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The Honorable Russell Vought
Director
Office of Management and Budget
725 17th St NW
Washington, D.C. 20503

Dear Director Vought,

Thank you for the work of the Trump Administration to reform the Federal grantmaking process. The Hermann Center for the Federal Budget at the Heritage Foundation writes in strong support of the proposed Rule to update Title 2 of the Code of Federal Regulations overseeing Federal Financial Assistance, which will institutionalize those reforms.

The rule contains changes in four key areas intended to foster appropriate stewardship of taxpayer dollars. The rule will help uncover fraud, stop wasteful spending, install political oversight, and end grants that are inconsistent with Administration priorities. This comment letter will address each subject in turn.

Antifraud provisions

The Hermann Center commends the Trump Administration for strong antifraud provisions. These provisions are important improvements to current procedures, yet in some instances could be further strengthened.

- Section 200.305 requires that every payment request (1) be matched against the Department of the Treasury's Do Not Pay (DNP) system to prevent improper payments, and (2) include a brief, written justification tied to the activities supported by the federal award. Importantly, the justification requirement extends to payment requests by subrecipients, ensuring transparency and an audit trail that will make it easier for federal agencies to question payments that look suspicious.

This provision appears to be sufficiently strong.

- Section 200.303(g) mandates States conduct pre-payment verification checks prior to distributing federal funds. The verification could be made through Treasury's DNP system or alternate means. There currently is no requirement that States handle federal pass-through dollars with the same care required by federal agencies.

  This provision appears to be sufficiently strong.

- Section 200.329 requires quarterly reports from recipients and subrecipients that relate financial data and program accomplishments to achieving the goals set forth in the federal award, as well as immediate notification if there are "significant developments" to report. This information will enable federal program managers to determine if the goals are achieved in the most efficient manner possible, leading to corrective actions or termination if taxpayer resources are being squandered. It is particularly important that the reporting requirements apply to subrecipients because that is where visibility is lacking currently.

  Section 200.329 could be strengthened by making clear that quarterly reports and other required documents are available for public inspection. Further, OMB should consider clarifying that emails and other communications between the recipient and the subrecipient are subject to the Freedom of Information Act (FOIA). This would allow non-governmental organizations to dig into the recipient-subrecipient relationship without having to take legal action against a recalcitrant federal agency.

- Sections 200.201(b) and 200.333 eliminate fixed amount awards and subawards. Taxpayers cannot be assured that they are getting appropriate value for money in a fixed amount award. Further, transparency and accountability decrease as distance from the grantee increases, and granular information currently is not required of subgrantees who have a fixed dollar subaward. The current situation is ripe for inefficiencies at best since there is no need to show that work was performed, and at worst invites subawards that provide payment for no work. Eliminating fixed amount awards and subawards will reduce the risk of fraud and abuse of taxpayer dollars.

  This provision appears to be sufficiently strong.

<u>Stopping wasteful spending</u>

The Hermann Center also supports the additional guidance on program planning and design and cost principles contained in the proposed regulation. These policies provide guardrails that will prevent the abuse of taxpayer dollars.

- Section 200.202(c) prohibits the use of federal program funds for "political advocacy, lobbying, or any attempt to influence legislation, elections, or government officials." Too often, recipients of Federal Financial Assistance (FFA) use significant amounts of their FFA to obtain additional federal funds. Receipt of additional federal funds should be based on merit and performance rather than lobbying—particularly lobbying paid with federal funds.

  Section 200.202(c) could be strengthened by adding a cap on the total lobbying expenditures of recipients, such as a cap on the percentage of recipient revenue from all sources that can be devoted to lobbying activities. Because a dollar is fungible, a cap on lobbying expenditures would prevent recipients from shifting these costs onto other activities to evade the contemplated federal prohibition.

- Section 202.202(e) requires that federal research and development awards must go to entities that are organized under the laws of the United States and performed in the United States except when international elements are in the national interest. This America First policy will prevent intellectual property developed with the resources of American taxpayers from being exploited by foreign entities.

  Section 202.202(e) could be improved by adding language requiring that the granting agency perform appropriate due diligence to ensure that the recipient is not just a front for foreign entities that seek to benefit from American technology.

- Section 200.202(f) encourages Federal agencies to design programs such that they can be awarded on a multi-year basis rather than on an annual basis. This will add efficiency to the administration and awarding of FFA, reducing the number of applications that must be reviewed each year while not reducing oversight which is increased by other provisions in the proposed rule discussed in this comment letter.

  This provision appears to be sufficiently strong.

- Section 200.432 prohibits grantees from using federal grant money to attend conferences except when included in the federal award and specifically approved by the agency making the grant. This will stop grantees from traveling to useless conferences in exotic locations at taxpayer expense when many hardworking Americans cannot afford vacations at all. If a recipient feels they need the funds to go to important conferences—which is common among researchers—they may request the funds to do so, instead of getting them automatically and without transparency to spend as they wish.

  This provision appears to be sufficiently strong.

- Section 200.450(c)(1)(iii)-(v) disallows costs related to voter registration, issue advocacy, and efforts to affect state governments on items unrelated to the federal award. These changes would prevent a loop where recipients receive taxpayer dollars and then use those dollars to promote themselves, which then enables them to compete for more grant money.

  This section could be improved by capping the total amount spent by the recipient on such activities as a percentage of total revenue, as discussed above under section 200.202(c), to prevent the recipient from doing an end-run around the intent of the prohibition.

- Section 200.454 disallows costs for subscriptions to academic and trade journals, club memberships, and advocacy organizations while still allowing membership in relevant professional organizations with prior written approval by the agency making the grant. Researchers funded by federal grants should not be able to subsidize their professional development with tax dollars. As with 200.432, this would still allow for critical scientific research, but without the opaqueness that creates the opportunity for wasteful spending.

  This provision appears to be sufficiently strong.

- Section 200.461 prohibits charging the government for publication costs that are not required by statute or approved by the federal agency. This will preclude the use of grant money for the self-promotion activities of the grantee.

  This provision appears to be sufficiently strong.

- Section 200.475 limits travel reimbursement to the amounts included in the GSA schedule, generally prohibiting luxury business travel related to the federal award.

  This provision appears to be sufficiently strong.

<u>Ensure appropriate political oversight</u>

The Hermann Center commends OMB for wrestling back control over federal spending from unelected bureaucrats. Final decisions on the commitment of federal dollars appropriately rest with elected and senior political officials.

- Section 200.205 establishes a mandatory merit review for every discretionary grant to be conducted by senior political appointees or their designees. The merit review will focus solely on the likelihood of the applicant accomplishing the goals set for the federal program consistent with Presidential priorities and American values. Heritage has pointed out that in the previous administration federal awards were inconsistent with the public purposes set forth in law.[1] The executive branch is charged with the faithful execution of the law. Establishing a uniform policy requiring pre-award review by senior political appointees will ensure that the grant is consistent with law and administration policy rather than unelected bureaucrats' interpretation of the public good.

While this could have a whipsaw effect on the types of grants funded from administration to administration, it should also have the effect of ensuring applications are squarely within the four corners of the law. This will over time rebuild taxpayer confidence that federal tax dollars are being spent wisely.

<u>Terminate grants that are not consistent with administration priorities</u>

The Hermann Center supports OMB's position that grants may be terminated as Presidential priorities change. Elections have consequences and can and should change the direction of the country. Post-election, federal funds should be disbursed in a manner consistent with the direction demanded by the electorate.

- Section 200.340 clarifies that a federal agency or pass-through entity may cancel a discretionary award when either determines that the recipient or subrecipient did not comply with that terms and conditions of the award, or the award no longer serves federal agency priorities, program goals or the national interest.
  - It makes clear that a federal award recipient's award may be terminated for its failure to report subawards in SAM.gov, elevating the importance of proper stewardship of federal dollars and the ability for any interested party to learn what organizations are doing work on behalf of the federal government.
  - It also requires federal agencies to disclose in SAM.gov those entities that have been terminated for failure to comply with the terms and conditions of their federal award. This provision should serve as a deterrent to bad behaviors from the award recipient and provide federal agencies with additional information about the ability of a business or non-profit institution to perform.

In general, these provisions will make termination of federal grants more like the termination of federal contracts. This will increase oversight and is appropriate since there is little difference between grants and contracts in the eyes of the taxpayers who are footing the bill.

*OMB has also expressed an interest in comments relating to the whether pass-through entities like state and local governments should have the ability to determine when cancelling a grant is in the federal government's interest. On balance, the Hermann Center has concluded that pass-through entities should **not** be granted this authority.*

[1] David Ditch, "Funding Leftism, Making Power Grabs: The Biden Administration's Bureaucratic Radicalism." Heritage Foundation, April 18, 2024.

> *The incentives of pass-through entities are not always aligned with those of the federal government, so granting pass-through entities the ability to determine the disposition of federal taxpayer funds does not seem to be a prudent course. Federal elected officials and their representatives should have final say of the use of federal funds.*

Again, the Hermann Center commends you, Director Vought, for this thoughtful framework for uniform and unbiased grantmaking in the federal government. We hope these comments are useful to OMB in further strengthening the proposed regulations.

Sincerely,
Daniel Kowalski
Director
Hermann Center for the Federal Budget