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Submitted via www.regulations.gov

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Re: Comment of Citizens for Responsibility and Ethics in Washington in response to Notice of Proposed Rulemaking, titled "Regulation for Federal Financial Assistance" (Docket No. OMB–2026–0034)

Citizens for Responsibility and Ethics in Washington (CREW) submits this comment on the Notice of Proposed Rulemaking (NPRM or proposed rule) titled "Regulation for Federal Financial Assistance" (Docket No. OMB-2026-0034), issued by the Office of Management and Budget (OMB) on May 29, 2026.[1] CREW is a nonpartisan nonprofit organization committed to protecting the rights of citizens to be informed about the activities of government officials and agencies; monitoring and informing the public about key government activities, including the executive branch's use of appropriated funds; ensuring transparency, ethics, and integrity in government; and empowering citizens to have an influential voice in government decisions and in the government's decision-making process. Because the pre-issuance review proposed by the NPRM under § 200.205 prioritizes the president's priorities without providing sufficient guidance to agencies on compliance with existing law,[2] and neither this requirement nor the additional audit provision under § 200.503(b) furthers the NPRM's identified objective of improving oversight, we urge OMB to withdraw these aspects of the proposed rule.

I. Background on the NPRM's pre-issuance review for discretionary awards [2 C.F.R. § 200.205] and additional audit provision [2 C.F.R. § 200.503(b)].

The proposed rule establishes a "pre-issuance review" for discretionary awards, conducted by a senior appointee[3] and "consistent with Executive Order 14332 [Improving Oversight of Federal Grantmaking],"[4] to "ensure that Federal award proposals selected for funding are

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[1] *See generally* Regulation for Federal Financial Assistance, 91 Fed. Reg. 32198 (May 29, 2026).
[2] *See id.*, 91 Fed. Reg. at 32248 (amending 2 C.F.R. § 200.205).
[3] The related executive order defines a "senior appointee" as "an individual appointed by the President, a non-career member of the Senior Executive Service, or an employee encumbering a Senior Level, Scientific and Professional, or Grade 15 position in Schedule C of the excepted service." Exec. Order No. 14332, 90 Fed. Reg. 38929, 38930 (Aug. 12, 2025).
[4] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32212.

consistent with applicable law, Federal agency priorities, and the national interest."[5] Pursuant to this review, "[d]iscretionary awards must, where applicable, demonstrably advance the President's policy priorities"[6] and may not fund "initiatives that . . . promote anti-American values."[7] The reviewing appointee may not "routinely defer to the recommendations of others," including peer review recommendations.[8]

The proposed rule also amends § 200.503(b), which currently provides that "a Federal agency, Inspector[] General, or GAO may conduct or arrange additional audits to carry out its responsibilities under Federal statute or regulation."[9] The NPRM changes this standard by providing that these entities may conduct such audits "only under applicable Federal statutes."[10]

II. The pre-issuance review serves solely to further the president's policies, and does not adequately address potential conflicts with existing law [2 C.F.R. § 200.205].

Agencies do not have any inherent authority to enter into grant agreements.[11] Pursuant to its legislative authority and power of the purse, however, Congress has authorized and provided funding for over two dozen federal agencies to administer over 1,800 grant programs.[12] In implementing these programs, agencies must comply not only with the constraints Congress sets on the grant funds, but also with other laws that govern their administration.[13]

The pre-issuance review focuses not on ensuring compliance with these legal requirements but, rather, advancing the president's policies. The proposed rule requires both that a political appointee review proposals and that the appointee ensure the award

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[5] *Id.*, 91 Fed. Reg. at 32249.
[6] *Id.*
[7] *Id.*
[8] *Id. Cf., e.g.*, *First Level: Peer Review*, NIH (last visited July 6, 2026), https://grants.nih.gov/grants-process/review/first-level (explaining that peer review allows experts to assess the overall impact of a grant application and "is intended to promote a process whereby grant applications submitted to the NIH are evaluated in a fair, equitable, and timely manner that strives to be free of bias").
[9] 2 C.F.R. § 200.503(b) (Relation to other audit requirements).
[10] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32263.
[11] U.S. Gov't Accountability Off., GAO-06-382SP, *Principles of Federal Appropriations Law: Third Edition, Volume II* at 10-17 (Feb. 2006), https://www.gao.gov/assets/2019-11/202819.pdf ("While federal agencies generally have 'inherent' authority to enter into contracts to procure goods or services for their own use, there is no comparable inherent authority to enter into assistance relationships, that is, to give away the government's money or property, either directly or by the release of vested rights, to benefit someone other than the government.").
[12] *Id.* at 10-28; U.S. Const. art. I, § 8, cl. 1; *id.* § 9, cl. 7; Cong. Rsch. Serv., *Searching for Federal Grants: An Overview of Resources*, at 1 (Feb. 13, 2025), https://www.congress.gov/crs_external_products/IF/PDF/IF12910/IF12910.3.pdf.
[13] *See Principles*, *supra* note 11, at 10-36; *see infra* note 17.

"demonstrably advance the President's policy priorities."[14] Although the proposed rule includes boilerplate language about compliance with existing law,[15] these cursory statements "do[] not and cannot override" the rule's unambiguous directives to implement the president's policies.[16] And the rule fails to clearly state that agencies must follow the law when faced with incompatible directives, leaving agencies without appropriate guidance on how to resolve potential conflicts between the president's priorities and duly enacted law.

Such a conflict is not hypothetical. Over the past year, myriad courts have determined that the administration's actions related to grants—including those taken following presidential directives in executive orders—violate the law.[17] And OMB's continued role in the grantmaking process only exacerbates this concern. Although Director Vought has said it is "not true" that the NPRM attempts to place the OMB Director at the center of the decision-making process, Vought's assertion neither addresses the potential for conflict between existing law and directives to advance the president's policies, nor precludes OMB interference in pre-issuance reviews.[18]

Indeed, Director Vought has emphasized OMB's role "in all downstream execution" and stated that OMB "has the only statutory tools in the White House that are powerful enough

[14] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32249.
[15] *Id.* (requiring that the appointee apply the outlined principles "as relevant and to the extent consistent with applicable law"); *see also id.* (stating that the review ensures the proposal is "consistent with applicable law").
[16] *San Francisco v. Trump*, 897 F.3d 1225, 1240 (9th Cir. 2018); *see also LULAC v. Exec. Off. of the President*, 780 F. Supp. 3d 135, 176 (D.D.C. 2025) ("[E]xecutive orders, like statutes, 'cannot be held to destroy themselves through saving clauses.'" (citation omitted)).
[17] *California v. U.S. Dep't of Transp.*, 808 F. Supp. 3d 291, 300, 308–311 (D.R.I. 2025) (holding unlawful the "Immigration Enforcement Condition" imposed on grant recipients, which followed issuance of an executive order prohibiting funding for "sanctuary" jurisdictions); *President & Fellows of Harvard Coll. v. U.S. Dep't of Health & Hum. Servs.*, 798 F. Supp. 3d 77, 93, 98–99, 121, 123–125 (D. Mass. 2025) (holding that grant terminations, which followed issuance of "anti-semitism" executive orders, were unlawful); *Planned Parenthood of Greater New York v. U.S. Dep't of Health & Hum. Servs.*, No. 25-2453, 2025 WL 2840318, at *29 (D.D.C. Oct. 7, 2025) ("Just because a pronouncement comes from the President does not make it true, even if expressed in the form of an executive order, and even then, does not supersede the law—particularly in the context of a statutory scheme for evidence-based grant funding."); *see also State v. U.S. Dep't of Transp.*, No. 2:25-00848, 2026 WL 183584, at *11 (W.D. Wash. Jan. 23, 2026) ("There are many ways to implement a new presidential administration's policies, but only those that are *legal* will survive judicial review. What Defendants have done here is not legal."); *State v. U.S. Dep't of Educ.*, 813 F. Supp. 3d 1222, 1240 (W.D. Wash. 2025) (holding that grant-related actions violated the law when the agency "decided whether to continue existing grants based on a review of original grant applications as judged against the agency's unpublished policy preferences, rather than complying with the procedure for making continuation awards set out in the regulations and agency guidance").
[18] White House Budget Director Russell Vought Testifies at Oversight Hearing, C-SPAN, at 1:19:00 (June 30, 2026), https://www.c-span.org/program/house-committee/white-house-budget-director-russell-vought-testifies-at-oversight-hearing/681932.

to override implementing agencies' bureaucracies."[19] In a separate context, for example, OMB has attempted to achieve this control by giving political appointees, rather than career officials, authority to approve legally binding apportionments.[20] Following this transition, OMB launched a series of apportionment abuses,[21] including effectively shuttering the Council of the Inspectors General on Integrity and Efficiency for 48 days by withholding over $27 million,[22] and allegedly "refus[ing] to timely apportion hundreds of millions of dollars of . . . education research funds."[23]

Now, OMB is attempting to exert similar control over grantmaking processes by requiring political appointees to implement a pre-issuance review that prioritizes advancing the president's policy objectives. This structure and the proposed rule both implicitly and explicitly reserve for OMB a critical role in dictating what the president's priorities are and, consequently, the policies appointees must advance to comply with the NPRM. The executive order on which the proposed rule is based—and with which the pre-issuance review is "consistent"—affirms OMB's involvement by providing for the "continuation of existing coordination with OMB."[24] The term "coordination" does not, however, necessarily constrain the scope of OMB's involvement. For example, after the president issued the executive order outlining the pre-issuance review, a court preliminarily held that OMB had *directed* grant terminations at the agency level for reasons unrelated to the laws passed by Congress.[25]

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[19] *Mandate for Leadership: The Conservative Promise*, Heritage Foundation, at 45 (2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf (Project 2025); *see also id.* (stating that OMB is the "keeper of 'commander's intent'" and serves as "the best, most comprehensive approximation of the president's mind as it pertains to the policy agenda"); Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32206 (justifying a single rulemaking because proceeding otherwise would "impede OMB's ability to timely exercise its own statutory authorities to set government-wide requirements for grants management").
[20] Notice; Delegation of Apportionment Authority Pursuant to 31 U.S.C. § 1513(b), 90 Fed. Reg. 17084 (Apr. 23, 2025); *see Project 2025 supra* note 19, at 45 (asserting that this change provides "visibility into the deep caverns of agency decision-making").
[21] *Flagging anomalous apportionments*, Protect Democracy (Mar. 20, 2026), https://protectdemocracy.org/work/flagging-anomalous-apportionments/.
[22] Scott MacFarlane, *Trump Administration to Defund Federal Watchdog Council*, CBS News (Oct. 1, 2025), https://www.cbsnews.com/news/trump-defunding-council-of-inspectors-general/; Letter from CIGIE to S. Appropriations Comm., House Appropriations Comm., S. Homeland Sec. and Governmental Affs. Comm., and House Oversight and Gov't Reform Comm. (Sept. 27, 2025), https://www.documentcloud.org/documents/26173184-cigie-letter-to-congress-september-27-2025/; OpenOMB, Inspectors General Council Fund, TAFS: 542-4592/X-Inspectors General Council Fund, https://openomb.org/file/11483369 (November 18 apportionment).
[23] Complaint at 2, *Nat'l Ctr. for Learning Disabilities v. OMB*, No. 1:26-13019 (D. Mass. 2026).
[24] Exec. Order No. 14332, 90 Fed. Reg. at 38930; *see also* Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32212.
[25] *Illinois v. Vought*, 825 F. Supp. 3d 721, 729 (N.D. Ill. 2026) ("Plaintiffs' evidence supports the inference that OMB's objective behind the decision to identify grants awarded to plaintiffs (and not similar grants awarded to other states) was unrelated to the Congressional authorization for public-health grants.").

In light of Director Vought's emphasis on OMB's role in exercising significant control over the implementation of the president's policies, OMB's continued "coordination"[26] in the pre-issuance review process, the many examples in which courts have held that the president's policies conflict with existing law and the proposed rule's failure to affirm that an agency must act in accordance with law even if it conflicts with the president's priorities, we oppose the pre-issuance review in § 200.205.[27]

III. Neither the pre-issuance review nor the additional audit provision furthers the identified objective of improving oversight [2 C.F.R. §§ 200.205, 200.503(b)].

The NPRM suggests that pre-issuance review will support the proposed rule's first objective, namely, improving oversight.[28] But the proposed rule appears to do the opposite. First, the proposed rule's requirement that a senior appointee alone determine whether a discretionary award program "demonstrably advance[s] the President's policy priorities" consolidates power in a single individual who remains accountable only to the president or other appointees.[29] And the NPRM further limits opportunity for oversight of the appointee's decision by simultaneously requiring that they "use their independent judgment" to evaluate proposals and prohibiting them from routinely deferring to experts or peer reviews.[30]

The proposed amendments to the audit provisions in § 200.503(b) further hinder oversight, contrary to the NPRM's stated purpose. Federal law allows agencies to conduct or arrange for additional audits, specifically provides that statutory audit requirements do not limit the authority of inspectors general or other federal officials, and requires independent auditors to make their working papers available to federal agencies or the Comptroller General upon request "as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of" the statutory audit requirements.[31] In accordance with these provisions, the current version of the regulation permits federal agencies, inspectors general or the Government Accountability Office to conduct additional audits "to carry out [their] responsibilities under Federal statute or regulation,"[32] which may be triggered by the results of other audits or whistleblower disclosures.[33]

Despite this statutory backdrop and the benefits of additional agency, inspector general or GAO review, the NPRM seeks to significantly narrow these entities' ability to provide

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[26] *Id.* (discussing OMB's directions to terminate grants).
[27] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32248.
[28] *Id.* at 32199, 32204, 32248.
[29] *Id.* at 32249.
[30] *Id.*
[31] 31 U.S.C. §§ 7503(b), (c), (f).
[32] 2 C.F.R. § 200.503(b).
[33] Jonathan D. Shaffer & Daniel H. Ramish, *Federal Grant Practice* § 46:19 (2025 ed.).

effective oversight by permitting additional audits only if "required by law."[34] This change both weakens the guardrails designed to protect against fraud, waste and abuse and, contrary to the stated objective of the NPRM, may have a chilling effect on investigations and oversight.[35]

Finally, we observe that requiring a senior appointee to conduct all pre-issuance reviews not only enhances the potential for conflicts of interest,[36] but likely will result in the inefficiency and delays that the rule purports to fix.[37] The Department of Homeland Security, for example, previously required the secretary to approve contracts and grants worth more than $100,000, and the Department of Commerce had adopted a similar policy in March 2025.[38] These policies led to significant backlogs in contract approvals[39] and potential real-world harms as agreements that help communities prepare for extreme weather events,[40] provide tornado-tracking tools,[41] support search and rescue crews[42] and

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[34] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32232, 32263.
[35] Donald K. Sherman, *Testimony before the U.S. Senate Committee on Small Business & Entrepreneurship Hearing On: "Blowing the Whistle: Inside the Grift that Keeps Giving*," CREW, at 4 (May 20, 2026), https://www.citizensforethics.org/wp-content/uploads/2026/05/Donald-Sherman-Written-Testimony-Senate-Small-Business-Committee-May-2026.pdf.
[36] Justin Elliott, Joshua Kaplan & Alex Mierjeski, *Firm Tied to Kristi Noem Secretly Got Money From $220 Million DHS AD Contracts*, ProPublica (Nov. 14, 2025), https://www.propublica.org/article/kristi-noem-dhs-ad-campaign-strategy-group; Alyssa Meiman & Mahnoor Imran, *EPA officials made millions from chemical industry before proposed rollbacks of a potentially lifesaving rule*, CREW (May 21, 2026), https://www.citizensforethics.org/reports-investigations/crew-investigations/epa-officials-made-millions-from-chemical-industry-before-proposed-rollbacks-of-a-potentially-lifesaving-rule/ (explaining that "[s]ixteen Trump-appointed EPA officials were paid more than $2.8 million by chemical companies and trade groups before they joined the agency that oversees the industry").
[37] Regulation for Federal Financial Assistance, 91 Fed. Reg. at 32202.
[38] Jason Miller, *'Absolutely nuts': DHS secretary to review all contract, grant awards over $100k*, Federal News Network (June 18, 2025), https://federalnewsnetwork.com/acquisition-policy/2025/06/absolutely-nuts-dhs-secretary-to-review-all-contract-and-grant-awards-over-100k/; Maxine Joselow, Alexandra Berzon, & Eli Murray, *Noem's Spending Rule Causes Delays at Homeland Security Dept.*, N.Y. Times (Aug. 21, 2025), https://www.nytimes.com/2025/08/21/us/kristi-noem-spending-contracts-homeland-security-department.html; Nicole Sganga & Camilo Montoya-Galvez, *DHS scraps Noem policy requiring secretary's review of all contracts above $100,000*, CBS News (Apr. 1, 2026), https://www.cbsnews.com/news/dhs-scraps-noem-policy-approval-100000-contracts/.
[39] Scott Waldman, *Backlog of unsigned contracts paralyzes NOAA*, E&E News (May 20, 2025), https://www.eenews.net/articles/backlog-of-unsigned-contracts-paralyzes-noaa/; Brittany Gibson, *The contracting mess Noem's leaving behind at DHS*, Axios (Mar. 11, 2026), https://www.axios.com/2026/03/11/noem-dhs-contracts-backlog.
[40] *See Backlog, supra* note 38.
[41] Gabe Cohen, *Exclusive: 'Rescuers were flying blind': Inside the crucial $200,000 contract Kristi Noem's team let lapse*, CNN (Mar. 13, 2026), https://www.cnn.com/2026/03/13/politics/fema-response-tornado-tracking-tool-kristi-noem.
[42] Gabe Cohen & Michael Williams, *FEMA's response to Texas flood slowed by Noem's cost controls*, CNN (July 10, 2025), https://www.cnn.com/2025/07/09/politics/fema-texas-flood-noem.

provide disaster unemployment and temporary housing assistance[43] awaited appointee approval. The NPRM—which requires an appointee to use their independent judgment to review *all* discretionary grant proposals selected for funding, without ratifying or routinely deferring to recommendations from others—likely would only contribute to delays in the provision of critical grant funding.

Because the pre-issuance review amplifies the potential for conflict between the president's policies and existing law, does not provide clear guidance to agencies on the requirement that compliance with the law takes precedence, and neither the pre-issuance review nor the additional audit provision improve oversight of the grantmaking process, we urge OMB to withdraw these provisions.

Respectfully submitted,

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[43] Scott Dance, *Noem Review Delayed Disaster Aid by Weeks, Senate Report Finds*, N.Y. Times (Mar. 4, 2026), https://www.nytimes.com/2026/03/04/climate/noem-dhs-fema-delays.html.