March 13, 2023

Honorable Steven Mackey, Policy Analyst
OMB Office of Federal Financial Management
Office of Management and Budget
Executive Office of the President
725 17th St., NW
Washington, DC 20503

Re: Office of Management and Budget, Executive Office of the President [Docket Number 2023-02158] Proposed revisions to Title 2 of the Code of Federal Regulation (CFR), subtitle A, chapters I and II Notice; request for information

Dear Director Young,

The undersigned organizations appreciate the opportunity to comment on the request for information by the Office of Management and Budget with regard to revisions to title 2 of the Code of Federal Regulation.

We support changes suggested by the Local Opportunities Coalition, including those to Section 200.322 "Domestic preferences for procurements" to:

1. Add a new provision allowing for local hire for manufactured goods
2. Add a new US Jobs Plan scoring credit that rewards bidders or proposers that commit to specific numbers and types of U.S. jobs, minimum compensation and benefits, and on the job training for all non-temporary employees involved in the manufacture and delivery of products, goods, materials and related services produced in the United States.

We would like to suggest additional revisions to Section 200.322 to allow officials the option of giving preferential treatment to bidders that make credible commitments to make productive investments in their companies, with corresponding commitments to refrain from stock buybacks and excessive executive compensation.

The OMB's Request for Information encourages public feedback in support of the goal of revising the guidance to incorporate administration priorities. Our recommendations support administration priorities in several ways:

1. The Biden administration has made clear its priority of **discouraging wasteful spending on stock buybacks**, which undermine the administration's pro-worker agenda and

long-term economic prosperity goals while enriching already wealthy executives and shareholders.

2. President Biden has often repeated his priority goal of "**building the economy from the bottom up and the middle out.**"[1] By contrast, many large U.S. corporations are misguidedly attempting to build the economy from the top down. Encouraging companies to refrain from stock buybacks and instead lift up their workers and make other productivity-enhancing investments will help achieve this administration goal.

3. The Biden administration has also made **tackling racial inequality** a high priority, as evidenced, for example, by the recently released executive order on Further Advancing Racial Equity and Support for Underserved Communities.[2] Curbing stock buybacks would help advance these goals, since such repurchases exacerbate the country's growing racial wealth gap, according to Roosevelt Institute research.[3]

The Biden Administration's Efforts to Date to Curb Stock Buybacks and Excessive CEO Pay

President Biden supported the excise tax on stock buybacks that was introduced through the Inflation Reduction Act. Recently, he called on Congress in his State of the Union address to quadruple this tax "to encourage long term investments."[4]

The administration has also begun incorporating buyback disincentives in federal funds going to businesses. On February 28, the Department of Commerce released guidelines related to new CHIPS subsidies for domestic semiconductor manufacturing. All applicants will need to detail their intentions with respect to stock buybacks over five years and those that commit to refraining from them will receive preferential treatment.[5]

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[1] The White House, "FACT SHEET: The Biden Economic Plan Is Working," February 3, 2023, *available at* https://www.whitehouse.gov/briefing-room/statements-releases/2023/02/06/fact-sheet-the-biden-economic-plan-is-working/.

[2] The White House, "Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government," February 16, 2023, *available at* https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/16/executive-order-on-further-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.

[3] Lenore Palladino, "The Contribution of Shareholder Primacy to the Racial Wealth Gap," Roosevelt Institute Working Paper, February 2020, *available at* https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_TheContributionofShareholderPrimacy_Working-Paper_202001.pdf.

[4] The White House, "Remarks of President Joe Biden – State of the Union Address as Prepared for Delivery," February 7, 2023, *available at* https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/02/07/remarks-of-president-joe-biden-state-of-the-union-address-as-prepared-for-delivery/.

[5] National Institute of Standards and Technology, U.S. Department of Commerce, "Funding Opportunity – Commercial Fabrication Facilities FACT SHEET: Protecting U.S. Taxpayers," February 28, 2023, *available at*

In his State of the Union speech, the president singled out big oil corporations for using "record profits to buy back their own stock, rewarding their CEOs and shareholders." Similar criticism could be leveled against many corporations that stand to benefit from federal contracts, grants, and subsidies, including those that flow through state and local governments. Large companies have broken stock buyback spending records in recent years and some analysts predict that such spending will soar even higher in 2023, with the S&P 500 possibly exceeding $1 trillion in buybacks expenditures for the first time in history.[6]

The revision of the Uniform Guidance presents an important opportunity to give state and local governments the flexibility to discourage this corporate practice, which has broad detrimental effects on our economy and in certain instances has contributed to public safety and environmental catastrophes.

The High Costs of Stock Buybacks and Excessive CEO Pay

Studies have long shown that stock buybacks are associated with investment slowdowns, reduced innovation, layoffs,[7] and wage stagnation.[8] Indeed, every dollar spent on stock buybacks is a dollar not spent on research and development, worker wages, and other productivity and innovation-boosting investments. S&P 500 companies' 2018 spending patterns provide a vivid illustration of overinvestment in stock buybacks and underinvestment in research and development: stock buybacks were 68% of net income and dividends were 41%, while only 43% of companies spent any money on research and development.[9]

In recent years, we have witnessed numerous examples of how these skewed priorities can contribute to severe public health and environmental risks and result in enormous economic burdens for taxpayers. For example:

- Norfolk Southern, the company responsible for the recent train derailment in Ohio that

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https://www.nist.gov/system/files/documents/2023/02/28/CHIPS_NOFO-1_Protecting_US_Taxpayers_Fact_Sheet_0.pdf.

[6] Reuters, "Factbox: U.S. stock buybacks so far in 2023: big money, fewer companies," February 7, 2023, *available at* https://www.reuters.com/markets/us/us-stock-buybacks-so-far-2023-big-money-fewer-companies-2023-02-07/.

[7] William Lazonick, "Stock Buybacks: From Retain-and-Reinvest to Downsize-and-Distribute," Brookings, Apr. 17, 2015, *available at* https://www.brookings.edu/research/stock-buybacks-from-retain-and-reinvest-to-downsize-and-distribute/.

[8] Lenore Palladino, "Financialization at work: Shareholder primacy and stagnant wages in the United States," Competition and Change, Jun. 22, 2020, *available at* https://journals.sagepub.com/doi/abs/10.1177/1024529420934641.

[9] William Lazonick, Mustafa Erdem Sakinç, & Matt Hopkins, "Why Stock Buybacks Are Dangerous for the Economy," Harvard Business Review, Jan. 7, 2020, *available at* https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy.

will have incalculable costs for local residents and the environment, spent $6.5 billion in the past two years on stock buybacks. Earlier this year, they announced plans to spend another $7.5 billion on share repurchases.[10] This is money that could've been spent on safety investments, paid leave for employees, and other measures to protect public and environmental health.

- Abbott authorized $8 billion in stock buybacks in 2019-2021. Meanwhile, the company let one of its baby formula plants deteriorate to the point that the FDA shut it down in 2022 after several infants who consumed formula made at the plant fell ill from bacterial infections. This public safety disaster then contributed to a national baby formula shortage.[11]
- When the pandemic hit in 2020, American taxpayers were on the hook for a $50 billion bailout of the airline industry. This bailout would not have been necessary had the airlines not blown $45 billion on stock buybacks in the years leading up to the crisis.[12]

Overinvestment in stock buybacks and corresponding underinvestment in workers and technological improvements is also closely related to excessive CEO pay, a key driver of the extreme inequality that is fraying our social fabric and undermining our democracy. Most CEO pay is equity-based and stock buybacks artificially inflate share price. CEOs' incentive-based compensation is also often tied to hitting financial metrics that can be influenced by stock buybacks.

Both stock buybacks and excessive CEO pay undermine workers' well-being, which is inextricably linked to companies' ability to be productive and innovative. As mentioned above, spending on stock buybacks is correlated with layoffs and wage stagnation, and money spent on stock buybacks is not spent on investments in human capital. Additionally, significant research finds that excessive CEO pay reduces productivity by undermining employee morale and boosting turnover rates.[13] Experts say a company's "knowledge base," which includes "the knowledge and skills of its employees" as well as employees' rewards "for their contributions to the company's productivity," is what "fuel[s] innovations in products and processes that enable

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[10] Chris Isidore, "Norfolk Southern is paying $6.5 million to derailment victims. Meanwhile, it's shelling out $7.5 billion for shareholders," CNN, February 22, 2023, *available at* https://www.cnn.com/2023/02/22/investing/norfolk-southern-share-repurchases/index.html.

[11] U.S. Senate Finance Committee, "Wyden Launches Investigation Of Abbot Tax, Stock Buyback Practices," MAY 18, 2022, *available at* https://www.finance.senate.gov/chairmans-news/wyden-launches-investigation-of-abbott-tax-stock-buyback-practices.

[12] Allan Sloan, "U.S. airlines want a $50 billion bailout. They spent $45 billion buying back their stock," Washington Post, April 6, 2020, *available at* https://www.washingtonpost.com/business/2020/04/06/bailout-coronavirus-airlines/.

[13] Academic Resources and Research About CEO-Worker Pay Gaps, CEO-Worker Pay Resource Guide, Inequality. Org, *available at* https://inequality.org/action/corporate-pay-equity/#academic-research.

[a firm] to gain and sustain an advantage over other firms in its industry."[14]

Interest in Tackling Excessive CEO Pay at the State and Local Level

Americans are outraged about excessive executive compensation – even when they are not directly subsidizing it. An April 2022 poll by JUST Capital shows that 87 percent of Americans see the growing gap between CEO and worker pay as a problem not just for workers but for the entire nation.[15]

State and local officials have expressed interest in addressing the problem of excessive executive compensation. Two U.S. municipalities have increased local taxes on companies that have huge gaps between the compensation of their CEO and their typical worker.[16] In at least nine other cities and states, lawmakers have introduced bills aimed at encouraging narrower CEO-worker pay gaps, either through tax or procurement reforms.[17] A Rhode Island state senate bill, for example, would give preferential treatment in state contracting to corporations that pay their CEOs no more than 25 times their median worker pay.[18]

A revision to the OMB Uniform Guidance expressly authorizing (but not requiring) preferences for firms that refrain from stock buybacks and excessive executive compensation would provide clarity and reduce the administrative burden on agencies interested in incorporating such considerations in their procurement and grant expenditure processes. The burden on bidders would be negligible. Publicly traded companies already must report stock buyback authorizations and expenditures, executive pay, and CEO- median worker pay ratios. If companies profess to have difficulty providing compensation data, agencies should consider this a sign of inefficiency and weak corporate governance.

More importantly, by discouraging wasteful spending on buybacks and excessive CEO pay, this reform would lessen the costly burdens associated with corporate underinvestment in safety-related technologies, workforce development, and other productivity-boosting

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[14] William Lazonick, Mustafa Erdem Sakinç, & Matt Hopkins, "Why Stock Buybacks Are Dangerous for the Economy," Harvard Business Review, Jan. 7, 2020, *available at* https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy.

[15] Jennifer Tonti, "Survey Report: Companies Should Reduce Income Inequality by Raising Minimum Wage to Living Wage and Capping CEO Compensation," JUST Capital, Apr. 2022, *available at* https://justcapital.com/wp-content/uploads/2022/05/JUST-Capital_Worker-CEO-Pay-Survey-Analysis_May-2022-min.pdf.

[16] Portland, Oregon: 188129 Surtax to Business License Tax if ratio of compensation of a company's chief executive officer to median worker is equal to or greater than 100:1 amend PCC 7.02.500 ordinance, December 7, 2016. San Francisco, California: Overpaid Executive Tax, 2020.

[17] Inequality.org, CEO-Worker Pay Resource Guide.

[18] STATE OF RHODE ISLAND IN GENERAL ASSEMBLY, S 0211, AN ACT RELATING TO PUBLIC PROPERTY AND WORKS - STATE PURCHASES, 2017.

investments. By using our public dollars to incentivize equitable business models, agencies can encourage greater enterprise efficiency and better services for taxpayers.

We appreciate this opportunity to weigh in on the OMB Uniform Guidance. We believe that all subsidies, grants, and contracts with private business – at all levels of government – should be used as levers for steering Corporate America in the direction of shared prosperity. Taxpayer dollars are precious, and we need responsible government action to ensure these dollars benefit working families and their communities instead of lining the pockets of wealthy executives and shareholders.

Sincerely,

Americans for Financial Reform Education Fund
Center for Popular Democracy
Institute for Policy Studies, Global Economy Project
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)
Jobs to Move America
Patriotic Millionaires
Public Citizen
Strong Economy For All Coalition
The Value Alliance
United for Respect