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March 31, 2009

FAX Cover Sheet

TO: Ms. Mabel Echols  
OIRA  
OMB

FROM: *Ameyall*  
Michael F. Walsh  
InsideNGO

SUBJ: Federal Regulatory Review  
Federal Register dated March 17

Pages Cover page plus 3

Comments from InsideNGO.



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Office of Information and Regulatory Affairs  
Records Management Center  
Office of Management and Budget  
Attn: Mabel Echols  
[Oira\\_submission@eop.gov](mailto:Oira_submission@eop.gov)

Subject: Federal Regulatory Review  
Reference: Federal Register dated March 17, 2009, Vol. 74, No. 50, Pages 11383-11384

Dear Ms. Echols,

Thank you for providing the opportunity to suggest means of enhancing the Federal regulatory review process. InsideNGO is a membership organization that represents Chief Financial Officers, Chief Information Officers, Human Resources, Grants and Contracts directors, and other administrative professionals from more than 235 PVOs and NGOs that receive grants, cooperative agreements and contracts from USAID and other donors for international development and humanitarian relief overseas. Our members are very attentive to the rules and regulations published in the Federal Register as they relate to federal funds for their work overseas. The high degree of risk and the operational challenges of working in developing countries, often in insecure and dangerous environments enhances the concern NGOs have that the proposed rules are appropriate for their environment.

InsideNGO, formerly the Association of PVO Financial Managers (APVOFM) and the Personnel Coop, has responded to numerous proposed policies and engaged constructively in their shaping. Our experience has been both positive and negative in response to the Federal rule-making process. Accordingly, we offer the following suggestions:

1. **OMB in general, and OIRA in particular, must be more vigilant in assuring that policy-making entities are constructively engaging with the public.**

We appreciated OIRA's hosting of a face-to-face "Listening Meeting" between USAID and its grantee community on the proposed USAID marking and branding rules (22 CFR 226.91). The policy-making process was very contentious up to that point. The OIRA hosted meeting was a watershed moment in a protracted process that ultimately lead to more workable marking/branding rules overseas.



Unfortunately, we have not seen similar support for the public's interests on another contentious issue, namely the proposed Partner Vetting System (PVS) which is poised to be rolled-out on April 3, 2009. USAID has not followed adequate policy making review procedures, relying on Privacy Act and Paperwork Reduction Act notices rather than comply with the Administrative Procedures Act.

We believe OMB/OIRA should not simply serve as a venue for publicizing federal policy. OMB/OIRA must hold Federal Departments and Agencies to a standard of constructive engagement on the issues identified by the public.

**2. OMB must police informal policies issues by Executive Departments and Agencies.**

We have witnessed countless initiatives by a variety of offices within Executive Departments and Agencies to impose policies that have not been formally vetted through the federal regulatory process – and are clearly contradictory to established rules and regulations. In the past, OIRA has recognized the importance of proper development of such guidance. We recommend that OMB sponsor an Ombudsman type function that can be contacted by the public when confronted with a policy that has been imposed without adherence to a rule-making process.

Many members of InsideNGO are often confronted with new “policies” issued by USAID offices overseas imposing restrictions beyond the standards established in OMB Circular A-122, or more frequent and detailed reporting requirements than permitted in OMB Circular A-110 or USAID's implementation of it in 22 CFR 226. The Department of State considers A-110 advisory, rather than mandatory, putting all their awardees at risk of non-compliance to their policy whims.

**3. OMB should establish a standard of transparency for Procurement Executives in Executive Departments and Agencies.**

We have found walls have been built around many procurement-related policy-making offices in Federal agencies. While these offices are responsible for developing workable policies, they do not provide themselves means to engage with the ultimate implementers. This is especially disconcerting because these Washington offices are far removed from the operational realities of the field. We have also found that the policy offices are issuing guidance and information to agency staff that affect contract and grant awardees, but this information is not being shared with the public.

We support attempts by agencies to engage directly, both formally and informally, in public venues. USAID hosts Partners Day with contractors and grantees and the Department of State conducts conferences with their

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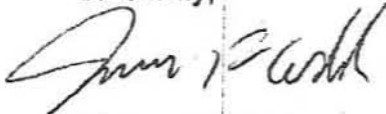
awardees. Nonetheless, OMB should establish as a standard for Procurement Executives a means of consulting with the public and assuring that policies affecting awardees are fully disclosed.

**4. OMB must revisit the "major rule" standard as it applies to the Congressional Review Act.**

We are aware of no assistance-related regulations issued by USAID, or any other Federal agency funding overseas programs, that have been deemed to be "major" rules/regulations. We believe these assessments are incorrect. USAID has avoided formal rule-making for the Partner Vetting System by deeming it not "major," nonetheless the security and civil liberties of NGO personnel are at serious risk if the PVS is implemented. Similarly, USAID, State and DoD are imposing a reporting requirement on NGOs in Iraq that jeopardize the security posture of these organization which rely on maintaining their distance from US Government association. Again, OMB has agreed with State that this is not a "major" rule, but the lives of employees working with NGOs in Iraq are in greater risk because of this poorly formed policy that did not benefit from public input. Too often Executive Departments and Agencies are driving policies with huge implications through this loop hole.

We applaud OMB's efforts to hold itself and the new Administration to a high standard of transparency and consultation.

Sincerely,



Michael F. Walsh  
Director of Programs – Finance, Grants & Contracts  
InsideNGO