

January 24, 2001
Attn: PL 106-107 Comments
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 517-D
Washington, D.C. 20201

Re: **Comments on Public Law 106-107**

I am writing to provide The Nature Conservancy's input on Public Law 106-107, the Federal Financial Assistance Management Improvement Act of 1999 (P.L. 106-107).

Thank you for the opportunity to comment. As a representative of the Conservancy, I attended the consultation meeting on Federal plans for implementing the requirements of P.L. 106-107 for nonprofits on October 20, 2000, at HHS. We appreciated the opportunity to participate in this meeting to hear first-hand from representatives of the Chief Financial Officer Council's Grants Management Committee about the implementation process for P.L. 106-107.

The Nature Conservancy is an international, non-profit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The Conservancy has more than 1,000,000 individual members and 1,900 corporate associates. We currently have programs in all 50 states and in 27 foreign countries. To date, we have protected more than 12 million acres in the 50 states and Canada, and have helped local partner organizations preserve 60 million acres overseas. The Conservancy owns and manages more than 1,340 preserves throughout the United States - the largest private system of nature sanctuaries in the world. Sound science and strong partnerships with public and private landowners to achieve tangible and lasting results characterize our conservation programs.

In fiscal year 2000, ending June 30, 2000, the Conservancy reported \$37.3 million in total expenditures of Federal awards in our A- 133 audit. The Conservancy receives grants, cooperative agreements and contracts from Federal agencies for management, restoration, stewardship and inventory of both Conservancy owned and Federally owned properties throughout the country. We receive land acquisition funds from the Federal government as well. In addition, our International Division receives USAID funds to assist nongovernmental organizations and government organizations in creating fully functioning protected areas in Latin America and the Caribbean through the Parks in Peril program by providing financial and technical assistance.

The Conservancy receives funds from USAID, the Department of Defense, the Department of Interior, the Department of Agriculture, the Department of Commerce, the Department of Transportation, the Department of Energy, the Department of State, the Environmental Protection Agency, the Tennessee Valley Authority, and the National Fish and Wildlife Foundation as well as Federal pass-through dollars from countless state and local partners. We have approximately 700 active Federal awards and approximately 150 active Federal pass-through awards. All 50 of the Conservancy's state field offices, the Conservancy's International Division, Conservation Science Division and heritage programs receive Federal funds.

Since 1998, the Conservancy has had in place a "Grants Service Network," the foundation of which are 28 Grants Specialists located throughout the country in various Conservancy offices. These Grants Specialists are responsible for the review of all proposals and draft agreements for all government-funded projects in addition to administering those same projects that receive funding. The Grants Specialists work in conjunction with local Conservancy project managers as well as Conservancy attorneys to negotiate the terms of the award and to carry out the project once finalized.

In general, we support the Federal government's efforts to streamline and simplify the application, administrative, and reporting procedures for Federal financial assistance programs. We are pleased to see the Federal government move toward a streamlined process in its financial assistance programs and believe that this will greatly benefit all Federal financial assistance recipients. The Federal government is a powerful partner of the Conservancy and we value the relationships our staff has created with local agency officials throughout the country.

We believe that many of our concerns as a recipient of Federal financial assistance can be addressed through this simplification process. With successful implementation of P.L. 106-107, including effective communication of the changes made and training opportunities for both grantors and grantees, we hope the simplification process for Federal financial assistance programs will result in more streamlined processes and procedures and improved clarity of the relevant rules and regulations.

Our general concerns about grants administration are as follows.

Inconsistent Acceptance of Indirect Cost Recovery. There are agencies/programs that do not allow the Conservancy to recover any indirect costs, yet USAID, our cognizant agency, has approved the Conservancy's indirect cost rate, and the Conservancy complies with the requirements of OMB Circulars A-133 and A-122. It is not at all clear that these agencies/programs have the discretion or authority to

decide that their program does not fund indirect costs. Indirect costs are a legitimate cost of doing business for all organizations. Consistent funding of indirect costs would help the Conservancy tremendously.

Identification on Incoming Wire Payments. The Debt Collection Improvement Act of 1996 requires that all federal payments made by an agency must be made by electronic funds transfer. For most payments from the Federal government, the Conservancy is paid by electronic funds transfer. Oftentimes, though, payments come to the Conservancy with no identifying information. It becomes our responsibility to track the payment within our systems. Each agency seems to have its own guidelines as to what information is transmitted in the wire. For example, the EPA payment office in Las Vegas will no longer put our invoice number on the transmittal, and now requires the Conservancy to assign a sequence number to each agreement. In the past, EPA provided either the agreement number or our invoice number on the wire transmittal, enabling the Conservancy to easily identify to which EPA agreement the payment should be allocated. A standard set of information across agencies to be transmitted with the wire transfer would significantly ease the burden in identifying the source of payment for organizations working with multiple federal agencies and hundreds of assistance agreements.

Use of Incorrect Awarding Instrument. We have seen a growth in the use of "Orders for Goods and Services" or purchase orders by the federal agencies with which we work in the place of grants or cooperative agreements when, clearly, under 31 U.S.C. Chapter 63, the latter awarding instruments are appropriate. The use of these purchase orders appears to accelerate as each fiscal year draws to a close and awarding agencies are anxious to obligate current year funds. Because they incorporate provisions of the Federal Acquisition Regulation, the purchase orders disadvantage the Conservancy in such areas as payment provisions and intellectual property rights.

For example, the Conservancy has been unsuccessful to date in getting grant agreements instead of purchase orders from the USFWS Barrington, Illinois, office. The reason, according to the local USFWS grants contact, is that the regional office in Minneapolis has imposed a deadline for accepting grant proposals. The deadline comes at or even before the local USFWS office knows how much money they will have to disburse for the fiscal year. In the end, if the Conservancy wants the financial support of USFWS, we must accept a purchase order. Under 31 U.S.C. 6304, the appropriate awarding instrument in this case is a grant agreement. The end result is a series of one-year purchase orders for a multi-year project, making the project more

difficult to administer for both USFWS and the Conservancy.

Growing Demand for Documentation of Receipt Expenses. There is a growing demand by some agencies for detailed documentation of individual expenses that must accompany invoices. Yet, the Conservancy is a "low risk" recipient as a result of successful A-133 audits over the past three years. As just one example, in September 2000, the Conservancy signed a grant agreement with USFWS in Anchorage, Alaska, in which we were required to provide detailed documentation in support of our invoices to the agency. We were unable to negotiate this out of the agreement.

States' Administration Requirements Added to "Pass Through" Awards. In addition to funds received directly from Federal agencies, the Conservancy works with state partners that pass on Federal funds to us through various state programs. More often than not, the state imposes stricter requirements than OMB Circular A- 110 requires. For example, the State of Tennessee has set the equipment dollar value threshold at \$ 1,000 as compared to the Federal government's threshold of \$5,000. States that reimburse staff for travel expenses on a per-diem basis are often reluctant to change their agreements to reflect the Conservancy's policy of reimbursing employees for actual travel costs. Finally, states often have a longer record retention period than the three years required by OMB Circular A- I 10. The additional and often more restrictive requirements imposed by states create an added layer of administrative burdens when carrying out Federal financial assistance programs.

Concerns about the Recently Revised Challenge Cost Share Agreement.

Service Contract Act as a Condition of Challenge Cost Share Agreements. The Forest Service recently amended its Challenge Cost Share (CCS) Agreement template. In particular, there is now a provision applying the Service Contract Act to all "contracts" for services under a CCS (the Forest Service uses the word "contract" very broadly; it applies to all awards and subawards). The provision also requires that all contracts must be awarded on a competitive basis. It is our understanding that the addition of these requirements was not mandated by statute or regulation.

The Service Contract Act responsibilities create an additional administrative burden for grantee recipients that contract out any portion of the project. The requirement for competition for all

contracts contravenes OMB Circular A- I 10 that requires competition "when practicable."

Terms and Conditions of Challenge Cost Share Agreements. At a more general level, the USFS' Challenge Cost Share Agreement is an assortment of requirements - taking some requirements from Federal financial assistance rules and some from the Federal Acquisition Regulation. Compliance is difficult and requires extra effort even though the type of work done under the Challenge Cost Share Agreements is generally exactly the same as that done under cooperative agreements and grants from other agencies.

Thank you for the opportunity to comment on P.L. 106-107. If you have any questions about concerns raised in this letter, please feel free to contact me at (703) 841-4222 or by e-mail at htoma@tnc.org.

Sincerely,

Manager, Grants Services