



## MEMORANDUM

### NORTHWEST PORTLAND AREA INDIAN HEALTH BOARD

Burns-Paiute Tribe  
Chehalis Tribe  
Coeur d'Alene Tribe  
Colville Tribe  
Coos, Suislaw &  
Lower Umpqua Tribe  
Coquille Tribe  
Cow Creek Tribe  
Cowlitz Tribe  
Grand Ronde Tribe  
Hoh Tribe  
Jamestown S'Klallam Tribe  
Kalispel Tribe  
Klamath Tribe  
Kootenai Tribe  
Lower Elwha Tribe  
Lummi Tribe  
Makah Tribe  
Muckleshoot Tribe  
Nez Perce Tribe  
Nisqually Tribe  
Nooksack Tribe  
NW Band of Shoshone Tribe  
Port Gamble S'Klallam Tribe  
Puyallup Tribe  
Quileute Tribe  
Quinalt Tribe  
Samish Indian Nation  
Sauk-Suiattle Tribe  
Shoalwater Bay Tribe  
Shoshone-Bannock Tribe  
Siletz Tribe  
Skokomish Tribe  
Snoqualmie Tribe  
Spokane Tribe  
Squaxin Island Tribe  
Stillaguamish Tribe  
Suquamish Tribe  
Swinomish Tribe  
Tulalip Tribe  
Umatilla Tribe  
Upper Skagit Tribe  
Warm Springs Tribe  
Yakama Nation

2121 SW Broadway  
Suite 300  
Portland, OR 97201  
(503) 228-4185  
(503) 228-8182 FAX  
www.npaihb.org

**DATE:** April 11, 2012  
**TO:** Tribal Leaders, Health Directors and Board Delegates  
**FROM:** Jim Roberts, Policy Analyst  
**SUBJECT:** OMB Proposed Rule regarding changes for developing Indirect Cost Rates (IDC)

The attached Federal Register notice published by the Office of Management and Budget (OMB) is an advanced notice of proposed rulemaking to reform the Indirect Cost (IDC) rate process as well as the rules for grants management. The proposals being discussed in the Federal Register notice will have an impact on Tribes if implemented. The deadline for comments is 5:00 p.m. Eastern Standard Time, April 30, 2012.

In preparation for this process and to assist Portland Area Tribes prepare their comments we have prepared material included with this memorandum. The following attachments are included with a short explanation:

1. "Analysis of the Office of Management & Budget Federal Register Notice". NPAIHB has developed a preliminary analysis on the impact of the OMB proposals discussed in the Federal Register. This document provides an overview of the OMB proposals discussed in the Federal Register. It includes commentary on how the OMB proposals will impact Tribes. The Executive Summary provides a quick read on the proposals, with more detailed discussion in the sections that follow.
2. "NPAIHB Draft Comment Letter." We have included a comment letter that will be submitted by the Board. We invite you to provide comments and recommendations on our letter. We plan to adopt our letter by resolution at our Quarterly Board Meeting on April 19, 2012.
3. "Sample Tribal Comment Letter." A sample comment letter is included to assist your Tribe to submit its own comments. You are welcome to customize and change the letter as needed.

At this point OMB is not yet proposing to go forward with these changes, but rather is in the conceptual stage. Thus, OMB is seeking comments about whether it should continue with this concept, and if so what issues should be taken into consideration. These proposals will impact Tribes and it is important that we all submit comments. If OMB decides to go forward with any reforms--and all indications are that it will--then OMB will issue a formal notice of proposed rulemaking at a later date.

Please share this document with your financial staff responsible for developing your IDC proposal. The deadline for comments is April 30, 2012.

###

**Analysis of the Office of Management & Budget Federal Register Notice**  
**Vol. 77, No. 39, Monday, February 28, 2012**  
**Vol. 77, No. 58, Monday, March 26, 2012**

Prepared by the NW Portland Area Indian Health Board  
April 11, 2012

**Introduction:**

On Tuesday, February 28, 2012 the Office of Management and Budget (OMB) posted a notice in the Federal Register concerning broad reform efforts related to audits, indirect rates and administrative requirements<sup>1</sup>. Comments are **due at 5:00 p.m. Eastern Standard Time on Monday, April 30, 2012.** The current notice is preliminary for purposes of soliciting comments. A proposed rule will likely be announced later. These changes will affect Tribes operating programs under Public Law 93-638 and it is very important to know what is being proposed. It is also important you provide comment on those items that will impact your Tribe. and how it may affect your contracts and your organizations. The proposals have been grouped into three categories relating to Single Audits, Cost Principles and Administrative Requirements.

**Executive Summary**

**Single Audits:** The recommendations related to the Single Audit Act include increasing the threshold for audits from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements for audits of organizations that expend between \$1 million and \$3 million in Federal funds. Increasing this threshold is likely a positive recommendation however Tribes should weigh this advantage against the fact that the BIA and the IHS rely on the Audit Reports as a way of demonstrating that the Tribe is carrying out Self-Determination programs in accordance with the requirements of its contracts or compact and Federal funds are properly expended. Without an Audit Report, the BIA and IHS may begin to increase monitoring efforts as a tradeoff on this issue. The OMB's proposal also includes strengthening the guidance on audit follow-up for Federal Agencies. This is counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard.

---

<sup>1</sup> Federal Register, Vol. 77, No. 39, Tuesday, February 28, 2012. "Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)." [This includes Cost Principles in OMB Circulars A-87 and A-122; Single Audit requirements in A-133; and the Administrative Requirements in A-102 and A-110 among others].

**Cost Principles:** The OMB is proposing several initiatives. These include consolidating requirements into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. This is something Tribes will need to be actively involved in but should be a positive proposal. The OMB recommends introduction of a “flat rate” for indirect costs as well as alternatives to time-and-effort reporting requirements. The Flat Rate proposal should only be supported as a voluntary option so Tribes can choose whether to participate or not. Initiatives that reduce the recordkeeping or reporting responsibilities should also be supported. There are numerous additional proposals that address specific issues that may be of interest to some Tribes. Most of these are also aimed at reducing costs to both Tribes and the Federal Government and are therefore not expected to be onerous.

**Administrative Requirements:** Reforms to Administrative Requirements relate to the consolidation of Circulars (A-102 and A-110) into a single publication. Tribes generally support this kind of streamlining, however we need to be attentive to what is included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included. The second OMB proposal is a case in point. The OMB is proposing pre-award consideration of a Tribe’s past experience in making a new award. Numerous provisions in expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in denying or declining to enter into a Self-Determination Agreement.<sup>2</sup> The OMB must recognize these regulations and incorporate an exception for Tribes and Tribal Organizations consistent with these Federal Regulations. Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and should be supported by Tribes and Tribal Organizations.

---

**Additional Background Information:**

The following is a more detailed discussion of each of the OMB proposals and things Tribes should take into consideration when providing individual comments. Comments on the February 28, 2012 OMB notice were requested by March 29, 2012 however during an open conference call on March 15, 2012 the OMB announced an extension to this deadline so the new deadline for comments is now 5:00 pm Eastern Standard Time on Monday, April 30, 2012.

Tribes and Tribal Organizations will be affected by these changes so everyone is encouraged to monitor this initiative and provide comments. The current notice is preliminary for purposes of soliciting comments and assisting the OMB in conceptualizing the proposed rule that will be announced later. There will also be a Public comment period associated with that announcement with any changes being

---

<sup>2</sup> See both the Title I Regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256); and the Title V Regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445).

published as a Final Rule at a later date. These changes relate to OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 C.F.R. Parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E. As part of this ongoing review, OMB will consider the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into Title 2 of the Code of Federal Regulations.

Because some of the above OMB Circulars are applicable to Public Law 93-638 Contracts and Compacts, Tribes and Tribal Organizations should evaluate for themselves the potential impact of these proposals on their organizations. It is noted that the Indian Self-Determination and Education Assistance Act (ISDEAA) allows the Secretary to waive cost principles adopted by regulation (see P.L. 93-638, Section 17(e) and 25 CFR Part 900, Section 900.140 and for Title V Compacts – P.L. 93-638, Section 512(b) and 42 CFR Part 137, Section 137.225), if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law. Therefore, Tribes should be aware that even if new Principles are adopted that are not appropriate for Tribes or are inconsistent with the ISDEAA, these principles can later be waived by the Secretary for ISDEAA contracts and compacts.

### **Single Audits:**

The recommendations related to Single Audits are focused on proper stewardship of Federal funds and will certainly result in a reduction of reportable improper payments or waste, fraud and abuse simply because fewer audits will be performed.

The OMB Proposal includes an increase in the threshold for applicability of the Single Audit Act from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements to two for audits of organizations that expend between \$1 million and \$3 million in Federal funds. The immediate reaction is that this is probably a good thing and will benefit smaller Tribes however; because of the 365 day rule relating to the disallowance of costs at P.L. 93-638, Section 106(f) this may remove this protection for many Tribes who are no longer required to undergo a Single Agency Audit Report pursuant to OMB Circular A-133. The raising of this threshold is most likely a positive recommendation that Tribes should support.

Another consideration for Tribes to think about is the fact that the ISDEAA requires Tribes to provide the Secretary with a copy of its annual Single Agency Audit report as a means of demonstrating that the Tribe is carrying out Self-Determination programs in accordance with the requirements of its contracts or compact and Federal funds are properly expended. This refocusing of the Single Audit Compliance Supplements to concentrate on managing instances of improper payments or waste, fraud or abuse and away from program performance and compliance with the terms of the contract or compact may result in the IHS feeling as though it needs to increase its own monitoring efforts to balance this shift in emphasis. Many Tribes enjoy a better relationship with the Federal Government because they maintain

clean audits and based on that fact alone monitoring has been reduced. We would not want to see an increase in monitoring as a tradeoff on this issue.

The OMB's proposal to counteract the increased focus of the auditor on the integrity of funds is to encourage strengthening the guidance on audit follow-up for Federal Agencies. This is absolutely counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard.

Finally, by increasing the audit threshold the underlying assumption is that the federal government and audit community can focus on larger auditees (good news for small programs, but not necessarily for larger sized programs) and there may be some Tribal programs that fall into this category and may want to consider this fact.

#### **Cost Principles:**

Under this heading the OMB is proposing several initiatives. These include consolidating requirements into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. The introduction of a "flat rate" for indirect costs is being considered as well as alternatives to time-and-effort reporting requirements. There are numerous additional proposals that address specific issues that may be of interest to some Tribes. Most of these are also aimed at reducing costs to both Tribes and the Federal Government and are therefore not expected to be onerous.

**Consolidation of Cost Principles** – With regards to the consolidation of the Cost Principles in Circulars A-87 (State, Local and Indian Tribal Governments), A-21 (Educational Institutions), A-122 (Non-Profit Organizations) and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E, the OMB indicates that the consolidation will streamline the documents but still retain some principles that may be unique to certain types of organizations. This may be an opportunity to retain some of the best elements of each Circular in terms of allowable costs and perhaps remove some of the pre-approval requirements in these Circulars so that they mirror the additional allowable cost provisions found in the ISDEAA at Section 106(k). In any event the final consolidated Circular needs to recognize when other statutes provide for additional allowable costs. See also the "waiver" discussion already included on page 1 above.

When the regulations were being developed for the 1994 amendments to P.L. 93-638 there was some interest on the part of Tribes to have a separate OMB Circular that was specific to Indian Tribes and Tribal Organizations but this notion of consolidation would seem to run counter to such an approach. This may still be an opportunity to secure some Tribal specific cost principles, however since the OMB is open to some organization specific principles.

**Indirect Costs** – There are two proposals aimed at providing a Flat Rate for Indirect Costs that would be applicable for up to 4 years at a time without re-negotiation. One of these proposals would make the imposition of a Flat Rate mandatory and the other proposal would allow the option to negotiate a Flat Rate or to continue to negotiate an indirect cost rate much as they are now. Because of Tribe’s experience related to previous Flat-Rate proposals by the Government (namely BIA proposals in the 1980’s aimed at “grandfathering” and a “15% Flat Rate”) it is appropriate that Tribes should be skeptical of such proposals. The OMB states up front that this approach is intended to reduce the costs to the Government by the application of an artificially lower IDC Rate based on some of the savings associated with the reduced costs the Tribe might experience by not having to negotiate annually.

What are these savings? If a Tribe is doing its own IDC Proposals and negotiating them themselves, there may be little or no savings since the hours spent doing this by staff in the IDC Pool will similarly be spent on other activities within the IDC Pool. The actual savings are negligible. If the Tribe sub-contracts the preparation and negotiation of their IDC Rate to an outside entity then presumably it might save somewhere between \$30 and \$40 thousand dollars in three out of four years but a \$20,000 reduction (half of the total savings) in a Tribe’s IDC Pool will only result in about a half of one percent (.5%) reduction to an IDC Rate yet most Tribal IDC Rates fluctuate either up or down by more than this each year so the risk to the Tribe can be significant. The greatest contributor to the fluctuation in Tribal IDC Rates is increases or reductions in the direct cost base each year so fixing the Rate creates a significant risk for Tribes while it will almost always result in a savings for the Government since the Flat Rate will always be lower by design. This may be a more significant issue for large hospitals and universities who may be able to realize a greater dollar savings, however the percent reduction in the IDC Rates will likely be even less for those larger entities.

With regard to indirect costs, the most critical issue to Indian Tribes is full funding of these costs by the IHS, the BIA and other Federal and State Agencies. On the March 15 conference call with the OMB, the OMB staff were not encouraging when asked if they would support a principle aimed at full funding of whatever approved IDC Rate there is. Since Tribes continuously experience CSC shortfalls at the hands of the Federal Government, perhaps withholding support for any approach aimed at reducing our IDC Rates until we can be assured of full funding would be appropriate. Remember, if we are only getting 85% funding of our current IDC Rates then we can probably also expect to receive 85% of the lower Flat Rate as well.

To the extent there are any Tribes who wish to support the negotiation of a Flat Rate, they must indicate support for the second OMB proposal wherein the negotiation *is optional* thus allowing those Tribes who choose not to negotiate a Flat Rate to continue negotiating IDC Rates annually as they do now. Additionally, the Flat Rate should be treated as a fixed or final Rate thus if the Tribe is able to realize efficiencies in administering the new IDC Rate there should not be a carry forward adjustment that would take the Tribal savings away.

Two other thoughts to keep in mind, the IHS allows Tribes to treat an IDC Rate as current for up to three years without having to renegotiate a newer IDC Rate already (the BIA allows a Rate to be considered current for up to four years). Therefore, Tribes essentially have a type of flat rate system already except that when it comes time to negotiate a newer IDC Rate the National Business Center generally requires the negotiation of all the interim rates in order to receive a new rate. The other issue is that the IHS also has a CSC Pilot Project under which Tribes can already fix a flat rate for a period of up to three years. This Pilot Project Program has been available for at least the last 7 or 8 years yet only one or two Tribes have ever opted for a fixed IDC Rate for multiple years others have opted for fixed or lump sum amounts as opposed to a fixed Rate). One would assume that the number of Tribes who have expressed interest in the IHS Pilot Project system, fixed Rate might be a good predictor of how many Tribes would opt for this under the OMB system as well?

Finally, there are other proposals for consideration that could result in a savings to both Tribes and the Government that do not necessarily require a Flat Rate system to include. These include allowability for certain items of cost without prior Federal approval and reduced time-and-effort recordkeeping/reporting. Tribes would likely support both of these initiatives.

#### **Administrative Requirements:**

Reforms to Administrative Requirements include changes that would replace the government-wide common rule implementing Circular A-102 on Grants and Cooperative Agreements with State and Local Governments. It would also revise Circular A-110 on Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (2 CFR part 215) and Circular A-89 on Catalog of Federal Domestic Assistance. The first proposal relates to the consolidation of these Circulars and regulations in a single publication. Tribes generally support this kind of streamlining, however we need to be attentive to what is included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included.

The second OMB proposal is a case in point. The OMB is proposing pre-award consideration of a Tribe's past experience in making a new award. A number of regulations expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in denying or declining to enter into a Self-Determination Agreement.<sup>3</sup> The OMB must recognize these regulations and incorporate an exception for Tribes and Tribal Organizations consistent with these Federal Regulations.

Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and

---

<sup>3</sup> See both the Title I regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256) and the Title V regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445)

reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and should be supported by Tribes and Tribal Organizations.

**Conclusion:**

In summary, the OMB proposals contained in the February 28, 2012 Federal Register Notice are a mixed bag of good and bad as far as Tribes are concerned. There are opportunities that should be seized here and Tribes have reason to be optimistic that the Obama administration might be more open and transparent and honest in dealing with Tribes than some previous administrations have been. It will take a concerted effort on the part of Tribes to assert their rights under P.L. 93-638 and all its implementing regulations at 25 C.F.R. and 42 C.F.R. to ensure that they do not lose ground that was gained at great expense and effort in the regulation development processes. Indeed, the OMB should be encouraged to invoke a Negotiated Rulemaking process for re-drafting all of these regulations in order to maintain the kind of transparency this Administration has embraced and to ensure equity for all affected stakeholders.

Questions related to any of the above issues or recommendations should be directed to Mr. Jim Roberts of the Northwest Portland Area Indian Health Board at [jroberts@npaih.org](mailto:jroberts@npaih.org) or (503) 228-4185. This analysis has been developed with the assistance of Mr. Ron Demaray of Demaray Consulting, and questions may also be directed to Mr. Demaray at [RBDemaray@DemarayConsulting.com](mailto:RBDemaray@DemarayConsulting.com) or (240) 778-3215.

**SAMPLE TRIBAL COMMENT LETTER ON FEDERAL REGISTER:**

April 11, 2012

Office of Management and Budget

ATTENTION: Office of Federal Financial Management “Grant Reform”

725 17th St N.W.

Washington, DC, 20025

**REFERENCE:** “OMB Advance Notice of Proposed Guidance, Published in Federal Register, Vol. 77, No. 39, Tuesday, February 28, 2012; Comment extension published in Federal Register, Vol. 77, No. 58, Monday, March 26, 2012.”

To whom it may concern:

The \_\_\_\_\_ Tribe hereby provides the following comments in response to the February 28, 2012 Federal Register Announcement regarding the “Reform of Federal Policies Relating to Grants and Cooperative Agreements; cost Principles and Administrative Requirements (including Single Audit Act).”

As a Federally recognized Tribe, we have a unique Government-to-Government relationship grounded in numerous historical, political, legal, moral, and ethical considerations. Treaties and laws, together with court decisions, have defined our relationship with the Federal Government such that it is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous regulations that implement and support this trust relationship with Indian Tribes. An integral element of the Government-to-Government relationship is that consultation occur with Indian Tribes on issues that impact them and that Indian Tribes participate in the decision making process to the greatest extent possible. Tribes and Tribal Organizations will be directly affected by many of these changes and we therefor respectfully request that the Office of Management and Budget (OMB) allow Tribes to participate in the decision making process on these issues to the greatest extent possible; including Negotiated Rulemaking on the Final Rule before any changes are made.

The current notice is preliminary for purposes of soliciting comments and assisting the OMB in conceptualizing the proposed rule that will be announced later. There must also be a Public comment period associated with that announcement with any changes being published as a Final Rule at a later date. These changes relate to OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 C.F.R. Parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E. As part of this ongoing review, OMB will consider

the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into Title 2 of the Code of Federal Regulations.

Our comments follow the general presentation in the Federal Register Announcement.

**Single Audits:**

The recommendations related to Single Audits are focused on proper stewardship of Federal funds. The \_\_\_\_\_ Tribe supports the OMB Proposal to increase the threshold for applicability of the Single Audit Act from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements to two for audits of organizations that expend between \$1 million and \$3 million in Federal funds. We recommend, however that a provision be added to put the Government on notice that when a Tribe expends less than \$1 million of Federal Funds, the 365 day notice period provided in the ISDEAA begins when the Tribe notifies the Government in writing that it is not required to undergo a Single Audit for a particular fiscal year.

The \_\_\_\_\_ Tribe is concerned that the OMB's proposal to increase the focus of the auditor on the integrity of funds is accompanied by another proposal to expand the guidance on audit follow-up for Federal Agencies. This is absolutely counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard. Many Tribes enjoy a good relationship with the Federal Government because we maintain clean audits and based on that fact alone Federal monitoring (and the costs associated with that monitoring) have been reduced. We do not want to see an increase in monitoring as a tradeoff on this issue.

**Cost Principles:**

The \_\_\_\_\_ Tribe supports consolidating cost principles into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. We believe that Indian Tribes maintain a unique Government-to-Government relationship with the Federal Government and therefore there ought to be consideration for some Tribal specific cost principles as well. These cost principles should be developed in consultation with all Indian Tribes.

The \_\_\_\_\_ Tribe has grave concerns that the imposition of a "flat rate" for indirect costs is nothing more than another attempt by the Federal Government to shirk its responsibility to pay its full share of Tribal indirect costs. We do not object to this being offered as an option or a pilot project so that we can see how it will be implemented and whether there is

any mutual benefit, but we strenuously object to the implementation of any flat rate system that does not also include a requirement for full funding of Tribal indirect costs.

Finally, there are other proposals for consideration that could result in a savings to both Tribes and the Government that do not necessarily require imposing a Flat Rate system to include. These include Allowability for certain items of cost without prior Federal approval and Reduced time-and-effort recordkeeping/reporting. The \_\_\_\_\_ Tribe supports both of these initiatives.

**Administrative Requirements:**

As with the consolidation of the Circulars containing cost principles, the \_\_\_\_\_ Tribe would be in support of consolidating the Circulars and regulations as long as we are consulted on specific provisions to be included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included. For example, the OMB is proposing preaward consideration of a Tribe's past experience in making a new award. Numerous provisions in both the Title I regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256) and the Title V regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445) expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in the Government's decision of whether or not to award a Self-Determination Agreement. The OMB must recognize these regulations and incorporate appropriate exceptions for Tribes and Tribal Organizations consistent with ISDEAA Federal Regulations.

Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and we support these types of changes.

In summary, the OMB proposals contained in the February 28, 2012 Federal Register Notice are a combination of good and bad as far as we are concerned. There are opportunities for streamlining that will benefit both Tribes and the Federal Government and we have reason to be optimistic that the Obama administration will be more open and transparent and honest in consulting with us than some previous administrations have been. It will take a concerted effort on the part of both Tribes and the OMB to recognize the rights we already have under the ISDEAA and all its implementing regulations. Tribes should not lose ground that was gained at great expense and effort in the regulation development processes because the OMB streamlining is aimed at a "one size fits all" approach. The Federal Government has an obligation to consult with Tribes and provide opportunities for our active participation. The \_\_\_\_\_ Tribe recommends the OMB use "Negotiated Rulemaking" for re-drafting all of these regulations in order to provide Tribal participation in the decision making processes; to maintain the kind of

transparency this Administration has embraced; and to ensure equity for all affected stakeholders.

Thank you for the opportunity to submit our comments on this important issue.

# Proposed Rules

Federal Register

Vol. 77, No. 58

Monday, March 26, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Chapters I and II

#### Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles And Administrative Requirements (Including Single Audit Act)

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB).

**ACTION:** Advance notice of proposed guidance; extension of comment period.

**SUMMARY:** The Office of Management and Budget (OMB) is extending the comment period for the Advance Notice of Proposed Guidance on Reform of Federal Policies Relating to Grants and Cooperative Agreements; cost principles and administrative requirements (including Single Audit Act). The original comment period was scheduled to end on March 29, 2012. With this document, OMB is extending the time period in which to provide public comments until April 30, 2012. This will allow interested parties additional time to analyze the issues and prepare their comments.

**DATES:** To be assured of consideration, comments must be received by OMB at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (E.S.T) on April 30, 2012.

**ADDRESSES:** In submitting commenting, please refer to file "Grant Reform". You may submit comments using one of the following three alternatives (please choose only one of these three alternatives):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *By express or overnight mail.* You may send written comments to the following address only: Office of Management and Budget, 725 17th St NW., Washington DC, 20025, Attention:

Office of Federal Financial Management "Grant Reform".

3. *By regular mail.* You may mail written comments to the following address only: Office of Management and Budget, 725 17th St NW., Washington DC, 20025, Attention: Office of Federal Financial Management "Grant Reform". Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we strongly encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Comments will be most useful if they are presented in the same sequence (and with the same heading) as the section of this notice to which they apply. Also, if you are submitting comments on behalf of an organization, please identify the organization. Finally, the public comments received by OMB will be posted on OMB's Web site and at <http://www.regulations.gov> (follow the search instructions on that Web site to view public comments). Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

**FOR FURTHER INFORMATION CONTACT:** Victoria Collin at (202) 395-7791 for general information.

**SUPPLEMENTARY INFORMATION:** OMB is extending the comment period for its advance notice of proposed guidance, which published in the *Federal Register* on February 28, 2012, at 77 FR 11178. The original comment period was scheduled to end on March 29, 2012, and this document extends it to April 30, 2012.

Copies of the OMB Circulars that are discussed in this notice are available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/). Circulars A-110, A-21, A-87, and A-122 are also available at 2 CFR at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfrv1\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title02/2cfrv1_02.tpl). The Cost Principles for Hospitals are in the regulations of the Department of Health and Human Services at 45 CFR part 75, appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals*), at <http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1.pdf>.

[www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1.pdf).

Daniel I. Werfel,  
Controller.

[FR Doc. 2012-7056 Filed 3-22-12; 11:15 am]

BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2011-1211; Airspace Docket No. 11-ASO-40]

#### Proposed Amendment of Class E Airspace; Memphis, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E Airspace at Memphis, TN, as the West Memphis Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Memphis International Airport. This action also would remove West Memphis Municipal Airport, West Memphis, TN from the existing airspace surrounding Memphis International Airport, Memphis, TN. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, Comments must be received on or before May 10, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

**ADDRESSES:** Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE., Washington, DC 20590-0001; Telephone: 1-800-647-5527; Fax: 202-493-2251. You must identify the Docket Number FAA-2011-1211; Airspace Docket No. 11-ASO-40, at the beginning of your comments. You may also submit and review received

# Proposed Rules

Federal Register

Vol. 77, No. 39

Tuesday, February 28, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Chapters I and II

#### Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)

**AGENCY:** Executive Office of the President, Office of Management and Budget (OMB).

**ACTION:** Advance Notice of Proposed Guidance.

**SUMMARY:** In his November 23, 2009, Executive Order 13520 on *Reducing Improper Payments* and his February 28, 2011, Presidential Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, the President directed the Office of Management and Budget (OMB) to work with Executive Branch agencies; state, local, and tribal governments; and other key stakeholders to evaluate potential reforms to Federal grants policies. Consistent with the Administration's commitment to increasing the effectiveness and efficiency of Federal programs, the reform effort seeks to strengthen the oversight of Federal grant dollars by aligning existing administrative requirements to better address ongoing and emerging risks to program outcomes and integrity. The reform effort further seeks to increase efficiency and effectiveness of grant programs by eliminating unnecessary and duplicative requirements. Through close and sustained collaboration with Federal and non-Federal partners, OMB has developed a series of reform ideas that would standardize information collections across agencies, adopt a risk-based model for Single Audits, and provide new administrative approaches for determining and monitoring the allocation of Federal funds.

**DATES:** To be assured of consideration, comments must be received by OMB at one of the addresses provided below, no

later than 5 p.m. Eastern Standard Time (E.S.T) on March 29, 2012.

**ADDRESSES:** In submitting comments, please refer to file "Grant Reform". You may submit comments using one of the following three alternatives (please choose only one of these three alternatives):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the instructions under the "more Search Options" tab.

2. *By express or overnight mail.* You may send written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington, DC 20025, Attention: Office of Federal Financial Management "Grant Reform".

3. *By regular mail.* You may mail written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington DC, 20500, Attention: Office of Federal Financial Management "Grant Reform". Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we strongly encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Comments will be most useful if they are presented in the same sequence (and with the same heading) as the section of this notice to which they apply. Also, if you are submitting comments on behalf of an organization, please identify the organization. Finally, the public comments received by OMB will be posted on OMB's Web site and at <http://www.regulations.gov> (follow the search instructions on that Web site to view public comments). Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

Copies of the OMB Circulars that are discussed in this notice are available on OMB's Web site at [http://www.whitehouse.gov/omb/circulars\\_default/](http://www.whitehouse.gov/omb/circulars_default/). The Cost Principles for Hospitals are in the regulations of the Department of Health and Human Services at 45 CFR part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and*

*Contracts with Hospitals*), at <http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-vol1/pdf/CFR-2011-title45-vol1.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Victoria Collin at (202) 395-7791 for general information.

**SUPPLEMENTARY INFORMATION:** This advance notice outlines the reform ideas for which OMB seeks public comment. These comments will assist OMB in its development in the coming months of a further Federal Register notice, to be published for comment later this year, which would propose specific revisions to existing requirements. These reform ideas relate to, and could result in proposed revisions to the following government-wide issuances: OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 CFR parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 CFR Part 74, Appendix E. As part of this ongoing review, OMB will consider the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into title 2 of the Code of Federal Regulations.

The reform ideas would be applicable to grants and cooperative agreements that involve state, local, and tribal governments as well as universities and nonprofit organizations. To the extent that current OMB circulars on cost principles cover all awards including contracts for these entities, reforms to cost principles will equally apply to all Federal awards including contracts, except for those contracts that are subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201. CAS-covered contracts will continue to be subject to the relevant requirements under the Federal Acquisition Regulation (FAR). Single Audit Act requirements will continue to apply to all Federal awards including contracts, though cost reimbursement contracts may continue to be subject to additional audit requirements.

## I. Objectives and Background

### A. Objectives

As the President made clear in Executive Order 13563 of January 18, 2011, on *Improving Regulation and*

*Regulatory Review* (76 FR 3821; January 21, 2011; <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>), each Federal agency must “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations” and, to that end, it is important that Federal agencies identify those “rules that may be outmoded, ineffective, insufficient, or excessively burdensome,” and “modify, streamline, expand, or repeal them in accordance with what has been learned.” The President reinforced his commitment in Executive Order 13579 of July 11, 2011 on *Regulation and Independent Regulatory Agencies* (76 FR 41587; July 14, 2011; <http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf>).

As in other areas involving Federal requirements, the President is committed to eliminating requirements in the financial assistance arena that are unnecessary and reforming those requirements that are overly burdensome. As part of this commitment, the President believes that the Federal government has an obligation to eliminate roadblocks to effective performance in carrying out and completing grants and cooperative agreements. Essential to this reform effort is reducing “red tape” that is attached to the more than \$600 billion the Federal government spends annually in the form of grants and cooperative agreements. These awards provide important benefits and services to the public, and the awards go to state, local and tribal governments as well as to institutions of higher education and non-profit organizations. In order to ensure that the public receives the most value for the tax dollars spent, it is essential that these programs function as effectively and efficiently as possible, and that there be a high level of accountability to prevent waste, fraud, and abuse.

To this end, the President on February 28, 2011, issued his *Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, (Daily Comp. Pres. Docs.; <http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf>). In the Memorandum, the President explained that “Federal program requirements over the past several decades have sometimes been onerous, and they have not always contributed to better outcomes. With input from our State, local, and tribal partners, we can, consistent with law, reduce unnecessary regulatory and

administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost.” In addition to other actions, the President instructed the OMB Director to “[r]eview and where appropriate revise guidance concerning cost principles, burden minimizations, and audits for State, local, and tribal governments in order to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.”

At the same time that the Federal Government must remove unnecessary and overly burdensome requirements that interfere with efficient and effective program performance, another Presidential priority is “intensifying efforts to eliminate payment error, waste, fraud, and abuse” in Federal programs, as the President emphasized in Executive Order 13520 of November 20, 2009, on *Reducing Improper Payments* (74 FR 62201; November 25, 2009; <http://www.gpo.gov/fdsys/pkg/FR-2009-11-25/pdf/E9-28493.pdf>). Accordingly, as the President explained, it is important for Federal agencies “to more effectively tailor their methodologies for identifying and measuring improper payments to those programs, or components of programs, where improper payments are most likely to occur.” Moreover, the elimination of unnecessary and overly burdensome requirements can advance the goal of strengthened program integrity, by enabling resources to be focused on those activities that are most effective at reducing payment errors and eliminating waste, fraud and abuse. Accordingly, in his February 2011 Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments*, the President directed Federal agencies to “[w]ork with State, local, and tribal governments to identify the best opportunities to realize efficiency, promote program integrity, and improve program outcomes, including opportunities, consistent with law, that reduce or streamline duplicative paperwork, reporting, and regulatory burdens and those that more effectively use Federal resources across multiple programs or States.”

The reform ideas described below are being considered as approaches for pursuing these objectives.

The purpose of this notice is to solicit public input on a range of ideas for reforming the requirements that govern the management of Federal financial assistance awards. OMB is interested in

receiving broad public feedback on these ideas. Based on the feedback that is received, as well as on the ongoing discussions among Federal agencies (including their Inspectors General) as well as with other stakeholders, OMB in the coming months will develop a set of proposed amendments that, later this year, will be published for public comment in the *Federal Register*. The public comments on that proposed set of revisions will in turn be considered as OMB develops a final notice that will adopt a set of reforms. Following the implementation of these reforms, OMB will continue to monitor their impacts to evaluate whether (and the extent to which) the reforms are achieving their desired results, and OMB will consider making further modifications as appropriate.

In addition, OMB is considering implementing these reforms through the development and issuance of an integrated set of guidelines that would be contained in one consolidated circular, in which current administrative requirements that currently vary by type-of-recipient would be streamlined into one set of common requirements, while at the same time some provisions that vary among different types of recipients would be retained. The goal of such a streamlining would be to increase the consistency, and decrease the complexity, in how the Federal Government’s financial assistance programs are administered. Among other benefits, this will make it easier for applicants and recipients of Federal awards to understand and implement these requirements.

## B. Background

The reform ideas outlined in this notice reflect input from a year of work by the Federal and non-Federal financial assistance community. In response to the President’s direction that OMB and Federal agencies identify ways to make the oversight of Federal funds more effective and more efficient, OMB worked with the Office of Science and Technology Policy (OSTP) to convene meetings with both Federal and non-Federal stakeholders to discuss possible ideas for reform efforts. These meetings resulted in OMB receiving a series of reform ideas at the end of August 2011 that have since been further developed as described below. In addition, over 150 comments were received from the university and research community. These comments are publicly available at [http://rbm.nih.gov/a21\\_task\\_force.htm](http://rbm.nih.gov/a21_task_force.htm).

On October 27, 2011, the OMB Director issued Memorandum M-12-01,

*Creation of the Council on Financial Assistance Reform* (<http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-01.pdf>). To “create a more streamlined and accountable structure to coordinate financial assistance,” the Memorandum established the interagency Council on Financial Assistance Reform (COFAR) as a replacement for two Federal boards (the Grants Policy Council and the Grants Executive Board). The 10-member COFAR is composed of OMB’s Office of Federal Financial Management (Co-Chair); the eight largest grant-making agencies, which are the Departments of Health and Human Services (a Co-Chair), Agriculture, Education, Energy, Homeland Security, Housing and Urban Development, Labor, and Transportation; and one additional rotating member to represent the perspectives of other agencies, which for the first two-year term is the National Science Foundation.

Since the COFAR’s first meeting on November 4, 2011, it has worked to formulate and further develop reform ideas for consideration to streamline and improve financial management policy for Federal assistance awards. These reform ideas are presented below, in Part II of this notice. In Part III, specific questions are posed regarding these reform ideas, for which comments are especially invited, along with other comments.

## II. Reform Ideas for Comment

OMB invites comments from the public on all issues addressed in this advance notice. We invite those interested in responding to answer all of the questions posed or to choose to respond only to those questions of greatest interest to them. This feedback will assist us in fully considering issues and developing policies. In addition, the public is invited to suggest additional reform ideas for our consideration. Finally, we should note that, as this is an advance notice, the fact that OMB is requesting public comment on a reform idea does not mean that OMB has concluded that the reform idea necessarily should be pursued. That is why public comment is being requested, so that OMB and Federal agencies (and other stakeholders) can have the benefit of the public’s input, views and perspectives at this stage of the process, as we continue to evaluate these ideas for reform.

The reform ideas under discussion are outlined below in three main categories:

- *Section A:* reforms to audit requirements (Circulars A–133 and A–50)

- *Section B:* reforms to cost principles (Circulars A–21, A–87, and A–122, and the Cost Principles for Hospitals)

- *Section C:* reforms to administrative requirements (the government-wide Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

### *A. Reforms to Audit Requirements (Circulars A–133 and A–50)*

This section discusses ideas for changes that would be made to the audit guidance that is contained in Circular A–133 on *Audits of States, Local Governments, and Non-Profit Organizations* and in Circular A–50 on *Audit Follow-up*. The following are ideas for reform that have been raised and discussed.

#### *1. Concentrating audit resolution and oversight resources on higher dollar, higher risk awards.*

Changing the Single Audit framework could enable agencies to focus their oversight and follow-up resources in the most efficient and effective way for targeting improper payments, waste, fraud, and abuse. The following oversight guidelines are an illustrative example of the form that a revised framework for the Single Audit requirement might take:

*A. Entities that expend less than \$1 million in Federal awards* would not be required to conduct a Single Audit. This would be an increase in the current threshold of \$500,000, below which entities are currently not required to conduct Single Audits.

*B. Entities that expend between \$1 million and \$3 million in Federal awards* would be required to undergo a more focused version of the Single Audit, which would differ from current Single Audit requirements in that once a major program determination has been made, auditors would review only two compliance requirements for those programs. Allowable and unallowable costs would always be one of the required compliance requirements, and agencies would have the discretion to select the second compliance requirement for each of their programs as they deem most appropriate. OMB would provide guidance to agencies that this second compliance requirement should be the one that, for the particular program, would best target the risk of improper payments or waste, fraud, and abuse.

*C. Entities that expend more than \$3 million in Federal awards* would undergo a full Single Audit. These Audits would be strengthened per the ideas in reforms 2–5 (below) to give agencies better tools to reduce improper

payments and to eliminate waste, fraud, and abuse.

Raising the threshold for a Single Audit (from \$500,000 to \$1 million) would reduce the administrative burden for audited entities and for auditing agencies, allowing the agencies to concentrate their audit oversight and follow-up resources more closely on other entities that are higher-dollar and higher-risk. Focusing the Single Audit requirement (for entities expending between \$1 million and \$3 million) to two compliance requirements would enable agencies to tighten their scrutiny on the highest risk areas of program oversight while at the same time reducing the burden—for both agencies and recipients—associated with collecting and resolving audit findings in lower risk areas. This would narrow the scope of compliance-related information that agencies receive for entities expending below \$3 million. Finally, maintaining the full Single Audit for entities expending more than \$3 million would ensure that agencies still receive full Single Audit compliance information for higher dollar recipients, and that they will be able to shift more resources to provide the necessary level of oversight to those recipients.

#### *2. Streamlining the universal compliance requirements in the Circular A–133 Compliance Supplement.*

For all entities that undergo a full Single Audit, the universal compliance requirements listed in the Circular A–133 Compliance Supplement could be streamlined to focus on proper stewardship of Federal funds.

This could be done, for example, by emphasizing—in the universal compliance requirements—those elements that address improper payments, waste, fraud, abuse, and program performance, while streamlining other elements. Under this approach, a subset of compliance requirements would be targeted for increased testing, larger sample sizes, or lower levels of materiality. Examples of these could include: Allowable or unallowable activities and costs, eligibility, reporting, selection of subrecipients and subrecipient monitoring, special tests and provisions, period of availability of Federal funds, and compliance of procurement with suspension and debarment policies. At the same time, other compliance requirements could either be made optional for testing (depending on the material effect of that requirement on the program) or could have smaller sample sizes and higher levels of materiality. In addition, Federal agencies would have the ability, on a

program-specific basis to place higher emphasis through the Compliance Supplement process on those elements (no longer universal) which the agency believes are relevant to prevent waste, fraud, or abuse.

Refocusing the Single Audit Compliance Supplement to reduce the number of types of compliance requirements tested would both reduce the audit burden on recipients and provide agencies with more risk-based audits. This refocusing of the Single Audit is intended to allow agencies to concentrate their audit resolution and oversight resources on the requirements most essential to managing waste, fraud, and abuse and reducing improper payments. This could result in a more focused audit that produces the findings needed to ensure accountability, while relieving the burden of audit work on issues that are secondary to the integrity of funds. Agencies could add back specific requirements under program specific tests and provisions where necessary. This would limit the types of compliance information that Federal agencies routinely receive from the Single Audit process.

### 3. *Strengthening the guidance on audit follow-up for Federal awarding agencies.*

This reform approach could include changes along the following lines:

- Requiring agencies to designate a senior accountable agency official to oversee the audit resolution process;
- Requiring agencies to implement audit-risk metrics including timeliness of report submission, number of audits that did not have an unqualified auditor opinion on major programs, and number of repeat audit findings;
- Encouraging agencies to engage in cooperative audit resolution with recipients; and
- Encouraging agencies to take a pro-active approach to resolving weaknesses and deficiencies, whether they are identified with single specific programs or cut across the systems of an audited recipient.

To improve audit follow-up, the Federal Government would digitize Single Audit reports into a searchable database to support analysis of audit results by Federal agencies and pass-through entities.

Strengthening audit resolution policies should result in agencies taking a more pro-active and collaborative approach towards following-up on audit findings, which should result in a decrease in audit findings and program risk over time. This collaborative approach would be envisioned more as a mediation process between agencies and recipients, with informal assistance

as needed, rather than a more formal provision of training or technical assistance. As underlying programmatic weaknesses are resolved and repeat findings reduced, both recipients' and agencies' audit burdens will be lessened. This may require more resources from Federal agencies as they work to strike the right balance on pro-active oversight. A web-based searchable database of Single Audit findings will provide a key tool to improve the utility of audits.

### 4. *Reducing burden on pass-through entities and subrecipients by ensuring across-agency coordination.*

In order to reduce redundancy and burden, this reform idea would involve making more explicit the existing requirement that Federal awarding agencies are responsible for coordinating additional audits of a recipient entity with the Federal cognizant or oversight agency for audit for that entity. This would in no way impact the ability of Inspectors General to conduct audit work as deemed necessary in accordance with the Inspector General Act of 1978, as amended.

Ensuring that audits are coordinated across Federal agencies, and that agencies conduct audit follow-up for internal-control issues at those subrecipients which receive the majority of their Federal funds through direct Federal assistance, would reduce the number of subrecipients for which pass-through entities engage in follow-up efforts that could duplicate the Federal efforts.

### 5. *Reducing burdens on pass-through entities and subrecipients from audit follow-up.*

For those situations in which an entity receives a majority of its Federal funds through direct grants from the Federal government, and some Federal funds through subawards, the reform idea would be to require Federal agencies to conduct audit follow-up of the subawards for those audit findings regarding financial or internal control systems that are not specific to the program delivery of the subawards.

Such a change to Circular A-133 would be aimed at eliminating duplicative audit follow-up work performed by a pass-through entity without providing significant additional work to Federal agencies that already will be following-up on these same audit findings, as well as at simplifying the follow-up for the subrecipient. Pass-through entities that give subawards would no longer be required to resolve financial and internal control issues but could instead focus on the programmatic requirements of the

subawards they make. Subrecipients would not be required to negotiate with both the Federal government and the pass-through entity over the same financial and control issues that affect both types of awards. However, once the Federal government has resolved the financial and control issues with the subrecipient, a pass-through entity that awarded a subaward would be responsible for audit follow-up monitoring of these general findings to ensure that the subrecipient complies with the audit resolution as it applies to the subgrants made by the primary grantee. The subrecipient's Federal awarding agency would perform a normal audit follow-up for the financial and control issues, issuing management decisions on these audit findings, and provide a process to make these management decisions and a Federal contact person readily available to the affected pass-through entities.

### B. *Reforms to Cost Principles (Circulars A-21, A-87, and A-122, and the Cost Principles for Hospitals)*

This section discusses ideas for changes that would be made to the OMB cost-principle circulars that have been placed at 2 CFR Parts 220, 225, and 215 (Circulars A-21, *Cost Principles for Educational Institutions*; Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*; and Circular A-122, *Cost Principles for Non-Profit Organizations*), and to the Cost Principles for Hospitals that are in the regulations of the Department of Health and Human Services at 45 CFR Part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals*). The following are ideas for reform that have been raised and discussed.

#### 1. *Consolidating the cost principles into a single document, with limited variations by type of entity.*

#### 2. *For indirect ("facilities and administrative") costs, using flat rates instead of negotiated rates.*

- One option would be to establish a mandatory flat rate that is discounted from the recipient's already negotiated rate. This approach could significantly reduce the burden associated with indirect cost rate calculation and negotiation, as well as reduce overall indirect costs.

- Another option would give recipients the option of accepting a flat rate or negotiating a rate. Recipients with a previously negotiated rate may have the additional option of accepting a discounted rate from their already negotiated rate. Recipients with a previously negotiated rate may have the

additional option of accepting a discounted rate from their already negotiated rate. Discounted rates could be maintained for up to a four-year period with minimal documentation, or raised through negotiation with full documentation.

Under both options, OMB would work with cognizant federal agencies and the HHS Division of Cost Allocation to develop a list of flat rates and discount factors by entity type. The aim of such approaches would be to reduce negotiation costs for agencies while reducing—for agencies, recipients, and subrecipients—the administrative burden associated with rate preparation and negotiations. Entities with CAS-covered contracts would still be required to use a negotiated rate for those contracts.

Establishing either a mandatory or optional flat indirect cost rate could reduce administrative burdens on recipients associated with documenting, justifying, negotiating, and maintaining support for a negotiated rate. This burden can be substantial depending on the extent to which an entity analyzes, documents, and negotiates a rate or group of rates. By setting the flat rate at a lower level than the negotiated rate would have been, this approach could also reduce indirect-costs expenses incurred by Federal agencies. OMB would continue to work with stakeholders to address potential challenges to implementation, including finding the right algorithms for setting the rates and reducing overall indirect costs.

One consideration here is the issue of whether Federal agencies would actually end up incurring additional indirect costs if each grantee had the option of choosing to use a flat rate or a negotiated rate. The concern here is that, through their choices, grantees would apply those rates that would result in the highest indirect cost reimbursement, with these increases in indirect costs thereby resulting in less funding being available for direct programmatic activities. OMB is seeking input on how to structure a reform approach in a way that would ensure a reduction in overall indirect costs.

### 3. *Exploring alternatives to time-and-effort reporting requirements for salaries and wages.*

This reform idea would involve working with the Federal grant and Inspector General (IG) communities to identify risks associated with justifications for salaries and wages and to identify possible alternative mechanisms for addressing those risks beyond current time-and-effort reporting requirements.

This would include consideration of the ideas described in existing pilots or development of new pilots to accountably document the allowability and allocability of salaries and wages charged to Federal awards as direct costs. The first three pilots under consideration are those of the Federal Demonstration Partnership ([http://sites.nationalacademies.org/PGA/fdp/PGA\\_055834](http://sites.nationalacademies.org/PGA/fdp/PGA_055834)); the Department of Labor's Workforce Innovation Fund ([http://www.doleta.gov/grants/find\\_grants.cfm](http://www.doleta.gov/grants/find_grants.cfm)); and the Department of Education's Request for Ideas (<http://www.ed.gov/blog/2011/10/granting-administrative-flexibility-for-better-measures-of-success/>).

Considering and developing pilot programs that provide alternatives to time-and-effort reporting could result in substantial reductions of the administrative burden currently associated with compliance, while enhancing compliance and stewardship. OMB will work with IGs and other stakeholders to ensure that any alternative provides appropriate levels of auditable and accountable information.

### 4. *Expanding application of the Utility Cost Adjustment for research to more higher education institutions.*

This reform idea would expand application of the 1.3% indirect (facilities and administration) costs adjustment for utility costs of research to more institutions of higher education.

The Utility Cost Adjustment (UCA) is currently provided to 65 institutions of higher education for research grants. Under this proposal, the UCA would be extended to other institutions that submit to their cognizant Federal agency a utility cost study justifying an increase in utility cost reimbursement and an approved plan to reduce their utility costs over time. OMB would work with Department of Defense's Office of Naval Research and the Department of Health and Human Services' Division of Cost Allocation to develop guidelines and a format for the cost studies to ensure standardization across entities.

Extending the opportunity to apply for the UCA to more institutions of higher education for research is aimed at resolving the equitable treatment concern that has been raised by those academic institutions that have not been offered this opportunity since the UCA became available to some institutions in 1998. This revision would address that concern while still ensuring cost accountability and reduced utility consumption by requiring a utility cost study (to be developed by OMB in coordination with DOD's Office of Naval Research and HHS' Division of Cost

Allocation) as well as a plan to reduce utility costs in order for the adjustment to be approved. If all remaining institutions apply for and receive this adjustment, this revision could raise Federal indirect cost reimbursements for utility costs by up to approximately \$80 million per year once fully implemented.

### 5. *Charging directly allocable administrative support as a direct cost.*

This reform idea would involve clarifying the circumstances under which institutions of higher education, and other entities where appropriate, may charge directly allocable administrative support as a direct cost. Included are project-specific activities such as managing substances/chemicals, data and image management, complex project management, and security.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

### 6. *Including the cost of certain computing devices as allowable direct cost supplies.*

This reform idea would involve explicitly including the cost of computing devices not otherwise subject to inventory controls (i.e. cost less than the organization's equipment threshold) as allowable direct cost supplies. Applicants for Federal awards would be required to document these items as a separate line-item in their budget requests, but would not be required to conduct the more stringent inventory controls in place for equipment.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

### 7. *Clarifying the threshold for an allowable maximum residual inventory of unused supplies.*

This reform idea would involve harmonizing cost principles with existing language in Circulars A-110 and A-102 to clarify that \$5,000 is the threshold for an allowable maximum residual inventory of unused supplies that may be retained for use on another

Federal award at no cost, as long as the cost was properly allocable to the original agreement at the time of purchase.

This clarification would be aimed at minimizing confusion about appropriate disposal or re-expensing of unused inventories at the conclusion of an award and at ensuring consistency in the application of the cost principles in the circulars.

**8. *Eliminating requirements to conduct studies of cost reasonableness for large research facilities.***

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct studies of cost reasonableness for large research facilities. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**9. *Eliminating restrictions on use of indirect costs recovered for depreciation or use allowances.***

This reform idea would involve eliminating the restrictions on the use of the portion of indirect cost recoveries associated with depreciation or use allowances. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**10. *Eliminating requirements to conduct a lease-purchase analysis for interest costs and to provide notice before relocating federally sponsored activities from a debt-financed facility.***

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct a lease-purchase analysis to justify interest costs, and to notify the cognizant Federal agency prior to relocating federally sponsored activities from a facility financed by debt. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

**11. *Eliminate requirements that printed "help-wanted" advertising comply with particular specifications.***

This reform idea would update the cost principles to reflect the media now used for those notices.

**12. *Allowing for the budgeting for contingency funds for certain awards.***

This reform idea would involve clarifying that budgeting for contingency funds associated with a Federal award for the construction or upgrade of a large facility or instrument, or for IT systems, is an acceptable and necessary practice; that the method by

which contingency funds are managed and monitored is at the discretion of the Federal funding agency. Contingency related amounts should not be included in recipient proposed budgets for specific awards or in the actual award documents; risk-adjusted total cost estimates should be based on verifiable supporting data consistent in compliance with Generally Accepted Accounting Principles (GAAP) and with standard project-management practices. Rebudgeting out of these funds would not be allowable.

Allowing recipients to budget for contingency funds is aimed at clarifying and harmonizing the rules on what is deemed standard project management practice and to encourage development of shared IT services. There could be some cost implications to projects if and when the contingency funds become necessary spending.

**13. *Requesting that the Cost Accounting Standards Board (CASB) consider increasing the minimum threshold for disclosure statements.***

This reform idea would involve OMB requesting that the Cost Accounting Standards Board consider the following—

- Increasing the minimum threshold for institutions of higher education to file a disclosure statement of cost-accounting standards from \$25 million to \$50 million in Federal awards per year based on the average of the entity's most recent three years;
- Establish that the requirement no longer applies if an entity drops below that threshold and is not required to file under current Cost Accounting Standards Board (CASB) requirements described at 48 CFR 9903.202-1; and
- Remove exhibit A of Circular A-21 from future guidance.

OMB would also request that the CASB reassess its rule to increase the \$25 million procurement contract threshold for institutions of higher education to conform to the \$50 million threshold for other types of entities. OMB would also link the requirement to future adjustments to the CASB rule.

**14. *Allowing for excess or idle capacity for certain facilities, in anticipation of usage increases.***

This reform idea would allow for excess or idle capacity in consolidated data centers, telecommunications, and public safety facilities. In order to consolidate data centers and operate in a cloud-based environment, data centers require excess capacity at their creation in order to accommodate increases in usage later on. Other telecommunications facilities and public safety projects have similar characteristics. Federal sharing of these

costs would be contingent on the grantee providing a multi-year plan for reaching full capacity of the data center. The OMB cost principles currently do not address the excess or idle capacity in consolidated data centers.

**15. *Allowing costs for efforts to collect improper payment recoveries.***

This reform idea would involve revising OMB guidelines to allow costs for expenses associated with the effort to collect improper payment recoveries or related activities, if such costs are specifically approved or directed by the awarding agency.

This change would be aimed at meeting the President's directive to improve the Federal government's ability to recover improper payments. While this could result in increased upfront costs to the agencies, the intention here is that awarding agencies would approve these costs only when the anticipated amount of recovered funding more than justifies the expense of collection.

**16. *Specifying that gains and/or losses due to speculative financing arrangements are unallowable.***

This reform idea would involve specifying that gains and/or losses, related to debt arrangements on capital assets, due to speculative financing arrangements (such as hedges, derivatives, etc.) are unallowable. Due to the volatile nature of such instruments, all derivative and hedging instruments would be unallowable, including derivative and hedging instruments embedded in other contracts, whether used for risk management purposes, forecasting, calculations used for the preparation of proposals for federal funding (e.g., forecasting contingencies) or otherwise, and regardless of whether related to assets, liabilities, or expenses.

This change would be aimed at updating the cost principles to address all types of debt arrangements.

**17. *Providing non-profit organizations an example of the Certificate of Indirect Costs.***

This reform idea would involve providing non-profit organizations an example of the required certification (Certificate of Indirect Costs) similar to the information that is already provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

**18. *Providing non-profit organizations with an example of indirect cost proposal documentation requirements.***

This reform idea would involve providing, for non-profit organizations, an example of indirect cost proposal

documentation requirements that are similar to the information provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

*C. Reforms to Administrative Requirements (the Common Rule implementing Circular A-102; Circular A-110; and Circular A-89)*

This section discusses ideas for changes that would replace the government-wide common rule implementing Circular A-102 on *Grants and Cooperative Agreements with State and Local Governments* and that would revise Circular A-110 on *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations* (2 CFR part 215) and Circular A-89 on *Catalog of Federal Domestic Assistance*. The following are ideas for reform that have been raised and discussed

1. *Creating a consolidated, uniform set of administrative requirements.*

This reform idea would involve consolidating the administrative requirements in OMB Circulars A-102 and A-110 into a uniform set of administrative requirements for all grant recipients. This uniform guidance would continue to include limited exceptions by type of recipient.

2. *Requiring pre-award consideration of each proposal's merit and each applicant's financial risk.*

This reform idea would involve requiring agency consideration of the merit of each proposal and the financial risk associated with each applicant prior to making an award. (Many agencies currently award grants based on merit review under current law and policy. The proposed change would be a reform in the sense that such merit-based review would be required for the first time in an OMB circular.) Indicators of risk would include past financial, internal control, and programmatic performance. The outcome of the review should affect award decisions, and risk assessment may also affect terms and conditions. This would formalize a "best practice" that is already conducted by many agencies, and agencies will continue to have the discretion to determine the format of the review. This reform would not apply to formula grants.

This change would be aimed at ensuring greater transparency in the award making process as well as higher quality of awarded projects, and at delivering improved results with less risk of waste, fraud, or abuse during implementation.

In evaluating risks, agencies would be required to consider factors that could include: Financial stability; quality of management and internal control systems and the ability to meet the management standards prescribed in the amended guidance; history of performance; Federal award Single Audit reports and findings for previous awards; and any other factors that may affect the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients. Merit reviews may be implemented according to the individual practices of each agency. This reform would include explicit authority for agencies to modify award decisions as well as the terms and conditions of any award based on the findings of a risk review.

Articulating the requirement for this review in an OMB circular could ensure greater transparency in the award making process and higher quality of awarded projects. There may be some additional burden for agencies that do not currently conduct such reviews to incorporate them into their processes, and could also result in additional information collections from recipients.

3. *Requiring agencies to provide 90-day notice of funding opportunities.*

This reform idea would involve requiring Federal agencies to provide 90-day advance forecast of funding opportunities in an updated Catalog of Federal Financial Assistance (CFFA) that will replace the existing Catalog of Federal Domestic Assistance (CFDA). This would not affect the requirement to post actual notices of funding opportunities on Grants.gov.

This change would be aimed at providing applicants with additional time and information with which to prepare financial assistance applications, thereby improving the relevance and quality of proposals submitted to Federal agency programs. Exceptions to the 90-day notice requirement would include statutory obligations or exigent circumstances that dictate a shorter timeframe. The new enhanced CFFA will include both domestic and international funding priorities for grants, loans, insurance, and other types of financial assistance, including information about projected amounts of available funds and a summary of general eligibility requirements. These notices of intended priorities may change based on modifications to funding cycles and/or statutory authorities.

4. *Providing a standard format for announcements of funding opportunities.*

This reform idea would incorporate into circulars the existing requirement for certain categories of information to be published in announcements of public funding opportunities. See OMB Memorandum M-04-01 of October 15, 2003 ([http://www.whitehouse.gov/omb/memoranda\\_fy04\\_m04-01](http://www.whitehouse.gov/omb/memoranda_fy04_m04-01)), which announced the Federal Register notice that OMB published at 68 FR 58146 (October 8, 2003).

Among other information, the opportunity announcement must include specific eligibility or qualification information and a clear description of all criteria used in agency review of applications for the grant opportunity. Further, agencies must disclose all terms and conditions that may be attached to the funded awards and general information regarding post-award reporting requirements, except for award specific terms and conditions determined during the pre-award process. Providing this level of transparency at the solicitation stage assists applicants in determining not only whether they are eligible and/or qualified for an award, but also the scope of recipient responsibilities associated with an award.

5. *Reiterating that information collections are subject to Paperwork Reduction Act approval.*

This reform idea would involve reiterating that information collection requests are limited to standardized data elements approved by OMB, as required under the Paperwork Reduction Act of 1995 (PRA), plus OMB-approved exceptions for all applications and reports.

Continued efforts at data standardization are intended to improve governmentwide program management; enhance transparency in Federal awards; and streamline and reduce the reporting burden, including the time necessary to comply with application and reporting requirements. For both applications and post-award reporting, there are current requirements that agencies use standard OMB-approved governmentwide information collections, with deviations approved by OMB on a limited basis. Continued data standardization will also support OMB and Federal agency efforts to develop a comprehensive, end-to-end grants reporting system that allows applicants and recipients to apply for and report on all Federal grants at one location. Approved collections would be designed to include necessary information for program measurement and monitoring. This reform would in some cases limit Federal agencies' ability to require unique information

collections for particular program, except where required by statute.

### III. Questions for Comment

The list below includes the questions about these reform ideas that address issues which are of greatest interest to OMB at this stage of the process. Comments addressing any other concerns, and other types of feedback, are also welcome.

In addition, as was explained at the beginning of this notice, the public comments received by OMB will be posted on OMB's Web site and at <http://www.regulations.gov>. Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

#### A. Overarching Questions

1. Which of these reform ideas would result in reduced or increased administrative burden to you or your organization?

2. Which of these reform ideas would be the most or least valuable to you or your organization?

3. Are there any of these reform ideas that you would prefer that OMB not implement?

4. Are there any reform ideas, beyond those included in this notice, that OMB should consider as a way to relieve administrative burden?

#### B. Single Audits

1. In general terms, how important are Single Audits to your entity or to entities you audit for subrecipient monitoring?

2. In general terms, what impacts would the following changes to the Single Audit framework have on your organization in administrative burden and in ability to provide oversight to subrecipients?

a. Increasing the Single Audit threshold to \$1 million?

b. Requiring a more focused Single Audit (with only two compliance requirements) for any entity expending between \$1 million and \$3 million?

c. Requiring full Single Audits for any entity expending more than \$3 million?

3. Should the Single Audit threshold(s) be increased, and if so, to what extent?

4. Which types of currently universal Single Audit compliance requirements do you think are most essential to identifying and mitigating waste, fraud, and abuse?

5. What processes or tools should the Federal Government implement in order to ensure better coordination in the Single Audit oversight by Federal agencies and pass-through agencies,

including in the resolution of audit findings that cut across multiple agencies' programs?

#### C. Cost Principles

1. On indirect cost rates:

a. Would administrative burden be reduced by having an indirect cost rate in place for 4 years?

b. Are there any existing Federal or state level statutory/regulatory/agency requirements that would prohibit recipients from using a "flat" indirect cost rate if it were proposed?

2. What are your views on the following types of indirect cost rates?

a. A flat rate

b. Longer term for negotiated rates to be in effect

c. A flat rate that would be a fixed percentage of the organization's already existing negotiated rate

3. In general terms, what would be the cost implications of implementing each of the following reforms, and/or of all of them together?

a. The proposed clarifications to allowable charges of directly allocable administrative support as a direct cost. As currently envisioned, reforms would clarify that project-specific activities such as managing substances/chemicals, data and image management, and security are allowable.

b. Allowing costs associated with recovery of improper payments.

c. Allowing excess capacity for telecommunications and public safety projects?

4. Would you be potentially interested in participating in a piloted alternative for time-and-effort reporting? Is there a permanent change to time-and-effort requirements that you recommend OMB consider?

5. If your organization is an educational institution that does not currently receive the Utility Cost Adjustment (UCA), what are the general factors that your organization would likely consider in deciding whether to conduct a cost study, and complete a plan to reduce utility costs, in order to justify receiving the UCA?

6. For organizations with CAS-covered contracts, are there differences between what is envisioned here and the standards for CAS-covered contracts in the FAR that you believe could be challenging to address?

#### D. Administrative Requirements

1. What areas of past performance should be considered as part of a Federal agency assessment of recipient risk (e.g., fulfillment of statutory matching requirements, record of sound financial management practices with no significant or material findings or

weaknesses, ability to meet established deadlines)?

2. What specific standards should be considered in Federal agencies' evaluation of merit prior to making Federal awards?

a. How should these be applied?

b. What elements and what source materials should be looked at?

3. With respect to the existing government-wide standard information collection requests (ICRs) for grant applications and grant reporting—

a. Do these ICRs provide necessary information to enable Federal agencies to review grant applications or to monitor the progress of grant awardees?

b. Are these ICRs unnecessarily burdensome and, if so, in what way(s)?

4. Should there be sets of standard data elements based on the type of assistance being provided (e.g. research, construction, social services, scholarships or aid program awards, etc.)?

5. Are there any system issues and associated costs that may arise as a result of implementing the new pre-award and post award requirements? In general, what is the rough order of relative magnitude of these costs?

Daniel I. Werfel,

Controller.

[FR Doc. 2012-4521 Filed 2-27-12; 8:45 am]

BILLING CODE P

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

[Docket No. EERE-2010-BT-STD-0043]

RIN 1904-AC36

#### Energy Conservation Program: Public Meeting and Availability of the Framework Document for High-Intensity Discharge Lamps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of public meeting and availability of the Framework Document.

**SUMMARY:** The U.S. Department of Energy (DOE) is initiating the rulemaking and data collection process to consider establishing energy conservation standards for high-intensity discharge (HID) lamps. Accordingly, DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and the issues it will address in this rulemaking proceeding. DOE welcomes written comments from the

**SAMPLE TRIBAL COMMENT LETTER ON FEDERAL REGISTER:**

April 11, 2012

Office of Management and Budget

ATTENTION: Office of Federal Financial Management “Grant Reform”

725 17th St N.W.

Washington, DC, 20025

**REFERENCE:** “OMB Advance Notice of Proposed Guidance, Published in Federal Register, Vol. 77, No. 39, Tuesday, February 28, 2012; Comment extension published in Federal Register, Vol. 77, No. 58, Monday, March 26, 2012.”

To whom it may concern:

The \_\_\_\_\_ Tribe hereby provides the following comments in response to the February 28, 2012 Federal Register Announcement regarding the “Reform of Federal Policies Relating to Grants and Cooperative Agreements; cost Principles and Administrative Requirements (including Single Audit Act).”

As a Federally recognized Tribe, we have a unique Government-to-Government relationship grounded in numerous historical, political, legal, moral, and ethical considerations. Treaties and laws, together with court decisions, have defined our relationship with the Federal Government such that it is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous regulations that implement and support this trust relationship with Indian Tribes. An integral element of the Government-to-Government relationship is that consultation occur with Indian Tribes on issues that impact them and that Indian Tribes participate in the decision making process to the greatest extent possible. Tribes and Tribal Organizations will be directly affected by many of these changes and we therefor respectfully request that the Office of Management and Budget (OMB) allow Tribes to participate in the decision making process on these issues to the greatest extent possible; including Negotiated Rulemaking on the Final Rule before any changes are made.

The current notice is preliminary for purposes of soliciting comments and assisting the OMB in conceptualizing the proposed rule that will be announced later. There must also be a Public comment period associated with that announcement with any changes being published as a Final Rule at a later date. These changes relate to OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 C.F.R. Parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E. As part of this ongoing review, OMB will consider

the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into Title 2 of the Code of Federal Regulations.

Our comments follow the general presentation in the Federal Register Announcement.

**Single Audits:**

The recommendations related to Single Audits are focused on proper stewardship of Federal funds. The \_\_\_\_\_ Tribe supports the OMB Proposal to increase the threshold for applicability of the Single Audit Act from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements to two for audits of organizations that expend between \$1 million and \$3 million in Federal funds. We recommend, however that a provision be added to put the Government on notice that when a Tribe expends less than \$1 million of Federal Funds, the 365 day notice period provided in the ISDEAA begins when the Tribe notifies the Government in writing that it is not required to undergo a Single Audit for a particular fiscal year.

The \_\_\_\_\_ Tribe is concerned that the OMB's proposal to increase the focus of the auditor on the integrity of funds is accompanied by another proposal to expand the guidance on audit follow-up for Federal Agencies. This is absolutely counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard. Many Tribes enjoy a good relationship with the Federal Government because we maintain clean audits and based on that fact alone Federal monitoring (and the costs associated with that monitoring) have been reduced. We do not want to see an increase in monitoring as a tradeoff on this issue.

**Cost Principles:**

The \_\_\_\_\_ Tribe supports consolidating cost principles into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. We believe that Indian Tribes maintain a unique Government-to-Government relationship with the Federal Government and therefore there ought to be consideration for some Tribal specific cost principles as well. These cost principles should be developed in consultation with all Indian Tribes.

The \_\_\_\_\_ Tribe has grave concerns that the imposition of a "flat rate" for indirect costs is nothing more than another attempt by the Federal Government to shirk its responsibility to pay its full share of Tribal indirect costs. We do not object to this being offered as an option or a pilot project so that we can see how it will be implemented and whether there is

any mutual benefit, but we strenuously object to the implementation of any flat rate system that does not also include a requirement for full funding of Tribal indirect costs.

Finally, there are other proposals for consideration that could result in a savings to both Tribes and the Government that do not necessarily require imposing a Flat Rate system to include. These include Allowability for certain items of cost without prior Federal approval and Reduced time-and-effort recordkeeping/reporting. The \_\_\_\_\_ Tribe supports both of these initiatives.

**Administrative Requirements:**

As with the consolidation of the Circulars containing cost principles, the \_\_\_\_\_ Tribe would be in support of consolidating the Circulars and regulations as long as we are consulted on specific provisions to be included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included. For example, the OMB is proposing preaward consideration of a Tribe's past experience in making a new award. Numerous provisions in both the Title I regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256) and the Title V regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445) expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in the Government's decision of whether or not to award a Self-Determination Agreement. The OMB must recognize these regulations and incorporate appropriate exceptions for Tribes and Tribal Organizations consistent with ISDEAA Federal Regulations.

Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and we support these types of changes.

In summary, the OMB proposals contained in the February 28, 2012 Federal Register Notice are a combination of good and bad as far as we are concerned. There are opportunities for streamlining that will benefit both Tribes and the Federal Government and we have reason to be optimistic that the Obama administration will be more open and transparent and honest in consulting with us than some previous administrations have been. It will take a concerted effort on the part of both Tribes and the OMB to recognize the rights we already have under the ISDEAA and all its implementing regulations. Tribes should not lose ground that was gained at great expense and effort in the regulation development processes because the OMB streamlining is aimed at a "one size fits all" approach. The Federal Government has an obligation to consult with Tribes and provide opportunities for our active participation. The \_\_\_\_\_ Tribe recommends the OMB use "Negotiated Rulemaking" for re-drafting all of these regulations in order to provide Tribal participation in the decision making processes; to maintain the kind of

transparency this Administration has embraced; and to ensure equity for all affected stakeholders.

Thank you for the opportunity to submit our comments on this important issue.