

January 20, 2012

Ms. Kimberly Krizanovic
U.S. Department of Energy
Office of the Chief Financial Officer
4th Floor, Suite 4A-236
1000 Independence Avenue
Washington, DC 20585

Dear Ms. Krizanovic:

The American Institute of Certified Public Accountants (AICPA) is the national, professional association of CPAs, with 369,000 CPA members worldwide in business and industry, public practice, government, education, student affiliates and international associates. It sets ethical standards for the profession and U.S. auditing standards for audits of private companies, nonprofit organizations, federal, state, and local governments. It also develops and grades the Uniform CPA Examination.

On behalf of the AICPA and its Governmental Audit Quality Center, we appreciate the opportunity to comment on the Request for Information issued by the Department of Energy (DOE) as published in the December 21, 2011, *Federal Register*. These comments represent a compilation of feedback received from several of our members that have experience in performing program compliance audits of for-profit entities expending federal financial assistance subject to the *U.S. Department of Energy Audit Guidance: For-Profit Recipients* (Audit Guidance). The *Federal Register* notice states that DOE seeks comment and information on this audit guidance to potentially improve the usefulness and clarity of the guidance.

General Comment. With a document of this size, we were disappointed that DOE did not provide a markup of changes from the current version of the Audit Guidance to more easily identify the changes DOE is as proposing to improve its usefulness and clarity. This made it very challenging for commenters to easily provide feedback. Some changes could only be identified by closely reviewing and comparing the 2010 Audit Guidance to the 2011 Audit Guidance. DOE may not receive comments in certain areas because reviewers would not have easily been able to identify a particular change (e.g., see the following comment).

Change in the Definition of a DOE Award May Lead to an Increase in Audit Effort and Related Costs for Certain Auditees Without Commensurate Benefit to the DOE. We noted the following definition of a DOE Award on page 5 of Part I of the proposed 2011 DOE Audit Guidance.

“DOE Federal Award - DOE financial assistance that non-Federal entities receive directly from DOE. It does not include procurement contracts used to buy goods

or services from vendors. (When multiple awards are made to a recipient for projects under the same CFDA number, the term “award” shall **NOT** [emphasis] refer to the awards in aggregate, and the audit of the awards shall be conducted at the individual award level, NOT at the aggregate CFDA level.) All references to awards throughout this audit guidance are in reference to DOE awards only and are not in reference to awards from other Federal agencies.”

We disagree with this change. The above definition represents a significant difference from the same definition of a DOE federal award on pages 1 - 2 of Part I of the 2010 Audit Guidance which states that “when multiple awards are made to a recipient or subrecipient for projects under the same CFDA number, the term “award” **SHALL** [emphasis] refer to the awards in aggregate, and the audit of the awards shall be conducted at the aggregate CFDA level.”

This definitional change does not allow auditors to aggregate all expenditures under all awards with a common CFDA and treat them as a single award. This could significantly impact the scope of the DOE compliance audit for certain auditees because auditors provide compliance opinions on each award they are required to audit. The amount of audit effort and related audit cost directly varies with the number of awards that an auditor has to opine on. Therefore, sufficient, appropriate evidence will have to be obtained for each award at a level to support an opinion. The following is an example of an auditee situation where this new definition will increase the number of awards that the auditor has to audit and the related audit effort and costs.

Auditee A has \$2 million in the DOE share of expenditures under Catalog of Federal Domestic Assistance (CFDA) number 81.086. These expenditures consist of four separate awards of \$500,000. Under the 2010 Audit Guidance, the auditor would have audited the \$2 million in DOE expenditures in the aggregate across CFDA number 81.086 and given an opinion on that aggregate amount. Therefore, there would likely have been one compliance sample for each of the direct and material compliance requirements.

Under the proposed 2011 Audit Guidance for this same situation, the auditor would have to audit each \$500,000 award individually and provide four separate opinions on compliance. This would result in the auditor likely having to draw four compliance samples for each of the direct and material compliance requirements for each award. This would be a significant increase in audit effort.

The increase in audit effort and related audit costs in this illustrated situation is due to each of the four awards having to be separately audited. Additionally, it is our view that this increase in audit effort is not likely to be offset by the reduced number of applicable compliance requirements that were included in Part III of the proposed 2011 Audit Guidance (see the following comment).

If the DOE is proposing this change because it believes that auditing individual awards within the same CFDA number provides the DOE with more assurance than auditing the awards at the aggregate level for that same *CFDA* number, we would challenge that assumption. In our view, the end result of the proposed change would basically be that the auditor audits against the same compliance criteria four times with four different samples as opposed to one time with one

sample across all the awards within the same CFDA number. Further, many times an additional award within the same CFDA number is used by a federal agency to denote only a different federal fiscal year of the source of the award and has the exact same compliance requirements as a different award with the same CFDA number. Unless DOE can demonstrate that the requirements for individual awards within the same CFDA are significantly different and that the proposed 2011 Audit Guidance sufficiently directs the auditor to test certain unique compliance requirements across each of the different awards within each of the CFDA numbers, the benefit of this change to the DOE will not be commensurate with the incremental cost of additional auditing.

Finally, DOE should consider that the definition of a "federal program" in a compliance audit under Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, is generally applied at the aggregate CFDA number. We recommend that DOE closely review the compliance requirements within the various awards within the various CFDA numbers subject to audit to determine whether such a departure from generally accepted federal agency convention is justified for the unique purposes of this compliance audit.

Reduction in Compliance Requirements May Not Equate to Significant Reduction in Audit Effort. The compliance requirements that were removed in the proposed 2011 Audit Guidance include requirements such as the Davis-Bacon Act, eligibility, program income, relocation assistance and real property acquisition and certain of the special tests and provisions related to the Endangered Species Act and the National Historical Environmental Protection Act. These compliance requirements may not have been considered direct and material to some auditees in the 2010 audit cycle. Therefore, they would not have been tested. As a result, removing them from the Audit Guidance may not achieve a significant reduction in audit effort depending on the individual facts and circumstances of an engagement. The cash management compliance requirement that was also removed from the proposed 2011 Audit Guidance was likely more consistently considered direct and material to various auditees in the 2010 audit cycle. Therefore, its removal could ultimately result in less audit effort. However, because of the revised definition of federal award (see previous comment), any reduction of effort relating to the removal of cash management may be more than offset by the additional work that would be necessary to provide opinions for each award.

Impact of Proposed Audit Guidance on Compliance Audits Completed or Underway.

Implementing the proposed 2011 Audit Guidance, particularly in light of the revised definition of a DOE award, may also be problematic in practice because the audit fee for the 2011 compliance audit has likely already been agreed on by the auditor and auditee based on the contents and the audit scope inherent in the 2010 Audit Guidance. This is problematic because many entities expending DOE awards that are subject to this guidance are also public companies where audit related fees are required under Sarbanes-Oxley to be agreed on in advance with the auditee's audit committee. For example, the audit related fees for audit services for the year ended December 31, 2011, were likely agreed to with the audit committee in the spring and/or summer of 2011. We are not aware of any communication from the DOE to its award recipients that the proposed 2011 Audit Guidance could contain a revision that may significantly impact the audit scope and related audit costs for certain entities.

Effective Date for 2011 Fiscal Years Problematic. Part I of the 2011 Audit Guidance states that the requirements and guidance set forth in the Audit Program are effective for all for-profit recipients' 2011 fiscal years (i.e., for any fiscal year ending in 2011) and thereafter. This effective date is very problematic. There are a number of entities subject to the Audit Guidance with June 30, 2011, and September 30, 2011, fiscal year ends. A number of these entities have already submitted their audit reporting package within the required deadlines in the 2010 Audit Guidance. The final version of the 2011 Audit Guidance should indicate whether or not these previously submitted audit reporting package submissions are acceptable. Additionally, there are a number of entities with a September 30, 2011, year-end whose audit reporting packages are not due until March 31, 2012. Many of these entities have not only agreed on their audit fees for their 2011 compliance audit (see previous comment), but their auditors have substantially completed their fieldwork and have audited awards based on the 2010 Audit Guidance. There could even be audits of entities with a December 31, 2011, year-ends that are not aware of this DOE effort and whose compliance audits are underway.

The final 2011 Audit Guidance should address the above situations in light of the proposed effective date. For example, do engagements with fiscal year ends prior to December 31, 2011, that have not submitted their compliance audit reporting packages but whose audits are underway or nearly complete as of the date of the release of the final 2011 Audit Guidance have to follow it? In answering this question, DOE should recognize that the proposed definition of a DOE award is such that it may have a substantial impact on the number of awards that the auditor would have to go back and audit. This could be a significant burden for an entity with, for example, a September 30, 2011, year-end where the fees were agreed on and the audit executed based on having to audit one award. The auditor would have to revise the audit approach and perform additional audit procedures for the individual awards.

Given all these factors, we recommend that the final 2011 Audit Guidance be made applicable only for auditees with fiscal years ending on or after a certain cutoff date within 2011 where it is likely that the audits have not substantially begun. Special case-by-case exemptions should be provided for audits that have begun or are nearly complete after the cutoff date. Any entity with a fiscal year ending in 2011 prior to such a cutoff date that would choose to implement the 2011 Audit Guidance (assuming DOE would provide this option), should be given additional time beyond the standard six months to submit the audit reporting package given the challenges outlined above with respect to agreeing on fees and the need to address potential changes in the scope of the audit. Finally, depending on when DOE actually issues the final 2011 Audit Guidance, consideration should be given to extending the six month submission deadline for all December 31, 2011, year-end audits.

Future Changes to Audit Guidance Should Be Accomplished More Timely. If DOE is planning to issue an annual update to its Audit Guidance, it should consider issuing the 2012 version as early in the calendar year as possible to avoid many of the concerns and issues described above.

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We appreciate the opportunity to provide these comments to representatives of the DOE. If you would like to further discuss these comments, you can contact me at mfoelster@aicpa.org or 202-434-9259.

Sincerely,

A handwritten signature in black ink that reads "Mary M. Foelster". The signature is written in a cursive, flowing style.

Mary M. Foelster
Director
AICPA Governmental Auditing and Accounting

cc: Thomas Griffin