Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC, 20503

REGULATION FOR FINANCIAL ASSISTANCE	))	**OMB-2026-0034**

COMMENTS OF

NTCA-THE RURAL BROADBAND ASSOCIATION

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I. INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association (NTCA) hereby submits comments in the above-captioned proceeding.[1] NTCA represents approximately 850 locally operated communications providers in rural areas throughout the United States. NTCA members are all small businesses, on average employing approximately 27 people. As small businesses operating in rural communities, NTCA participates actively in Federal rulemaking and other proceedings to support the interests of its small business members. These include relevant proceedings at the Federal Trade Commission, National Institute of Standards and Technology, Department of Agriculture, the Federal Communications Commission, and others. NTCA staff have served on Federal advisory groups for cybersecurity and agriculture, and NTCA works actively with other organizations representing the interests of small businesses in rural areas throughout the Nation.[2]

As OMB considers its proposed rule, NTCA urges that any amendments be limited to affected Federal financial assistance programs housed within the rules located

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[1] *Regulation for Federal Assistance*, Office of Management and Budget, 91 Fed. Reg. 32198, 32204 (May 29, 2026) (OMB PR).

[2] By way of example, NTCA holds a seat on the Board of the National Rural Economic Developers Association.

in 2 CFR Part 200. Part 200 includes rules for many varied federal financial programs, including grants, and OMB is strongest when it exercises its expertise on programs that are administered pursuant to those rules. Limiting potential amendments to Part 200 will also provide certainty to grantees, rather than relying on the more ambiguous Federal financial assistance (FFA) terminology. Scoping the rules accordingly will not limit their effectiveness. Rather, it will ensure that the reasoned inquiry of OMB in the instant matter, informed by expert opinions of affected entities, will be instrumentally focused and address most effectively the fundamental processes for instruments that operate within Part 200.

II. DISCUSSION

A. THE INSTANT INQUIRY IS MOST EFFECTIVELY APPLIED TO PROGRAMS THAT OPERATE WITHIN 2 CFR PART 200

1. The Various Definitions of Federal Financial Assistance Limit Application of that Standard to Designated Programs

The instant proposals, if adopted, would be most effectively applied to programs that operate within the scope of 2 CFR Part 200. In contrast, revisions to Part 200 should not be construed to inadvertently absorb programs governed by other regulatory structures. Many different Federal programs enable the distribution of financial and other support resources to individual firms, local governments, and industries. Yet even among programs that are found within the scope of FFA, there is no unform definition. This lack of a universal definition restrains OMB from applying new amendments to programs that operate outside of Part 200, rather counseling for using Part 200 as the *sine qua non* to determine which funding programs are affected.

The very existence of different definitions among various agencies underscores the fact that absent specific reference to FFA in either the controlling statute or Federal rules, those programs are not considered to be FFA. If programs were intended to fall within the scope of FFA, then that designation would be seen clearly in the defined rules of the agency or the governing statute. By way of example, the Department of Education defines FFA as "[a]ny contract, agreement, or arrangement" that assists an "education program or activity," including, but not limited to, loans, grants, or lease of Federal property.[3] The Department of Health and Human Services includes among its FFA definitions "financial assistance received by an entity selected by the Government or a pass-through entity . . . to carry out a service (e.g. by contract, grant, or cooperative agreement)."[4] The Department of the Treasury describes FFA to also include detail of Federal personnel, donation of Federal property and interests in property, and the sale or permission to use Federal property at little or no cost.[5] The scope of FFA definitions (and the corollary lack of a single, controlling definition) could mistakenly be read to leave wide margins within which any manner of program might be gathered. However, a determinative axiom arises from the opposite.

Congress consistently uses the phrase "Federal financial assistance" where it intends programs to be considered as such. These include Title VI of the Civil Rights Act

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[3] 34 C.F.R. § 106.2(g).

[4] 45 C.F.R. § 87.1(a).

[5] 31 C.F.R. § 22.3. *See also* "Federally Assisted Programs and Federally Conducted Programs," U.S. Department of the Treasury (https://home.treasury.gov/about/offices/management/civil-rights-and-equal-employment-opportunity/federally-assisted-programs-and-federally-conducted-programs) (visited June 24, 2026).

of 1964;[6] the Rehabilitation Act of 1973;[7] and Title IX of the Education Amendments of 1972.[8] The absence of such language in other places stands against attaching those constructs to other programs. Congress does not impose fundamental policies in vague or hidden language. As the Supreme Court observed a quarter-century ago, "Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, as one might say, hide elephants in mouseholes."[9] Stated differently, Congress repeatedly used the term "Federal financial assistance." Its absence elsewhere is deliberate omission. Known as the "negative implication canon," this implicates the proposition that "[w]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."[10] This principle may be extended to where Congress uses or does not use language in separate pieces legislation.[11] Where a term is omitted, the omission must be

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[6] Civil Rights Act of 1964, Sec. 100.3(c), (e), Pub. L. No. 88-352, 78 Stat. 241 (1964), *codified at* 42 U.S.C. §21.2000(d), (e) (specifying "federal financial assistance" multiple times).

[7] Rehabilitation Act of 1973 – EEOC, Sec. 504, Pub. L. 93-112, 87 Stat. 355 (1973), *codified at* 29 U.S.C. § 701 *et seq.* (specifying "federal financial assistance" multiple times including § 49*l*-2(e)(1), (2), § 732(c), § 794, and § 2938).

[8] Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 235 (1972), *codified at* 20 U.S.C. §§ 1681-1688 (specifying "Federal financial assistance in sections 1681, 1682, 1684, 1685).

[9] *Whitman v. American Trucking Association*, 531 U.S. 457, 468 (2001) (addressing whether Clean Air Act sufficiently delegated certain authorities to the Administrator of the Environmental Protection Agency).

[10] *Russello v. United States*, 464 U.S. 16, 23, *quoting United States v. Wong Kim Bo,* 472 F.2d 720, 722 (CA5 1972) (finding that the narrow construction of a term in one part of the statute undermined efforts to apply a broad construction elsewhere in the statute).

[11] *See*, *i.e.*, *Custis v. United States*, 511 U.S. 485 (1993) (differentiating between provisions of the Comprehensive Drug Abuse Prevention and Control Act (DAPCA) of 1970 and the Armed Career Criminal Act of 1984 (ACCA) ("The language of § 851(c) [DAPCA] shows that when Congress intended to authorize . . . it knew how to do so. Congress's omission of similar language in § 924(e) [ACCA] indicates that it did not intend to give defendants the right . . .). *See also*, *Meghrig, et al. v. KFC Western, Inc.*, 516 U.S. 419, 485 (1996) (addressing different statutory language relating to available remedies for environmental contamination) ("Congress thus demonstrated in CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act of 1980] that it knew how to

read as intentional and dispositive that Congress did not intend other programs to be treated as FFA.

Additionally, courts have varied in their interpretation of what constitutes FFA. Acceptance of a PPP loan has been found to be FFA.[12] In another instance, a college was found to have accepted FFA when it enrolled a student who received personal Federal financial aid.[13] A third court held that tax-exempt status is not FFA.[14] And yet, even accounting for cases that read FFA expansively, the existence of a benefit, or even a Federally connected benefit, does not automatically resolve whether the recipient is receiving FFA for every statutory or regulatory purpose. The language of the governing statute is a determinative factor in determining whether a program is FFA.[15]

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provide for the recovery of cleanup costs, and that the language used to define the remedies under RCRA [Resource Conservation and Recovery Act of 1976] does not provide that remedy.").

[12] *E.H.* ex rel. *Herrera v. Valley Christian Academy*, 616 F. Supp. 3d 1040, 1044 (C.D. Cal. 2022). The court also found that the school's tax-exempt status was a "[F]ederal financial benefit" that subjected the school to Title IX compliance.

[13] *Grove City College v. Bell*, 465 U.S. 555, 572 (1984).

[14] *See, Buettner-Hartsoe v. Baltimore Lutheran High School Association*, No. 23-1453 (4th Cir. 2023).

[15] *See, McGlotten v. Connally*, 338 F. Supp. 448, 460-61 (D.D.C. 1972) (while finding that fraternal organizations excluding non-whites cannot qualify for Federal tax-exemptions or allow charitable contributions deductions, the court explained that it looked first to the legislative history of the 1964 Civil Rights Act as well as the "plain purpose of the statute," evidencing that the determination of whether a benefit is FFA must be grounded in the relevant statute). Notably, Section 602 of the Civil Rights Act includes specific mention of FFA (*see,* 42 U.S.C. § 2000d-1). As noted above, where statutes lack such reference, no connection can be drawn. Limitations that cabin only designated Federal funding programs into FFA treatment can also be discerned from examining examples of programs that rely on targeted taxes and General Fund mechanisms, including Federal trust fund programs, and which are not FFA. In these instances, taxes are collected from a discrete pool of payors and are earmarked for related purposes. An accounting structure within the General Fund treats these amounts as a trust (though different than a typical private trust). The funds are accounted as Federal dollars and may be supplemented by general revenues or drawn upon for unrelated purposes. They are not FFA. By way of example, Social Security is funded through taxes on wages and earnings and distributed to retiree participants. *See* Federal Insurance Contributions Act, 68A Stat. 415, Pub. L. 83-736 (1954), *codified at* 26 U.S.C. § 3101 *et seq.* and Self-Employment Contribution Act, 68A Stat. 353-355, Pub. L. 83-591 (1954), *codified at* 26 U.S.C. § 1401 *et seq.* Another example of a Federal funds program that is not FFA is the Highway Trust Fund, which was created in 1956 to implement new funding authorizations in the Federal-Aid Highway Act of that same year. Federal-Aid Highway Act, 70 Stat. 374, Pub. L. 84-627 (1956), *codified at* 26 U.S.C. § 9503 *et seq*. A third example of Federal funding that is not FFA is the Airport & Airway Trust Fund. Airport and Airway Revenue Act of 1970, 84 Stat. 236, Pub. L. 91-258 (1970). Federal trust funds generally share common features: they are often funded through taxes, collected by the Federal tax system, deposited in Treasury accounts, supplemented by general revenues when necessary, or available for uses Congress

2. Use of the Term "FFA" is Intentional and its Constructs Cannot Be Imputed to Other Programs Absent Specific Congressional Design

Other non-grant regulatory support mechanisms may be funded by assessments collected and administered through specialized structures, based on detailed industry forecasts, distributed through cost-recovery methodologies, and limited to specific statutory purposes without meaningful injections from or transfers to the General Fund. And yet these, too, are not FFA, and should not be included in any proposed or final rule. For example, the National Flood Insurance Reserve Fund is not FFA. It is an insurance premium capitalized primarily through policyholder fees, not tax dollars.[16] The existence of many programs analogous to the descriptions above informs that not every Federal dollar program is viewed as FFA or should be viewed as within the scope of 2 CFR Part 200. Part 200 programs are so placed within those regulations by Congress intentionally. Thus, even if Federal dollars are construed as a benefit,[17] that does not transform a program into FFA.

Even mechanisms that rely on General Fund revenues are not necessarily FFA merely because they are Federally regulated or advance national policy objectives; that would blur the boundary between FFA and other regulatory structures that enable financial support, risking an unwarranted imposition of grant-style requirements into systems that Congress and expert agencies deliberately built around separate and distinct

may later direct. And they are not considered FFA. This, too, indicates the limited scope of Federal programs subject to the instant inquiry.

[16] 42 U.S.C. § 4017(a) *et seq*.

[17] *See i.e.*, *Fischer vs. United States*, 529 U.S. 667, 681 (2000) (characterizing Medicare provider payments as "benefits" for purposes of prosecuting bribery actions but not reaching broader applications) ("Any receipt of federal funds can, at some level of generality, be characterized as a benefit. The statute does not employ this broad, almost limitless use of the term.").

statutory obligations. These may include personal and/or industry contributions; cost recovery; enforceable commitments; and ongoing oversight that may include audits, performance evaluations, and quantifiable testing. Programs that are already subject to safeguards, audits, testing, reporting, eligibility obligations, and agency oversight already address and protect against waste, fraud, abuse, and nonperformance. And, where those programs are based upon costs instead of unbounded grants, other OMB concerns are addressed. Simply put, OMB should not rely upon FFA as a trigger. Instead, it should limit any new or revised regulations to programs that fall under 2 CFR Part 200.

NTCA also recommends OMB reject proposals to eliminate all fixed amount awards. A fixed amount award need not be unbounded by subsequent oversight or the opportunity of the government to recover inappropriately used or mismanaged funds. For example, the Department of Energy administers fixed amount awards within the Office of Clean Energy Demonstrations (OCED). Without commenting on the utility or performance of those programs *per se,* NTCA highlights that those awards are paid *after* the recipient verifies completion of each project milestone.[18] To the extent that current fixed award programs lack sufficient mechanisms for oversight and performance verification, those deficiencies can be cured through targeted adjustments to respective program guidelines. In fact, tying payments to performance shifts economic risk to the award recipient and accordingly increases incentives for compliance. To be sure, these parameters can largely be deployed most effectively when considering programs with quantifiable goals such as infrastructure deployments or healthcare, which can

[18] "Fixed Amount Awards," Office of Clean Energy Demonstrations, Department of Energy (https://www.energy.gov/cmei/oced/fixed-amount-awards) (visited Jul. 9, 2026).

incorporate defined milestones and verification standards. Qualitatively measured undertakings may present different verification needs.[19]

Moreover, the government is not without remedy if *post hoc* review discloses insufficient performance for a prior-paid fixed amount award. Depending on the award, the government's ability to recoup (or "claw back") funding can find basis in the Payment Integrity Act of 2019, which allows the government to recover funds that were used incorrectly.[20] The government can also recover funds within the bounds of the particular regulations beneath which awards were made.[21] Finally, the False Claims Act establishes bases for the government to recover already-disbursed awards, including government property.[22] These demonstrate the long arm of Federal law and the ability of Congress and agencies to fortify effective guardrails. Accordingly, the path toward more effective fixed amount awards is not wholesale cessation but rather enhanced oversight and enforcement as may be appropriate within any particular Part 200 program.

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[19] *See* Jack, S., and Ng., J., "Rediscovering Fixed Amount Awards," Stanford Social Information Review (Oct. 3, 2020 (https://doi.org/10.48558/SK9J-0J41) (visited Jul. 9, 2026).

[20] Payment Integrity Information Act of 2019, 134 Stat. 113, Pub. L. 116-117 (2020), *codified at* 31 U.S.C. §§ 3351-3358.

[21] *See Bennett v. Kentucky Dept. of Education*, 470 U.S. 656 (1984) (allowing the U.S. Department of Education to recover fund paid to the Kentucky Department of Education) ("The State gave certain assurances as a condition for receiving federal funds, and if those assurances were not complied with, the Federal Government is entitled to recover amounts spent contrary to the terms of the grant agreement."). *Id.* at 470 U.S. 656, 663.

[22] *See U.S. v. Muskingum Watershed Conservancy District*, 842 F.3d 430 (6th Cir. 2016) (finding that leasing watershed lands for fracking triggered a reversion clause for Federally conveyed land because the land was no longer used for prior-agreed upon purposes); *see also* 31 U.S.C. § 3729.

B. EXISTING PROGRAMS THAT RELY ON COST RECOVERY, PERFORMANCE MILESTONES, RIGOROUS VETTING, AND BASED OVERSIGHT ARE NOT FEDERAL FINANCIAL ASSISTANCE

Consideration of the instant proposal should be confined to Part 200 programs. These funding programs tend to focus on purpose-driven action and can depend heavily on appropriations cycles. At the same time, they may fail to account for long-term operations, maintenance, affordability, debt service, and programmatic upgrades. By contrast, other programs that exist beyond the scope of Part 200 may rely on Federal trust funds or cost recovery mechanisms (either actual costs, or forward-looking economic costs) with defined eligibility rules; vetted and verified cost inputs; ongoing, enforceable obligations; commitment milestones; testing; audits; and meaningful default consequences. These elements provide predictability for planning, accountability for actions, and transparency that cements trust in the proper stewardship of funds.

The well-intentioned goal of improving FFA management, transparency, and oversight will accordingly be accomplished most effectively by containing the instant proceeding to awards that are already subject to 2 CFR Part 200. No gains or efficiencies are realized by expanding the scope of inquiry to cover programs that are by statutory design and regulatory construct governed by separate systems. Not every funding mechanism of the Federal government – whether loans, cost-based recovery systems, or Federal trust funds - becomes FFA merely because it is grounded in Federal regulations. Such an expansion would risk uncertainty and the unnecessary (if not inherently hazardous) overriding of specialized statutory schemes administered by expert agencies operating under the Executive Branch. Accordingly, a foundational construct of the instant analysis is the limiting principle that Federal regulation is not the same as FFA.

A program may be created by a statute; supervised by an agency; audited to monitor ongoing compliance; and enforced without becoming a grant or cooperative agreement. Federal support mechanisms take many forms, including those rooted in the Spending Clause and programs that are funded by user contributions. Even among the latter, there are different varieties, including those funded through excise taxes and those whose collected funds mingle freely with U.S. Treasury General Fund monies. This community of programs, as it were, evidences that not all Federal financial programs are FFA or grants – or other mechanisms – that operate within the scope of Part 200. Those outside the scope should be left to their own regulations and oversight.

C. THE INSTANT PROCEEDING SHOULD AVOID ADVERSE IMPACTS ON SMALL BUSINESSES

When participating in Federal proceedings, NTCA often highlights the differences in rural areas. A popular aphorism observes, "If you have seen one rural place – you have seen one rural place." In that vein, NTCA regularly invokes the imperative to ensure that Federal regulations recognize the unique nature of small businesses and their limited abilities to absorb burdensome compliance obligations. These impacts may be observed in cybersecurity issues, where NTCA has advocated for tailored approaches, as well as data security and privacy proceedings addressing differences between small and large businesses.[23] In the instant proceeding, NTCA opposes and urges OMB to reconsider the proposal to require recipients to justify every payment request.[24] Such a requirement would be an extreme administrative burden

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[23] *See*, *i.e.*, *Cyber Incident Reporting for Critical Infrastructure Act of 2022: Comments of NTCA–The Rural Broadband Association*, Cybersecurity and Infrastructure Security Agency, Docket ID CISA-2022-0010 (Nov. 14, 2022); *Developing a Privacy Framework: Comments of NTCA–The Rural Broadband Association,* National Institute of Standards and Technology, Docket No. 181101997-8897-01 (Jan. 15, 2019).

[24] OMB PR, 91 Fed. Reg. 103 at 32204.

on small and rural entities who would be required to divert limited resources to repetitive and functionally unnecessary tasks. The average NTCA member employs 27 people and many of those staff often manage a diverse range of roles within their company. Diverting their attention to unnecessary ministerial requirements would create unnecessary opportunity costs:

> The alternative or opportunity cost doctrine has provided modern economic investigations with an invaluable tool of analysis. This doctrine advances the conceptualization of cost beyond its superficial identification with explicit outlays or payments. Cost is viewed as reflecting the value of *opportunities foregone.* The cost of obtaining anything is the value placed on whatever must be sacrificed in order to obtain it. Implicit in this formulation is the rejection of the idea that cost must in some way be associated with disutility. As long as time spent on a particular activity precludes the simultaneous pursuit of another activity, an opportunity cost is incurred.[25]

Time spent on burdensome per-payment requests will divert staff attention from other needs. In similar vein, NTCA recommends OMB reject proposals to expand other documentation and audit requirements.[26] This is not intended to facilitate malfeasance, but rather to avoid unnecessary burdens on small businesses such as NTCA members. Increased compliance obligations create costs and divert both staff and financial resources from other needs. Leading economists have long agreed that "opportunity costs ought to be used in as an input in economic decisions."[27] NTCA accordingly urges OMB to refrain from implementing ministerial obligations with no measurable benefits.

NTCA additionally cautions against proposals that would permit agencies to "apply, adjust, and remove specific conditions" in Part 200 awards.[28] These, too, impose economic costs

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[25] Levine, Aaron, "Opportunity Cost as Treated in Talmudic Literature," 15 Tradition 153 (1975) (emphasis in original).

[26] OMB PR, 91 Fed. Reg. 103 at 32205, 32232, 32233, 32245 *et seq*.

[27] Friedman, L. A., and Neuman, B. R., "The Effects of Opportunity Costs on Project Investment Decisions: A Replication and Extension," 18 Journal of Accounting Research 407 (1980).

[28] OMB PR, 91 Fed. Reg. 103 at 32212.

arising out of legal uncertainty. A firm that relies on private capital (whether obtained through lenders or equity investors) as a material component of its project strategy will face higher financial costs if it cannot assure lenders or investors of the stability of Federal award funding.

In contrast, "sticky regulations" (*i.e.,* those that cannot be changed without an established process) can provide vital assurance to private investors.[29] This is a particularly critical aspect where public policy undertakings rely on a blend of private capital and Federal awards. Greater regulatory certainty improves anticipated outcomes and attracts private capital at more efficient levels alongside Federal funds. The efficient infusion of private investment is crucial as public-private partnerships are a critical aspect of advancing societal interests, for example "[r]egulators are often hard pressed to achieve long-term policy goals absent private investment in innovation – and private investment is enhanced by regulatory stability."[30] In these instances, government's role is most effective when it mitigates, rather than increases, risk – namely, the "effect of uncertainty on objectives."[31]

This is a prevalent point of investigation for private investors, for whom it is "risky to expend time, money, and effort developing infrastructure projects that ultimately fail to receive the necessary authorization."[32] Accordingly, rules that "bake in" uncertainty will introduce adverse impacts to programs and projects that are intended to achieve public policy goals. For these reasons, NTCA recommends OMB to remove proposals that would permit mid-stream

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[29] *See* Nielson, A.L., "Sticky Regulations," 85.1 University of Chicago Law Review 85 (Jan. 13, 2018).

[30] *Id.*

[31] Rybnicek, R., Plakolm, J. and Baumgartner, L., "Risks in Public-Private Partnerships: A Systemic Literature Review of Risk Factors, Their Impact and Risk Mitigation Strategies," 43 Public Performance & Management Review 5, 1174, 1177 (2020) (internal citation omitted).

[32] Albalate, D., Bel, G., and Geddes, R.R., "Do Public-Private Partnership Enabling Laws Increase Private Investment in Transportation Infrastructure?" 63 Journal of Law and Economics 1, Article 2, University of Chicago Law School, at 3 (Feb. 5, 2019).

changes and adjustments that could withdraw, reduce, or otherwise amend conditions of authorized awards during the period of performance. These changes are particularly important for small businesses or similar organizations that rely on potentially affected programs to meet unique needs in rural spaces.

NTCA can speak to these dynamics as they play out in Department of Agriculture (USDA) and Rural Utilities Service (RUS) programs. NTCA members rely on USDA and RUS funding to supplement private capital investment in rural broadband networks that support precision agriculture, education, healthcare, and other vital rural sectors.[33] The confidence these programs signal to the market helps unlock vital access to private capital, which in turn further supports rural communities. In these efforts, private industry does not treat government funding as an unbounded, standalone source of support. Rather, it draws on both the tangible resources these programs provide as well as the qualitative confidence they inspire to justify higher levels of private investment. Programs that carry the risk of changing or being scaled back mid-stream would undermine that investment confidence, ultimately shocking and shrinking the overall pool of resources available to support rural communities. Moreover, the interdependent relationships among rural and urban economies can precipitate cascading negative impacts to National economic interests.[34] Rural markets are integrated with urban markets – "the fate of each place

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[33] NTCA has committed significant research to the impact of broadband on various sectors and the impact of those sectors, in turn, on National economic and other conditions. *See* Seidemann, J., *From Fiber to Field: The Role of Rural Broadband in Emerging Agricultural Technology*, Smart Rural Community, NTCA–The Rural Broadband Association (2021); Seidemann, J., *Rural Broadband and the Next Generation of American Jobs,* Smart Rural Community, NTCA–The Rural Broadband Association (2019); Joshua Seidemann, *Extended Reality Telehealth for Rural Spaces*, Smart Rural Community, NTCA–The Rural Broadband Association (2024).

[34] *See*, *i.e.*, Tandoh-Offin, P., "The Evolving Rural and Urban Interdependence: Opportunities and Challenges for Community Economic Development," 3 Journal of Geography and Regional Planning 12 (Dec. 2010); "Better Together: Interdependence Connects Rural and Urban Communities," University of Minnesota (Jan. 6, 2026) (https://twin-cities.umn.edu/news-events/better-together-interdependence-connects-rural-and-urban-communities) (visited Jul. 12, 2026).

depends largely on what is happening outside its boundaries"[35] – and the reliance of each on the other cautions against changes that could trigger widespread adverse outcomes, no matter how unintended.

D. THE ADMINISTERING EXPERT AGENCY'S TREATMENT OF A MECHANISM SHOULD CARRY SUBSTANTIAL WEIGHT IN DETERMINING WHETHER IT FALLS WITHIN 2 CFR PART 200

The administering expert agency's position on programming should carry substantial weight in determining whether it falls within the scope of 2 CFR Part 200. This is not simply a motion of semantics but rather reflects the agency's administrative oversight and treatment of the program. Many funding programs stand outside the scope of the instant proceeding (*see supra.* Sec. II.A.1). The administration of a support mechanism as a cost-recovery or regulated service-obligation framework rather than as an assistance program carries substantial weight. They are not grants or Federal awards; they are support for Congressionally mandated obligations. Any contrary classification would require a clear legal basis and careful attention to the structure Congress created in the controlling statute.

Grant structures that fall beneath Part 200 are distinguishable from ongoing trust and cost recovery programs that do not. The OMB proposal expresses its concerns of "fixed amount awards and subawards, which can limit transparency and hinder effective oversight." In contrast, programs that feature regulated contribution funding, cost recovery, defined service obligations, cost-based payments, and performance milestones address (if not preempt) OMB's fears. For example, OMB expresses concerns about instances in which "there is no expected routine monitoring of the actual costs incurred

[35] Kubisch, A. C., Topolsky, *et al.* "Our Shared Fate – Bridging the Rural-Urban Divide Creates New Opportunities for Prosperity and Equity," at 7, Aspen Institute (Washington) (2008).

by the recipient or subrecipient, and no financial reporting is required."[36] In contrast, cost-recovery programs that are subject to ongoing performance monitoring, audits, and enforcement (and which statutorily and administratively fall outside the scope of FFA) transcend the concerns expressed OMB in relation to Part 200. These programs that condition cost-recovery upon such commitments obviate instant OMB concerns by preserving accountability while the public objective is achieved.

E. THE OMB CAN ACCOMPLISH ITS GOALS WITHOUT INAPPROPRIATE EXPANSION OF PART 200

Within the 2 CFR Part 200 framework, OMB can incorporate these types of standards and model other agencies that use milestones, goals, and performance-based monitoring where appropriate. But such changes should be at most additive to Federal awards governed by Part 200, which covers the vast majority of Federal funding where issues exist that the proposed rule seeks to remedy. The instant inquiry should not be used as a reason to reclassify every or any non-grant regulatory support mechanism as FFA. In contrast, OMB should state expressly that the instant proceeding applies only to Federal awards and other assistance instruments that are subject to 2 CFR Part 200, and that it does not alter the legal status of programs, support mechanisms, contributions, reimbursements, regulatory payments, or agency-administered funds that are not otherwise governed by that Part. This clarification would not weaken oversight of grants; it could rather strengthen the integrity of the grant framework by modeling it on rigorous other programs.

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[36] OMB PR, 91 Fed. Reg. 103 at 32204.

This approach will avoid administrative confusion. Recipients, regulated entities, agencies, auditors, and courts should not be left to infer whether OMB meant to reach programs outside Part 200. A clear boundary will allow OMB to pursue stronger grant administration while respecting program-specific statutes such as those governing Federal trust funds or other programs. This is particularly important because case law and agency practice use the phrase "Federal financial assistance" differently across contexts. A benefit may be Federally connected, Federally overseen, or even treated as Federal funds for one legal purpose without becoming a Federal award under 2 CFR Part 200. OMB should avoid language that could be misread to collapse those categories.

The correct approach is therefore not to expand the definition of FFA, but to identify the instruments that 2 CFR Part 200 governs and tailor the rule to those instruments. That approach can enhance process and accountability in those programs while preserving the legal character of non-grant regulatory mechanisms.

III. CONCLUSION

OMB should make clear that any final rule applies only to Federal awards within 2 CFR Part 200. The rule should not reach any funding mechanism outside that framework. OMB can improve Federal financial assistance by favoring model-based, milestone-driven, performance-focused awards where appropriate, while respecting the separate legal character of non-grant regulatory support mechanisms. The final rule should therefore focus on improving FFA but without pulling other distinct regulatory support systems into 2 CFR Part 200 by implication.

This approach will strengthen Part 200 programs while avoiding collateral disruption of unrelated mechanisms. This will preserve expert agencies' ability to administer distinct statutory support frameworks consistent with Congressional directives and without converting every Federally connected support mechanism into FFA.

Respectfully submitted,

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