category of work for which a cost-reimbursement structure is the appropriate and cost-disciplined choice, and to ask that the rule not impede its use.

For professional engineering and consulting services where the level of effort cannot be scoped in advance, including feasibility research, preliminary studies, and early-stage design (for example, technical and economic evaluation of generation and energy-storage technologies, and transmission, substation, distribution, and SCADA systems design), Members appropriately use cost-plus-fixed-fee structures. As Members describe them, these contracts pair fully burdened rate schedules with a **fixed** (not percentage) fee and a **not-to-exceed total contract price** that cannot be increased without formal approval, and they are administered through task authorizations defining the scope, schedule, and budget of each task. We recognize that cost-plus-fixed-fee is a cost-reimbursement structure that the provision reaches: it reimburses actual costs, and the not-to-exceed ceiling caps total exposure rather than removing the cost-reimbursement character. But it is not the open-ended, incentive-eroding arrangement the provision is principally aimed at. It is the appropriate structure for work whose precise extent is genuinely unknowable at the outset, and it disciplines cost through a fixed fee and a binding ceiling.

Members are directly concerned that the discouragement of cost-reimbursement contracts, without accommodation for this category, could impede their ability to pursue and accept federal funding for early-stage engineering and feasibility work, the very work that determines whether larger infrastructure investments proceed. We therefore request that OMB confirm that the § 200.320 discouragement, and any prior-approval requirement, accommodate the use of cost-plus-fixed-fee structures, subject to a not-to-exceed ceiling and a fixed fee, for engineering, feasibility, and design work whose level of effort cannot reasonably be fixed in advance. Clarifying that such structures remain available for this defined category of work would give recipients the confidence to use federal funds for it.

III. Discretionary Termination and Suspension (Proposed § 200.340)

Proposed § 200.340 would expressly authorize agencies to terminate awards when, in the agency's judgment, an award "no longer advances agency priorities or the national interest," and would add temporary suspension procedures. LPPC does not dispute that an Administration may align discretionary funding with its priorities. Our concern is the practical effect of open-ended, mid-performance termination authority on the multi-year capital projects that define public power's use of federal assistance, and the absence of basic safeguards for recipients who have already committed substantial resources in reliance on an award.

LPPC Members commit capital, financing, procurement, and multi-year construction schedules around federal awards for transmission, resilience, and grid modernization. Because our Members finance infrastructure principally through municipal debt and recover costs from the customers they serve, funding that can be withdrawn mid-project without regard to recipient performance does not merely

delay a project; it strands costs already incurred and shifts risk to ratepayers. Member experience under the Proposed Rule's approach is not hypothetical:

Members' experience. A Member was awarded approximately $24 million under a federal hazard-mitigation program to fund an ice-jam flood-mitigation project protecting a populated area. After the award was announced, it was cancelled by public notice; even after reinstatement, the funding agency has not re-engaged, and the Member reports the project is unlikely to be built despite having advanced it to ninety percent design using its own funds. Other Members report federal awards paused during the 2025–2026 funding lapse, and at least one Member had a Department of Energy award frozen for an extended agency review running from mid-2025 into early 2026, placing the funded project significantly behind schedule.

These experiences illustrate the core problem: termination or indefinite suspension untethered from recipient performance imposes real and unrecoverable costs on recipients, contractors, and the communities the projects serve. We therefore respectfully request that OMB adopt the following safeguards, each of which preserves the Administration's discretion while making the provision administrable and predictable:

1. Clear standards and written notice. Termination or suspension under § 200.340 should be accompanied by a written statement of the basis for the action, so that recipients and reviewing bodies understand the grounds.

2. Opportunity to respond. Recipients should have a defined opportunity to address the agency's stated concerns before a termination becomes final, consistent with the suspension-and-cure structure the Proposed Rule borrows from federal contracting.

3. Protection of costs properly incurred. Costs reasonably incurred before the effective date of termination, including binding obligations to contractors, should remain allowable and reimbursable, so that recipients are not penalized for having performed.

4. Recognition of reliance where construction is underway. Where a recipient has commenced construction or made irrevocable financial commitments in reliance on an award, the agency should weigh those reliance interests before terminating.

5. Prospective application. The discretionary-termination authority should apply prospectively, to awards made after the effective date of the final rule, so that it does not introduce new uncertainty into awards already in performance around which Members have already committed capital.

These safeguards do not limit the Administration's ability to set priorities. They make the exercise of that authority predictable to administer for agencies and recipients alike, and they protect the public investment already made in projects that serve the national interest.

IV. Senior Appointee Pre-Issuance Review of Discretionary Awards (Proposed § 200.205)

Proposed § 200.205 would require a senior agency appointee to conduct a pre-issuance review of discretionary awards for consistency with law, agency priorities, and the national interest. LPPC accepts that an Administration may ensure its discretionary awards reflect its priorities; every Administration sets priorities. We raise three concerns directed not at the existence of the review but at its administration, each of which Members identified directly.

A. Procedural fairness for applicants

Members invest significant resources preparing competitive applications for grid-resilience, transmission, and cybersecurity programs. A discretionary review layer that can decline an award on policy grounds, with no obligation to notify unsuccessful applicants or to disclose the criteria applied, creates pre-award uncertainty that parallels the back-end termination risk discussed above. We request that OMB establish minimum procedural standards: notification to applicants when an application is declined at this stage, and reasonable transparency regarding the criteria used. We further request that any priorities-based review be completed before award rather than applied to revisit or rescind an award after issuance, so that an issued award is a reliable basis for the capital commitments that follow.

B. Preservation of technical and merit-based review

Many awards Members pursue, particularly research, development, and demonstration awards, depend on expert evaluation of technical merit. Members have expressed concern that a pre-issuance policy review could supersede peer and merit-based review, shifting evaluation away from technically qualified personnel toward reviewers who may lack the relevant expertise to assess a project's purpose, scope, or value, and thereby undermining fair competition and public confidence in award decisions. Sound, merit-based evaluation serves the Administration's own interest in funding projects that work. We request that OMB clarify that technical and merit-based review will be preserved and given weight within the award process, and that the § 200.205 review supplement rather than displace expert evaluation of technical merit.

C. Indirect cost rate preference

Proposed § 200.205 includes a criterion under which, all else equal, agencies are to prefer applicants with lower negotiated indirect cost rates. A negotiated indirect cost rate reflects an organization's cost structure and the nature of its work; it is not a measure of efficiency or of the value an applicant will deliver, and it is not tied to award performance or accountability. A public power utility maintains a skilled, specialized workforce that builds, operates, and restores high-voltage electric infrastructure, often in hazardous conditions, and the indirect costs that support that work, including safety programs, specialized training, equipment, and emergency-response capability, differ in kind from those of an applicant whose work is principally analytical or administrative. A higher negotiated rate in that context is not a sign of inefficiency or of lesser value; it reflects what it takes to do demanding and dangerous work safely and well. Public power utilities may therefore carry negotiated rates that are not comparable

to those of other dissimilar applicants, and the difference says nothing about the merit or value of the work proposed. Using the rate as a preference criterion therefore risks systematically disadvantaging structurally dissimilar applicants on a basis unrelated to the merits or outcomes of the proposed work. We request that OMB clarify how rate comparisons will be made across structurally dissimilar applicant types, and confirm that the criterion will not be applied in a manner that disadvantages applicants with legitimately negotiated rates without regard to award performance.

We note that these requests are consistent with the Proposed Rule's own emphasis on rigorous, merit-based decision-making, and with the Administration's broader interest in funding technically sound projects that advance the national interest.

V. Additional Clarification: Commercial Off-the-Shelf Software (Proposed § 200.220)

Proposed § 200.220 would prohibit using federal award funds for collaborations involving covered foreign countries or entities. LPPC's principal foreign-technology concern for grid equipment is addressed through the foreign-entity effective-control framework, on which LPPC commented to the Department of the Treasury on March 30, 2026. To avoid unintended overlap, we request that OMB clarify that the routine licensing of standard commercial off-the-shelf (COTS) software, which may incorporate globally sourced components, is not treated as a prohibited foreign collaboration under § 200.220, consistent with the position LPPC advanced in its Treasury comments. This clarification would prevent ordinary grid and information-technology operations from being inadvertently swept into the prohibition.

VI. Conclusion

LPPC appreciates OMB's consideration of these comments and shares the Administration's commitment to the responsible stewardship of federal funds. The clarifications and safeguards described above would allow the Proposed Rule to achieve its objectives while preserving the ability of public power utilities to build critical infrastructure and to restore power quickly and reliably after disasters. We would welcome the opportunity to discuss these comments and to serve as a resource to OMB as it develops the final rule.

Respectfully submitted,

Large Public Power Council