

**EVALUATION OF FOREST SERVICE GRANTS  
TO THE NATIONAL FOREST FOUNDATION  
WASHINGTON, D.C.  
REPORT NO. 08801-1-Te**

**FEBRUARY 1998**

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**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF INSPECTOR GENERAL - AUDIT  
SOUTHWEST REGION  
ROOM 324, FEDERAL OFFICE BUILDING  
101 SOUTH MAIN STREET  
TEMPLE, TEXAS 76501**

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## EXECUTIVE SUMMARY

### EVALUATION OF FOREST SERVICE GRANTS TO THE NATIONAL FOREST FOUNDATION REPORT NO. 08801-1-Te

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#### PURPOSE

We performed an evaluation of Forest Service (FS) assistance agreements made by the FS with the National Forest Foundation (NFF) amounting to \$7.4 million. We reviewed the NFF because it was established under legislation drafted by the FS, funded from FS appropriations, and former and current FS employees worked as its Executive Director, field representative, consultant, and director of membership. Our objectives were to determine if the statutory and regulatory authorities for making grants were followed and to evaluate the FS' administration of the grants.

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#### RESULTS IN BRIEF

The NFF was established with the expectation that it would receive private gifts enabling it to conduct activities that support and provide substantial benefits to the FS. However, almost 7 years after enactment of the NFF Act, and expenditures of over \$4.1 million in Federal funds, private financial support for the NFF has declined and reliance on funding from the FS for its administrative costs has increased.

We are concerned that if the NFF continues to operate in this manner, the benefits of the relationship between the FS and the NFF will be outweighed by the existing and potential costs of the relationship. The net fiscal benefit received by the FS has only averaged slightly over \$179,000 per year as of December 31, 1996.

We also determined that the FS needs to improve its controls and oversight of the NFF. The FS did not manage the agreements with the NFF in accordance with laws and regulations. As a result, \$1.2 million in Federal funds was not matched by the NFF, and the

NFF has not implemented a financial management system meeting assistance agreement standards.

Although we questioned the cost benefits and practices of the NFF, we determined the regulatory authority for making grants was being followed.

## KEY RECOMMENDATIONS

If additional appropriations under the NFF Act are authorized, we recommend the FS initiate actions to reduce the NFF's dependency on appropriated funds for administrative expenses and that the NFF be required to reimburse the FS for the value of in-kind services provided by the FS. This recommendation is to ensure self-sufficiency on the part of the NFF and to contain costs and save Federal funds.

We recommend the recovery of \$1.2 million in Federal funds not matched by the NFF, that NFF's financial management system meet standards required in the assistance agreements, and the NFF submit revised Federal financial documents that are prepared in accordance with applicable regulations and reflect the total costs of the assistance agreements.

## AGENCY POSITION

FS officials agreed with the audit conclusion regarding the need for the NFF to achieve financial and administrative independence from the FS. To this end, they indicated to the Interior and Related Agencies Appropriations Committee their plans to completely phase out administrative grants to the NFF by the year 2000. The Committee's acceptance of this plan is noted in the report language of the fiscal year (FY) 1998 House/Senate Conference Report language. Also, they committed to improve oversight and controls of the NFF to ensure that it fully complies with all laws and regulations in administration of all Federal grants and works with the NFF to develop a sound financial management system.

Further, they stated the continued success of the NFF as their nonprofit partner is vital to the interest and future of the FS, and that they will make every effort to implement all of the recommendations discussed and ensure that the NFF operates within the legal requirements of the legislative act.

Although FS officials generally concurred with the audit conclusions, they did not agree to implement all recommendations. Their planned corrective actions are stated in the Findings and Recommendations section of the report under the heading "FS Response." Our comments outlining actions necessary to reach a management decision follows under the heading "OIG Position." Additional action is needed with regard to Recommendations Nos. 1a, 2a, 2b, 3b, 3c, 3d, 4a, 4b and 5.

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# INTRODUCTION

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## BACKGROUND

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The NFF Act was enacted on November 16, 1990, establishing the NFF as a charitable and nonprofit corporation domiciled in the District of Columbia.

The purposes of the NFF are to

- ! encourage, accept, and administer private gifts of money, and of real and personal property for the benefit of, or in connection with, the activities and services of the FS;
- ! undertake and conduct activities that further the purposes for which units of the National Forest System are established and are administered and that are consistent with approved forest plans; and
- ! undertake, conduct and encourage educational, technical and other assistance, and other activities that support the multiple use, research, cooperative forestry, and other programs administered by the FS.

The NFF Act authorized appropriations of \$500,000 per year for 2 years beginning November 16, 1990, to assist in establishing an office and meeting initial administrative and other startup expenses. Additionally, during the 5-year period beginning November 16, 1990, appropriations were authorized to provide \$1,000,000 annually to be made available to the NFF to match, on a one-for-one basis, private contributions made to the NFF.

As the result of implementation delays in startup, the NFF Amendment Act of 1993 was enacted. The NFF Act Amendment of 1993, dated October 12, 1993, changed the beginning date that funds would be authorized to be appropriated from November 16, 1990, to October 1, 1992. This change applied to the initial costs for administrative expenses during startup. It also applied to the annual authorized



appropriations of \$1,000,000. The amendment also allowed startup and administrative funds to be used for NFF projects.

As of December 31, 1996, the NFF had received from the FS Washington office the following grants and agreements. The amounts do not include Challenge Cost Share Agreements totaling \$1.5 million or northeast area office grants totaling \$52,000:

Granting Region	Grant No.	Date Signed	Amount of Federal Funds	NFF's Matching Amount
Washington Office	Grant 93-G-023	12/15/92	\$ 500,000	\$ 0
Washington Office	Agreement 93-CA-102	N/A	N/A	N/A
Washington Office	Grant 94-G-101	03/30/94	800,000	800,000
Washington Office	Grant 94-G-101 Modification 1	05/11/95	1,000,000	1,414,000
Washington Office	Grant 94-G-101 Modification 2	10/18/96	1,000,000	1,906,527
Washington Office	Grant 94-G-228	09/27/94	10,000	0
Washington Office	Grant 94-G-235	09/27/94	2,500	0
<b>Totals</b>			<b>\$3,312,500</b>	<b>\$4,120,527</b>

## OBJECTIVES

Our objectives were to determine if the statutory and regulatory authorities for making grants were followed and to evaluate the FS' administration of the grants.

## SCOPE

Our scope included the activities of the FS related to the establishment and eventual operation of the NFF from August 1987 through December 1996. This coverage primarily encompassed two assistance agreements made by the FS Washington Office under the auspices of the NFF Act with a total value of \$7.4 million, \$4.1 million of which was to be provided by the NFF with \$3.3 million provided by the FS.

This coverage accounted for 83 percent of the \$8.9 million in assistance agreements provided by either the FS Washington Office or the northeastern area of the FS.

During the audit, we performed fieldwork at the FS Headquarters and the offices of the NFF, both located in Washington, D.C.

This evaluation was performed in accordance with the quality standards for inspections issued March 1993 by the President's Council on Integrity and Efficiency, except for the scope of our review of the NFF's accounting records being constrained because the NFF's accounting system did not track Federal and private fund expenditures on a grant-per-grant basis (see Findings Nos. 2 and 3).

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## METHODOLOGY

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At the FS offices, we interviewed the Deputy Chief for Programs and Legislation and his staff. We obtained information related to the establishment of the NFF's and the FS' administration of its assistance agreements with the NFF. Further, we reviewed and analyzed documentation of the FS' legislative history of the NFF and the financial and performance reporting by the NFF to the Deputy Chief for Programs and Legislation.

We also interviewed the Property and Procurement staff of the Deputy Chief for Administration regarding their procedures for reviewing and administering the assistance agreements with the NFF. Further, we analyzed the financial reporting documents submitted to the FS for accuracy and compliance with procedural requirements.

At the NFF, we interviewed the former chairman of the board to discuss the initial activities of the NFF. We also interviewed the Executive Director and the Chief Financial Officer of the NFF for their perspective on the matching of private donations with Federal funds. The attorney for the NFF also participated in the discussions. At the NFF, we also reviewed and analyzed the financial records for accuracy, completeness, and compliance with procedural requirements.

## FINDINGS AND RECOMMENDATIONS

### I. THE NFF NEEDS TO ACHIEVE FINANCIAL AND ADMINISTRATIVE INDEPENDENCE FROM THE FS

#### FINDING NO. 1

After 7 years of operation and an infusion of over \$4.1 million in Federal funds, the NFF has been unable to gain financial and administrative independence from the FS. These conditions developed because the legislation that created the NFF did not provide controls to encourage the NFF to become self-sustaining and independent from the FS, and the FS did not exercise actions to implement the needed controls. Because administrative costs now exceed private donations, the NFF is not fulfilling its legislative objective of supporting the FS mission. Further, the NFF's close relationship with the FS has created appearances of conflict of interest and facilitated inappropriate gifts and contributions to FS employees, their association, and the FS.

In 1987, the FS drafted legislation for the creation of the NFF to support the FS. The Legislative Affairs Staff of the FS stated it patterned the legislation after the National Fish and Wildlife Foundation (NFWF). However, key controls included in NFWF's legislation were excluded from the NFF's legislation.

Under its legislation, the NFWF is not allowed to use Federal funds for administrative expenses, including salaries, travel, transportation, and other overhead expenses;<sup>1</sup> grant funds are to be used only for project expenses. Further, after 5 years the NFWF was required to reimburse the Fish and Wildlife Service for the fair market value of the services it received from the Fish and Wildlife Service. In contrast, the proposed legislation and eventually the NFF Act provided that appropriated funds could be used for

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<sup>1</sup> 16 USC, section 3709(b)(2).

administrative expenses and gave the FS authority to provide the NFF use of the Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement. As of December 31, 1996, the FS had provided over \$1.6 million in FS services without requiring reimbursement from the NFF. These services included the placement of a full-time FS employee with the NFF as its director of membership.

Controls such as those found at the NFWF, but missing from the NFF legislation, provide an incentive for the NFF to not only remain independent of its Federal funding agency, but to contain costs. Without incentives to control costs and actively solicit private donations, administrative expenses at the NFF in 1996 have exceeded private donations.

#### ADMINISTRATIVE COSTS EXCEED PRIVATE DONATIONS

The NFF Act of 1990 authorized the establishment of a charitable, nonprofit corporation to be headquartered in the District of Columbia. The Act authorized the appropriation of \$500,000 per year for 2 years in administrative and startup funds. Additionally, it authorized to be appropriated \$1 million per year for 5 years to match private donations on a one-to-one basis. The 5-year period was to end September 30, 1995. The Act also authorized the FS to provide in-kind services to the NFF.

The Act was amended in 1993 because of delays in establishing the NFF. The amended act extended the initial 5-year period to 7 years which ended on September 30, 1997. However, the amount of funds authorized to be appropriated remained at \$5 million. In addition, the amended act allowed the startup funds to be used for projects as well as startup expenses. Table 1 describes the amounts appropriated each FY and the amounts provided to the NFF via agreements and in-kind services.

	Fiscal Years				
	1993	1994	1995	1996	1997
Appropriations by Congress	\$ 500,000.00	\$1,000,000.00	\$1,000,000.00		\$1,000,000.00
Federal Portion of FS Grant Agreements	\$ 500,000.00	\$ 800,000.00	\$1,000,000.00		\$ 139,849.00
In-kind Services Provided by the FS	611,050.50	456,753.75	275,504.00	\$272,246.50	69,510.25
<b>Total Grant and In-Kind Services</b>	<b>\$1,111,050.50</b>	<b>\$1,256,753.75</b>	<b>\$1,275,504.00</b>	<b>\$272,246.50</b>	<b>\$ 209,359.25 <sup>1/</sup></b>

<sup>1/</sup> Through first quarter of FY 1997.

**Table 1**  
**The agreements required the FS and the NFF to share expenses as shown in table 2.**

Grant Agreement No.	Total	NFF	FS
93-G-023	\$ 500,000	\$ 0	\$ 500,000
94-G-101	1,600,000	800,000	800,000
94-G-101 Mod. 1	2,414,000	1,414,000	1,000,000
94-G-101 Mod. 2	2,906,257	1,906,257	1,000,000
<b>Totals</b>	<b>\$7,420,527</b>	<b>\$4,120,527</b>	<b>\$3,300,000</b>

**Table 2**

To be eligible for the FS funds, the NFF is required to obtain matching funds from private donations. However, instead of obtaining these funds from broad public support, they were primarily obtained from three of the initial NFF board members. For example, chart 1 shows that three NFF board members donated \$690, 427. 73 (86. 3 percent) of the \$800, 000 in private donations required to establish eligibility for the Federal funds under the initial agreement 94- G- 101. The same three NFF board members donated \$805, 765. 11 (81 percent) of the first modification's \$1 million matching donations' requirement.

By the end of 1996, these three individuals had donated \$320, 616 of the second modification's \$1 million donations' requirement.

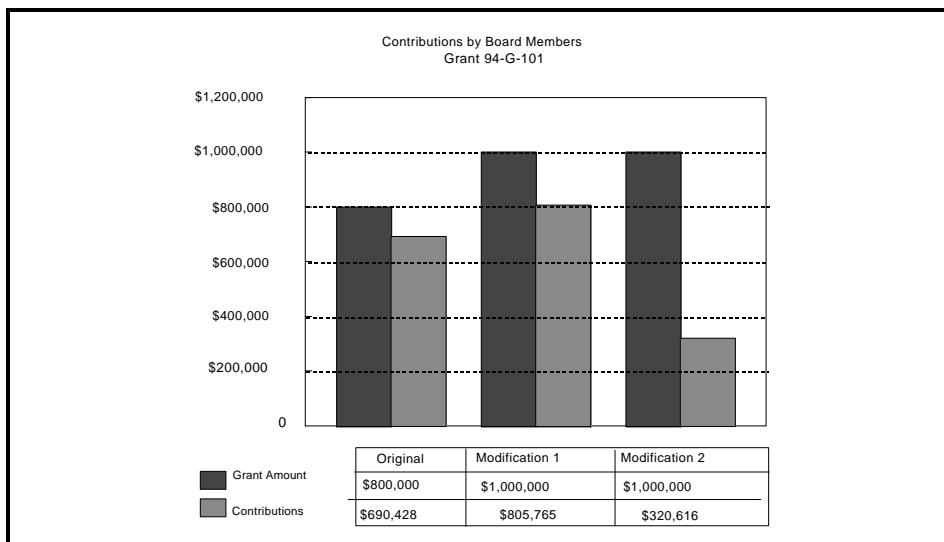


Chart 1

Also, during this same 1993 to 1996 period, the NFF's financial statements disclosed that total private donations steadily decreased

from \$936, 087 in 1993 to \$406, 007 in 1996, while at the same time general and administrative expenses increased from \$92, 624 to \$948, 730 (see chart 2). Thus, for 1996, not only did the NFF not generate sufficient funds to cover its administrative expenses, it did not generate funds to contribute toward projects supporting the FS mission.

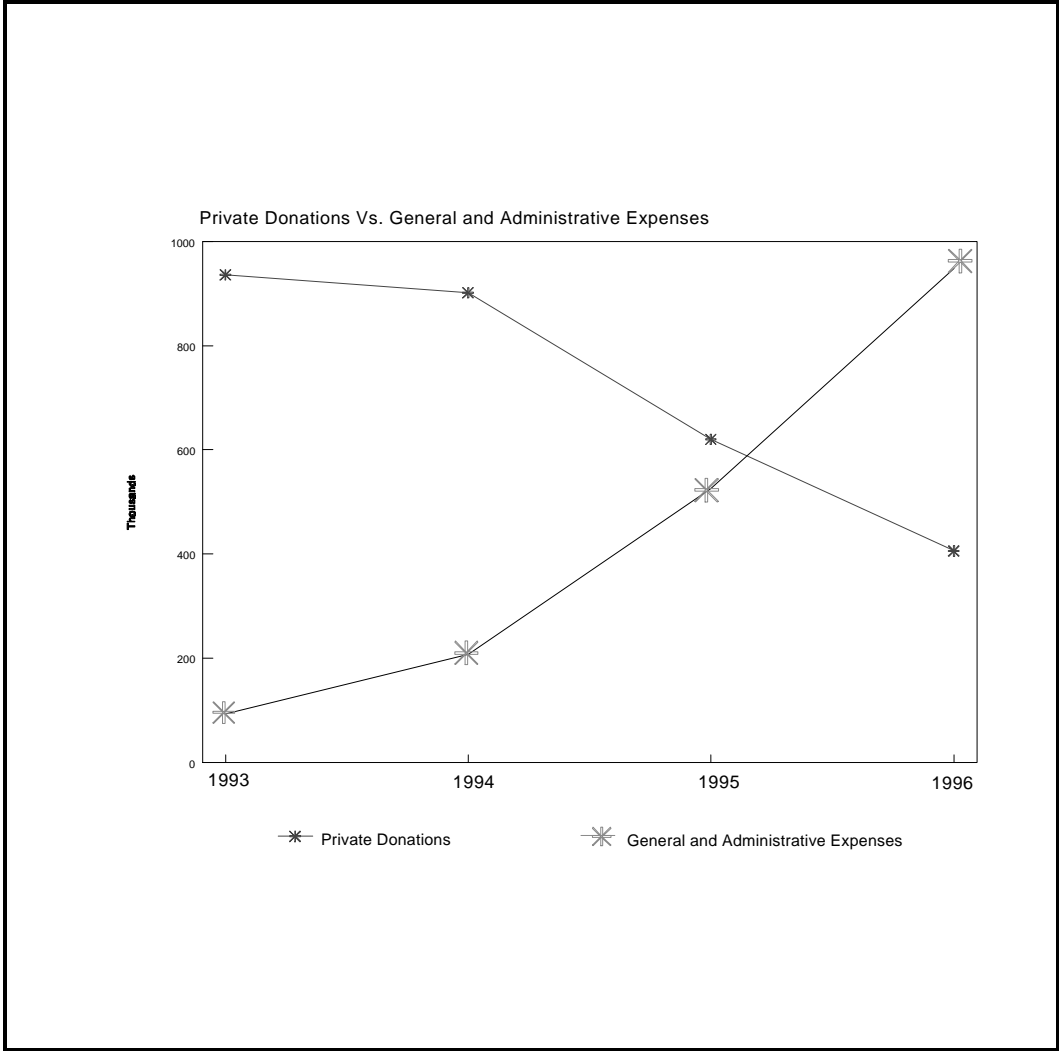


Chart 2

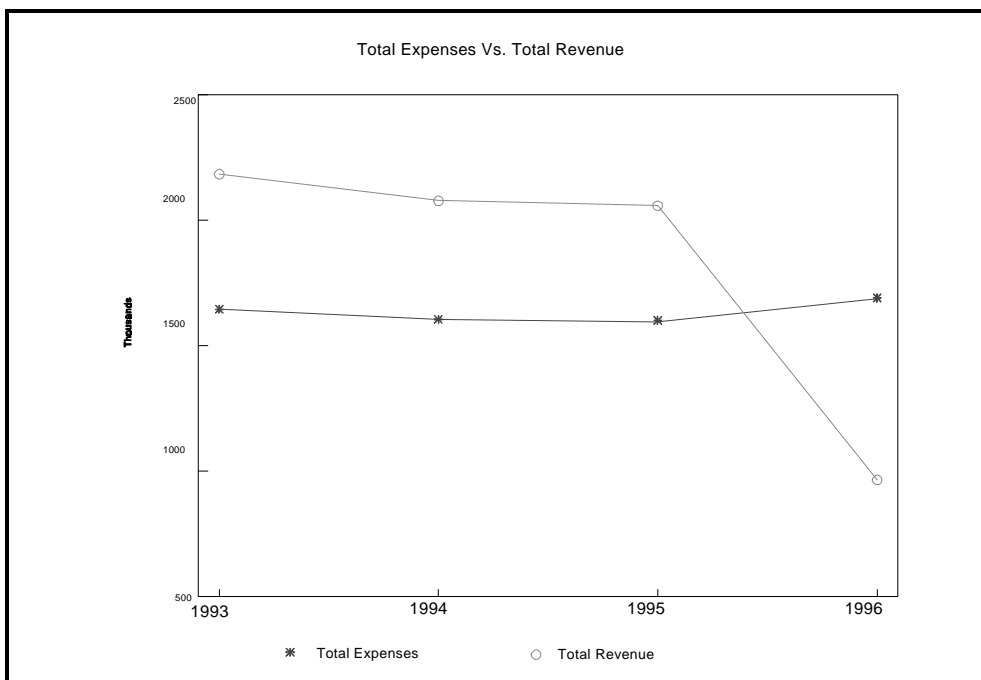


Chart 3

We also analyzed the yearly expenses in relation to the NFF's yearly income from private donations and Federal grants and determined that by the end of calendar year 1996 the total expenses for the year were nearly twice the amount of total income (see chart 3).

The NFF's net contribution to the FS has averaged slightly over \$179,000 each year as of December 31, 1996.

Further, by the end of 1996, only 9 months remained before the expiration of its Federal funding. However, we noted examples of 1996 expenses which appeared unreasonable for an entity unable to cover its costs and facing a loss of income from its primary funding source - Federal grants:

! \$123,501.15 for "Membership Costs" (Account No. 5860-00). Only \$13,000 in membership fees were received in 1996. The amount clearly represents a poor return on an investment.



- ! \$106,838.60 for "Recruiting" (Account No. 5093-00). The president of the NFF said these recruiting costs resulted in the hiring of two persons for a total salary of \$151,000 per year.
- ! \$82,686.89 for "Consulting Fees/Expenses" (Accounts Nos. 5090-00 and 5091-00). These expenses consisted solely of payments to a retired FS employee and to an ex-NFF board member.
- ! \$10,107.94 for "Luncheon, Dinner, and Banquets" (Account No. 5073-00). Costs such as these are generally not allowable under OMB Circular A-122. However, see Finding No. 2 for a discussion of this issue.

The NFF would be in even greater financial difficulty if not for the FS in-kind contributions. The NFF, in addition to receiving Federal funds and a full-time employee from the FS, occupies FS office space, is provided office renovations, computers, telephones, furniture and equipment, postage, supplies, and copying services. For FY's 1993 through 1996, the FS has provided an average of \$421,266 each year for in-kind services, as valued by the FS. Although the NFF Act authorizes the FS to request partial reimbursement for in-kind services, no requests were made.

The question of self-sufficiency and high administrative costs is not new to the FS. An NFF task force was established on August 6, 1990, by the FS and on November 1, 1990, made its report to the Deputy Chief for Programs and Legislation. The Programs and Legislation section of the FS is responsible for administering FS grants under the NFF Act and for liaison between the FS and the NFF.

The NFF task force was comprised of a diverse staff which crossed all functions and activities of the FS. All members of the NFF task force fully concurred in the findings of the report and supported its recommendations.

One of the policy issues the NFF task force stated should be addressed was "How will the Foundation be self-sufficient in light of potential high overhead costs?" However, the FS, and specifically the program and legislation section, never addressed these concerns.

Almost 7 years after enactment of the NFF Act and the infusion of over \$4.1 million of Federal funds, the NFF's administrative costs at the close of 1996 exceeded its private donations. Therefore, rather than bringing substantial additional resources to the FS, the NFF's contributions have been marginal.

#### INDEPENDENCE LACKING

In his review of the proposed legislation in 1990, the Associate Counsel to the President stated that it " \* \* \* blurs the distinction between private foundations chartered by Congress and Government agencies established by Congress \* \* \* ." We concur with the Associate Counsel regarding this blurring of lines. Moreover, the FS has fostered this blurring by its involvement in the creation and staffing of the NFF.

As early as 1987, the FS drafted legislation for the creation of a foundation to support the FS. This proposed legislation was distributed to the Chief and Deputy Chiefs of the FS, including the Deputy Chief for Administration, who was later to become the Executive Director of the NFF created by the legislation. The Executive Director avoided conflict of interest violations by not participating in activities from which he was barred, as outlined in the General Counsel opinion.

The sole field representative of the NFF is a recently-retired FS employee. Before his retirement, his official duty station was at the Gallatin National Forest in Bozeman, Montana. While still formally stationed in Bozeman, Montana, he was detailed to the FS Washington Office and, at one point, was the sole member of the NFF. Later, he became the FS liaison with the NFF. While this individual was the FS liaison, he received a gift from the NFF (see Finding No. 4). In both capacities, he dealt with all aspects of the NFF, including administrative and project activities. At one time this individual had control of NFF funds and was a signatory on the NFF's bank account. As the liaison between the NFF and the FS, he approved grant payments totaling \$759,925.53 to the NFF. The individual retired from the FS on September 29, 1994, and was rehired as a reemployed annuitant on October 15, 1994, to continue his liaison with the NFF. On November 14, 1994, while reemployed with the FS as liaison with the NFF, the NFF board voted to approve hiring him as a full-time NFF employee. His reemployment with the

FS ended on January 8, 1995. He was hired by the NFF on January 1, 1995, as the NFF field representative in Bozeman, Montana, the sole field representative employed by the NFF. This matter was referred to OIG Investigations, and the individual is being investigated for a potential conflict of interest under Title 18, USC, section 207.

Although an NFF board member was designated as the liaison between the NFF and the FS for matters in which the Executive Director was barred from participating, these duties were actually performed by another FS retiree. This person retired from the FS on February 3, 1994. In April 1995, he was asked by the Executive Director of the NFF if he was interested in working for the NFF. On June 6, 1995, this person was hired as a consultant. His duties included representing the NFF in general communications with the FS during the time the Executive Director of the NFF was covered by post-employment restrictions. He also worked on the membership program until the FS provided an employee to the NFF to handle these duties. The Executive Director explained that this individual was hired as a consultant, instead of an employee, because it was less costly for the NFF.

The FS also provided the NFF with a full-time employee who had an office at NFF and who was listed and functioned as NFF's director of membership. (Note: We initially stated this person had not been formally detailed to the NFF and his salary cost shared in accordance with OPM regulations, but the FS, in its reply to the official draft (see exhibit C's reply to Recommendation No. 1b) pointed out that this person also had an office at USDA and worked under the direct supervision of FS. Therefore, we modified the final report to simply show that the person had an office at NFF and served as its director of membership.

#### INAPPROPRIATE GIFTS AND CONTRIBUTIONS

Several instances of gifts to or benefitting FS employees or an employee organization were noted during the audit. Further, some of the gifts were paid with Federal funds, while other gifts may have been paid with private donations used to match Federal funds. The uncertainty arises because the NFF's financial management system did not capture agreement costs (see Finding No. 2).

The Principles of Ethical Conduct for Government Officers and Employees generally provide that an employee should not accept any gift or other item of monetary value from an entity seeking official action from, or doing business with, or conducting activities regulated by the employee's agency.<sup>2</sup>

During an NFF board meeting in June 1993 in Portland, Oregon, the Executive Director arranged for a canoe trip for 22 people, 6 of whom were USDA and FS officials. Federal funds were used to pay for the canoe trip, and the expense was recorded in NFF's financial records as an entertainment expense (see Finding No. 4).

During the week of November 18, 1996, the Chief of the FS hosted the North American Forestry Conference in Asheville, North Carolina. Attendees at this meeting included representatives from Mexico, Canada, and other United States (U.S.) agencies. For events such as this, Congress has provided the Chief with a \$1,500 discretionary fund. However, we determined that the NFF has a "Chief's Fund" account which it used, according to the NFF Executive Director, to supplement Congressional appropriations for the discretionary fund. For this conference, the NFF provided \$4,757.39 in refreshments for the conference attendees which was charged to the "Chief's Fund" account.

This activity raises certain issues. First, the Chief of the FS had responsibility for deciding on the funding of grants to the NFF. Second, the funds being used to support the Chief's activities came from private donations that may have been used to match Federal funds (see Finding No. 2). Congress determined that the Chief of the FS would be allowed \$1,500 of Federal funds for discretionary purposes. Using private donations to augment the appropriated discretionary fund circumvents the Congressional appropriation process and places the Chief in an apparent conflict-of-interest position.

We also noted two other instances where the NFF "Chief's Fund" had been directly used in a manner that could be described as an "Office Coffee Fund" for the FS. In one instance, the FS international visitors coordinator directly charged \$147.50 for a "Latin American

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<sup>2</sup> Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731), part I, section 101(d).

Breakfast" to the NFF. In the second instance, a member of the FS recreation, heritage, and wilderness resources management staff was reimbursed \$78.38 by the NFF for his purchases of food for "National Trails Day."

Further, the NFF made a \$2,000 donation to the FS Employees Association. Not only is it inappropriate for the NFF to make a gift to an employee association of the Federal agency from which the NFF receives its funding, the NFF Act grants no authority to the NFF to use funds for such a purpose. Further, the donations may have come from either Federal funds or from private donations used to match the Federal funds (see Finding No. 2 for a discussion of this issue).

#### POTENTIAL FUTURE DEVELOPMENTS

The President's budget for FY 1998 seeks an amendment of the NFF Act to remove the time limitation of 5 years for appropriations which ends September 30, 1997. Under the President's proposal, the NFF would receive \$1 million each year - indefinitely.

Also, HR 101, the Forest Foundation Conservation Act, was introduced in the House of Representatives on January 7, 1997, and was referred to the Committee on Agriculture. The contents of this resolution were prepared by the president of the NFF and provided to the FS and the sponsoring member of Congress. The FS provided drafting services for the proposed legislation. The proposed legislation would

- ! allow the Secretary of Agriculture to detail USDA personnel to assist the NFF and to provide the NFF with USDA facilities, equipment, supplies, and other administrative services (including Government-contracted transportation and travel services);
- ! provide \$5 million per year for 5 years for the NFF to match, on a one-for-one basis, private contributions made to the NFF;
- ! allow the NFF, and its subgrantees, to keep interest earned on Federal funds (this provision would be retroactive);
- ! exempt NFF subgrantees from auditing and reporting requirements of OMB Circular A-133 for grants of \$250,000 or less;

- ! grant exclusive authority to the NFF to license or authorize persons to use trademarks, symbols, etc., to represent, promote, or advertise that entities are official sponsors of the FS;
- ! provide civil penalties for entities using trademarks, symbols, etc., without approval of the NFF.

HR 2107, Department of Interior and Related Agencies Appropriations Act, 1998, was passed by the House of Representatives on July 15, 1997. Title II, Related Agencies, contains a section titled Administrative Provisions, FS. This section contains the following provisions relating to the NFF:

- ! Advancement in a lump sum of \$2,000,000, without regard to when the NFF incurs expenses, for administrative expenses or projects;
- ! no more than \$500,000 of the \$2,000,000 may be used for administrative expenses;
- ! the NFF must match the \$2,000,000 with private contributions by the end of the period of Federal financial assistance; and
- ! the NFF is allowed to hold advanced, undisbursed, Federal funds and use any interest or other investment income, provided that investments are made in interest-bearing obligations of the U.S. or guaranteed by the U.S. (this provision is retroactive).

HR 2107 was reported from the Senate Committee on Appropriations with Senate Report No. 105-516 on July 22, 1997. Senate Report No. 105-516 contained language that included the following modifications to HR 2107:

- ! The amount of lump sum advancement was \$2,500,000; and
- ! based on FS assurances that Federal funding for administrative expenses will be phased out by FY 2000, the Committee authorized up to \$1,000,000, of the Federal funds to be used for administrative expenses of the NFF.

The FS has proposed language that adopts the Senate's funding levels and includes the control that funding for administrative expenses be phased out by FY 2000. However, controls established by the Cash Management Improvement Act to limit borrowing costs to the

Government are being set aside by language that permits the NFF to receive funds in a lump sum, hold them, and retroactively use the interest income.

#### CONCLUSION

We concluded that the continued funding of the NFF without controls that would make it self-sustaining and independent would perpetuate excessive administrative costs and appearances of conflicts of interest.

#### RECOMMENDATION NO. 1a

Encourage the NFF to be self-sustaining and independent by phasing out FS funding of administrative expenses and phasing in reimbursement for in-kind services.

#### FS Response

In the 1998 Interior and Related Agencies Appropriations Act, Public Law (P. L.) 105-83, 111 Stat. 1543, Congress authorized the FS to make available to the NFF no more than \$750,000 for administrative expenses, provided that the NFF obtains, by the end of the period of Federal financial assistance, private contributions to match on at least a one-for-one basis funds made available to the FS. The FS has proposed to Congress to reduce the funds that the FS makes available to the NFF for administrative expenses to \$500,000 in FY 1999 and to eliminate all funds for administrative expenses by FY 2000.

Under 16 United States Code (U. S. C.) 583j-3(c) of the NFF Act, Congress authorized the Secretary of Agriculture to "provide the NFF use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish." The FS may provide the NFF personnel, facilities, and equipment in support of the NFF's activities with partial or no reimbursement, subject to the terms and conditions that the Secretary may establish. The FS intends to comply fully with this provision of

the NFF Act and, as such, will carefully monitor all in-kind support that we provide to the NFF to make sure it is commensurate with the benefits derived by the FS in this partnership.

OIG Position

We generally agree with the proposed action and will be able to accept a management decision when the FS provides its specific monitoring plan explaining how it will ensure in-kind support is commensurate with benefits derived by the FS and the timeframe for implementation.

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### RECOMMENDATION NO. 1b

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Provide sufficient guidelines and directions to the NFF and FS employees to (1) ensure that FS employees do not accept gifts from the NFF, and (2) preclude the acceptance of funds from the NFF which creates the appearance of a conflict of interest.

FS Response

The FS concurs with this recommendation. On December 22, 1997, the FS sent a formal letter to the NFF transmitting copies of the USDA Personnel Bulletin 735-1 that outlines FS employee responsibilities and conduct, and a copy of 5 Code of Federal Regulations (CFR), part 2635, the Standards of Ethical Conduct for Federal Employees. These two documents were distributed to all FS employees within the last 2 months. In addition, by January 31, 1998, the FS will send a letter to all FS employees clearly identifying what we can and cannot do in the FS' relationship with the NFF. This letter will also contain supplemental information relative to gifts and conflicts of interest which is part of the "Partnership Guide" issued to all FS line officers on May 27, 1997.

OIG Position

We accept the management decision.



**RECOMMENDATION NO. 1c**

Work with legislative officials to avoid weakening existing Governmental controls by not supporting proposed legislation that allows the NFF and its subgrantees to keep interest earned on Federal funds or exempts NFF subgrantees from audit and reporting requirements of OMB Circular A-133.

FS Response

The pending legislation has been signed and is in effect which allows the NFF to retain the interest earned on Federal funds (P. L. 105-83). In all other circumstances, pertinent OMB Circulars apply to the NFF when receiving Federal funds, including A-133.

OIG Position

We accept the management decision.

## II. AGREEMENTS WERE NOT MANAGED IN ACCORDANCE WITH LAWS AND REGULATIONS

FS officials did not manage the agreements with the NFF in accordance with laws and regulations. The NFF did not match FS funds according to the formula established in the agreement and did not implement a sound financial management system. Therefore, we are recommending that \$1,246,265 in Federal funds provided to the NFF be recovered.

### FEDERAL FUNDS WERE NOT MATCHED

#### FINDING NO. 2

match \$1,246,265 of the amount as required by law and regulations.

Between March 30, 1994, and May 4, 1995, the NFF requested \$1.8 million from the FS based on private donations of a like amount. Because FS employees misinterpreted matching requirements and did not follow policy in approving funds requested on Form SF-270, Request for Advance or Reimbursement, the NFF did not match \$1,246,265 of the amount as required by law and regulations.

### USDA UNIFORM FEDERAL ASSISTANCE REGULATIONS

The Department has issued the USDA Uniform Federal Assistance Regulations to promote the consistent and efficient use of grants and cooperative agreements within the Department. These regulations are generally upheld even if they are not specifically addressed in the program legislation, as long as they are within USDA's statutory authority, issued in compliance with applicable procedural requirements, and are not arbitrary or capricious.<sup>3</sup> Moreover, they

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<sup>3</sup> Gallegos v. Lyng, 891 F.2d 788 (10th Cir. 1989); Louisiana v. Bergland, 531 F. Supp. 118 (M.D. La. 1982), aff'd sub nom. Louisiana v. Block, 694 F.2d 430 (5th Cir. 1982); Hettleman v. Bergland, 642 F.2d 63 (4th Cir. 1981). As cited in U.S. General Accounting Office, Office of the General Counsel, Principles of Federal Appropriations Law, Second Edition, Volume II, chapter 10.C.1.d.(1), dated December 1992.

have the force and effect of law and may not be waived on a retroactive or ad hoc basis.<sup>4</sup>

The USDA Uniform Federal Assistance Regulations require the recipient's financial management system to be capable of reporting a complete, accurate, and current disclosure of the financial results of each USDA-sponsored agreement. The source and application of the funds are to be readily identified by the continuous maintenance of updated records which contain information pertaining to awards, authorizations, obligations, unobligated balances, assets, outlays, and income. Also required is the establishment of specific procedures to minimize the time elapsing between the advance of Federal funds and their subsequent disbursement by the recipient. Further, the recipient is also required to establish procedures to be used for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles prescribed in OMB Circular A-122, Cost Principles for Non-Profit Organizations.

The financial reporting process for grant agreements requires the recipient to use Standard Form 269 (SF-269), Financial Status Report, and Standard Form 270 (SF-270), Request for Advance or Reimbursement. In completing these forms, the recipient is to follow all applicable standard instructions issued by OMB. Both forms require the recipient to report the status of all funds in the grant agreement, both Federal and recipient.

If the recipient uses the SF-270 to request an advance of funds, the advance payments are to be made by Treasury check. The recipient is required to submit its payment requests at least monthly, and less frequent requests are not permitted because they result in advances covering excessive periods of time. The recipient is not allowed to request advances in excess of the Federal share of reasonable estimates of outlays for the month covered.

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<sup>4</sup> 57 Comp. Gen 662(1978) (eligibility standards); B-163922, February 10, 1978 (grantee's liability for improper expenditures); B-130515, July 17, 1974; B-130515, July 20, 1973 (matching share requirements). As cited in U.S. General Accounting Office, Office of the General Counsel, Principles of Federal Appropriations Law, Second Edition, Volume II, chapter 10.C.1.d. (1), dated December 1992.

If the recipient uses the SF-270 to request a reimbursement for expenditures, the expenditures are deemed to be supported by the agreement in the same proportion as the percentage of Federal/non-Federal participation in the overall budget. For example, if the grant agreement calls for expenditures of \$100,000, which is to be shared equally by the Federal agency and the recipient, the SF-270 would report total expenditures of \$100,000 with Federal and recipient outlays of \$50,000 each. Under this procedure the recipient is reimbursed for the Federal agency's share of \$50,000.

When a recipient's financial management system does not meet the standards of the USDA Uniform Federal Assistance Regulations, reimbursement is the preferred method of payment (see Finding No. 3).

#### FS POLICIES FOR REVIEWING FINANCIAL REPORTS

Internal FS policies require forms SF-269 and SF-270 to be analyzed for accuracy and completeness upon receipt.<sup>5</sup>

For the SF-270, this review includes instructions to analyze the total program outlays to date and reminds the reviewer that this is to consist of the recipient's actual expenditures (not just the FS share) to date. The policy notes that if the costs identified reflect only the amount the FS is obligated to pay under the agreement, then it likely does not reflect the true total program outlays, and the amount should be questioned. Additionally, the recipient's and Federal shares are to be reviewed to ensure that the shares are in the percentages approved for the agreement. The policy further states that if the Federal share is higher than approved, then the FS has been overbilled and the SF-270 should not be paid.

For the SF-269, this review also includes instructions to analyze the total outlays to date and again reminds the reviewer that outlays must consist of the recipient's actual expenditures (not just the FS share) to the date of the report. The reviewer is again cautioned that if the costs identified reflect or match up to the total amount the FS is obligated to pay under the terms of the

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<sup>5</sup> FS Handbook 1509.11, Grants, Cooperative Agreements, and Other Agreements.

agreement, it likely does not reflect the true total outlays and should be questioned.

The policy guidelines note that reviewing the SF-269 in conjunction with the SF-270 is one of the few opportunities available to properly assess the recipient's progress or financial difficulties. It further notes the SF-269 is required to provide the FS with information to help determine if the recipient's projects and spending patterns are consistent with the milestones and quarterly spending projections as shown in the agreement. If the recipient is receiving advance payments, the reviewer is further directed to compare the SF-269 with the SF-270 to determine if the recipient is spending the advance funds in a timely manner. If it is noted that the recipient is receiving more advance funding than necessary, its next advance payments are to be adjusted or denied.

FEDERAL FUNDS NOT MATCHED

As shown in table 3 below, Agreement 94-G-101 (before modification) required the NFF to match Federal expenditures on a one-to-one basis. Modification 1 required a match by the NFF of 1.414 to 1. Also, as shown in table 3, the total grant agreement amount was \$4,014,000 through modification 1 with a required match by the NFF of \$2,214,000. The FS share was \$1,800,000.

Grant Agreement No.	Total	NFF Share	FS Share	Matching Ratio
94-G-101	\$1,600,000	\$ 800,000	\$ 800,000	1:1
94-G-101 Mod. 1	2,414,000	1,414,000	1,000,000	1.414:1
<b>Totals</b>	<b>\$4,014,000</b>	<b>\$2,214,000</b>	<b>\$1,800,000</b>	

Table 3

Between March 30, 1994, and May 4, 1995, the NFF submitted forms SF-270 requesting \$1,800,000 in Federal funds. However, the forms SF-270 were not prepared in accordance with OMB directions. The forms SF-270 did not report "Total program outlays to date." Instead, the words "Total contributions to date" had been inserted. The amount requested was based on contributions received by the NFF and not on the amount of funds expended for authorized purposes.

As noted earlier, the FS policy requires a review to ensure the SF-270 reflects both the FS and the NFF share of expenditures, and

if only FS costs are reflected on the SF-270, the amount should be questioned and not paid. Despite this policy, FS officials approved the payments of \$1,800,000 to the NFF, even though the NFF had not reported the expenditure of its \$2,214,000 share.

As shown in table 4 below, on February 18, 1997, the NFF submitted an SF-269 for the period of March 30, 1994, through September 30, 1996. This Financial Status Report showed total outlays of \$2,270,044.95. The NFF share of the outlays was reported as \$553,734.63, and the FS share of the outlays was reported as \$1,716,310.35. It also showed that the NFF had on hand, and unobligated, \$83,689.65 in Federal funds (\$1,800,000 - \$83,689.65 = \$1,716,310.35). Again, the FS policy requires the reviewer to analyze total outlays to ensure that both parties to the grant agreement have met their share of expenditures. However, the SF-269 submitted by the NFF was not questioned by FS reviewers.

Since the amount reported as expended by the NFF did not exceed the NFF's required matching amount for the original grant agreement of \$800,000, we concluded that all of the NFF's share of expenditures (\$553,734.63) was matching for the original grant agreement. Based on NFF's reported expenditures, we concluded the NFF had not met its matching requirements of \$1,246,265.37 as required by the terms of the agreement.

Grant No.	Total Outlays Reported By The NFF	Reported NFF Share	FS Share of Amount Reported	Federal Expenditures Not Matched By the NFF
94-G-101	\$1,600,000.00	\$553,734.63	\$ 800,000.00	\$ 246,265.37
94-G-101 Mod. 1	670,044.95	0.00	277,599.62 <sup>1/</sup>	277,599.62
			638,710.73 <sup>2/</sup>	638,710.73
			83,689.65 <sup>3/</sup>	83,689.65
<b>Total</b>	<b>\$2,270,044.95</b>	<b>\$553,734.63</b>	<b>\$1,800,000.00</b>	<b>\$1,246,265.37</b>

<sup>1/</sup> A matching ratio of 1.414 to 1 equates to 59 percent for the NFF and 41 percent for the FS. The FS share is \$670,044.95 x 42 percent.  
<sup>2/</sup> Additional Federal funds provided by the FS that were not required under the terms of the agreement. These funds were expended by the NFF.  
<sup>3/</sup> Additional Federal funds paid to the NFF but unspent as of September 30, 1996.

Table 4

As discussed, grant funds were not matched in part because FS officials did not properly review forms SF-269 and FS-270 and take

the required action. However, we have concluded that a misinterpretation of law regarding matching of NFF's grant funds also contributed to the problem.

In discussing these matters with NFF officials and staff members from the Deputy Chief for Programs and Legislation and Deputy Chief for Administration, it became apparent that there were material differences in the interpretation of matching requirements for the NFF grants. Both the liaison officer from the staff of the Deputy Chief of Programs and Legislation and the Property and Procurement staff of the Deputy Chief of Administration have responsibility for reviewing forms SF-269 and SF-270. Although both staff members indicated they had reviewed the forms in question, neither kept any documentation regarding the results of their reviews. Further, they disagreed as to what constituted matching. The Programs and Legislation staff member said matching of Federal funds occurred when private donations were received. NFF officials were of the same opinion and based their opinion on their reading of the NFF Act. Section 410 (b) of the act states " \* \* \* there are authorized to be appropriated \$1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis private contributions made to the Foundation." Initially the Property and Procurement staff also held the same position but later decided the position was erroneous.

After reconsideration of the matter, the Property and Procurement staff determined that payments to the NFF were to be considered matched based on the expenditures of the NFF. They also determined that NFF expenditures claimed under the agreement were subject to the cost principles of OMB Circular A-122. They informed the NFF in subsequent modifications to the agreement that expenditures for authorized purposes were required in order to receive Federal funds. Moreover, they requested that the NFF return \$39,711 in interest earned on the \$1.8 million in improper payments, a request with which the NFF complied. This interest has since been returned to the U.S. Treasury, but the NFF still carries it as an account receivable because it hopes to recover it based on proposed legislative changes to the NFF Act (see Finding No. 1).

However, we noted that in subsequent payments to the NFF, the Property and Procurement staff approved the payments of funds based

only upon the expenditure of Federal funds. The NFF still is not required to account for its matching expenditures.

To clarify the NFF's position on these matters, we met with the NFF's Executive Director, Chief Financial Officer, and the NFF's attorney. They stated that it is the position of the NFF that the matching of Federal funds occurs when private donations are received. The expenditure of the private donations is not required to invoke the requirement for a Federal disbursement of funds. Further, these NFF officials stated that only Federal funds are subject to the terms of the grant agreement and the cost principles of OMB Circular A-122. Their position is that the expenditure of the private donations, the funds used to match the Federal funds, are not subject to either the terms of the grant agreements or the cost principles enumerated in OMB Circular A-122. The Executive Director of the NFF and the NFF's attorney stated that the agreements were in error when they included references to the USDA Uniform Federal Assistance Regulations, Title 7, CFR, part 3015, and to the OMB Circulars, such as A-122 and A-110. They further stated that it was their position that the statute and appropriations applied, not the terms of the grant.

We noted to the NFF officials that, by signing the grant agreements, the NFF had agreed to terms in the agreements which included requirements to adhere to the USDA Uniform Federal Assistance Regulations and the applicable OMB Circulars<sup>6</sup>. Nevertheless, the Executive Director, Chief Financial Officer, and the NFF's attorney reiterated their position that the NFF matched Federal funds upon receipt of private donations. Further, the expenditure of those private funds were not subject to the terms of the agreement. Neither were the expenditures subject to the cost principles promulgated by OMB and contained in the agreement.

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<sup>6</sup> The grant agreement states that this is an award of Federal financial assistance and as such is subject to the Office of Management and Budget (OMB) Circular A-110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Nonprofit Organizations, OMB Circular A-122, and Cost Principles for Nonprofit Organizations, as implemented by the attached United States Department of Agriculture (USDA) Uniform Federal Assistance Regulations, Title 7 CFR 3015, and the OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Organizations, as implemented in the attached USDA Uniform Federal Assistance Regulations, Title 7 CFR 3015.



## CONCLUSION

As discussed, there is a disagreement between the staffs of the Deputy Chief of Programs and Legislation and the Deputy Chief for Administration regarding how payments are to be made to the NFF. The staff of the Deputy Chief of Programs and Legislation agrees with the Executive Director of the NFF and maintains that the FS is required to advance Federal funds upon the receipt of private donations by the NFF. Further, it is maintained that Federal funds are matched upon receipt of private donations and expenditures of the NFF for the agreement are not subject to the cost principles of OMB Circular A-122.

As noted above, the Deputy Chief for Administration disagrees with that position.

We have concluded that the NFF's and Deputy Chief of Programs and Legislation's position is erroneous and not based in law. The language in the act " \* \* \* there are authorized to be appropriated \$1,000,000 annually to the Secretary of Agriculture to be made available to the Foundation to match, on a one-for-one basis private contributions made to the Foundation" merely authorizes the NFF to receive \$1 in Federal funds for each dollar of private donation. The FS is still required to provide funds to the NFF via an agreement, and USDA regulations specify how those funds are to be provided, i.e., advance or reimbursement. Further, the NFF accepted the terms of the grant agreement. Therefore, under the terms of the grant agreement, the NFF is required to match Federal funds by the expenditure of private donations, and all expenditures under the agreement, both Federal and non-Federal, must meet the requirements of OMB Circular A-122.

To allow the NFF to only account for the Federal funds portion of the agreement does not ensure that funds are spent only on agreement purposes. Proof of this conclusion is that NFF reported on form SF-269 that it spent only \$553,734.63 of NFF funds when it was required to spend \$2,214,000 to match Federal expenditures of \$1,800,000. Also, matching expenditures under the grant agreement may include the payment of items which are improper under the Federal cost principles and go undetected (see Findings Nos. 1 and 4).

We further concluded that the NFF's financial records did not provide evidence that Federal funds had been matched in accordance with the terms of the grant; therefore, \$1,246,265.37 (\$1,800,000 - \$553,734.63) in Federal funds should be recovered from the NFF.

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**RECOMMENDATION NO. 2a**

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Recover \$1,246,265.37 in unmatched Federal funds.

FS Response

The FS does not concur with this recommendation. Based on Title 7 Code of Federal Regulations (CFR) 3019.23 on cost-sharing or matching, which states "(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost-sharing or matching" when such contributions are verifiable, are not included as contributions for any other Federally assisted project, and are allowable under the applicable cost principles. The FS reviewed the NFF's audited financial statements for their FY's 1993 through 1996, and in-kind contributions from (private sources) were added back to arrive at new expenditures for the grant period. Based on this analysis, the NFF had sufficient private funded expenditures to meet matching requirements for FS reimbursement.

OIG Position

We do not accept the FS response to this recommendation that all verifiable contributions by the recipient must be accepted as matching and that the NFF matching requirement can be met by deducting Federal funds from total expenditures. This process does not address whether the expenditures were reasonable, allowable, and allocable to the grant.

During the audit, NFF's management was adamant that private contributions were not required to be expended only on allowable cost items and the FS initially concurred in this position; therefore, the allowability of expenditures was not determined by the NFF. Moreover, Title 7 CFR, section 3019.23(a) lists seven criteria that must be met before contributions can be accepted as cost-sharing or matching. For example, contributions (1) may not be included as contributions for any other Federally-assisted project or program, (2) must be necessary and reasonable for proper and efficient accomplishment of project or program objective, and (3) must be allowable under OMB Circular A-122. However, it could not be determined from the accounting records of the NFF whether the expenditure of private donations met these requirements.

In order to reach a management decision on this recommendation, please provide the detailed schedule of expenditures that FS deems eligible for matching and the basis for acceptance. Absent such action, FS needs to recover the \$1.2 million in unmatched Federal funds.

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**RECOMMENDATION NO. 2b**

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Establish controls to ensure forms SF-269 and SF-270 are thoroughly reviewed prior to grant fund disbursement.

FS Response

The FS concurs with this recommendation. The FS will ensure that the forms are reviewed prior to grant fund disbursements.

OIG Position

In order to accept a management decision, the FS needs to describe in detail the controls to be initiated, to include an explanation of how the controls will ensure compliance with applicable OMB Circulars, and the timeframes for implementation.

**NFF DOES NOT HAVE A SOUND  
FINANCIAL MANAGEMENT  
SYSTEM**

The NFF's financial management system does not accumulate costs in accordance with Departmental regulations. This condition developed because FS employees did not review the NFF's accounting system. As a result, program costs by grant and their allowability are unknown.

**FINDING NO. 3**

The NFF came to the end of its 5-year authorization for appropriations on September 30, 1997. However, the NFF's financial management system does not track expenditures from its primary source of funding - Federal agreements. We concluded that this occurred because FS personnel did not review the NFF's accounting system policies and procedures to ensure the system would track separate project costs on a grant-per-grant basis as required by the FS Handbook<sup>7</sup>.

Although Federal agreements represent a substantial portion of the funding of the NFF, and it has agreed to participate in 10 Federal agreements totaling over \$9 million, its financial management system does not allocate costs by Federal agreements. As a result, the amount of costs and allowability under OMB Circular A-122 attributable to the Federal agreements is unknown and cannot be determined.

Further, it cannot be determined whether the NFF has contributed its portion of allowable costs to the grant agreements. And, until such time as the NFF determines its allowable costs under the grant agreements, Federal funds that have been provided remain unsupported.

Since the NFF does not use its accounting system to accumulate costs by Federal agreements, the NFF indicates on some, not all, of its expenditure documentation (e.g., receipts) that the source of the funds used was private contributions, Federal funds from agreement 93-G-023, or Federal funds from Agreement 94-G-101. Therefore, the amounts reported on the forms SF-269 come from a spreadsheet prepared by the NFF on an ad hoc basis, and the forms SF-270 are prepared from private contributions received, not expended. The

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<sup>7</sup> FSH 1509.11, Grants, Cooperative Agreements, and Other Agreements, section 13.32c-5.

forms SF- 270 have no relationship to expenditures under the Federal agreements.

For example, the \$284,000 claimed for reimbursement under Agreement 93-G-023 (the startup agreement - no matching required) was not based on an allocation of costs chargeable to that agreement. The NFF arrived at the amount by determining how much of the Federal funds under the agreement remained unspent. If the funds claimed for reimbursement came from private donations and were used to match Federal funds under Federal Agreement 94-G-101, then reimbursement under Federal Agreement 93-G-023 is improper. The funds must be over and above that used for matching Agreement 94-G-101. However, this cannot be determined from the NFF's financial management system.

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**RECOMMENDATION NO. 3a**

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Ensure the NFF has a financial management system capable of reporting a complete, accurate, and current disclosure of the financial results of each FS agreement.

FS Response

In accordance with Title 7 CFR 3019.21, Standards for Financial Management Systems, the FS will ask the NFF to have an independent auditor certify that their financial management system complies with the above requirements and that the audited financial statements include a schedule displaying income and expenses of each Federally sponsored project or program. We have been advised by the NFF that they have a new cost accounting system that will comply with controls set forth in Title 7 CFR 3019 and OMB Circulars A-122 and 133. In its response to Recommendation No. 3b, the FS indicates the certification will be available March 31, 1998.

OIG Position

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**RECOMMENDATION NO. 3b**

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We accept the management decision.

Make no further disbursements to the NFF until its financial management system has been modified to adequately track expenditures of Federal and private funds on a grant-per-grant basis.

#### FS Response

The FS does not concur with this recommendation. Title 7 CFR 3019.22(h) states that "Unless otherwise required by statute, Federal agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h) (1) and (h) (2) of this section apply." The NFF submitted a spreadsheet showing expenditures for the grant period (FY 1992 - FY 1996) broken out by Federal funds versus private funds on a grant-per-grant basis. With the implementation of a new cost accounting system in 1997, the NFF has made every effort to comply with the applicable laws. The FS will continue to work with the NFF to ensure their new financial management system is in compliance. However, management reserves the prerogative to make reimbursement payments on an as-needed basis through March 31, 1998, until the NFF's independent auditor can release an audit report to determine full compliance with controls set forth in OMB Circulars A-122 and 133.

#### OIG Position

We do not accept the management decision. As FS officials stated in their response, payments shall not be withheld unless paragraphs (h) (1) and (h) (2) of Title 7 CFR 3019.22 are complied with. These paragraphs state that payments shall be withheld if a recipient has failed to comply with the terms and conditions of the award or Federal reporting requirements. This report notes that the NFF did not believe it was required to comply with the terms and conditions of the award and that it did not comply with the Federal reporting requirements.

In order to accept a management decision, agreement is needed that the FS will make no further payments until the NFF financial management system has been modified.

### RECOMMENDATION NO. 3c

Ensure the NFF has established procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles of OMB Circular A-122.

#### FS Response

The FS concurs with this recommendation. The FS will review the independent audit reports to ensure compliance with OMB Circular A-122.

#### OIG Position

We agree in general with the proposed action and can accept a management decision when the FS provides a date when the independent audit will be obtained and reviewed, as well as documentation that the independent audit determined the reasonableness, allowability, and allocability of costs in accordance with the cost principles of OMB Circular A-122.

### RECOMMENDATION NO. 3d

Require the NFF to submit revised forms SF-269 and SF-270 reflecting the total costs (Federal and NFF) in accordance with the applicable OMB directives.

#### FS Response

The FS will assure the NFF provides corrected SF-269 reports. However, forms SF-270 are payment documents and shall not be revised.

## OIG Position

The management decision on this recommendation is tied to the monetary amount in Recommendation No. 2a. Therefore, in order to accept a management decision, the covered matching expenditures on forms SF-269 need to be received and reviewed, either by FS or an independent auditor, for conformance with the matching requirements of the grant.



### III. NFF ENGAGED IN UNALLOWABLE ACTIVITIES AND CLAIMED UNALLOWABLE EXPENSES

The NFF gave gifts to FS employees and claimed unallowable travel and entertainment expenses. As a result, \$2,330 in Federal funds was spent on unallowable purposes.

#### THE NFF PROVIDED GIFTS TO FS EMPLOYEES, CONTRARY TO LAW

During an NFF board meeting in June 1993 in Portland, Oregon, the Executive Director arranged for a canoe trip at Mount Hood, Oregon, for 22 people at \$30 per person (or \$660) plus \$81 for wine, for a total of \$741 (see Finding No. 1). Cost principles applicable to nonprofit organizations state that the cost of amusement, diversions, social activities,

#### FINDING NO. 4

and ceremonies are unallowable as costs to Federal agreements.<sup>8</sup> The 22 people included

- ! 12 NFF board members,
- ! chief of the FS,
- ! chief's executive assistant,
- ! special assistant to the chief,
- ! FS liaison officer between the FS and the NFF,
- ! a FS employee,
- ! a USDA office of public affairs employee,
- ! NFF Executive Director, and
- ! 3 other persons (affiliation unknown).

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<sup>8</sup> OMB Circular A-122, Cost Principles for Nonprofit Organizations, attachment B, paragraph 12.

Federal funds were used to pay for this trip to Mount Hood and later paid as part of a travel claim by the Executive Director. The NFF Executive Director claimed the \$741 expense as entertainment on a voucher submitted to the NFF. The \$741 was part of a \$2,512.54 claim submitted by the Executive Director. However, the Executive Director claimed full reimbursement of \$660 for the canoe trip but did not deduct a \$225 advance that the NFF had previously paid to the vendor.

The check reimbursing the Executive Director was signed by the Executive Director and the chief's executive assistant who had been appointed by the NFF board to countersign NFF checks. The chief's executive assistant was also the recipient of the gift (canoe trip) for which this payment was claimed.

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**RECOMMENDATION NO. 4a**

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Recover \$741 from the NFF in unallowable entertainment costs.

FS Response

The FS concurs with this recommendation and will recover the \$741 in unallowable entertainment costs.

OIG Position

We agree with your proposed action and can accept a management decision once we receive a copy of the FS' letter to the NFF requesting repayment of the amount and evidence that the amount has been established as an account receivable or refunded.

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**RECOMMENDATION NO. 4b**

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Direct the NFF to recover \$225 from the prior Executive Director

FS Response

The FS concurs with this recommendation and will notify the NFF to recover the \$225.

OIG Position

We agree with your proposed action and can accept a management decision once we receive a copy of the FS' notification letter.

**THE NFF CLAIMED  
UNALLOWABLE EXPENSES**

**FINDING NO. 5**

because the reimbursement may not exceed the rate for Federal employees, the NFF must recover these costs from the NFF board members.

The NFF used Federal funds to reimburse NFF board members for \$1,588.57 in lodging costs that exceeded the rate allowable for Federal employees (see exhibit B). Because the NFF Act allows the NFF to reimburse NFF board members only for the actual and necessary traveling and subsistence expenses, and

**RECOMMENDATION NO. 5**

Require the NFF to recover from the NFF board members the \$1,588.57 in excess lodging costs.

FS Response

The FS does not concur with this recommendation. FS employees, including the chief, were in attendance at these meetings and requested and received approval for lodging rates at an actual subsistence rate higher than the per diem rate. This policy is consistent with Chapter 301-7.4 of the Federal Travel Regulation.

OIG Position

We will accept the management decision when we receive documentation that FS employees received approval, at the time, for lodging rates at an actual subsistence rate higher than the per diem rate.

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## **EXHIBIT A - SUMMARY OF MONETARY RESULTS**

<b>FINDING NO.</b>	<b>DESCRIPTION</b>	<b>QUESTIONED COSTS RECOVERY RECOMMENDED</b>
<b>2</b>	<b>Federal Funds Not Matched by the NFF</b>	<b>\$1, 246, 265. 37</b>
<b>4</b>	<b>Unallowable Entertainment Costs</b>	<b>741. 00</b>
<b>5</b>	<b>Excess Lodging Costs</b>	<b>1, 588. 57</b>
<b>Total</b>		<b>\$1, 248, 594. 94</b>

**EXHIBIT B - SCHEDULE OF EXCESS LODGING COSTS**

GRANT NO.	CHECK NUMBER	AUTHORIZED LODGING RATE	NUMBER OF NIGHTS	LODGING ALLOWABLE	LODGING PAID	OVER-PAYMENT
93-G-023	2525	\$ 67.00	3	\$201.00	\$393.60	\$ 192.60
93-G-023	2526	\$ 67.00	3	\$201.00	\$345.00	144.00
93-G-023	2527	\$ 67.00	3	\$201.00	\$345.00	144.00
93-G-023	2529	\$ 67.00	3	\$201.00	\$345.00	144.00
93-G-023	2557	\$ 67.00	3	\$201.00	\$345.00	144.00
93-G-023	2565	\$ 67.00	2	\$134.00	\$345.60	211.60
93-G-023	2566	\$ 67.00	3	\$201.00	\$345.00	144.00
93-G-023	2631	\$ 67.00	3	\$201.00	\$345.00	144.00
94-G-101	2237	\$142.00	1	\$142.00	\$162.82	20.82
94-G-101	2405	\$114.00	1	\$114.00	\$142.75	28.75
94-G-101	2473	\$ 66.00	2	\$132.00	\$202.40	70.40
94-G-101	2493	\$ 66.00	1	\$ 66.00	\$101.20	35.20
94-G-101	3109	\$124.00	2	\$248.00	\$330.60	82.60
94-G-101	3111	\$124.00	2	\$248.00	\$330.60	82.60
<b>Total</b>						<b>\$1,588.57</b>

# EXHIBIT C - FS RESPONSE TO THE DRAFT REPORT



United States  
Department of  
Agriculture

Forest  
Service

Washington  
Office

14th & Independence SW  
P. O. Box 96090  
Washington, DC 20090-6090

File Code: 1430  
Route To:

Date: JAN 8 1998

Subject: Audit Report No. 08801-1-TE, Evaluation of Forest Service Grants to  
the National Forest Foundation, November 19, 1997

To: James R. Ebbitt  
Assistant Inspector General for Audit

We have completed our review of the Office of Inspector General's Official Draft Evaluation of Forest Service Grants to the National Forest Foundation (NFF), Audit Report No. 08801-1-TE. Except for the changes noted in the recommendations below, we generally concur with the audit findings and recommendations.

We are enclosing our Forest Service response to the OIG report.

  
CLYDE THOMPSON  
Acting Deputy Chief for Operations

Enclosure



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## **EXHIBIT C - FS RESPONSE TO THE DRAFT REPORT**

**United States Department of Agriculture  
Forest Service (FS)**

**Office of Inspector General (OIG)  
Evaluation of Forest Service Grants to the National Forest Foundation (NFF)  
November 19, 1997**

**Forest Service (FS) Review Comments  
January 8, 1998**

### **GENERAL COMMENTS CONCERNING THIS REPORT:**

We agree with the OIG regarding the need for the Foundation to achieve financial and administrative independence from the Forest Service. To this end, we have indicated to the Interior and Related Agencies Appropriations Committee our plans to completely phase out administrative grants to the National Forest Foundation by the year 2000. Their acceptance of this plan is noted in the report language of the FY 1998 House/Senate Conference Report language. We will also improve our oversight and controls of the Foundation to ensure that they fully comply with all laws and regulations in administration of all Federal grants and work with them to develop a sound financial management system.

Public-private partnerships have always been an essential way of doing business in the Forest Service. Our partners have become vital to expanding our capability to meet our mission in delivering quality products and services to our customers. Operating in a "balanced-budget" environment means that our work force will continue to shrink and many programs that meet the needs of our customers will be eliminated or curtailed unless we embrace cooperative ventures. The Forest Service is increasingly turning to the National Forest Foundation to play an important role in forging and maintaining these partnerships to help us accomplish activities that we cannot accomplish ourselves.

The continued success of the Foundation as our nonprofit partner is vital to the interest and future of the Forest Service, and we will make every effort to implement all of the recommendations discussed and ensure that the Foundation operates within the legal requirements of the legislative Act.

**OIG RECOMMENDATION NO. 1a: "Encourage the NFF to be self-sustaining and independent by phasing out FS funding of administrative expenses and phasing in reimbursement for in-kind services."**

**FS RESPONSE TO RECOMMENDATION NO. 1a:** In the 1998 Interior and Related Agencies Appropriations Act, P.L. 105-83, 111 Stat. 1543, Congress authorized the Forest Service to make available to the NFF no more than \$750,000 for administrative expenses, provided that the NFF obtains, by the end of the period of Federal financial assistance, private contributions to match on at least one-for-one basis funds made available to the Forest Service. The Forest Service has proposed

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## EXHIBIT C - FS RESPONSE TO THE DRAFT REPORT

to Congress to reduce the funds that the Forest Service make available to NFF for administrative expenses to \$500,000 in FY 1999 and to eliminate all funds for administrative expenses by FY 2000.

Under 16 U.S.C. 583j-3(c) of the NFF Act, Congress authorized the Secretary of Agriculture to "provide the Foundation use of Department of Agriculture personnel, facilities, and equipment, with partial or no reimbursement, with such limitations and on such terms and conditions as the Secretary shall establish." The Forest Service may provide the NFF personnel, facilities, and equipment in support of NFF's activities with partial or no reimbursement, subject to the terms and conditions that the Secretary may establish. The Forest Service intends to comply fully with this provision of the NFF Act and, as such, will carefully monitor all in-kind support that we provide to the Foundation to make sure it is commensurate with the benefits derived by the FS in this partnership.

**OIG RECOMMENDATION NO. 1b: "Provide sufficient guidelines and directions to the NFF and FS employees to (1) ensue that FS employees do not accept gifts from the NFF, and (2) preclude the acceptance of funds from the NFF which create the appearance of a conflict of interest."**

**FS RESPONSE TO RECOMMENDATION NO. 1b:** The FS concurs with this recommendation. On December 22, 1997, the FS sent a formal letter to the NFF transmitting copies of the USDA Personnel Bulletin 735-1 that outlines FS employee responsibilities and conduct and a copy of 5 CFR, part 2635, the standards of ethical conduct for federal employees. These two documents were distributed to all Forest Service employees within the last 2 months. In addition, by January 31, 1998, the FS will send a letter to all FS employees clearly identifying what we can and cannot do in the FS relationship with the NFF. This letter will also contain supplemental information relative to gifts and conflicts of interest which is part of the "Partnership Guide" issued to all FS line officers on May 27, 1997.

While the FS agrees with this recommendation, we do not fully agree with the statements on the second and third paragraphs on page 10 of the official draft report which state in part that "The FS has also provided a full-time employee to the NFF.....By not detailing the employee to the NFF, the FS has circumvented the regulations of the OPM Federal Personnel Manual and USDA's policy that the costs of a detail be mutually shared by the NFF." The above-referenced FS employee is assigned as a project coordinator with the NFF and, as such, works closely with the NFF. He maintains an office in the Auditor's Building and works under FS supervision. Since the NFF is a nonprofit entity, any arrangement where he would work for the NFF would be handled under an Intergovernmental Personnel Act (IPA) agreement. And, since the employee is under FS supervision and works to coordinate projects that benefit the FS, his liaison role does not seem to be appropriate for an IPA, and is entirely consistent with 16 U.S.C. 583j-3(c) of the NFF Act.

**OIG RECOMMENDATION NO. 1c: "Work with legislative officials to avoid weakening existing Governmental controls by not supporting proposed legislation that allows the NFF and its subgrantees to keep interest earned on Federal funds or exempts NFF subgrantees from audit and reporting requirements of OMB Circular A-133."**

**FS RESPONSE TO RECOMMENDATION NO. 1c:** The pending legislation has been signed and is in effect which allows the NFF to retain the interest earned on Federal funds (P.L. 105-83). In all other circumstances, pertinent OMB Circulars apply to the NFF when receiving Federal funds including A-133.



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## **EXHIBIT C - FS RESPONSE TO THE DRAFT REPORT**

**OIG RECOMMENDATION NO. 2a: "Recover \$1,246,265.37 in unmatched Federal funds."**

**FS RESPONSE TO RECOMMENDATION NO. 2a:** The FS does not concur with this recommendation. Based on 7 Code of Federal Regulations (CFR) 3019.23 on cost-sharing or matching, which states "(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost-sharing or matching" when such contributions are verifiable, are not included as contributions for any other federally assisted project and are allowable under the applicable cost principles. The Forest Service reviewed the Foundation's audited financial statements for their FY's 1993 through 1996. Government funded expenses were extracted from total expenses for the grant period of 1992 through 1996, and in-kind contributions from (private sources) were added back to arrive at net expenditures for the grant period. Based on this analysis, the foundation had sufficient private funded expenditures to meet matching requirements for Forest Service reimbursement.

**OIG RECOMMENDATION NO. 2b: "Establish controls to ensure forms SF-269 and SF-270 are thoroughly reviewed prior to grant fund disbursement."**

**FS RESPONSE TO RECOMMENDATION NO. 2b:** The FS concurs with this recommendation. The FS will ensure that the forms are reviewed prior to grant fund disbursements.

**OIG RECOMMENDATION NO. 3a: "Ensure the NFF has a financial management system capable of reporting a complete, accurate, and current disclosure of the financial results of each FS agreement."**

**FS RESPONSE TO RECOMMENDATION NO. 3a:** The FS concurs with this recommendation. In accordance with 7 CFR 3019.21 Standards for Financial Management Systems, the FS will ask the Foundation to have an independent auditor certify that their financial management system complies with the above requirements and that the audited financial statements include a schedule displaying income and expenses of each federally sponsored project or program. We have been advised by the Foundation that they have a new cost accounting system that will comply with controls set forth in 7 CFR 3019 and OMB Circulars A-122 and 133.

**OIG RECOMMENDATION NO. 3b: "Make no further disbursements to the NFF until its financial management system has been modified to adequately track expenditures of Federal and private funds on a grant-per-grant basis."**

**FS RESPONSE TO RECOMMENDATION NO. 3b:** The FS does not concur with this recommendation. 7CFR 3019.22(h) states that "Unless otherwise required by statute, Federal agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) and (h)(2) of this section apply." The Foundation submitted a spreadsheet showing expenditures for the grant period (FY 1992-FY 1996) broken out by Federal funds versus private funds on a grant-per-grant basis. With the implementation of a new cost accounting system in 1997, the Foundation has made every effort to comply with the applicable laws. The FS will continue to work with the Foundation to ensure their new financial management system is in compliance. However, management reserves the prerogative to make reimbursement

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## EXHIBIT C - FS RESPONSE TO THE DRAFT REPORT

payments on an as needed basis through March 31, 1998 until the NFF's independent auditor can release an audit report to determine full compliance with controls set forth in OMB Circular A-122 and 133.

**OIG RECOMMENDATION NO. 3c: "Ensure the NFF has established procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the cost principles of OMB Circular A-122."**

**FS RESPONSE TO RECOMMENDATION NO. 3c:** The FS concurs with this recommendation. The FS will review the independent audit reports to ensure compliance with OMB Circular A-122.

**OIG RECOMMENDATION NO. 3d: "Require the NFF to submit revised forms SF-269 and SF-270 reflecting the total costs (Federal and NFF) in accordance with the applicable OMB directives."**

**FS RESPONSE TO RECOMMENDATION NO. 3d:** The FS concurs with this recommendation. The FS will assure the NFF provides corrected SF-269 reports. However, the SF-270's are payment documents and shall not be revised.

**OIG RECOMMENDATION NO. 4a: "Recover \$741 from the NFF in unallowable entertainment costs."**

**FS RESPONSE TO RECOMMENDATION NO. 4a:** The FS concurs with this recommendation and will recover the \$741 in unallowable entertainment costs.

**OIG RECOMMENDATION NO. 4b: "Direct the NFF to recover \$225 from the prior Executive Director."**

**FS RESPONSE TO RECOMMENDATION NO. 4b:** The FS concurs with this recommendation and will notify the Foundation to recover the \$225..

**OIG RECOMMENDATION NO. 5a: "Require the NFF to recover from the NFF Board members the \$1,588.57 in excess lodging costs."**

**FS RESPONSE TO RECOMMENDATION NO. 5a:** The FS does not concur with this recommendation. FS employees, including the Chief were in attendance at these meetings and requested and received approval for lodging rates at an actual subsistence rate higher than the per diem rate. This policy is consistent with Chapter 301-7.4 of the Federal Travel Regulations.



