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April 30, 2012

Office of Management and Budget
725 17th Street NW
Washington, DC 20500
Attention: Office of Federal Financial Management "Grant Reform"

BY ELECTRONIC MAIL TO: http://www.regulations.gov

Ladies/Gentlemen:

This letter is in response to OMB's "Advance Notice of Proposed Guidance" published in the Federal Register on February 28, 2012 (77 FR 11778-11785).

InsideNGO is a membership association that is comprised of professional managers of 280 nongovernmental organizations that implement humanitarian relief, economic development, health promotion, and civil society programs worldwide. These professionals include finance officers, grant and contract administrators, human resource managers, legal counsels, and information technology staff. Their organizations receive and administer hundreds of millions of dollars in grants and cooperative agreements from a variety of federal awarding agencies including the U.S. Departments of State, Health and Human Services, Labor, Justice and the U.S. Agency for International Development. As such, they are vitally concerned about the policies and procedures used to administer these awards and particularly about the unique challenges that these requirements present when operating outside the United States.

This concern has manifested itself by continuing active participation by this association and its individual members at every opportunity presented by OMB and the federal agencies for input on such policies over the past seventeen years. This has included but has not been limited to extensive comments submitted to OMB itself on the following:

- Issuance and revision to OMB Circular A-133 (1996-7, 2003)
- Revisions to OMB Circular A-122 (1995-8, 2002-4)
- Implementation of the Federal Financial Management Improvement Act (1999-present)
- Implementation of the Federal Funding Accountability and Transparency Act (2006-present)

InsideNGO welcomes the opportunity to participate once again in the policy development process. We are particularly encouraged by OMB's plan to conduct two steps in developing changes to the government-wide circulars that guide federal agency and recipient and sub-recipient management of assistance awards. However, our reason for that positive reaction is that we believe there is a substantial disconnect between the reform ideas that OMB has identified thus far and some of those that we believe would constitute meaningful and practical reform that have not yet been articulated. It is our impression that some of the reform ideas

mentioned in the notice are clearly reflective of the fact that OMB has been engaged with certain segments of the recipient community such as colleges and universities in the period prior to the issuance of the notice. Obviously, now in response to the notice, you are likely to hear more broadly and deeply from a more representative audience and we hope that will better inform your subsequent drafting of any revisions to the grants related circulars.

However, we must respectfully suggest that some of the items discussed in your announcement are couched in terms that seem to indicate that grant reform is being pursued more as a way to adjust the tasks of federal officials and independent auditors than to craft better grants management policies and reduce the actual burden on those organizations to which federal assistance is awarded. We believe that is shown by the list of questions that appears at the end of the notice, many of which, if answered problematically, might actually make the job of administering grants and cooperative agreements at the recipient and sub-recipient level more complicated.

Accordingly, we are offering our comments which bear on some of those questions in this letter, and we are also providing numerous other observations about practical and detailed policy additions, subtractions, alterations and reinforcements that our experience shows would help improve the overall conduct of federal grants management, particularly in the international environment.

1. **We must begin by stating that we believe that the existing policies contained in the OMB Circulars that apply to most of our members (A-110, A-122, and A-133) have generally worked well over a significant period of time.**

   Many of them do not need to be changed. They have achieved a degree of uniformity and, because they have been in place for many years, they are familiar to our members and have been integrated to a considerable extent into their management.

   Instead, we believe that the Circulars would mostly benefit from adjustments and clarifications such as those suggested below and which are based on the considerable experience our members have gained in implementing them. As we indicate, 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. We also hasten to add that OMB's stated intent to consolidate its administrative circulars into a single document and to take similar action with its cost principles will hardly constitute grant reform unless there is a corresponding attempt to take the clearest and most effective language from the separate documents and to employ it in the applicable policy going forward. Also, where appropriate, all legitimate reasons to treat the sectors differently should be reflected in any consolidated documents.

2. **We suggest that some of the problems that our individual members have experienced with federal agency implementation of the Circulars have resulted from the fact that the agencies themselves do not effectively train their administrative personnel and particularly their program managers on OMB's requirements.**

   We urge OMB to instruct federal agencies to rectify that situation through at least some minimum levels of awareness training. There is little question that grant recipients can

often be at the mercy of federal officials whose approach is "he who has the gold sets the rules" but who often demonstrate that they do not know their own rules.

3. **We believe that OMB should take a more active monitoring and enforcement role concerning ongoing federal agency implementation of the Circulars.**

   While this role is generally articulated in some policy documents such as 2 CFR 215.0(c), our experience is that the absence of a constant "firm hand" from OMB has allowed inadvertent or purposeful undercutting of the intended uniformity of the policies to occur. We point out that we are not alone in this assessment of the need for sustained OMB leadership as previous grants management-related reports issued by the Government Accountability Office (GAO) have voiced similar concerns.

4. **We suggest that OMB direct uniform implementation of any changes that are made, both as to timing and substance. The difference between implementation of the Common Rule issued under OMB Circular A-102 and that of Circular A-110 is instructive.**

   On March 11, 1988, OMB caused all 27 agencies then administering grant programs to state, local and tribal governments to issue the same rule on the same day. That achieved an unprecedented degree of uniformity of substance that has demonstrably benefited the governmental recipient community ever since. However, on November 29, 1993, when OMB issued its revised Circular A-110, it gave the federal agencies six months to issue codified regulations. Our analysis shows that only two federal agencies (the Departments of State and Transportation) met that deadline while others failed to accomplish the task until 1998. And some agencies (such as the National Science Foundation) have never actually issued codified regulations as instructed. Arguably, uneven substantive implementation has resulted.

   If OMB's intent is to create a real system of guidance for federal assistance management that works as well or better than the Federal Acquisition Regulation has for federal acquisition, it should require federal awarding agencies to handle their responsibilities in the timely and disciplined way that OMB showed as workable as early as 1988.

5. **We recommend that OMB establish a uniform federal policy - - subject at most to only very narrow exceptions - - calling for agency grant and cooperative agreement policies to be subject to public notice, comment and rulemaking.**

   OMB appropriately secures public comment through the publication of NPRMs and ANPRMs when it proposes to change policies relating to federal assistance. The same practice is followed by many federal agencies such as HHS, as well as in procurement contracts subject to the FAR and agency supplements. Some agencies, however, fail to take this approach, and only allow public participation on an occasional basis. This results in outdated, incomplete, counter-productive, and non-value-added policies that are often unilaterally imposed. The establishment of such a uniform policy would be a tremendously productive reform that would be greatly welcomed by our community of implementing partners, and would over time improve the quality and consistency of agency assistance rules.

6. **We suggest that, to the limited extent that OMB exercises its prerogative to grant so-called "class deviations" to the policies contained in any Circular, these class deviations be transparently posted on OMB's website so that non-federal entities and their auditors may be aware of them and understand the extent to which they apply.**

7. **We recommend that OMB exclude Recipient Country organizations (Local NGOs) from OMB Circular A-122**.

   As part of its USAID Forward Implementation and Procurement Reform initiative, USAID is currently considering ways of streamlining and simplifying awards and subawards to Recipient Country organizations (Local NGOs). When OMB Circular A-110 was formulated, at USAID's request, agencies were given the authority to exclude application to such entities. USAID exercised this authority. OMB Circular A-133 is similar in excluding certain organizations, including Local NGOs. Inconsistent with this framework, OMB Circular A-122 does not exclude Local NGOs and other foreign organizations. The lengthy, complex and in some respects very US-based cost principles can be intimidating to such entities and inhibit participation in USAID awards and subawards. We recommend that an exclusion comparable to the other two key OMB Circulars be added to A-122.

8. **We suggest that OMB reissue guidance to the federal agencies concerning the distinctions between assistance and acquisition and between grants and cooperative agreements under the Federal Grant and Cooperative Agreement Act.**

   OMB published this detailed guidance in the Federal Register on August 18, 1978 and has only reinforced it in a cryptic fashion since, in OMB Circular A-102 (3/11/88) and Section 11 of OMB Circular A-110 (2 CFR 215.11(a)). Yet, the absence of understanding about these award distinctions, particularly among some federal agency officials, has demonstrably caused the important objectives of the Act to be undercut. One very visible manifestation of this circumstance is the actual and illegal application of policies that apply to federal contractors pursuant to the Federal Acquisition Regulation and forms that are approved for use in contracts to grantees and cooperative agreement recipients.

9. **We suggest that OMB initiate an effort to assess the quality of information submitted for publication in the Catalog of Federal Domestic Assistance prior to inclusion in the CFDA and actually included. Our experience, based on our familiarity with certain programs, is that many entries lack responses to the standard data elements that are supposed to be presented in the Catalog.**

   Further, staff contact data (e-mail addresses and telephone numbers) that are critical to potential applicants are often outdated at the time the document is published or placed on the Internet. We suspect that this is a function of those compiling the Catalog for OMB relying exclusively on what are clearly uneven submissions from individual federal agencies. One example of this deficiency is the entry for the Global AIDS program at the DHHS's Centers for Disease Control, where all of the contact information was outdated on the date the document was transmitted. Since this is a program that is of considerable interest to our members, we point to it as indicative of what we believe is a broader problem.

10. **We support OMB's proposal to further standardize the practices of federal agencies in the issuance of solicitations for federal assistance awards (Requests for Applications, Notifications of Fund Availability and Program Announcements) consistent with its June 20, 2003 directive and to include such direction in the administrative circulars.**

11. **We support OMB's proposal to further standardize federal agency conduct of pre-award financial responsibility determinations and financial evaluations.**

    However, we strongly suggest that the risk factors that were identified in OMB's list of questions in the February 28 notice are not ones that should be introduced when there is already reference to a more comprehensive and serviceable list of such risk factors contained in the provisions on the employment of special award conditions in Section 12 of the Common Rule issued pursuant to Circular A-102 and Section 14 of OMB Circular A-110 (2 CFR 215.14).

12. **We suggest that OMB consider issuing further guidance to federal agencies to achieve better standardization of grant agreements and cooperative agreements and more clarity about the federal policies that flow-through to subrecipients.**

13. **We submit that confusing terminology and practice plague activities involving the sub-award of grant funds. We believe that these problems could be addressed if OMB would harmonize the definitions for "subgrants" and "contract under a grant" to correspond to the concepts of "subrecipient" and "vendor" and "subgrantee" and "contractor" as those terms are used throughout the current Circulars.**

    Currently, in our view, the Common Rule issued pursuant to Circular A-102 does the clearest and most effective job in differentiating among awards made to lower tier organizations. Section 36 of the Common Rule clearly defines purchase transactions regardless of the organizational type of the contractor while Section 37 of the Rule effectively defines awards of financial assistance to lower tier entities. We suggest that the language contained there be consistently adapted to Circular A-110 and to Circular A-133 so that the proper flow-through of federal policies to lower tier entities can occur and so that appropriate oversight mechanisms for subrecipient monitoring and contract administration can be used.

14. **We suggest that OMB clarify that the provisions contained in Section 25 (c)(8) and Section 30 (d)(4) relate to the *ability* to subgrant, contract out, or otherwise transfer substantive activity as distinct from introducing federal agency prior approval for each such award action or creating additional inappropriate federal involvement in matters related to transactions to which the federal agency is not a party. Some Federal Agencies appear to interpret the cited sections to authorize (or even require) them to approve each and every subaward transaction. We think that is not what OMB meant when they drafted the regulation.**

15. **We strongly suggest that the provision currently contained in Section 30 (f)(3) of the Common Rule issued pursuant to OMB Circular A-102 concerning prior approvals at the subrecipient/subgrantee level be introduced into Circular A-110.**

This provision establishes that prior approval requests from subrecipients are to be addressed to the recipient and that decisions thereon are to be made by the recipient. Our experience is that officials in some of the federal agencies that fund our members routinely require recipients to channel all prior approvals from their entire subrecipient portfolio to the federal level for approval. Examples of this practice abound even when the federal awards are to experienced entities and they involve tens of millions of dollars and dozens, scores, or even hundreds of subrecipients. The waste of resources and time that such practices cause should be very clear. We submit that this is precisely the kind of activity that OMB's reform effort should eliminate so that federal oversight can focus on meaningful matters such as program performance and results.

16. **We suggest that OMB revise Section 28 of OMB Circular A-110 (2 CFR 215.28) and Section 23 of the Common Rule issued pursuant to OMB Circular A-102 as well as add language in the three sets of OMB Cost Principles to make clear that the cost of actions taken after a performance period to close out a grant or cooperative agreement and to maintain any continuing accountability are allowable costs. Some agencies appear not to recognize this allowability.**

17. **We urge OMB to reinforce the fact that financial reporting on federal grants and cooperative agreement is limited to the level of detail and frequency called for under Section 52 of OMB Circular A-110 (2 CFR 215.52) and Section 41 of the Common Rule issued pursuant to OMB Circular A-102.**

    We observe that some federal agencies have been more than willing to "require" recipients of non-construction grants to report more frequently than quarterly and in more detail than is permitted under the recently issued Standard Form 425 and that recipients, particularly those involved in competitive discretionary grant programs, are reluctant to resist because of legitimate concern that doing so will result in adverse decisions about future grant applications.

18. **We suggest that OMB revise its financial reporting regime to eliminate use of the Standard Form 270 (Request for Advance or Reimbursement). This form was formulated during the 1970's when grant payment was exclusively carried out using paper checks.**

    However, it is our understanding that, since July 26, 1999, the federal government has been required to use electronic payment for all grant payments and that corresponding requests for payment should, by now, be able to be handled electronically. While federal agencies such as USAID, which do not operate their own payment systems but rely on the systems of other agencies, may resist such elimination, we submit that it is long past time when such federal agencies should be able to obtain data about grantee draw downs from the servicing federal agency rather than requiring a separate submission from the recipient.

19. **We suggest that the documentation, reporting and records retention and access requirements of all of the Circulars be updated to fully reflect the modern policies contained in the Electronic Signatures Act of 2000 (PL 106-229, 15 USC 7001 et seq.) and to take full advantage of the options that are available therein.**

20. **We suggest that OMB revise its regulations implementing the Paperwork Reduction Act (5 CFR 1320) to establish clearly that the requirements for applications for federal assistance and for post-award financial, performance, property, and audit reporting contained in the OMB administrative, cost and audit circulars constitute limits on federal agency reporting burden unless separate information collection requests are approved by OMB's Office of Information and Regulatory Affairs. Further, we suggest that federal agencies may not use grantee noncompliance with unauthorized federal agency information collection actions as a basis for employing enforcement remedies.**

21. **We suggest that OMB incorporate or at least cross reference the financial reporting requirements currently contained in the FFATA regulations into the financial reporting requirements of the administrative Circulars (Circular A-110 Section 52—2 CFR 215.52 and Section 41 of the Common Rule issued pursuant to Circular A-102).**

22. **We ask that OMB reiterate the need for uniformity and restate the long-standing principle that expenditures relating to a federal award may continue for up to 90 days after the end of the award period.**

    OMB Circular A-110 expressly states that expenditures relating to a federal award may continue for up to 90 days after the end of the award period. The standard Award Letter used by USAID, however, states that not only obligations or commitments, but also expenditures, must occur prior to the end of such period. This is erroneous, but changes have not been made to the automated award-writing system despite the passage of many years and repeated reference to the problem by our members.

23. **There is little question that documentation of effort on individual grant programs is a source of frustration for grant recipients and subrecipients in all sectors. However, we believe that the standards for such reporting that affect nonprofit organizations are the most rigorous of those contained in the three sets of OMB cost principles. Accordingly, we suggest that the more flexible approaches such as those contained in the principles applicable to other types of performers be made available to non-profit organizations.**

    For example, we believe that the so-called "Plan Confirmation" method available to colleges and universities in OMB Circular A-21 (Paragraph J.10(c)(1)) is one that is appropriate for many of the types of employees who work on federal projects and other cost objectives in our member organizations. Since the timing of such reporting in the higher education environment is on the basis of an academic term, a more realistic approach in the nonprofit sector would probably be to continue to prepare the report on a monthly or pay period basis. Another option that we believe is appropriate for non-profit entities is the requirement for a semi-annual certification by employees who work on a single federal award that is available for state and local government employees pursuant to OMB Circular A-87 (Appendix B (8)(h)(3)).

24. **We suggest that the procurement procedures contained in both administrative circulars be clarified to establish that the small purchase procedure of any recipient is the lesser of the one used by the federal government itself (now $150,000) or that established in the policies of the organization itself. Doing so would clearly establish when a more streamlined procurement process is appropriate as an alternative to**

competitive sealed bids or proposals. It would also help assure that appropriate procurement records such as those contemplated in Section 46 of Circular A-110 (2 CFR 215.46) are generated and retained.

25. **We suggest that the property disposition procedures in Circular A-110 for assets that cost less than $5,000 per unit and for those with a fair market value of less than $5,000 per unit at time of disposition be clarified so that they are consistent with requirements contained in Section 32(e) of the Common Rule issued pursuant to OMB Circular A-102 which provide that such items may be retained, sold, or otherwise disposed of without further obligation to the federal government.**

    In this connection, we also suggest that OMB consider whether a further upward adjustment to the dollar threshold which triggers a need to obtain federal direction for property disposition is warranted. OMB adopted the current threshold in 1993 for non-governmental recipients and in 1988 for governmental ones, recognizing that the major control on assets that cost more than $5,000 per unit involves the federal cost principle provisions that require prior approval for such acquisitions.

26. **Section 46 of OMB Circular A-110 (2 CFR 215.46) states that procurement records and files for purchases in excess of the small purchase threshold (see Comment 25) must contain certain elements, at a minimum. One of these is "Justification for lack of competition when competitive bids or offers are not obtained."**

    However, unlike the Common Rule issued pursuant to OMB Circular A-102, Circular A-110 does not contain any explicit statements about what justifications might exist for such non-competitive negotiation. We suggest that Circular A-110's procurement provisions be revised to introduce the criteria for justification that are used in the Common Rule (e.g., emergency, unique capability, awarding agency authorization, absence of competition following actual solicitation).

27. **Some federal agencies are employing a concept (that is not defined in any of the OMB circulars) called "leveraging." In practice, it represents all of the non-federal resources that might be applied to a project or program, a portion of which would be any required cost sharing or matching. However, considerable confusion arises programmatically as to the obligation of recipients to provide leveraging at certain levels and the agreement-related consequences if those levels are not met.**

    We suggest that OMB introduce a government-wide definition of this concept in the administrative circulars but clarify that it does not have a role in determining the extent of cost sharing or matching on grants, cooperative agreements, and subgrants.

28. **We suggest that OMB clarify in its administrative circulars that in-kind contributions associated with awards are only derived from third parties and that resources provided by recipients and subrecipients themselves are to be based on their cost not their value.**

29. **We suggest that OMB fully explore creation of a procedure whereby, when an organization registers or updates its registration under the Central Contractor Registry, the organization can file certifications and representations required by**

federal law, regulation, and executive order and signed by a responsible official of the organization that would cover the same period as the registration.

In this manner, OMB would fully achieve the objective that it established in Section 17 of Circular A-110 (2 CFR 215.17). This would eliminate one submission currently required of recipients that are dealing with a federal agency that availed itself of the authority available under Section 17 and the multiple submissions that might be required if the federal agency involved has not implemented that policy.

30. **We suggest that OMB more proactively encourage federal agencies to take advantage of so-called "expanded authority" options which it made available in 1993 in Circular A-110 (such as Section 25 (e)—2 CFR 215.25(e)). Our members' experiences are that, with the exception of research grants, federal agencies have been reluctant to move away from full use of all available prior approvals.**

31. **We suggest that OMB broaden the application of the provision contained in Section 25 (m) of Circular A-110 (2 CFR 215.25(m)) which requires that federal action on a request for budgetary revision be taken within 30 days after receipt.**

    We believe that this standard should cover all prior approval requirements that are contained in either the administrative circulars or the cost principles. We assert first that, if an administrative step is of sufficient importance to warrant a decision by a federal agency official, it is something that is important enough to be done quickly. We also submit that the continuing use of prior approvals coupled with a lack of strict discipline concerning the timing of the response can be shown to be a major factor in performance delays and curtailed program results.

32. **Given the importance that the task has taken on in grants management generally and in the discussion contained in the February 28 notice, we suggest that OMB define the term "monitoring" in both its administrative and audit circulars.**

    We believe that a very serviceable definition has been employed by the U.S. Department of Health and Human Services in its *Grants Policy Statement* and could be adapted to circumstances that involve the federal role *vis-a-vis* a primary recipient and a pass-through entity *vis-a-vis* a subrecipient. HHS defines monitoring as "A process by which a grant's programmatic performance and business management performance are assessed by reviewing information gathered from various required reports, audits, site visits, and other sources." This language is similar to that used in the applicable section of the Single Audit Act Amendments of 1996. Both sources make clear that multiple techniques should be available to the entity conducting the monitoring and that the decision about which techniques to employ in any given circumstance involves managerial prerogative and judgment.

33. **We request that OMB clarify the records retention requirements for awards that involve multiple program years.**

    We believe that the intent of the longstanding record retention requirements in Section 42 of the A-102 Common Rule and Section 53 of Circular A-110 (2 CFR 215.53) has been to have records for any particular program year retained for three years after the final

financial report for that year has been submitted. Given the timing of conduct of the Circular A-133 audit and any required follow-up, all of the actions that necessitate the presence of records should be able to be accomplished within that time period or the exception provisions of those applicable rules is activated.

Some federal agencies are requiring recipients to retain records for the first performance year of multi-year projects for three years after the submission of the final financial report for the final year. For example, the scenario for a five year project would thus involve retention of the records for the first year of the project for three years after the submission of the final report for the fifth year—resulting, essentially, in a seven year record retention period for the first performance year. Clear direction from OMB to the federal agencies and to recipients on this subject can directly translate to reduced burden and cost.

34. **We urge re-examination of the appropriateness of unilateral termination rights so as to unify agency practice government-wide and adhere to the long-established principle of unilateral termination only for noncompliance/default.**

A fundamental principle of federal assistance law, reflected in OMB Circular A-110, has always been that federal funding agencies may only terminate an assistance award unilaterally for noncompliance/default. However, USAID, in 22 CFR 226, and the Department of State, in some awards, have reserved a right to terminate unilaterally under other scenarios. InsideNGO believes that the validity of award obligations of funds requires the elimination of such aberrant unilateral rights. OMB turned USAID down at least twice in the 1970's when the Agency sought such authority. When 22 CFR 226 was issued, however, a unilateral termination provision was included presumably with OMB's approval but without an explanation of the basis for the change of position.

35. **We suggest that the administrative circulars be revised to include a place holder section for reference to any disputes and appeal procedures that are available to assistance recipients under any agency specific policies (such as 45 CFR 16 at the Department of Health and Human Services and 22 CFR 226.90 at the U.S. Agency for International Development).**

OMB should also direct the agencies to carry out any such procedure in a timely manner so that any contingent liabilities affecting the recipient because of disputed, questioned or disallowed costs can be resolved.

36. **We strongly oppose the introduction of any standardized flat rates for recovery of indirect costs associated with management of federal awards. Such an approach would fail to continue OMB's longstanding and proper recognition of the diverse characteristics and accounting practices of nonprofit organizations as well as those affecting other types of governmental and educational institution performers.**

We believe that indirect cost recovery policies should continue to be used in a case-specific manner. We instead urge OMB to reinforce the policies already contained in the applicable Cost Principles which permit the use of a fixed rate with carry-forward or predetermined rates as an alternative to the use of the provisional/final rates which cause the need to adjust each award to final rates. Federal agencies should be directed

to permit those types of rates whenever the conditions identified in the cost principles (such as continuing relationships with the federal agencies and relatively stable rate histories) are met.

37. **We request that OMB arrange for the issuance of an authoritative guide for nonprofit organizations to use in the development, presentation, and negotiation of indirect cost rates that is similar in nature to the *Guide for State and Local Governments (OASMB C-10)* developed by the U.S. Department of Health and Human Services at OMB's direction for use by all federal agencies.**

    Such guide and Circular A-122 itself should include a standard indirect cost certification that has received OMB approval as a proper information collection. As a means to reduce the burden on nonprofit organizations seeking approval of an indirect cost rate proposal, this guide should also include a standardized listing of the documentation needed to support an indirect cost rate proposal such as is currently presented in OMB Circular A-87, Appendix E, Subsection D.

38. **We suggest that OMB re-examine the results of its 2004 "Cost Consistency Project" to assure that the desired results were actually achieved.**

    We have identified some apparent oversights that were not addressed during that effort. For example, we suggest that OMB Circular A-122 (2 CFR 230) be revised to include a provision on the allowability of bid and proposal costs that is consistent with such provisions in OMB Circulars A-21 and A-87 (2 CFR 220, 2 CFR 225). We have also noticed that Section J53 of OMB Circular A-21 (2 CFR 220) is missing the section which appears in the other Circulars related to foreign travel. Since our members that are universities are engaged in extensive foreign travel because of the nature of overseas projects, this oversight has presented some problems.

39. **We ask that OMB restate and elaborate on the need for agencies to be consistent regarding the fundamental principle of paying its fair share of allowable costs**.

    OMB Circular A-122 expressly states that it is the policy of the federal government to pay its fair share of allowable costs; artificial reduction of such costs by the arbitrary imposition of restrictions is prohibited. Nevertheless, agencies funding overseas operations do not have policies or rules inhibiting the imposition of restrictions in various forms, including but not limited to arbitrary caps or ceilings on indirect costs, limitations on otherwise allowable direct costs, and effectively mandatory "suggestions" or "recommendations" for applicants to "contribute" part of their indirect costs to the nonfederal share. These practices contradict OMB policy and we ask that OMB restate and elaborate the need for agency guidance to be consistent with this fundamental principle.

40. **We support the elimination of analyses for cost-benefit of facility purchase and for relocation of federally sponsored activities to a debt financed facility.**

41. **In 1997, in part at the urging of InsideNGO and its members, OMB exempted non-U.S. based entities expending federal assistance as recipients or indirectly as subrecipients from the requirements of OMB Circular A-133. The basis for this action was, in part,**

the impracticality of such organizations arranging for such an audit to be conducted in accordance with generally accepted governmental auditing standards and the provisions of the Circular.

However, this exemption did leave some gaps in policy guidance related to the type of oversight that such organizations would receive. As OMB may be aware, USAID introduced a separate audit policy for non-U.S. based entities contained in its Automated Directives System Chapter 591 which requires a financial statement audit on the part of any such entity that expends more than $300,000 in USAID funds received directly or indirectly. While InsideNGO continues to support the exemption for non-U.S. based entities contained in Circular A-133, we suggest that it coordinate with USAID and other agencies that fund overseas programs to assure that any policies that those agencies impose are fully consistent with OMB's policies regarding audit coverage and that any higher thresholds introduced for U.S.-based entities are used for agency-specific policies used for non-U.S. entities.

42. **Considerable discussion in the February 28 notice is devoted to audit follow-up and the perceived need for cross-agency coordination in dealing with audit findings that might affect the programs of more than one federal agency or pass-through entity. Yet, there is no real indication from anything stated in the notice that the existing policies for handling these matters are not working.**

Our view is that the data contained in the Schedule of Expenditures of Federal Awards of a Circular A-133 audit report and the Schedule of Findings and Questioned Costs should provide sufficient information for awarding agency management officials to be able to contact one another concerning their views about a particular finding. We suggest that OMB avoid creating a "Rube Goldberg" system of coordination, particularly one in which offices of the inspectors general community are to assume responsibility for taking or coordinating any steps which are legitimately the prerogative of awarding agency management.

43. **The role of the Compliance Supplement for Circular A-133 Audits is a source of concern for our members. It is instructive that the objectives of the Single Audit Act of 1984 and the resulting OMB Circulars (A-128 and later A-133) included the elimination of a proliferation of individual federal agency audit guides. However, over time, the Compliance Supplement for Circular A-133 Audits has arguably become one very large and complex package containing all such individual agency audit guidance.**

The operational details of how OMB would organize any future Compliance Supplement to cut down on the number of general compliance requirements that would need to be tested while, at the same time, allowing federal agencies to introduce compliance requirements that are unique to their individual programs raise questions about whether it might make more sense to actually return to the days of multiple audit guides. One of the challenges that existed nearly three decades ago was how auditors could keep up with the current versions of those guides. However, with the presence and use of the internet, that problem may be soluble.

It may also be instructive that, as early as 1980, OMB, along with the Government Accountability Office and the National Intergovernmental Audit Forum, developed a

single well publicized and compact audit guide for financial and compliance audits of federally assisted programs which included an internal control review questionnaire and documentation guide that could serve as a model for a substantially reduced Compliance Supplement. As troublesome as the size and complexity of the Supplement has become, its presence has created an even more important problem. The individual listings in Part 3 and Part 4 of the Supplement are presented in a format where a digest of the compliance requirement to be audited is presented (including statutory and regulatory citations to the actual language of the requirement). That text is followed by a listing entitled "Audit Objectives" and another entitled "Suggested Audit Procedures."

With nearly a decade and a half of experience, it is painfully clear that many of these latter sections are presented in a manner that has led independent auditors to conclude that something mentioned there constitutes an actual compliance requirement applicable to the auditee. During our discussions with independent auditors, some have admitted that the Supplement has become something of a source for "back door requirements"—particularly in the area of features of grantee management systems affecting financial management, procurement, and property management.

Despite OMB's stated cautions in the introduction to Part 6 of the Supplement (Internal Control), that part of the document appears to have increasingly become, in the eyes of some independent auditors, a checklist of required characteristics for internal controls over compliance. Unfortunately, absence of such an identified feature can become the basis for a troublesome and inaccurate finding that some level of internal control deficiency exists.

As the length and level of detail of this letter demonstrate, Inside NGO and its members are vitally interested in the grants reform effort that OMB has initiated. We are also very hopeful that tangible practical improvements of the types we have suggested will be considered and proposed for final adoption in the next phase of the policy development process. We look forward to the opportunity to review and comment further on your proposals in the months ahead.

Sincerely,

Alison N. Smith
Executive Director