



NATIVE AMERICAN FISH & WILDLIFE SOCIETY

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July 10, 2026

Office of Management and Budget
Executive Office of the President
725 17th Street NW, Washington, DC 20503
Submitted electronically via Regulations.gov

Re: OMB-2026-0034, Regulation for Federal Financial Assistance

To Whom It May Concern:

The Native American Fish and Wildlife Society (NAFWS), a national Tribal organization, submits these comments in response to the proposed rule “Regulation for Federal Financial Assistance” (OMB-2026-0034).

Introduction

Tribal Nations are in a position to be uniquely impacted by the Office of Management and Budget’s (OMB) proposed rule, “Regulation for Federal Financial Assistance”. Tribal Nations have a political, government-to-government relationships with the United States, and they have prepaid with their lands and resources for the trust and treaty obligations that the United States owes them. The United States fulfills its trust and treaty obligations through both the direct delivery of Tribal programs and services and through provision of federal funding to Tribal Nations and Tribal organizations serving Tribal Nations. Essential services provided by Federal employees include healthcare services through IHS, law enforcement and public safety, fish and wildlife management through the BIA, and educational services through the BIE—not to mention countless other essential and legally mandated services. These programs are not discretionary; they are legal obligations rooted in treaties, trust obligations, the U.S. Constitution, and long-standing federal statutes. And Tribal Nations, as inherently sovereign governments with strong political relationships to Tribal citizens and community members, are responsible for providing these, and other, essential government services—frequently utilizing funding from the federal government to do so. Therefore, any change in federal funding regulations is likely to disproportionately impact Tribal Nations, Tribal citizens and communities, and Native-serving organizations.

Support for OMB’s Intention to Engage in Government-to-Government Tribal Consultation

Given the potential impacts this proposed rule may have for Tribal Nations, we applaud OMB’s decision to already consider some Tribal “concerns in developing this proposed rule” and its acknowledgment of its obligation to engage in “formal Tribal consultation before a final rule is

promulgated”. Tribal Nations welcome formal government-to-government Tribal consultation on this proposed rule and encourage OMB to hold multiple sessions with officials who have decision-making authority on this critically important issue to ensure maximum participation and consideration of Tribal input and feedback.

Tribal Fish and Wildlife Programs are Uniquely Impacted

There are no annual, dedicated base funds available for Tribal fish and wildlife programs. Unlike state fish and wildlife agencies, Tribal fish and wildlife departments do not receive dedicated funding through the Pittman-Robertson Wildlife Restoration Act, the Dingell-Johnson Sport Fish Restoration Act. Consequently, Tribal fish and wildlife programs rely heavily on Federal grant funding to implement trust and treaty responsibilities, conserve nationally significant fish and wildlife resources, restore habitat, manage invasive species, conduct wildlife disease surveillance, and implement treaty-reserved hunting, fishing, and gathering rights. In a 2021 survey conducted by NAFWS, 83% of Tribal fish and wildlife program respondents indicated they received federal grant funding. Administrative delays or additional barriers to Federal assistance have disproportionately severe consequences for Tribal Nations.

Fish and wildlife management is governed by biological rather than fiscal calendars. Delays in awards, suspensions, or terminations can result in missed spawning surveys, habitat restoration windows, invasive species treatments, prescribed fire operations, wildlife disease surveillance, and seasonal hiring, effectively delaying conservation work for an entire year while increasing costs.

Many Tribal natural resource departments consist of only a few employees responsible for biological monitoring, grant management, procurement, reporting, and compliance. Additional administrative requirements disproportionately burden Tribal programs and reduce time available for on-the-ground conservation. Tribal fish and wildlife departments serve as front-line partners in surveillance for Highly Pathogenic Avian Influenza, Chronic Wasting Disease, aquatic invasive pathogens, and other emerging wildlife diseases. Delays in funding reduce early detection capacity and create risks for wildlife, livestock, subsistence resources, and public health.

Federal financial assistance also supports Tribal Conservation Law Enforcement. Tribal Conservation Law Enforcement Officers are often the first line of defense for public safety in addition to their conservation duties. Interruptions in funding jeopardize protection of treaty resources, public safety, culturally significant species, and early detection of diseases affecting wildlife, livestock, and human health. Tribal Conservation Law Enforcement Officers also investigate wildlife trafficking, illegal commercialization of fish and wildlife resources, violations of treaty-protected harvest regulations, and crimes involving culturally significant species. Funding interruptions reduce the ability of Tribal Nations to protect natural resources while also affecting intergovernmental partnerships with federal and state law enforcement agencies.

Comments on OMB's Proposed Regulation for Federal Financial Assistance

While we look forward to OMB's formal consultation with Tribal Nations, we also offer the following comments for the record highlighting some areas of concern we have with the rule as currently proposed.

1. The proposed rule has the potential to dramatically interfere with Tribal Nations' inherent sovereign rights of self-determination and self-governance by allowing partisan politics to dictate Tribal priorities.

Tribal Nations must be able to make their own choices about the priorities for their communities and should not be subject to the whims of national politics. Historically, Tribal Nations have successfully worked with *both* Republican leaders and Democratic leaders to achieve positive results for Native people and communities. Conversely, Tribal Nations have experienced setbacks in their ability to exercise self-determination and self-governance at the hands of *both* parties. The reality is that Tribal Nations' issues do not fit neatly into the politics of either party and that the diversity among the cultures, traditions, governmental structures, and political priorities of Tribal Nations and Native people must be respected.

With increasingly polarized political electorate and a winner-take-all electoral system, the following proposed changes represent potential future threats to Tribal Nations and their ability to govern their people and communities as they deem fit:

- **§ 200.202(a)(1)(iii)**—The proposed new requirement that federal programs must “[a]lign with administration policies and priorities” subjects inherently sovereign Tribal Nations to the whims of whatever political party is ruling at a particular time instead of allowing Tribal Nations to exercise meaningful self-determination and self-governance to meet the needs of their communities as they have done since time immemorial.
- **§ 200.205(b)**—The proposed new requirement that “one or more senior appointees” conduct “pre-issuance review of all discretionary awards” not only places a new administrative hurdle in the awarding of discretionary grants, but, as with the proposed changes to §200.202(a)(1)(iii), this particular hurdle risks subjecting a Tribal Nations' decisions for how to use federal funding to judgement of a single political appointee who may or may not have extensive experience with Indian Country at the time the decision is being made.
 - **§ 200.205(b)(1)**—The proposed pre-issuance review process is particularly concerning given that, under §200.205(b)(1), the senior political appointee is required to ensure that discretionary grants “demonstrably advance the President's policy priorities”. As noted previously, Tribal Nations' issues do not fit neatly into the politics of either party and, therefore, this provision could be repeatedly utilized—whether intentionally or not—to prevent Tribal Nations from being able to fully exercise their sovereign authority as they deem necessary.

- **§ 200.205(b)(2)(i)**—The proposed pre-issuance review process also requires a senior political appointee to deny discretionary awards used to “fund, promote, encourage, subsidize, or facilitate[r] acial preferences...including activities where race or intentional proxies for race will be used as a selection criterion for employment or program participation”. While it is true that the U.S. Constitution singles out Tribal Nations and Native people as unique, and the U.S. Supreme Court has time and again affirmed the principle that United States actions that deliver on trust and treaty obligations to Tribal Nations, Tribal citizens, and Tribal communities do not run afoul of the U.S. Constitution’s equal protection requirements because they are not race-based, it is also true that federal officials have needed continuous education from Tribal Nations on this point. All too often, federal officials only come to understand the political status of Tribal Nations after having made a decision negatively impacting Tribal Nations. Given the settled unique status of Tribal Nations and Native people, we respectfully request that this provision clearly states that it may not be used to deny discretionary grants to Tribal Nations and Native people because proposals benefiting them should not be understood as implicating racial preferences within the meaning of federal law.
- **§ 200.205(b)(2)(iv)**—The proposed pre-issuance review process also requires a senior political appointee to deny discretionary awards that “promote anti-American values” without any definition of what that term means. Given that Tribal Nations have fought for centuries for the right to preserve our cultures, values, and ways of life, we urge removal of this provision or a definition that makes it clear that this provision may not be used to deny discretionary grants to Tribal Nations and Native people seeking discretionary grant funding.
- **§§ 200.206(b)(2)(vii)(C) and 200.206(b)(2)(viii)**—OMB’s proposed amendments to this section include modifying the requirement that federal agencies review “risk posed by applicants” by mandating that agencies take into account whether applicants are “[e]ngaging in activities or initiatives that are inconsistent with...equal protection principles of the U.S. Constitution” (see §200.206(b)(2)(vii)(C)), and whether “the applicant’s membership in or affiliation with organizations engaged in activities that...undermine public safety or national security”. Tribal Nations do not object to provisions, in principle, but given the amount of political discretion that may be used in the future when applying these provisions, we again ask that these provisions either be removed or defined in a manner as to clearly preclude their use to deny discretionary grant applications from Tribal Nations and Native people.
- **§§ 200.340(a)(2), 200.340(e), 200.342, and 200.343(b)**—Collectively, these proposed changes allow federal agencies to exercise their discretion over:
 - the termination of federal awards whenever “a termination is in the interest of the Federal agency or pass-through entity”, including but not limited to in instances when the federal agency decides the “award does not effectuate...the national interest...at the time of termination”;

- the suspension for up to 90 days of federal awards any time a federal agency “determines that a suspension is in the interest of the Federal agency or pass-through entity”;
- the availability of “objections, hearings, and appeals related to any reasons for termination except termination for noncompliance”; and
- the availability of “any additional costs to the recipient or subrecipient resulting from financial obligations incurred after the termination of a Federal award”.

This level of discretion by federal agents is significant given that these provisions are applicable only *after* decisions to award funding to Tribal Nations and Native people have taken place. Once funding award decisions are made, Tribal Nations, Native entities, and Native-serving organizations rely on those decisions to carry out a wide range of services and activities. Allowing federal agencies to exercise their discretion to terminate and suspend awards on the basis of vague standards such as whether doing so is “in the interest of the Federal agency”, subject funding decisions used to further the United States’ trust and treaty obligations to the partisan whims of whomever is in power at a given point in time. Such a system—subject to the constant possibility of having federal dollars disappear overnight—is not meaningful fulfillment of the United States’ obligations to Tribal Nations and Native people, and a different system must be employed to ensure Tribal Nations are able to exercise self-determination and self-governance as fully as any other sovereign.

2. The proposed rule embraces a one-size-fits-all philosophy that has, in the past, proven ineffective and frequently harmful when applied to programs serving Tribal Nations and Native people.

Tribal Nations comprise a diverse group of independent sovereign governments, each with their own histories, cultures, traditions, and legal histories. Tribal Nations have many political, historical, and legal attributes that make them wholly unlike other federal awardees regardless of whether other awardees are governmental (i.e. states or local government) or non-governmental entities. Over the past 250 years, the United States—in its government-to-government interactions with Tribal Nations—has repeatedly acknowledged the failures of “one-size-fits-all” approaches when applied to Indian Country.

Despite the lessons learned over the history of U.S.-Tribal relations, the proposed rule by OMB will, effectively, result in significant changes that would immediately take effect government wide. Additionally, future changes to this OMB rule would, again, take effect government-wide on a single date, without the need for separate agency rulemaking to codify OMB amendments. In addition to potentially undoing existing agency regulations that were developed in consultation with Tribal Nations, the proposed OMB rule and its agency-wide effect, means that Tribal Nations, Native entities, and Tribal-serving organizations have less time to prepare for changes and potentially fewer opportunities for agency-specific input prior to implementation.

While non-exhaustive, some proposed changes that will be implemented across the federal bureaucracy with the potential to negatively impact Tribal Nations include:

- **§ 200.205(b)(3)**—The proposed pre-issuance review criteria that gives “preference for discretionary awards...to institutions with lower indirect cost rates”, which has the potential to ignore the realities of providing programs and services to Tribal Nations and Native people who, frequently, are located in rural and isolated areas of the country;
- **§ 200.205(b)(5),(6)**—The proposed pre-issuance review criteria that requires applicants to “commit to complying with administration policies, procedures, and guidance respecting Gold Standard Science”, which has the potential to cut out Tribal proposals seeking to draw from and build upon traditional Indigenous knowledge and understandings; NAFWS recommends that OMB expressly recognize Indigenous Knowledge and Traditional Ecological Knowledge as valid scientific information under the proposed Gold Standard Science provisions and protect Tribal data sovereignty by ensuring expanded reporting requirements do not require disclosure of sensitive cultural sites, species locations, or other protected Tribal information.
- **§ 200.205(e)**—The proposed granting of discretion to federal agencies to not award funding due to “low-quality proposals”, which risks preventing funding to go to the Tribal Nations and communities that may need it most;
- **§ 200.218**—The proposed general prohibition against federal awards to support theories of disparate-impact liability, which are often critically important avenues of research to understand how policy decisions negatively impact Native people and communities, and what changes are needed to make positive change for the future;
- **§ 200.303(f)**—The requirement of all federal awardees to participate in the Department of Homeland Security’s E-verify program, which raises privacy concerns and has the potential to infringe upon Tribal Nations’ sovereignty with respect to its own data;
- **§ 200.320**—OMB’s limiting of the use of cost-reimbursement contracts and requiring prior approval to use such contracts;
- **§§ 200.329(h) and 200.332(g)**—The addition of potentially burdensome subaward reporting requirements;
- **§ 200.320**—The elimination of fixed amount subawards; and
- **§§ 200.421, 200.429, 200.432, 200.461, and 200.477**—OMB’s changes to allowable costs, which, among other things, require prior approvals for publications, conferences, and fundraising costs, and which presumptively disallow advertising costs.

3. The proposed rule includes a modification targeting Tribal Nations and that will have significant negative consequences for Tribal Nations and Native people.

The proposed rule also includes the effective replacement of current § 200.444(b), which reads:

Indian Tribes...may include up to 50 percent of salaries and expenses directly attributable to managing and

operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

This proposed change, if it goes into effect, would have an immediate negative impact on Tribal Nations' ability to employ the individuals necessary to carry out the requirements of federal funding awards. And the consequences would extend beyond Native people, impacting anyone who relies on Tribal Nation governments for programs and services—whether Native or not. Due to the potential for substantial negative impacts across Indian Country if this provision were removed, we call on OMB to amend its proposed rule to allow the current text of § 200.444(b) to remain in effect.

4. The Regulatory Impact Analysis underestimates the economic consequences for Tribal Governments.

OMB's Regulatory Impact Analysis substantially underestimates the economic consequences for Tribal governments by considering only administrative compliance costs. It fails to account for delayed habitat restoration, cancelled field seasons, increased construction costs, staff turnover, missed opportunities to detect wildlife disease outbreaks, delayed invasive species response, and the long-term ecological consequences of postponing conservation work that depends upon seasonal biological windows.

Additional Recommendations

- Provide explicit exemptions or tailored implementation for programs carried out in fulfillment of Federal trust and treaty responsibilities.
- Preserve existing 2 CFR §200.444(b) without modification.
- Clarify that programs authorized under Federal Indian law are political classifications rather than racial classifications.
- Develop Tribal-specific implementation guidance and conduct government-to-government consultation before future amendments.
- Delay implementation until Tribal recipients receive sufficient technical assistance and guidance.

Conclusion

Tribal fish and wildlife programs conserve fish, wildlife, habitats, and cultural resources that benefit not only Tribal Nations, but the Nation as a whole. These programs implement treaty rights, fulfill the Federal trust responsibility, and steward resources that cross jurisdictional boundaries and support regional ecosystems. The final rule should recognize these unique responsibilities and ensure that government-wide financial assistance requirements do not unintentionally impede the ability of Tribal Nations to carry out these essential governmental functions. NAFWS respectfully requests that OMB carefully consider the recommendations

contained in these comments and continue to engage Tribal Nations through meaningful government-to-government consultation before issuing a final rule.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Donald J. Reiter". The signature is written in a cursive, flowing style.

Donald J. Reiter, President
Native American Fish and Wildlife Society