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May 31, 2013

Office of Federal Financial Management
Office of Management and Budget
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BY ELECTRONIC MAIL TO: www.regulations.gov

Ladies/Gentlemen:

This letter is in response to the notice published in the *Federal Register* on February 1, 2013 concerning reform of federal policies related to grants and cooperative agreements (78 FR 7282-7296).

InsideNGO is a membership organization that is comprised of professional managers of 300 nongovernmental organizations that implement humanitarian relief, economic development, health promotion and civil society programs worldwide. These professionals include chief financial officers, legal counsels, grant and contract administrators, human resource managers, and information technology staff. Their organizations receive and administer several billion dollars in federal grants and cooperative agreements from a variety of awarding agencies including the Departments of State, Health and Human Services, Labor, Justice, and the U.S. Agency for International Development. As such, our members are vitally concerned about the policies and procedures used to administer these awards and particularly about the unique challenges that those requirements can present when operating outside the United States.

InsideNGO has a long track record of providing input on the policies that OMB now has under review and we have closely followed the current grant reform initiative. InsideNGO, along with a number of member organizations, submitted extensive comments on the Advance Notice of Proposed Guidance published on February 28, 2012. We believe that some of the comments and concerns that we articulated then remain valid and should continue to be considered as OMB moves forward.

As you requested in the more recent announcement, our comments are organized according to the numbering system used in the substantial proposed Uniform Guidance document. However, preceding those specific substantive comments, we identify what we consider to be overarching comments that address matters of critical importance if stated goals such as burden reduction, cost containment, and performance enhancement are to be meaningfully achieved.

GENERAL COMMENTS

1. While the proposed consolidation of the various administrative, cost, and audit circulars and of other related policies will certainly be an administrative achievement in its own right, OMB should not miss this opportunity to introduce further clarity into these detailed policies. As we stated in our April 30, 2012 comment letter, “many of the

problems that our members encounter have more to do with faulty adherence to or interpretation of existing policies rather than the need for new ones." Plainly stated, many of the existing policies were effectively developed to balance the same kinds of accountability and burden reduction that OMB is pursuing currently. However, they have been undermined when officials in some federal agencies have, by omission or commission, departed from the uniform approaches mandated by OMB since the 1970's. A number of our comments urge you to adopt language that will help preclude misinterpretation or provide a shield against overreaching by awarding agencies.

2. Closely related to the previous comment is our perception that OMB needs to take a more constant and consistent management and oversight role with respect to federal agency implementation of the policies it plans to issue. Such a posture has been routinely recommended by the Government Accountability Office (GAO) and numerous outside professional groups. We believe that it has been demonstrated that when OMB provides clear and forceful direction, its policies are effectively adopted and more properly followed. Examples include the uniform implementation of the Common Grants Administration Rule under OMB Circular A-102 (1988) and of OMB Circular A-133 (1997). More recently, we suggest that the implementation of the American Recovery and Reinvestment Act benefitted from a similar OMB-led approach. We are encouraged by the feature included that is related to the management of exceptions to full indirect cost rate application.

SPECIFIC COMMENTS

Section .100(a) Purpose—While we are encouraged by OMB's willingness to retain its longstanding instruction to Federal agencies not to impose additional or inconsistent requirements, we strongly suggest that the phrase at the end of this section needs to be clarified concerning when exceptions are permitted. Use of the generic word "guidance" has the potential to be significantly misconstrued because it is a word that is employed regularly by individual federal agencies in issuing such documents as "grants policy statements," "automated directives," and "guidance letters." We suggest that the final phrase of the section read as follows "unless specifically required by Federal law, Executive Order, codified regulation, or OMB-issued guidance."

Section .100 (c)—We appreciate OMB's retention of the reference to federal agencies bearing "their fair share of cost recognized under these principles except where restricted or prohibited by law." The sentence which immediately follows "Agencies are not expected to place additional restrictions on individual items of cost" is apparently drawn directly from subsections of the Federal Acquisition Regulation (48 CFR 31.303(b); 48 CFR 31.603(b); and 48 CFR 31.703(b)). We submit that the language in these sections has not worked well in discouraging federal agencies from the practice of arbitrarily limiting certain items of cost. Most notably, this has occurred where the subject agencies have imposed a restriction that only applies to the federal government itself rather than to non-federal grantees or contractors.

Section .101(c) Applicability—Providing federal agencies with the continued flexibility to apply the provisions of Subchapters B through F of the proposed guidance to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments and international organizations undercuts the intended uniformity of the policies in ways that

can be detrimental. This is because, in the case of organizations under the jurisdiction of foreign governments (such as non-U.S. based NGOs which are members of our Association), such entities can and do receive funds directly from more than one federal agency as well as through one or more U.S-based pass-through entities. The result can be a type of administrative uncertainty and conflict that current circulars have sought to avoid. We therefore suggest that OMB "encourage" federal agencies to apply the policies uniformly and as fully as possible.

Section .102(a) Exceptions—We support OMB's continuation of its longstanding approach toward managing exceptions "only in unusual circumstances" and strongly support its addition of providing a public and transparent listing of all exceptions on its website. We believe that this feature will enhance the strong leadership role that above we are urging OMB to renew.

Section .102 (c)—We suggest that the words "publicly promulgated and" be added to be inserted between the phrase "when those requirements are" and "codified in the Code of Federal Regulations" in order to preclude use of the emergency rulemaking authority of the Administrative Procedure Act to introduce an exception.

Section .106 Effect on Other Issuances—We suggest that additional language be added in this section that makes clear that the uniform policies will also take precedence over any inconsistent requirements that are issued by federal agencies following codification that are not based on statute, executive order, or OMB directed guidance.

Section .110 Review Date—Given the significant and comprehensive nature of the proposal, we suggest that the five year time period chosen before the proposed guidance will be reviewed is too long. We believe that OMB should continue the operation of the Council on Federal Assistance Reform (COFAR) following completion of this reform effort and that body led by OMB should monitor implementation of the policies and conduct targeted reviews, particularly of those policies where significant changes are manifested. While the review process that OMB is using during this stage holds promise for development of well-crafted policies, we submit that more timely review is warranted because of the broad nature of the revisions.

Section .111(b) Effective Date—In our April 30, 2012 letter on the Advance Notice, we strongly urged OMB to require federal agencies to adopt the resulting uniform policies on a date certain rather than allowing the agencies to choose a date. We based this position on past history which has clearly demonstrated that OMB direction is needed. Consistent with that position, we suggest that the term "on a specified date" be modified by the words "chosen by OMB."

Subchapter B – Pre-Award Requirements

Section .202 Use of Grants, Cooperative Agreements, and Contracts—We renew our suggestion that OMB resurrect the guidance that it issued in connection with implementation of the Federal Grant and Cooperative Act (43 FR 36860-36865, August 18, 1978) and reissue it as an Appendix to these policies. We believe that current clarification should be made available to federal agencies in making proper instrument choices between acquisition and assistance awards and, within assistance, between grants and cooperative agreements. It should be made clear, as the guidance identified above shows, that the choice to use a cooperative agreement is to be made based upon programmatic considerations rather than administrative ones. Our members have frequently experienced circumstances in which federal agencies have inappropriately introduced federal contract-type policies into cooperative agreements and

where cooperative agreements have been laden with administrative and cost requirements not permitted under existing OMB administrative and cost policies. We assert that, if the new proposed uniform guidance applies to grants and cooperative agreements equally, as the proposal shows, then the only conclusion is that federal agency "substantial involvement" during performance is a programmatic distinction. Accordingly, we believe additional guidance to federal agencies beyond the cryptic statement in this section is warranted.

Section .204 Announcement of Funding Opportunities—We support the codification of the policies related to announcements for funding opportunities. However, we suggest that the language concerning making all solicitations available for application be modified to state that they should be made available for as long as possible but for not less than 30 days, unless exigent circumstances dictate otherwise. The rationale for this approach is that, in our experience, requirements that are presented as this one is drafted often result in behavior in which every application process becomes based on 30 days rather than providing a longer period when feasible. OMB's February 28, 2012 proposal suggested a 90 day period and we understand why federal agencies would be resistant to that length of time. However, we believe that the approach that we suggest constitutes a reasonable middle ground that might give applicants more time to develop quality applications.

Section .205 Agency Review of Merit Proposals and Risk Posed by Applicants—The terminology used in the title of this section should be modified. We suggest that the word "Application" be substituted for "Proposal" because it is consistent with the terminology used in federal assistance programs. The latter term is one that is properly associated with acquisition awards (contracts). We also suggest that the term "Risk Posed by Applicants" be dropped. The practices that would be codified in this section are currently being carried out in varying degrees by federal agencies under the rubric of terms like "Financial Evaluations" and "Pre-Award Financial Responsibility Determinations." These more appropriately capture what should be taking place in the future under the proposed guidance. Further, we believe that the items listed under (a)(1) through (a)(6) should be edited. For example, Item (a)(3) does not address the possibility that a new applicant that has not administered a federal award before may still have a positive history of performance in implementing programs that have been sponsored by non-federal sources or from their own source revenue. It should be made clear that being a new applicant does not always equate to being a high risk. Another example of problematic language is Item (a)(6). While most of the other criteria listed involve some form of objective assessment, it is questionable how a federal agency might judge the ability of the applicant to effectively implement the requirements cited.

Section .205(c)—We support the requirement that federal agencies be required to design and execute a merit review process for applications. We suggest, however, that OMB introduce into this section some description of the elements of such a system such as requirements for articulated evaluation criteria, use of review panels and other approaches to assure objectivity.

Section .206 Standard Application Requirements—We support this section's reinforcement of the requirements of the Paperwork Reduction Act and its regulations. However, we suggest that it be further strengthened to instruct federal agencies that information collections approved for one purpose should not be introduced to other uses. In just one example, USAID can often employ an Agency form used by offerors for contracts (USAID 1420—BioData Sheet) for applicants for grants and cooperative agreements and employs the SF1034 (Public Voucher for Supplies and Services Other Than Personal), another contract form, for financial reporting by

non-US-based recipients and subrecipients. Our members' experience is that requirements for more frequent and more detailed financial and performance reporting are often the norm, particularly in highly competitive discretionary grant environments where federal officials know that recipients are reluctant to push back for fear of damaging their relationship with the federal agency and jeopardizing future funding. We are aware that some of our members are preparing comments that will show how prevalent these kinds of practices are, including some where recipients are being required to upload information directly into federal data bases without the requisite paperwork clearances having been given.

Subchapter D - Inclusion of Terms and Conditions in Federal Award Notices

We support OMB's proposal to further standardize the terms and conditions of federal award notices. The current diverse practices of individual federal agencies in this area are a source of some frustration for our members. It is interesting that OMB is articulating that recipients and subrecipients are responsible for understanding all of the applicable award provisions because doing so under the current regime of federal agency documents is challenging at best. Anything that will hasten the day when a standard assistance award format parallel to but appropriately different from the Uniform Contract Format (48 CFR 14.201-1) used in acquisition awards is welcomed. Most importantly, we urge OMB to mandate that the Standard Form 424A be used, not only for submission of application budgets, but also for inclusion in approved awards. We understand that this was the standard practice in the years immediately following issuance of these standard forms in the 1970's but assert that some federal agencies have drifted away from that approach in more recent years. A particular concern associated with this request is that revisions to budgets (currently covered under 2 CFR 215.25(f) and the A-102 Grants Management Common Rule, Section 30 and proposed for inclusion in Section 502(h)(5) of the proposed guidance) related to "direct cost categories" and "programs, functions, and activities" which are specific cells of the matrix-type budget established in the SF424A. Assuring that the latter requirement is tied to the appropriate document will reduce confusion and possible friction when modifications need to be made.

Subchapter E – Post Federal Award Requirements

Section .501 Subrecipient Management and Monitoring—We support the consolidation of policies related to subrecipient monitoring and management. However, we strongly urge OMB to make clear here and in its proposed Section . 502(h)(5)(H) that the federal role in approving the ability to subgrant, contract out or otherwise transfer substantive activity under a grant or cooperative agreement does not extend to such actions as approving the selection of individual subrecipients, to routine review of the terms and conditions of subgrant agreements, or other matters related to the privity of these agreements. Our members have encountered considerable misapplication and misinterpretation of the current policy contained in 2 CFR 215.2 (c)(8) and corresponding federal agency implementing regulations and since the proposed language in Section. 502(h)(5)(H) is the same, we believe that language that attempts to prevent such actions going forward is warranted. To that end, we are enclosing text of a clarification received from a former OMB official who was directly involved in the development of the administrative circulars that would be replaced by the proposed guidance. It shows conclusively that the longstanding intent of the policy was for federal agencies to approve the *authority and ability* to subgrant while leaving the responsibility to select, manage and monitor subrecipients to the recipient/pass-through entity. We earnestly request that you review that letter and rely upon it in your further consideration of this section as well as Section 502(h).

Section .501(a)(2)—We urge OMB to clarify that pass-through entities are expected to provide advance payments to subrecipients when the pass-through entity is receiving advance payment from the federal government. This approach is consistent with that which is currently articulated in Section 37 of the OMB Circular A-102 Common Rule and in the proposed language of Section .501(e)(2). This would introduce a significant and more comprehensive element of fairness into the financing of subgrant activities when the pass-through entity is a party other than a state government. Arguably, one of the most significant ways to assist an entity is to provide working capital in advance and it is quite likely that performance success at the subrecipient level can be enhanced when subrecipients who need financing and who can demonstrate that they can handle federal cash management duties are provided with it.

Section .501(b)—We support the change in terminology associated with this section as we believe that use of the term "vendor" which has not appeared in any of the current administrative and cost circulars has been detrimental to proper determination of the nature of lower tier relationships. We suggest some modifications to the language proposed here, however, because, in our view, the determination of subrecipient and contractor relationships has continued to be a source of confusion and frustration for federal fund managers because of what we perceive to be some weaknesses here. We also strongly oppose allowing federal agencies to "supply and require recipients to comply with additional guidance" on the subject. We believe that such an approach would undercut the intended uniformity of the new policies on a subject that is fundamental to proper management and oversight. OMB should concentrate on strengthening the guidance in this section and then require all parties (federal agencies, recipients, subrecipients, contractors and auditors) to rely on it going forward. We submit that allowing federal agencies the option presented in the last sentence of Section 501(b) could lead to administrative chaos for organizations that receive funds directly and indirectly from a variety of federal agencies and pass-through entities.

Other proposed language changes that we recommend include: (1) Amend Section 501(b)(1)(A) to make clear that this refers to determining beneficiary eligibility; the current and proposed language is not only awkward but also not sufficiently dispositive; (2) Amend Section .501(b)(1)(D) by adding "such as those identified in Section 401 of this guidance."; such a change will help clarify the types of terms and conditions that appropriately flow-through to subrecipients and will reinforce the language proposed in Section .501(c)(1); (3) Amend and add language in Section. 501(b)(1)(E) as follows: " …as opposed to providing goods or services for the use or benefit of the pass-through entity in its performance or administration of a federal program."; these additions would more fully articulate the "assistance nature" of a subrecipient relationship as distinct from a relationship of "acquisition" and would reinforce the subsequent and consistent discussion in Section .501(c)(2).

Section .501(c)(2)(E)—We suggest that the language changes proposed in this section (from the current Section 210(c) of Circular A-133) are problematic in that they do not explain what "other reasons" compliance requirements applicable to a subaward to a subrecipient might be employed in this type of relationship. Since, in Appendix III of the proposed guidance, OMB has fully presented the provisions (clauses) that are required by federal laws , executive orders, and other authority to be included in a recipient's or subrecipient's contracts, we strongly suggest that a cross reference be made to that Appendix here. Doing so will add a key instruction to all guidance users that will further help differentiate subgrants from contracts under grants.

Section .501(b)(3)—We appreciate that this section has been improved from the current language of Section 210 (d) of Circular A-133. However, we believe that it can be further enhanced. First, the discussion of the "substance of the relationship" and the "form of the agreement" remains problematic. It is arguable that, when first promulgated in 1997, it was an attempt to get past the mislabeling of lower tier agreements through careless use of terminology such as "subcontracts." OMB appears to be overcoming that problem effectively with the terminology changes it is making to the section title. However, it is most assuredly the "content of the agreement" that is the key factor in determining whether a subrecipient or contractor relationship exists. OMB should make clear that what a lower tier agreement is called is not as important as what is inside of it. Further, it should add language to the effect that "no single factor or any special combination of factors is necessarily determinative." We can point to numerous examples where independent auditors have asserted that the presence of a single factor such as determination of beneficiary eligibility leads to the conclusion that a subrecipient relationship exists. Similarly, we note numerous examples where an auditor has asserted that the presence of a non-profit organization at the lower tier, by itself, led to the conclusion that a subrecipient relationship was present. Further strengthening this section will help reduce those kinds of errors.

Section .501(c)(5)—We oppose the use of the word "shall" in introducing the list of monitoring techniques. We believe that this language, particularly associated with Subsection 5(A) of this section, is contrary to the letter and spirit of Section 7502(f)(2)(B) of the Single Audit Act (As amended). We assert that while that section makes monitoring mandatory, it states that it may be accomplished through site visits, limited scope audits **or** (emphasis added) other means. The determination of the extent of monitoring necessary for oversight of any particular subrecipient or subaward should be a matter of judgment exercised by management of the pass-through entity. By making the items contained in the list mandatory, OMB would create more of a "one size fits all" model that may guarantee conflict between pass-through entities and auditors about what is "necessary."

Section .501(c)(8)—We suggest that this section be modified to establish that pass-through entities that have subrecipients that are non-US based and are therefore exempted from the coverage of Subchapter G (similar to for-profit subrecipients) be allowed to devise appropriate audit requirements of their own for such organizations expending more than the established threshold amount of federal awards (i.e. $750,000). In that vein, we also urge OMB to preclude federal agencies from dictating the audit procedures to be used for non-U.S.-based recipients or subrecipients using any threshold that is lower than the one that is ultimately established for entities that are covered by Subchapter G.

Section .502(e) Standards for Financial and Program Management—As noted above, we believe that OMB should address the issue of advance payment to subrecipients and mandate it as appropriate either in Section 501 (c), in this section or, in a consistent manner, in both.

Section .502(f)(1)—The second sentence of the section should be clarified by changing the language as follows: "Where matching or cost sharing is required, all contributions, including cash expenditures and third party in-kind contributions shall be accepted as part of the recipients non-federal share…" Further, we suggest that OMB (1) make clear that assets provided by the recipient or subrecipient should be charged according to their cost rather than their value; (2) that absent a statutory provision to the contrary, federal agencies should not

require that the non-federal share be in the form of cash expenditure so long as, over the duration of the agreement, the non-federal contribution is met; and (3) that matching or cost sharing should be based on the ratio of the final federal and non-federal shares expended during the award rather than on a strict dollar amount. In the case of the latter suggestion, our members have encountered numerous situations where an award stated, for example, that the federal share of the project would be $800,000 and the non-federal share would be $200,000 and the recipient did not draw and spend the entire federal share yet was being held to providing the full $200,000 non-federal share.

Section .502(f)(3)—The language in this section can and should be clarified by eliminating the words "Values for" and by restating the sentence as follows: "Recipient contributions of services and property shall be based on costs determined in accordance with the applicable cost principles."

Section .502(f)(4)—The final sentence in this section should be modified to eliminate the word "paid" since, in this case, they are not. Instead, a better and clearer phrase would be "In either case, an imputed amount for fringe benefits that are reasonable, allowable, allocable and consistent with recipient or subrecipient policy may be included in the valuation."

Section .502(f)(10)—This section should be eliminated. The general revenue sharing program referred to expired in 1986. If, in the future, such a program is re-enacted, its treatment should be addressed at that time.

Section .502 and Definitions—In our letter of April 30, 2012, we suggested that OMB define the term "leveraging" in its guidance while making it clear that amounts attributable to that concept are not fully required to be provided to the award in the same manner as amounts for cost sharing or matching. We renew our request for this clarification.

Section .502(g)(1) and (2)—These sections are overlapping and duplicative and should be harmonized so that a single cohesive definition of program income is available. Further, given the fact that OMB has created a separate Appendix for definitions, it should be placed in that section as opposed to being presented here.

Section .502(h)(4)—We suggest that the longstanding authority currently granted to federal agencies to, at their option, waive the administrative and cost-related prior approvals discussed in this section has not been exercised in the past for sectors other than those involved in research to the degree that may now be warranted by OMB's current emphasis on burden reduction and performance enhancement. In the same manner that OMB seeks to use special "high risk" conditions for recipients and subrecipients that are problematic, we suggest that OMB encourage the relaxation of such prior approvals (also known as "expanded authorities") when warranted by the risk assessments now being mandated under Section .205 of the proposed guidance. Continued use of all of these with experienced, well-managed recipients involved in endeavors other than research encourages the kind of micro-management that is wasteful of federal agency and recipient staff resources and time consuming. We assert that many of our member organizations would be judged as equally qualified to be considered for such waivers as those research grantees to whom a blanket waiver is being provided in Subsection (4)(D).

Section .502(h)(5)—The word "exceed" should be inserted between the word "project" and the words "the simplified acquisition threshold" in this section. As noted above, because the terms used in this section are drawn from those used on the Standard Form 424A, we believe that document should be used for issuing approved budgets in grants and cooperative agreements and should be referenced here in order to preclude misinterpretation that rebudgeting may involve subcategories of expense discussed in project narratives, budget justifications, or budget notes.

Section .502(h)(9)—We suggest that the dollar amount identified here be updated to reflect the changes made elsewhere in the guidance concerning what are considered small awards (i.e. those that are less than the federal simplified acquisition threshold).

Section .502(h)(11)—We strongly encourage OMB to establish a designated time frame of less than 30 days for federal agencies to respond to **any** request for prior approval, not just those related to budget revisions. Our belief is that, if something is important enough to warrant the need for a federal decision, it is important enough to warrant more expeditious treatment. Simply stated, 30 days is 1/12 of an annual performance period. If OMB is serious about emphasizing timely expenditure of funds and improved performance, as it shows elsewhere in its proposal, this particular section is an appropriate place to reinforce that. The previous requirement was established in 1993 when rapid electronic communication was not as prevalent as it is today. There should be few reasons why a federal agency grants officer or contracting officer cannot respond within 15 days and, if they do exist, the "escape clause" contained in the last sentence of the section would become more appropriate.

Section .502(h)—We urge OMB to adequately address the topic of prior approvals that may be needed at the subrecipient level in this section. Federal agencies do not have a relationship to subrecipients. Consistent with the concept of privity of agreement, we therefore submit that prior approvals for subrecipients should be the responsibility of the pass-through entity. Some federal agencies have wisely adopted this approach (such as the U.S. Department of Health and Human Services in 45 CFR 92.30) while others have become needlessly bogged down dealing with prior approvals needed by dozens of subrecipients in the portfolios of primary recipients.

Section .502(i)—OMB should add a subsection that addresses how audit requirements for non-U.S. organizations should be determined. As suggested elsewhere in this comment letter, we urge OMB to align any such resulting audit requirements with the audit threshold contained in Subchapter G and to permit primary recipients to develop consistent audit requirements for those non-U.S. organizations whose expenditures exceed the threshold.

Section .502(k)—The language proposed in this section further confuses language from a poorly crafted current provision that already needed clarification (i.e. 2 CFR 215.28). OMB should adopt the language presented in the A-102 Common Rule (Section 22) which more clearly established that the recipient should charge to the award only allowable costs resulting from "obligations" of the funding period. This word choice would clarify that costs allocable to the award include (1) those arising from "obligations incurred" during the period, whether or not they are liquidated during the period or during the 90 period following the period during which close out occurs and (2) those arising from "legal obligations" established under the grant award such as those involved with the actual close-out (such as preparation of final financial and performance reports and disclosure and disposition of property, as necessary).

Section .503(d)(5)(A) Property Standards—We strongly support OMB's clarification of the disposition procedures for equipment with a fair market value of $5,000 or less and its resulting policy that such equipment may be handled without any further obligation to the Federal agency. We submit that this should demonstrate conclusively to federal officials some of whom have unfortunately asserted otherwise that their proper control on equipment purchased with federal funds involves the prior approval to allow its purchase under the applicable cost principle.

Section .503(e)(1)—We suggest that the first sentence of this section be modified to state: "Title to supplies and other expendable equipment shall vest in the recipient or subrecipient upon acquisition." Further, we suggest it be made clear that "other expendable equipment" (i.e. that defined as equipment by the recipient or subrecipient based on its definition) is not properly included within the definition of "unused supplies" contained in this section. We believe that these clarifications are necessary because our members have frequently encountered situations in which federal officials have asserted that the value of assets that never met the federal definition of equipment on a per unit basis (such as furnishings, small office machines, etc.) should be included in determining whether $5,000 of supplies was present and have forced the recipient to engage in costly and unnecessary inventory and disposition procedures. We suggest that clear contrary statements will help preclude such circumstances in the future.

Section .503(g)—OMB should clarify the relationship between the property record requirements in Section .503(d)(4)(A) and the requirement in this section concerning appropriate notices of records, particularly whether the former satisfies, in any way, the need for the latter.

Section .504 (Generally) Procurement Standards—OMB should make clear that this section does not apply to the award of subgrants to subrecipients but to the purchase of goods and/or services using federal funds. It is instructive that such authoritative sources as Black's Law Dictionary define procurement as "bringing a buyer and a seller together."

Section .504(b)(3)—We suggest that this section be clarified to include the words "prospective or incumbent" to modify "contractors or parties to subawards" in the fourth sentence. We believe that doing so will assure better understanding of potential conflicts of interest.

Section .504(b)(5)—We suggest that additional language be added to this section that indicates that cooperative or joint purchasing arrangements are also encouraged among non-governmental entities that may not be able to participate in "intergovernmental agreements" for that purpose. This may be accomplished by adding the words "or other cooperative or joint purchasing arrangements" following the words "intergovernmental agreements."

Section .504(b)(9)—OMB should clarify that these procurement records are the appropriate place for inclusion of information currently referred to in 2 CFR 215.46 concerning any "justification for lack of competition where competitive bids or offers are not obtained." We believe that this additional language will properly inform recipients, subrecipients, and auditors about a matter that is frequently a source of friction.

Section .504(c)(1)—We suggest that OMB incorporate the phrase "to the maximum extent practicable" from 2 CFR 215.43 in the first sentence of this section. We suggest that this

longstanding language is somewhat more precise than "consistent with the standards of this section" and represents the well-understood current policy in which absence of competition is expected to be an exception.

Sections .504(d)(1)—OMB should address the relationship between the federal simplified acquisition threshold and small purchase procedures used by recipients and subrecipients. We doubt that few, if any, recipients or subrecipients that will be covered by this guidance have small purchase thresholds that come close to the federal simplified acquisition threshold. Certainly, none of our members, including those that administer hundreds of millions of federal dollars, does so. Accordingly, we believe that OMB should clarify that recipients and subrecipients may use such small purchase procedures for purchases that do not exceed their own thresholds but that the other types of procedures discussed in this section should be used for those purchases that exceed those thresholds.

Section .504(g)—We believe that the review processes discussed in this section should be largely unnecessary in light of the requirements for pre-award review that would be imposed under proposed Section .205(a)(2) of the guidance. We assert that the time to determine whether a recipient's procurement system is well designed and compliant with federal standards is before a grant award is made. We believe that that the combination of self-certification and robust federal pre-award review should be sufficient in most cases to assure that procurements will be carried out properly. The post-award steps discussed in this section are unwieldy and introduce significant possibilities for performance delays.

Sections .505(c) and (d) Performance and Financial Monitoring and Reporting—OMB should retain and reiterate the requirements currently contained in Sections 40 and 41 of the Circular A-102 Common Rule and in 2 CFR 215.51 and 52 that financial and performance reports shall be submitted no more often than quarterly nor less often than annually. Our members have encountered numerous examples of federal agencies imposing more frequent reporting without proper authority. In addition, we believe that since, effective October 1, 2009, OMB combined the previous Financial Status Report (SF269) and the previous Report of Federal Cash Transactions (SF272) into the Federal Financial Report (SF425), it should make specific reference to this report in this section. It should also make clear that reporting on a line item (object class category) basis is precluded through use of the SF425 and somewhat pointless in light of the standard False Claims Act certification contained in block 13 of the form. Further, we oppose the statement contained in Section .505(d)(2)(A) that would permit more frequent performance reporting "in unusual circumstances" but does not define what those circumstances would be or invoke the requirements of the Paperwork Reduction Act or its implementing regulations. Such language almost invites federal agencies to craft expansive "unusual circumstances" and would provide little protection for recipients against overzealous reporting requirements. OMB and the federal agencies should recognize that there is a cost associated with grant reporting that is somewhat hidden because it has usually been standardized. On the other hand, when federal agencies awarding contracts project detailed and frequent financial and performance reports, those costs are more visible in contract proposals and thus are often adjusted to more realistic levels when contract awards are actually made.

We also strongly recommend that OMB fully adopt the provision currently present in Section 41 of the OMB Circular A-102 Common Rule which establishes that recipients are not required to use federal forms when obtaining financial and performance reports from subrecipients but that

they should not impose more frequent or detailed reports on those entities. This would assure the same level of reporting accountability that would be present if the federal funds had been awarded directly and would help preclude what our members can attest have been a plethora of more frequent and more detailed reporting requirements that unfortunately is largely invisible to the federal government.

Section .505(d)(5)—This section should be modified to state that "Federal agencies and pass-through entities may make site visits as warranted by program needs."

Section .505(e)(3)—A cross reference to this section should be made in Section 501 concerning proper imposition of terms and conditions on subrecipients by pass-through entities.

Section .506(a)(1) Record Retention and Access—The section appears to have fully derived from 2 CFR 215.53. While OMB's intent has been to require record retention for a particular grant budget period for three years after the final financial report *for that year* has been submitted, we have found that some federal agency officials, based on the language "as authorized by the Federal awarding agency," have interpreted the requirement in an expansive way in projects that receive multi-year support. Thus, they have required recipients to keep records for the first year of project support for three years after submission of the financial report for the *last* year of support. For example, as a result, the records for Year 1 of a five year project are being kept for seven years. This is excessive and unnecessary, particularly given the disciplined schedule for independent audits under Subchapter G. We urge OMB to clarify that the interpretation we have encountered is incorrect and that the provision in Section .506(a)(1)(A) adequately protects the federal interest in cases where longer retention is necessary.

Section 506(b)—We question the statement that records must meet the standards for source documentation "as required by the Single Audit Act." We have reviewed that Act completely and find no reference to such standards therein. We urge OMB to delete this reference and to refrain from dictating the nature and content of grant source documentation as it has done for years in the financial management standards of the current OMB administrative circulars and in the three sets of OMB cost principles.

Section .507(a)(2) Termination and Enforcement—The word "responsibly" should be changed to "responsible."

Section .507(c)(3)—We are concerned that the discussion of cost allowability in this section is not fully consistent with the treatment of the same subject in Section .621 (C-50). This concern is based on the fact that, because our members operate in some foreign countries where termination for foreign policy reasons is sometimes effectuated, that legitimate costs of shutting down a program expeditiously be fully recognized.

Section .508 Closeout (Introduction)—OMB has introduced the definition of close-out into the body of the proposed guidance. For consistency sake, we suggest that the definition be presented in Appendix I or that the introductory phrase used here be revised to state "Closeout is the process…"

Section .508(f)—We believe that the requirement to account for "all real and personal property acquired with federal funds " has been defective since it was issued in OMB Circular A-110 in November, 1993. It has led to expectations on the part of some federal officials that a complete inventory of *any* property purchased with federal funds (real property, equipment, and *supplies)* must be completed at close-out. The apparent intent was for recipients to identify the capital assets that they purchased with federal funds and that remained in their possession at the end of the performance period so that appropriate disposition decisions can be made about those assets. Once again, we must point out that unclear policy is often the source of burdensome grants management procedures.

Section .508(g)—OMB should clarify what it means by "the final report" since it is assumed that there will be both a final financial report and a final performance report.

Section .510(b) Collection of Amounts Due—We believe that the citation to the Federal Claims Collection Standards is incorrect. It should be 31 CFR 900.

Subchapter F - Cost Principles

Section .601(b) Policy Guidance—The longstanding language drawn from existing cost principles should be edited since "underlying agreements" and "the terms and conditions of the Federal award" are the same.

Section .602(a) Application—The language in the introductory portion of this section is problematic. For example the term "Federal awards" as used here would not be fully dispositive of the award types to which the cost principles must be applied. We suggest that OMB rely instead on the proven language on this subject contained in the introduction to OMB Circular A-122 (2 CFR 230) which has worked well in the past to define the applicability of the cost principles.

Section .602(a)(3)—OMB should add the words "and fixed obligation grants" at the end of the section so that it is fully clear that the cost principles do not apply to those instruments which are extensively discussed elsewhere in the guidance.

Section .602(c)—The full citation to the commercial cost principles (48 C FR 31.2) should be provided since Part 31 also covers cost principles applicable to other sectors.

Section . 603 Inquiries—The reference to "the cognizant agency" in the last sentence in the section should be clarified. We submit that interpretation of the cost principles for non-federal entities should be designated as the responsibility of "appropriate management officials of the federal awarding agency (i.e., the grants officer, contracting officer, or agreement officer)" and that inquiries should be properly directed there. Since officials involved in negotiating indirect cost rates have warranted authority, we believe that the language suggested is fully dispositive. We urge OMB to make clear that the cognizant agency referred to is not the "cognizant agency for audit" as that term has been used in OMB Circular A-133 and is proposed for continuation in Subchapter G of the guidance.

Section .605(e) Factors Affecting the Allowability of Cost—We believe that some allowability distinctions contained in the cost principles may still depart from generally accepted accounting

principles. Accordingly, we suggest that OMB retain the language on this subject used in 2 CFR 225 and add the words, "Except as otherwise provided," prior to "[b]e determined."

Section .606(e) Reasonable Costs—We suggest that the addition of the words "regarding the incurrence of costs" is unnecessary and may actually limit the applicability of the section.

Section .610 Advance Understanding—OMB should clarify what is meant by "preponderance" in light of the standard dictionary definition of the word and the requirements for reporting about highly compensated staff members pursuant to the Federal Funding Accountability and Transparency Act.

Subtitle III - Direct and Indirect (F&A) Costs

Section .615(d) Direct Costs—The first sentence in the section is inconsistent with longstanding statements such as the one contained in 2 CFR 230 and reiterated in Section 616(f) of the proposed guidance (i.e., "Because of the diverse characteristics and accounting practices of nonprofit organizations, it is not possible to specify the types of costs that may be classified as indirect cost in all cases.") because it uses the word "should" and is therefore prescriptive. It appears to have been derived from the practices common to the higher education community. We suggest that it be modified with the words, "In some sectors, the salaries and wages of administrative and clerical staff are normally treated as indirect (F&A) costs."

Section .616(b) Indirect (F&A) Costs—The second sentence which discusses "Facilities" includes reference to "use allowances" which we understand is being discarded as a means to recover the cost of facilities owned by the recipient. The final sentence in the section should be further clarified in two related ways. It should make clear whether the distinction of being a major nonprofit organization relates to whether the cited $10 million is received or expended and how that amount is measured (i.e. if "received" means awarded and "expended" means obligated or disbursed) and to which period the amount applies (i.e., annually).

Section .616(c)—We strongly support the procedure that OMB is introducing related to required federal agency acceptance of negotiated indirect cost rates and to management of limited exceptions and urge its full adoption.

Section .616(e)—Because of the existing responsibilities incumbent upon a pass-through entity and the even more robust policies for subrecipient management and monitoring that OMB is proposing in this guidance, we request that the definition of modified total direct cost be modified to increase the amount of each subgrant and subcontract to which an indirect cost rate may be applied. Our suggestion is that it be placed at a minimum of $50,000.

Section .617(b)(2) Required Certifications—This section fails to address the situation in which an entity is not required to submit a rate because it is not a major local government or it does not have a direct relationship with the federal government. To address the latter situation, we suggest that this section cross-reference Section .501(c) (1)(D).

Subtitle VI - Provisions for Selected Items of Cost

Section .621 (introduction) —The second sentence of this section is not completely accurate because there are several of the selected items of cost for which a specific charging allowability instruction is provided (i.e., to be allowable, the cost must be charged directly). Accordingly, the sentence should be prefaced with the words, "Except as otherwise provided."

We oppose inclusion of the sentence, drawn from OMB Circular A-21 (2 CFR 220), which deals with the case of a discrepancy between the cost principles and the award document. Inasmuch as the proposed guidance is to be implemented through codified regulations, we believe that any subsequent discrepancies should be resolved in favor of the regulations, which have the force and effect of law. To permit the situation contemplated in the language proposed could lead to invalid case-by-case cost allowability exceptions that undercut the uniform nature of the guidance.

Finally, we suggest that OMB avoid solving cost allowability issues that arise as a result of requests made during this comment period by simply introducing additional federal agency prior approvals which is only likely to serve as a basis for delay and possible friction.

Section .621 (C-5) Audit Services—We suggest that the rights of pass-through entities to audit subrecipients and to charge the cost of doing so appropriately to federal awards should parallel the audit rights of the federal government to audit primary recipients. In other words, the restriction on allowable audit costs contained in subsection (3) of this section should not preclude pass-through entities from conducting additional audits that build on the work performed by independent auditors under Subchapter G for entities that are covered by the single audit requirement.

Section .621 (C-6 and C-8) Bad Debts and Bonding—In our view, these two cost principles need to be further clarified and harmonized. We suggest that the original decisions to make bad debts and related collection costs unallowable arose from a desire not to have federal grantees and contractors charge off a bad debt to the federal government in the manner permitted under the federal tax code. However, the attempt to recover improper payments from organizations or individuals involving in federal programs is a legitimate internal control activity and the full cost of pursuing the debt should be allowable up to the point where it becomes clear that the improper payment/debt becomes uncollectible.

Section .621 (C-10—Paragraph 1) Compensation – Personal Services—We strongly suggest that the first sentence of the section be revised to include the language contained in Paragraph B-8 of OMB Circular A-122 (2 CFR 230) which more clearly establishes that this section relates to the compensation of employees (as opposed to independent contractors) and which discusses more fully the types of compensation that are covered. We believe that this change, drawn from longstanding clear and reliable federal policy language, will assure that this section is not incorrectly applied to individual workers who are properly not treated as employees and that the failure to mention certain forms of compensation is not construed as meaning that they are unallowable.

Section .621 (C-10—Paragraph 9)—The words "professional" and "nonprofessional" employees in this section should be eliminated and replaced with the with the words "exempt" and "non-

exempt" which are the terms used in U.S. Department of Labor regulations to describe whether employees are subject to the minimum wage and maximum hours requirements of the Fair Labor Standards Act. It is instructive that OMB has started to do that in the final sentence of Paragraph 9 (C) by stating that "non-professional" means "non-exempt." Accordingly, we suggest that full and complete adoption and explanation of the proper terminology should be accomplished, particularly since the word "non-professional" has a potentially pejorative and inappropriate connotation.

The discussion of substitute systems for allocating salaries and wages in subparagraph (F) includes several references to the "cognizant or oversight agency." This is the first use of the term "oversight agency" that we have encountered in current or proposed cost principles. Since the only other place where such term is used is in connection with the single audit requirement (i.e. oversight agency *for audit*), we believe that OMB should clarify which federal entity would be in a position to approve substitute systems. We assert that the cognizant or oversight agency *for audit* (i.e., an office of inspector general) is not the appropriate federal unit to discharge this responsibility.

Section .621 (C-11)—Paragraph 9(B)(iv-v) Compensation – Fringe Benefits—The treatment of severance pay for foreign nationals in these sections resulted from comments submitted by this organization during the review and comment process associated with OMB Circular A-122 that was initiated by OMB in 1995. While the language adopted provided a means to appropriately charge such severance pay costs to federal awards, we submit that, in most cases, organizations such as our members that must address these costs are doing so because of the requirements of host country law and they have no choice to comply. Accordingly, we believe that these two cost principles can be substantially simplified by amending the language to state that the costs are unallowable "unless required by host country law." We assert that awarding agency approval is extraneous in these cases.

Section .621 (C-13) Contributions and Donations—The discussion of contributions and donations in this section is needlessly confusing and complicated. We suggest that most of the language does not belong in the cost principles because it addresses matters that are not *costs*. Instead, we suggest that it be moved to Section .502(f) of the proposed guidance and harmonized with the discussion there of the use of donated services, supplies, equipment and facilities to meet matching or cost sharing requirements. What should remain in this section should relate only to the unallowability of expenditures for donations or contributions from recipients and subrecipients to other organizations or individuals. For further clarity, it may also be appropriate to make the distinction between unrestricted donations and contributions and conditional subgrants and between such donations and contributions and participant support costs.

Section .621 (C-15) Depreciation—We question the application of Governmental Accounting Standards Board Statement Number 51 to private nonprofit organizations here and in Paragraphs C-18 and C-27.

The proposed abandonment of use allowance as a method for recovery of costs associated with assets acquired by recipients and subrecipients with their own funds and the disallowance of any charges on assets that have outlived their depreciable lives means that situations may arise in which a federal program receives the benefit of a non-federal asset at no charge. Accordingly,

we favor continuation of the longstanding policy contained in the current cost principles that a reasonable use charge be able to be negotiated by the recipient or subrecipient and the awarding agency or cognizant agency for indirect cost negotiation.

Section .621 (C-18) Equipment and Other Capital Expenditures—This section needs further clarity because it perpetuates what we believe to be awkward and confusing language from current cost principles. First, the section should make clear that the decision by a recipient or subrecipient to treat certain assets with a useful life of less than one year or a unit acquisition cost of less than $5,000 as equipment for their own purposes does not ratchet down the federal agency's authority to prior approve such purchases. Language to this effect that is contained in the Questions and Answers section of the Department of Labor's "Indirect Cost Determination Guide" would be particularly helpful in addressing this clarification. Second, the separate treatment of "general purpose equipment" and "special purpose equipment" is unnecessary since the same prior approval policy applies to both.

Finally, we appreciate and support OMB's inclusion of the authority for federal agencies to waive prior approval for these types of purchases. We suggest, however, that it also mention the possibility of federal agencies raising the threshold purchase amount on a case-by-case or comprehensive basis (e.g., retaining prior approval rights for equipment costing more than $25,000 per unit).

Section .621 (C-20) Gains & Losses on Disposition of Depreciable Assets—OMB should introduce the word "unrestricted" into the discussion of fundraising costs in order to reinforce the distinction between this unallowable activity and allowable bid and proposal costs. We believe that several federal agencies have done this in their internal policy documents but believe that extending that distinction government-wide through the cost principles would be beneficial.

Section .621 (C-23) Goods and Services for Personal Use—OMB should revisit the allowability of housing and personal living expenses as an indirect cost for organizations such as our members who are performing work overseas. We believe that these indirect costs should be also allowable with the prior approval of the federal awarding or cognizant agency for indirect cost. The situations that we suggest would make such charges reasonable are those in which a senior staff member of a non-governmental organization is managing multiple projects and their salary and allowable fringe benefits are included in a cost pool yet their otherwise legitimate housing allowance would be disallowable because of this cost principle. We submit that leaving the decision about allowability to the awarding agency or cognizant agency for indirect cost negotiation is an appropriate safeguard against abuse.

Section .621 (C-24) Idle Facilities and Idle Capacity—The discussion of "shift" basis appears to have been drawn from federal policies applicable to commercial/industrial types of entities. We suggest that it is inappropriate for the kinds of organizations to be covered by these cost principles and should be removed and the term idle capacity be redefined to more closely align with the kind of expense that might arise in the covered sectors.

Section .621 (C-27) Interest –OMB's February 1, 2013 *Federal Register* notice(page 7290) states that the requirement for a lease purchase analysis of interest costs is being eliminated because "OMB finds that entities have appropriate incentives to make the most cost-beneficial decisions

about whether to lease or purchase a facility without providing additional paperwork to the Federal government." If that is the case, we question why OMB has retained Subsection (6) of this cost principle. We strongly suggest that this section be removed and that nonprofit organizations be accorded the same treatment on this subject as other sectors that will be covered by the consolidated cost principles.

Section .621 (C-28) Lobbying—We question the applicability of 18 U.S.C. 1913 to the activities of non-federal organizations and urge OMB to re-examine its inclusion in light of the Comptroller General's decision concerning funds in the hands of a grantee (43 Comp. Gen. 697, 699(1964)) and previous related decisions.

Section .621 (C-31) Material & Supply Costs Including Costs of Computing Devices–Consistent with our earlier comments concerning the definitions of equipment, we believe that the parenthetical phrase at the end of Paragraph (1) is unnecessary and confusing, because it raises questions about the proper treatment of computing devices that are treated as capital equipment by a recipient or subrecipient but which cost less than $5,000 that are settled elsewhere in the cost principles.

Section .621 (C-32) Meetings and Conferences (External)—The addition of the words "external" and "beyond the recipient entity" to this cost principle is problematic. Many recipients and subrecipients conduct extended internal meetings the purpose of which is the "dissemination of technical information." In order to enhance productivity, such meetings may be held off-site and involve facility expenses, be supported by speakers such as consultants, and involve reasonable incidental expenses. The proposed language here is overly restrictive and does not recognize that meeting expenses of the types illustrated are often more reasonable and beneficial to a federal program than attendance at an outside conference sponsored by others. We submit that an explicit statement allowing these costs should be included here.

Section .621 (C-33) Memberships, Subscriptions, and Professional Activity Costs—We suggest that the term "substantially engaged in lobbying" be abandoned in favor of a more accurate and clear tax-code based definition. We believe that the longstanding intent of this cost principle is to preclude membership charges for organizations such as those classified under Sections 501 (c)(4), 501(c)(6) and 501(c)(7) of the Internal Revenue Code but not to disallow memberships in tax exempt organizations organized under Section 501(c)(3) which are thereby limited in the extent to which they may engage in lobbying. Accordingly, we suggest that OMB make clear what it means by "substantially engaged in lobbying."

Section .621 (C-36) Plant and Homeland Security Costs—We urge OMB to add costs for assets such as "protective gear and devices for staff personnel and surveillance equipment " to the list contained in the second sentence of this cost principle. Our reason for making this request is that since the provisions of the Foreign Assistance Act of 1961 (as amended) preclude purchases for "military equipment" and "surveillance equipment" this restriction has been interpreted by some federal agency officials to preclude otherwise reasonable purchases of items such as helmets, protective vests, and firearms. Since the assets identified are intended to be used for protective purposes for staff of our member organizations posted in many dangerous locations rather than for any military purpose, we urge OMB to clarify that such purposes are allowable, particularly because they pass the "prudent person" test discussed in Section 606 of the proposed guidance.

Section .621 (C-39) Proposal Costs—We support OMB's improved treatment of this cost but suggest that, because of longstanding word choice in current federal cost principles that it be retitled "Bid and Proposal Costs" and reinserted alphabetically.

Section .621 (C-42) Recruiting Costs—The language in the last sentence of Subsection (1) and in Subsection (2) seems to have been introduced to address matters where OMB and the federal agencies have detected abuses. However, we submit that these statements are largely unnecessary because of other provisions, particularly those contained in the general tests of allowability (Sections .605-.607).

Section .621 (C-47) Specialized Service Facilities—We suggest that the examples of allowable specialized service facilities be expanded beyond those "highly complex" ones identified in this cost principle to include types of facilities or service units that are routinely accounted for by recipients and subrecipients as internal service funds or recharge or service centers. Such examples might be motor pools and other fleet operations, print and copy centers, and maintenance and support functions.

Section .621 (C-51) Training and Education Costs—We strongly support the substantial simplification and clarity of this cost principle on training and education.

Section .621 (C-52) Transportation Costs—We suggest that OMB is needlessly complicating what has previously been a fairly clear cost principle regarding the shipment of goods. In our view, decisions about whether such costs should be charged directly or indirectly should be reserved to the entity incurring the cost based on the allocability of the cost and the degree to which it can be readily assigned to a final cost objective. This approach is fully consistent with OMB's instructions articulated in Subtitle II of the cost principles.

Section .621 (C-53) Travel Costs—InsideNGO and its members strongly support OMB's proposal to eliminate the prior approval requirement related to foreign travel. The current requirements in this area have constituted a major impediment to the effective and efficient implementation of projects conducted overseas. However, we do have additional concerns about language here that is being retained from the results of OMB's cost consistency project completed in May, 2004.

First, we submit that continued use of the word "acceptable" to modify "written institution policy regarding travel costs" carries the implication that such policy must be approved in some fashion by the awarding agency. We suggest that this word be removed and replaced by the words "consistently applied" which corresponds to other statements in this principle and in Sections 605-607 of the proposed guidance.

Second, we believe that the three types of airfare listed in Subsection (3)(1) have been problematic as a basis for consideration of reasonableness since they were adopted. OMB should simplify this cost principle by stating only that the cost of coach or equivalent accommodations is the general basis for allowability unless one of the circumstances listed arises

Third, we have some members that own and maintain their own aircraft. They do so because they have made a business decision that doing so is less expensive and more flexible than relying on commercial carriers. Some also have unique security concerns. They have found that determining the difference between the cost of a particular flight using such aircraft and the corresponding commercial airfare involves substantial accounting effort. We suggest that an equitable way to avoid such calculations would be to allow such organizations to calculate the total annual cost of air operations and to allocate a reasonable proportion to federal programs based on the total direct costs of those programs compared to the total direct cost of the organization. We urge OMB to address this in the final version of this cost principle or in the commentary that will accompany its issuance.

Subchapter G – Audit Requirements

Section .701 Audit Requirements—Paragraphs (a) and (b) of the proposal are duplicative and should be consolidated. More importantly, InsideNGO supports the increase in the threshold amount of federal awards expended that will trigger a single audit in the future and its continued exemption of non-US based organizations from the requirement. However, it urges OMB to address two related issues. First, we suggest that OMB only permit any subsequent federal agency specific policy on audit of non-US based entities (such as portions of USAID's Automated Directives System Chapter 591 that deal with audits of non-U.S. based NGOs) to use the same threshold as it ultimately establishes for covered organizations. Second, we urge OMB to respond affirmatively to our comments about the need for continued flexibility in the selection of subrecipient monitoring techniques under proposed Section 501 and for fair allowability of the costs associated with conduct of audits of subrecipients under proposed Section .621(C-5).

Section .702(a) Basis for Determining Federal Awards Expended—Consistent with procedures applicable to financial reporting of obligations on the Standard Form 425, Federal Financial Report, OMB should identify amounts obligated in subgrants to subrecipients as being treated as federal awards expended for purposes of this section.

Section .705 Sanctions—OMB should simplify this section by simply cross-referencing Section .507(c) of the proposed guidance which addresses the same measures generally for noncompliance with any aspect of the policy guidance. Also, however this subject is addressed, it should replace the word "overhead" with the terms used throughout the proposed guidance (i.e. indirect or F&A costs).

Section .709(a) Auditor Selection—Introduction of the words "Whenever possible" in the last sentence of this section appears to be inconsistent with the corresponding provisions of Section .504 of the proposed guidance.

Section .713 Responsibilities—Since the cognizant agency for audit does not have a legal relationship with the independent auditor, we question why it should be responsible for initiating contact with that party concerning a change in cognizance. We suggest that OMB should carefully craft this and other sections of the proposed guidance to assure that proper lines of authority, responsibility, and communication are maintained. While the federal inspectors general offices have important roles to play, these should be limited to those legally and organizationally appropriate for the audit function and should not intrude on the

prerogatives of federal agency or auditee management. For instance, we are concerned that the introduction of the cognizant agency for audit or oversight agency for audit into the actual decision making concerning management decisions as opposed to the coordination thereof appears to run counter to the letter and intent of Section 106 of the Inspector General Act Amendments of 1988.

We further suggest that Subsection (4) of this section be broadened so that the cognizant agencies for audit are charged with informing auditees about the trends identified rather than just "the community of independent auditors." After all, it is the auditees who are engaging the services of independent auditors and who are ultimately responsible for compliance with the applicable audit requirements.

Section .715(c)(1) Scope of Audit—The introduction of reference to that portion of the compliance supplement which addresses internal control (Part 6) is potentially very troublesome unless this section also includes language drawn directly from the introduction to that Part which clearly states that the internal control procedures there are **not** a checklist of required internal control characteristics and that organizations may achieve effective internal control through alternative means. We strongly urge OMB to insert that language here and to refrain from actions here and elsewhere in the proposed guidance that may be construed as prescribing a particular set of internal control policies and procedures.

Section .715(d)(3)—The new language in the last sentence of this section is awkward and less clear than that on the subject of compliance criteria for programs not included in the compliance supplement which is currently contained in Section 500(d) of the current OMB Circular A-133. Since many of the federal programs administered by our members fall into this category, we believe that the current provisions are clearer and preferable.

Section .715 and Appendix XII—While we support OMB's intention to reduce the number of compliance requirements that would be subject to testing under the single audit requirement, we believe that extreme care should be exercised in crafting the procedures under which federal awarding agencies and their inspectors general would be able to reintroduce compliance requirements for testing. If these procedures are not rigorous, the perceived benefit of audits targeted to significant matters is likely to be lost. We recall that one of the early objectives of the single audit approach was to preclude the need for agency specific audit guides. While that has been achieved by the use of the compliance supplement, OMB should be careful to avoid future situations in which the condition which was sought to be avoided arises in substance if not in form.

Section .716(d)(3)(A) Audit Reporting—The phrase "responsible for a management decision" should be added to the second sentence of this section for clarity.

Section .717(b) Audit Findings—This section should be edited for simplification and should reflect longstanding and well established concepts of audit findings drawn from generally accepted government auditing standards. For example, Subsections (5) and (10) are confusing, awkwardly stated, and overlapping on the subject of "effect" as are Subsections (4) and (10) on the subject of "cause." If the objective of this guidance is, as OMB asserts in Section .712 of the proposal, to "obtain high quality audits," we submit that further clarity related to the critical elements of audit findings is absolutely essential .

Section .717(c)—This section should be amended to include the auditee as a party that should have access to the audit documentation as well as those already mentioned. Once again, it is the auditee who has the contractual relationship with the auditor and who is subject to sanctions in the event of a substandard audit that does not comply with the single audit requirement.

Section .720(d) Criteria for Federal Program Risk—In discussion of the inherent risk of a federal program, OMB should adopt consistent language to that used elsewhere in the proposed guidance. While the term "third party contracts" has appeared in Circular A-133 since it was issued in 1997, we submit that, in light of the substantial clarifications that are being made in the guidance about the differences between subrecipients and contractors and the respective instruments used in those relationships, OMB should drop the term "third party contracts" and introduce the words "subgrants and contracts under grants."

APPENDIX I—Definitions

Approval or Authorization of the Awarding or Cognizant Federal Agency—This definition and the one dealing with "Prior Approval" should be consolidated, harmonized, and simplified. We suggest the following language: "Written approval by an authorized official evidencing prior consent. Where a cost or administrative action requiring prior approval is included or addressed in an agreement or amendment, approval of that document constitutes prior approval."

Budget—In view of the mention of the pass-through entity in the first sentence, we suggest that the word "Federal" be deleted from the second sentence in order to be fully dispositive.

Cooperative Agreement—We suggest that subsection (b) of the definition be amended by using the words "substantial programmatic involvement" as this more clearly makes the distinction between the program activity contemplated under the award and the administrative activities that apply to all grants *and* cooperative agreements.

Equipment—In addition to other comments on this subject made above, we believe that the definition of equipment needs to make clear that the federal definition applies to prior approval to purchase while the recipient definition refers to the amounts that would be excluded from application of the organization's indirect cost rate on a modified total direct cost basis.

Federal Share—This definition should be made consistent with that for "Cost Sharing and Matching" by using the words "That portion" rather than referring to the "percentage." This will help clarify that the final settlement of calculations of federal and non-federal shares should be based on actual expenditures.

Management Decision—Please refer to the comments above concerning Section .713 of the proposed guidance.

Outlays—We urge OMB to present a corresponding definition of outlays for recipients and subrecipients.

Prior Approval—Please refer to the comment related to Approval or Authorization of the Awarding or Cognizant Agency.

Questioned Cost—We suggest that this definition be amended to more closely align with the provisions of Section 106 of the Inspector General Act Amendments of 1988.

Unrecovered Indirect Cost—For clarity, we suggest that this definition be amended by substituting the words "through application of" in place of "under."

APPENDIX V

We support OMB's proposals to address the need for clear indirect cost related policies relative to subrecipients and believe that the methods identified in Section .502 provide valid choices to be used in those circumstances, including with non-US based entities whom some federal agencies have, we think unfairly, precluded from recovering any indirect cost. We do have an additional comment related to indirect cost recovery which we believe has the potential to significantly simplify the procedures used in connection with nongovernmental organizations such as our members.

OMB Circular A-122 (now 2 CFR 230) has identified the fixed rate with carry forward methodology as being available to nonprofit organizations since it was first issued in June 1980, but agency officials with indirect cost cognizance for many of our members steadfastly refuse to adopt this approach even when the organizations involved meet all of the stated criteria for its use (e.g., continuing relationship, large numbers of federal awards, and high dollar volume). Instead, they continue to adhere to the provisional/final approach which involves multiple submissions and substantial delays in arriving at final rates. The result is considerable and costly accounting burden and delayed close-outs for organizations whose federal fund portfolios are often as large as those of research oriented colleges and universities, large state agencies, and larger local governments. We urge OMB to encourage cognizant agencies for indirect cost to more aggressively pursue the fixed rate with carry forward approach with nonprofit organizations as a way to achieve the simplification that OMB is seeking through a variety of other indirect cost related reforms.

As should be clear from the length and detail of this letter, InsideNGO and its members are vitally concerned about the clarity, accuracy, and tone of federal policies affecting management of federal grants and cooperative agreements. We know that you will be receiving comments from a variety of federal and non-federal organizations as you proceed with your reform efforts. We earnestly hope that you will balance those which may seek to impose restrictions in the name of accountability with those that urge attention to the proper federal and non-federal roles and to the need for flexibility and diversity in the effective performance of federally assisted programs. We appreciate the opportunity to participate in this process and stand ready to continue to do so as appropriate especially as it relates to how the grant reform initiative affects U.S. organizations working globally, a perspective we believe we can uniquely represent.

Sincerely,

Alison N. Smith
Executive Director