Americans United for Life

July 13, 2026

Submitted Electronically via Federal Rulemaking Portal

Russell T. Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Regulation for Federal Financial Assistance (91 Fed. Reg. 32,198) (2 C.F.R. pt. 200.477)

Dear Director Vought:

On behalf of Americans United for Life ("AUL"), we are writing in support of, but with recommendations for, the proposed rule in Regulation for Federal Financial Assistance regarding abortion funding restrictions, 2 C.F.R. pt. 200.477. The proposed rule reads, "§ 200.477 Abortion. Costs associated with elective abortions are unallowable, except as expressly authorized by Federal law."[1]

AUL is a national pro-life legal advocacy organization. Founded in 1971, AUL has committed over fifty years to protecting human life from conception to natural death. AUL attorneys are legal experts on constitutional law and bioethics, and regularly testify before state legislatures and Congress on abortion and end-of-life issues.[2] AUL has represented parties before the U.S. Supreme Court in cases involving Congress' constitutional authority to prohibit the use of public funds to subsidize abortions in *Harris v. McRae*[3] and *Williams v. Zbaraz*.[4] AUL has long held the policy position that government-appropriated or controlled funds should not subsidize abortion, but, instead, support authentic women's healthcare.

Thank you for the opportunity to comment on Section 200.477 of the proposed rule, which would establish robust abortion funding restrictions on federal financial assistance. Below, we discuss how Section 200.477 of the proposed rule (I) aligns with

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[1] Regulation for Federal Financial Assistance, 91 Fed. Reg. 32,198, 32,263 (proposed May 29, 2026) (to be codified at 2 C.F.R. pt. 200.477).
[2] *See, e.g.*, *Revoking Your Rights: The Ongoing Crisis in Abortion Care Access Before the H. Comm. on the Judiciary*, 117th Cong. (2022) (testimony of Catherine Glenn Foster, President & CEO, Americans United for Life).
[3] 448 U.S. 297 (1980).
[4] 448 U.S. 358 (1980).

Congress' long-standing policy of prohibiting federal funds from supporting abortion; and (II) furthers the Trump Administration's goals of transparency, accountability, and oversight. We further request that the Office of Management and Budget (OMB) consider (III) changing "elective abortion" to "abortion" in the rule to prevent abortion activists from seeking an ambivalent health exception to the abortion funding restriction; and (IV) strengthening the "costs associated with elective abortion" language within the rule to prevent a narrow interpretation that circumvents the rule's intent.

I. Section 200.477 Aligns with Congress' Long-standing Policy of Prohibiting Federal Funds from Supporting Abortion, which the Supreme Court Upheld even under *Roe v. Wade*.

For over half a century, Congress has enacted abortion funding restrictions throughout federal law. The Supreme Court recognized that abortion funding restrictions were constitutional even under *Roe v. Wade*'s right to abortion.

A. The Proposed Rule Supports Congress' Legal Tradition of Restricting Public Funding for Abortion.

We agree with the preamble that Section 200.477 of the proposed rule "reflects longstanding appropriations restrictions prohibiting the use of Federal funds for elective abortion except in limited circumstances."[5] Congress has long established abortion funding restrictions within federal law.

The Hyde Amendment has been a cornerstone of every federal health and welfare appropriations bill since Congressman Henry Hyde first proposed it in 1976.[6] The current version of the Hyde Amendment directs that "[n]one of the funds appropriated in this Act . . . shall be expended for any abortion."[7] However, it recognizes an exception "in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed," or in cases of rape or incest.[8]

The Hyde Amendment is one of many funding restrictions within federal law. In fact, Congress has applied abortion funding restrictions to the District of

[5] 91 Fed. Reg. at 32,232.
[6] *See* Department of Labor and Health, Education, and Welfare Appropriation Act, 1977, Pub. L. No. 94-439 tit. II, § 209, 90 Stat. 1418, 1434 (1976).
[7] Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, div. B, tit. V, § 506, 140 Stat. 173, 317.
[8] *Id*. div. B, tit. V, § 507.

Columbia,[9] foreign assistance,[10] Department of Defense,[11] Indian Health Service,[12] and various laws dealing with public health and welfare.[13]

More generally speaking, "federal statutory law shows Congress has set a public policy of limiting abortion"[14] not only by restricting public funds for abortion, but also by prohibiting partial-birth abortions,[15] recognizing legal protections upon infants born alive after a botched abortion,[16] protecting conscientious objections to abortion,[17] and "restrict[ing] the market for abortion-produced human fetal tissue."[18] The proposed rule is consistent with this robust federal policy of limiting abortion, including through abortion funding restrictions.

B. Abortion Funding Restrictions Were Constitutional Even Under *Roe v. Wade*'s Right to Abortion.

The Supreme Court notably upheld abortion funding restrictions even under *Roe v. Wade*'s right to abortion, highlighting the distinction between negative and positive rights. In *Roe v. Wade*, Jane Roe's attorney argued "for a 'liberty *from* being forced to continue the unwanted pregnancy[.]' She argued before the Court for a negative right, for a restraint on governmental interference in the abortion decision, not for a positive right of access or governmental entitlement to abortion."[19] As such, the *Roe* decision established a negative right to abortion.

The Supreme Court emphasized there has never been a positive right to receive federal funding of abortion in *Harris v. McRae* when the Court upheld the Hyde Amendment as constitutional. According to the Court:

> [R]egardless of whether the freedom of a woman to choose to terminate her pregnancy for health reasons lies at the core or the periphery of the due process liberty recognized in *Wade*, it simply does not follow that a

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[9] *Id*. div. E, tit. VIII, § 810.
[10] 7 U.S.C. § 1733(k); 22 U.S.C. §§ 2151b(f), 5453(b)(1), 7704(e)(4).
[11] 10 U.S.C. § 1093.
[12] 25 U.S.C § 1676.
[13] 42 U.S.C. §§ 280h-5(f)(1)(B), 290bb-36(i), 300a-6, 300z-10, 1397ee(c), 1397jj(a)(16), 2000e(k), 2996f(b)(8), 12584a(a)(9), 18023(b) (also recognizing under the Affordable Care Act that states "may elect to prohibit abortion coverage in qualified health plans offered through an Exchange").
[14] Carolyn McDonnell, *Mail-Order Abortion Rules: Text, Context, and History of the Comstock Act's Restrictions on Mailing Abortifacient Matter*, 23 Ave Maria L. Rev. 101, 112 (2025).
[15] 18 U.S.C. § 1531(a); *see also Gonzales v. Carhart*, 550 U.S. 124, 168 (2006) (upholding the Partial-Birth Abortion Ban Act).
[16] 1 U.S.C. § 8.
[17] *E.g.*, Church Amendments, 42 U.S.C. § 300a-7.
[18] McDonnell, *supra* note 14, at 114; *see* 42 U.S.C.§ 289g-1.
[19] Maureen Kramlich, *The Abortion Debate Thirty Years Later: From Choice to Coercion*, 31 Fordham Urb. L.J. 783, 783 (2004) (citing Transcript of Oral Argument, *Roe v. Wade*, 410 U.S. 113 (1973) (No. 70-18)).

> woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices.[20]

Thus, the Supreme Court recognized that the government may make "a value judgment favoring childbirth over abortion, [through] implementing that judgment by the allocation of public funds."[21]

Accordingly, Congress and the Supreme Court distinguished between *Roe*'s negative right to abortion, and a positive right that would require government subsidization of abortion through appropriations. Now that the Supreme Court has overturned *Roe* in *Dobbs v. Jackson Women's Health Organization*,[22] abortion funding restrictions are firmly settled within federal law. Thus, the proposed rule is consistent with Congress' legal tradition of enacting abortion federal funding restrictions both under *Roe* and post-*Dobbs*.

II. Section 200.477 Furthers the Administration's Goals of Transparency, Accountability, and Oversight in Federal Grantmaking.

Section 200.477 of the proposed rule establishes a clear baseline for federal assistance by barring the funding of abortion-related expenditures absent explicit authorization by federal law. This bright-line rule aligns federal grantmaking with OMB's stated objectives of transparency and accountability, the Executive Branch's broader goal of responsible stewardship of taxpayer funds, and the public's interest in preventing their tax dollars from going towards a bioethically contentious practice, *i.e.*, abortion.

The proposed rule's preamble states that "OMB is proposing revisions that would improve transparency, accountability, and oversight for Federal awards across the Federal Government."[23] It further explains that these revisions are intended to ensure "that American tax dollars are not wasted or misused, activities performed under Federal awards are consistent with law and policy, and recipients are held accountable when they fail to meet relevant standards."[24] The proposed rule advances these goals by providing a clear and uniform directive regarding abortion-related expenditures, identifying such costs as categorically unallowable unless expressly authorized by federal law. This clarity will reduce disputes, compliance costs, inconsistent enforcement, and improper expenditures.

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[20] *Harris*, 448 U.S. at 316; *see also id*. at 327–28 (White, J., concurring).
[21] *Id*. at 314 (cleaned up) (citing *Maher v. Roe*, 432 U.S. 464, 474 (1977)).
[22] 597 U.S. 215, 231 (2022).
[23] 91 Fed. Reg. at 32,199.
[24] *Id*.

Section 200.477 is also consistent with the Administration's emphasis on responsible stewardship of taxpayer funds. In Executive Order 14332, Improving Oversight of Federal Grantmaking, President Donald Trump directed agencies to improve the federal grantmaking process, underscoring that "[e]very tax dollar the Government spends should improve American lives or advance American interests."[25] The proposed rule supports the Executive Order's broader objectives of preventing misuse of taxpayer dollars and improving oversight of federal grantmaking by helping ensure that taxpayer dollars are used efficiently and in accordance with the law.

We agree with the preamble that Section 200.477 "is consistent with Executive Order 14182, Enforcing the Hyde Amendment (January 24, 2025)."[26] As discussed above, public funding of abortion has long been a matter of significant public concern, and Congress has long preserved policies against taxpayer funding of abortion. The proposed rule continues this enduring policy by clearly establishing that federal funding of abortion-related costs is generally unallowable unless federal law expressly provides otherwise.

Polling further confirms that Americans oppose the use of taxpayer dollars to fund abortion. A recent Marist poll found that 54% of Americans oppose taxpayer funding of abortion.[27] Thus, the proposed rule promotes public trust by ensuring that taxpayer funds are not misused for expenditures that the majority of Americans find objectionable. This is critical because "[a]bortion is a profoundly difficult and contentious issue";[28] the practice exposes women to unnecessary health and safety risks, [29] raises the risk of intimate partner violence, [30] undermines women's equality,[31] and of course, intentionally ends the life of a separate, unique, human being.[32]

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[25] 90 Fed. Reg. 38,929, 38,929 (Aug. 12, 2025).
[26] 91 Fed. Reg. at 32,232.
[27] *See* Knights of Columbus/Marist Poll, *Americans' Opinions on Abortion*, slide 4 (Jan. 2026), https://files.kofc.org/download/assets/Americans%E2%80%99+Opinions+on+Abortion/14d8d5d4fae411f0a09b9a87033bad70.
[28] *Dobbs*, 597 U.S. at 337 (Kavanaugh, J., concurring).
[29] *E.g.*, Rsch. Comm., Am. Ass'n Pro-life Obstetricians & Gynecologists, *State Restrictions on Abortion: Evidence-Based Guidance for Policymakers*, Comm. Op. No. 10, at 8–9 (2022) ("[S]ome data suggest that *abortion* is associated with higher mortality rates, and [pro-life laws] may result in improved maternal outcomes.").
[30] Comm. on Health Care for Underserved Women, Am. Coll. of Obstetricians & Gynecologists, Reproductive and Sexual Coercion, Comm. Op. No. 554, at 2 (reaffirmed 2025) ("[T]he prevalence of [intimate partner violence] was nearly three times greater for women seeking an abortion compared with women who were continuing their pregnancies.")
[31] Helen M. Alvaré, *Nearly 50 Years Post-Roe v. Wade and Nearing its End; What Is the Evidence that Abortion Advances Women's Health and Equality?*, 34 Regent U. L. Rev. 165, 213 (2022).
[32] *See* Fred de Miranda & Patricia Lee June, *When Human Life Begins*, Am. Coll. of Pediatricians 1, 1–2 (Mar. 2017), https://acpeds.org/assets/imported/3.21.17-When-Human-Life-Begins.pdf.

Accordingly, the proposed rule properly strengthens federal grant administration by promoting efficient, transparent, and accountable stewardship of federal taxpayer dollars by clearly prohibiting federal funds for abortion.

III. OMB Should Change "Elective Abortion" to "Abortion."

Abortion funding restrictions within federal law use "abortion" terminology, not "elective abortion," and then enumerate exceptions to the funding restrictions. Abortion fundamentally is a legal term of art that implicates the intent of an actor. Under "elective abortion" terminology, abortion proponents may try to devise a health exception that permits a broad, ambivalent loophole to the abortion funding restriction. Accordingly, we urge OMB to change "elective abortion" to "abortion" within the rule.

A. Consistent with Other Federal Funding Restrictions on Abortion, OMB Should Use "Abortion" Terminology with Explicit Exceptions.

Although pro-life advocates colloquially use the term "elective abortion,"[33] federal law uses the term "abortion." The word "abortion"—not "elective abortion"—appears in the Hyde Amendment and numerous other federal laws.[34] In fact, the authors of this comment only know of one federal abortion funding restriction that does not use the word "abortion," instead using the term "nontherapeutic abortion,"[35] but this is an outlier among numerous abortion funding restrictions employing the word "abortion."

Abortion funding restrictions appear throughout federal law, however, Congress does not define the word "abortion."[36] Rather, Congress has discussed abortion in terms of what it is not. For example, the Hyde Amendment provides that "[n]one of the funds appropriated in this Act . . . shall be expended for health benefits coverage that includes coverage of abortion."[37] The Hyde Amendment then clarifies that the prohibition does not apply to scenarios where the mother's life is at risk or in cases of rape or incest.[38]

The Department of Veterans Affairs (VA) recently grappled with a similar issue when reinstating funding restrictions on abortions and abortion counseling

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[33] *See*, *e.g.*, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 386, 396 (2024) (unanimous). In medical terms, "elective" means something that is "beneficial to the patient but not essential for survival." *Elective*, Merriam-Webster's Medical Dictionary 230 (2016).
[34] *Supra* notes 7–13.
[35] *See* 42 U.S.C. § 2996f(b)(8) (providing within the Legal Services Corporation Act that "[n]o funds made available by the Corporation . . . may be used . . . to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion . . . .").
[36] *See* McDonnell, *supra* note 14, at 111.
[37] Consolidated Appropriations Act, 2026, div. B, tit. V, § 506.
[38] *Id*. div. B, tit. V, § 507.

within its medical benefits package and Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).[39] Although the final rule applied to abortions and abortion counseling, the VA explained that "[it] is not defining abortion . . . . ."[40]

VA instead clarified within the preamble that the final rule does not prevent funding for procedures to save the mother's life, including when the pregnancy is ectopic, or when the mother is suffering a miscarriage. The CHAMPVA restriction codified an exception for when "the life of the mother would be endangered if the fetus were carried to term"; however, the VA explained in the preamble that both the medical benefits package and CHAMPVA included a life exception because "VA has simply never used the term 'abortion' to refer to life-saving treatment provided to a pregnant woman. VA's proposal and final action today do not change this long-standing understanding of the difference between an abortion and a medical intervention necessary to save the life of a pregnant woman."[41] Within the preamble, the VA, relying upon a Department of Justice's Office of Legal Counsel opinion, likewise noted "that procedures necessary to save the life of the pregnant veteran (such as treatment for ectopic pregnancies or miscarriages) are not considered 'abortions' within the meaning of [relevant statutory text] and therefore remain permissible."[42]

Thus, to be consistent with federal law, we ask OMB to use the word "abortion" not "elective abortion."

B. Abortion Is a Legal Term of Art that Relies Upon an Actor's Intent.

The qualifier "elective" is unnecessary to describe an abortion within the law. Fundamentally, abortion is a legal term of art.[43] According to Black's Law Dictionary, an abortion is "[a]n artificially induced termination of a pregnancy for the purpose of destroying an embryo or fetus."[44] Since "abortion" is a legal term of art, courts use its technical sense, not the "ordinary, everyday meaning[]" of the word abortion.[45]

The intent element is critical to understanding what procedures meet the legal definition of abortion. As recent scholarship described, abortion laws in the United States "all require conduct *intended to cause a pregnancy to end* and do not apply to

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[39] Reproductive Health Services, 90 Fed. Reg. 61,310 (Dec. 31, 2025) (to be codified at 38 C.F.R. pt. 17).
[40] *Id*. at 61,327.
[41] *Id*. at 61,311, 61,328.
[42] *Id*. at 61,311; *see* Reconsidering the Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions, 49 Op. O.L.C. ___ (July 11, 2025).
[43] *See* McDonnell, *supra* note 14, at 115.
[44] *Abortion*, Black's Law Dictionary 6 (12th ed. 2024).
[45] Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012).

pregnancies that end due to natural causes occurring spontaneously."[46] The intent element is essential, since abortion laws "apply only to intentional actions that *begin* the process of terminating a pregnancy, that is, to physician interventions *intended* to prevent an ongoing pregnancy from continuing and progressing to live birth."[47]

The intent element is key in differentiating between legally permissible and prohibited procedures. Two cases exemplify this distinction.

In *Vacco v. Quill*, the Supreme Court recognized that a patient withdrawing or withholding life-sustaining medical treatment was not similarly situated as an assisted suicide patient under the Equal Protection Clause and, thus, a state law banning assisted suicide only merited rational-basis review.[48] According to the Court, "[t]he distinction comports with fundamental legal principles of causation and intent. . . . [W]hen a patient refuses life-sustaining medical treatment, he dies from an underlying fatal disease or pathology; but if a patient ingests lethal medication prescribed by a physician, he is killed by that medication."[49] The *Vacco* Court recognized that "[t]he law has long used actors' intent or purpose to distinguish between two acts that may have the same result."[50]

In *United States v. Skrmetti,* the Supreme Court reaffirmed that rational-basis review is appropriate for a law that distinguishes between the medical indication of the drug or procedure—*i.e.*, legal intent of the medical practitioner.[51] The *Skrmetti* Court upheld a state law under which "[h]ealthcare providers may administer puberty blockers or hormones to minors to treat certain conditions but not to treat gender dysphoria, gender identity disorder, or gender incongruence."[52] In this regard, the Court acknowledged that the legal intent of a medical practitioner may vary based upon the "administration of specific drugs for particular medical uses."[53] Thus, the intent of a medical intervention is critical to distinguishing between legally permitted and proscribed acts.

Accordingly, as a legal term of art, "abortion" implicates the actor's intent, and the qualifier "elective" is unnecessary. As such, we ask OMB to consider removing the word "elective" before "abortion."

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[46] Maura K. Quinlan & Paul B. Linton, *Medically Necessary Abortions After* Dobbs*: What, If Anything, Has Changed?*, 39 Notre Dame J.L. Ethics & Pub. Pol'y 87, 97–98 (2025).
[47] *Id*. at 98.
[48] 521 U.S. 793, 799, 801 (1997).
[49] *Id*. at 801.
[50] *Id*. at 802.
[51] 605 U.S. 495, 511 (2025).
[52] *Id*.
[53] *Id*. at 516.

C. The Phrase "Elective Abortion" May Enable an Ambivalent Health Exception to OMB's Abortion Funding Restriction.

The word "elective" indicates that some types of abortions are necessary for medical reasons. Unfortunately, without a limiting definition, the phrase "elective abortion" may open the door to an amorphous health exception.

Health exceptions are problematic in abortion jurisprudence.[54] "The 'health' definition is a trap door for any legal prohibition or regulation of abortion."[55] *Roe v. Wade*[56] had a companion case, *Doe v. Bolton*.[57] In *Doe*, the Supreme Court instituted a health exception under which a physician's "medical judgment may be exercised in the light of all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient."[58] Virtually any situation could fit *Doe*'s health exception, and federal courts often weaponized it to strike down pro-life laws.[59]

As such, unless there is a limiting definition, health exceptions within abortion laws enable a loophole that can subvert a pro-life law in nearly any circumstance. Accordingly, we urge OMB to remove the word "elective" before "abortion," which will prevent a possible health exception to the abortion funding restriction.

IV. OMB Should Strengthen the Language Regarding "Costs Associated with Elective Abortions" to Prevent Circumvention of Federal Abortion-Funding Restrictions.

While Section 200.477 properly recognizes that federal awards must not be used for abortions, OMB should strengthen the preamble to eliminate ambiguities that abortion proponents could exploit through litigation or in future administrations. The proposed rule provides that "[c]osts associated with elective abortions are unallowable, except as expressly authorized by Federal law." We support this provision, but urge OMB to clarify that "costs associated with elective abortions" include both direct and indirect costs.

Without such clarification, abortion proponents could attempt to circumvent the provision by interpreting it as applying only to direct costs associated with the abortion procedure itself. That narrow interpretation would create the kinds of loopholes that this funding restriction intends to prevent.

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[54] *See Moyle v. United States*, 603 U.S. 324, 366–68 (2024) (Alito, J., dissenting).
[55] Clarke D. Forsythe, *Abuse of Discretion: the Inside Story of* Roe v. Wade 152 (2013).
[56] 410 U.S. 113 (1973), *overruled by Dobbs*, 597 U.S. at 231.
[57] 410 U.S. 179 (1973), *abrogated by Dobbs*, 597 U.S. at 231.
[58] *Id*. at 192.
[59] Forsythe, *supra* note 55, at 8, 152.

A. OMB Should Align Section 200.477 with the Hyde Amendment's Broader Language Restricting Abortion Funding.

The proposed rule restricts "costs associated with elective abortions." Abortion proponents may try to devise a loophole within this language, such as by arguing that "costs" is limited to billable costs, which would exclude, for example, travel funds for abortion. As such, we ask OMB to consider modifying the language to align with the Hyde Amendment's abortion funding restriction.

The most recent version of the Hyde Amendment states that "[n]one of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion," subject to very limited exceptions.[60] The Hyde Amendment's text is broader than the proposed rule since it does not discuss "costs." The language extends beyond merely prohibiting federal funds from being used to "perform" abortions. Rather, Congress broadly directed that federal funds may not "be expended for any abortion." This more expansive structure reflects Congress's intent to ensure taxpayer dollars are not used to subsidize abortion, either directly or indirectly, except where federal law explicitly provides otherwise. Accordingly, AUL urges OMB to strengthen the language "costs associated with elective abortions" so that the proposed rule is at least as broad as the Hyde Amendment's funding principle.

B. OMB Should Clarify the Types of Direct and Indirect Costs that Fall Under Section 200.477.

Regardless of whether OMB modifies the phrase "costs associated with elective abortions," we ask that OMB clarify that the rule restricts both direct and indirect costs. The proposed rule does not define this phrase. This ambiguity leaves room for abortion proponents to argue that the provision only applies to direct costs of the abortion procedure itself. That narrow interpretation would leave a potential loophole that abortion proponents could exploit to use taxpayer funding for various costs that support, enable, arrange, or promote abortion, undermining the purpose of the proposed rule.

OMB can avoid this problem by using the preamble to provide examples of impermissible costs under the proposed rule. Doing so would remove confusion, improve auditability and enforcement of the funding restriction, and prevent the misuse of taxpayer dollars. Therefore, AUL urges OMB to clarify that costs associated with elective abortions include, but are not limited to, direct and indirect costs, administrative costs, overhead, personnel costs, supplies, equipment, transportation

[60] Consolidated Appropriations Act, 2026, div. B, tit. V, § 506.

and lodging, training, coordination, referrals, counseling and informational materials, contracts, subawards, and other costs that subsidize or facilitate abortion.

C. Strengthening Section 200.477 is Necessary to Prevent Future Circumvention and Abuse of the Rule.

Federal administrative actions under the previous Administration demonstrate how vulnerable abortion-funding prohibitions can be without sufficient clarity. Agencies previously misinterpreted funding restrictions and statutory language to create pathways for indirect funding of abortion and abortion-related expenditures where Congress never expressly provided or intended such authorization. This is why we urge OMB to proactively close those potential loopholes by clarifying that the proposed rule applies to the full range of abortion-related costs, both direct and indirect.

For example, in 2022, the Biden Administration's Office of Legal Counsel (OLC) decided that the Hyde Amendment did not bar the U.S. Department of Health and Human Services (HHS) from funding transportation for women seeking abortions.[61] OLC reasoned that the Hyde Amendment only prohibited funding for the abortion procedure itself, but not indirect expenditures such as transportation. That interpretation would have created a pathway for federal funds to facilitate and indirectly support abortion despite Hyde's purpose. However, in 2025, OLC withdrew that opinion, concluding that Hyde is best read to prohibit "the use of federal funds to provide ancillary services necessary to receive an abortion" and that the prior opinion was "inconsistent with the traditional tools of statutory interpretation."[62] This reversal underscores the need for clarity. Without it, agencies may again argue that federal abortion-funding restrictions apply only to the abortion procedures themselves.

A concerning string of other federal administrative actions manufacturing protections for abortion funding further demonstrates the importance of explicitly clarifying the proposed rule's terms. For example, under the Biden Administration:

- HHS finalized a rule that "remov[ed] restrictions on nondirective options counseling and referrals for abortion services and eliminat[ed] requirements for strict physical and financial separation between abortion-related activities and Title X project activities."[63] Title X, however, contains an explicit abortion funding restriction that "[n]one of the funds appropriated under this

[61] Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions, 46 Op. O.L.C. ___ (Sept. 27, 2022).
[62] Reconsidering the Application of the Hyde Amendment to the Provision of Transportation for Women Seeking Abortions, *supra* note 42, at 1, 6.
[63] Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56,144, 56,144 (Oct. 7, 2021) (to be codified at 42 C.F.R. pt. 59).

subchapter shall be used in programs where abortion is a method of family planning."[64]

- VA promulgated a final rule permitting abortion counseling and abortions in the medical benefits package and Civilian Health and Medical Program of the Department of Veterans Affairs for the life or health of the mother, or in cases of rape or incest.[65] This enabled abortion-on-demand, as the VA did not constrain the definition of "health," notwithstanding the Veterans Health Care Act of 1992's explicit exclusion of abortion from the VA's authority to provide "[g]eneral reproductive health care."[66]
- The Department of Defense established a policy promoting abortion travel for Service members,[67] forcing taxpayers to subsidize abortion travel and contravening long-standing federal policy to restrict funds for abortion.[68]
- The Equal Employment Opportunity Commission finalized a rule under the Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg-1, directing "a covered entity to make reasonable accommodation to the known limitations of a qualified employee related to pregnancy, childbirth, or related medical conditions, absent undue hardship," and then included abortion under "related medical condition."[69] Yet the underlying statute says nothing about abortion.[70]
- The Office of Refugee Resettlement ("ORR"), which is part of HHS' Administration for Children and Families, promulgated a final rule ensuring abortion "access" for unaccompanied minors notwithstanding the Hyde Amendment and federal funding restrictions on abortion.[71]

These examples demonstrate that, absent clear terms and limitations, agencies may interpret federal law creatively in order to support abortion-related activities. Thus, we recommend that OMB provide examples in the preamble of both direct and indirect expenditures prohibited under the proposed rule. These examples may include, but are not limited to, costs to perform, promote, refer for, facilitate, reimburse, subsidize, or provide logistical support for abortions. This clarification

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[64] 42 U.S.C. § 300a-6.
[65] Reproductive Health Services, 89 Fed. Reg. 15,451, 15,473 (Mar. 4, 2024) (to be codified at 38 C.F.R. pt. 17).
[66] *See* Reconsidering the Authority of the Department of Veterans Affairs to Provide Abortion Services, 49 Op. O.L.C. ___, at 2 (2025) (citing Veterans Health Care Act of 1992, Pub. L. No. 102-585, 106 Stat. 4943, 4943).
[67] *DOD Policy Changes: Reproductive Health Benefits*, Cong. Rsch. Serv. 1, 2 (Feb. 24, 2025), https://www.congress.gov/crs_external_products/IN/PDF/IN12512/IN12512.3.pdf.
[68] *See* 10 U.S.C. § 1093; *see also* Exec. Order No. 14,182, Enforcing the Hyde Amendment, 90 Fed. Reg. 8,751 (Jan. 31, 2025).
[69] Implementation of the Pregnant Workers Fairness Act, 89 Fed. Reg. 29,096, 29,183 (Apr. 19, 2024) (to be codified at 29 C.F.R. pt. 1636).
[70] *See* 42 U.S.C. §§ 2000gg to 2000gg-6.
[71] Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34,384, 34,516, 34,586, 34,601 (Apr. 30, 2024) (to be codified at 45 C.F.R. pt. 410).

would promote transparency, protect the Administration's intent to restrict federal funds for abortion, reduce enforcement burdens, and ensure federal funds remain available only for appropriate and lawful purposes. Such clarification also would strengthen the proposed rule, better aligning the rule with other funding restrictions within federal law and preventing future circumvention of the Administration's intent to prevent direct or indirect funding of abortion.

V. Conclusion.

Overall, the proposed rule is consistent with Congress' long-standing tradition of establishing abortion funding restrictions and the Trump Administration's policies of transparency, accountability, and oversight. However, to prevent abortion proponents from devising loopholes within the rule, we ask OMB to consider changing "elective abortion" to "abortion," and strengthening the language "costs associated with elective abortions."

Sincerely,

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