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Open Source "America's Operating System" "It's Not Just A Good Idea—It's The Law!"

March 15, 2021

Ms. Clare Martorana Chief Information Officer of the United States Office of Management and Budget The White House Washington, D.C. 20500

Mr. V. David Zvenyach Director, Technology Transformation Services U.S. General Services Administration 1800 F Street Washington, D.C. 20006

Mr. Matt Cutts, Administrator U.S. Digital Service Office of Management and Budget The White House Washington, D.C. 20500

Dear Ms. Martorana, Mr. Zvenyach, and Mr. Cutts:

I bring to your attention the attached letter to the Office of Information and Regulatory Affairs (OIRA) and the Office of the Federal Register (OFR) regarding President Biden's Presidential Memorandum of January 20, 2021 which directs the Biden Administration to "advance regulatory policies that improve the lives of the American people."

The letter suggests that in order to meet this laudable goal, a necessary but not sufficient condition is to make substantial improvements in how the Code of Federal Regulations (CFR) is created and promulgated. Specifically:

- The CFR contains a large number of images that are low-resolution and inaccessible. We have spent considerable effort rekeying those images and would like to make them available to the government.
- The CFR needs changes in the underlying markup to explicitly support modern standards for tables, formulas, graphics, and certain semantic areas such as incorporation by reference using modern standards.
- The CFR relies heavily a mechanism called incorporation by reference that has resulted in over 50% of the CFR not being available to the public.

We fully understand that your offices have many important tasks to accomplish, including your path-breaking and transformational efforts to reform how information technology is used in government. Likewise, we understand that OIRA's efforts to reform the regulatory process to be more inclusive, sustainable, and accessible requires a number of efforts that are about the mechanics and policies of rule-making. However, in a nation founded on the rule of law, at the end of the day the Code of Federal Regulations is our rulebook. Better promulgation of the definitive statement of federal law is a necessary precondition to achieving the goals of transforming critical, public-facing services and, as President Biden so aptly stated "promote public health and safety, economic growth, social welfare, racial justice, environmental stewardship, human dignity, equity, and the interests of future generations" in the regulatory process.

We would be pleased to discuss our suggestions with you in more detail and hope you will be able to work with the regulators to assist them in helping make our Code of Federal Regulations more readily accessible.

With best regards,

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Carl Malamud, President Public Resource

cc: Mr. David Halperin, Of Counsel, Public Resource Mr. Stephen J. Schultze, Attorney, Wilson Sonsini Goodrich & Rosati

