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STATEMENT OF
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OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

I am here today to discuss the Government-wide regulations recently proposed by the Administration to control political advocacy or lobbying with appropriated funds by government contractors and Federally funded non-profit organizations. The Office of Management and Budget (OMB), Department of Defense (DOD), General Services Administration (GSA) and the National Aeronautics and Space Administration (NASA) have simultaneously proposed the adoption of identical regulations that prohibit the reimbursement of political advocacy expenses charged to Federal grants or contracts.

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These proposed regulations are in part the result of a series of recommendations contained in GAO reports and decisions that the Administration establish uniform Government-wide regulations prohibiting Government contractors and Federally funded non-profit organizations from expending appropriated funds for lobbying activities. While we endorse the concept of uniform cost principle regulations governing political advocacy activities, we have certain reservations about the proposed regulations.

The Federal Government pursues its aims and promotes its purposes through payments of about one hundred billion dollars annually to contractors and grantees. Every recipient of a government contract or grant is unquestionably free to exercise the right to political expression free of restraint. It is equally clear, however, that the costs associated with political advocacy should not be financed with taxpaper funds through charges to Federal contracts or grants. The proposed regulations seek to assure that Federal funds do not finance political advocacy.

We have two primary concerns with the proposed regulations which we have discussed in detail with OMB officials. First, we have serious problems with the way the regulations treat allocation of costs between unallowable

and allowable activities. Our second concern relates to the scope of prohibited activities included within the definition of political advocacy. We understand that OMB is prepared to make significant revisions to its initially proposed approach -- changes which will go far toward ameliorating their far reaching effect. Nevertheless, even with OMB's suggested revisions, there will remain an essential feature that troubles us.

Under the proposed cost principles, and as they might be revised, costs representing political advocacy are not merely disallowed but may cause otherwise legitimate costs also to be disallowed. The full salary costs of individuals are unallowable if any part of their work consistitutes political advocacy or if their organization has required or induced them to contribute to any organization engaging in political advocacy during nonworking hours. The allowable portions of other expenses are also unallowable if any portion of the items involved are used for political advocacy. Under the revisions OMB is apparently prepared to make, some threshhold amounts of political advocacy will control but the basis concept will remain.

In essence grantees and contractors will be penalized for having individuals engaged in political advocacy doing any work otherwise properly chargeable to a grant or contract. We have serious reservations concerning the legal

enforceability of these penalty provisions as well as their desirability from a policy standpoint. Contractual provisions requiring forfeiture of reimbursement for otherwise allowable costs because of actions unrelated to contract or grant purposes generally will not be enforced. Under the OMB proposal it is clear that there is no reasonable relationship between the proscribed activities and the requirement for forfeiture where the Government is not being charged in any way for those activities. We don't understand why engaging in political advocacy on one's own time is any different from engaging in any other non-reimbursable activity on one's own time. The key requirement is only that the non-allowable activity be separated from public financing.

Since the penalty can be so great, it could have a "chilling effect" on grantees and contractors in communicating with their program agencies concerning legitimate business. It would also make it necessary for grantees and contractors to add additional staff and equipment to replace staff and equipment that had been used previously for both permissible and impermissible activities on a cost allocation basis. This could increase the Government's cost for the same goods and services. Also, the requirement for small grantee organizations to physically separate permissible and impermissible activities could place such a strain on their finances as to threaten their continued viability.

We are also concerned with the scope of the definition of political advocacy, although here too, OMB indicates an intent to make substantial changes. OMB initially defined political advocacy as including attempts to influence Federal, State, and local legislative outcomes through contributions, endorsements, or publicity, and attempts to influence governmental decisions through communication with any participant in the decision-making process or the general public. The term Governmental decisions is in turn defined as including legislation on the Federal, State and local levels, administrative decisions, and formal informal adjudications.

We are uneasy about including "attempts to influence the administrative decision-making process" within the scope of unallowable political advocacy costs in the absence of a statute or other evidence of Congressional intent to go that far. While we recognize that lobbying of executive branch personnel with Federal funds by contractors or grantees is a legitimate area of concern, we foresee major difficulties in distinguishing between contacts between contractors or grantees and agencies which are permissible--indeed necessary--to the pursuit of the contract or grant objective and those contacts which constitute impermissible political advocacy.

As pointed out, OMB officials have stated that the proposed cost principles represent only a "first draft" to be modified in a great many respects before they become final. We think the issue covered by the proposed regulations is an important one which should be subject to full debate by all interested parties. We agree with the underlying premise that taxpayers should not be forced to support causes with which they might be in substantial disagreement. Indeed, we subscribe to the idea that taxpayer funds should be devoted to governmental purposes which do not include, except in rare circumstances, the financing of political advocacy. We think that any regulations go too far, however, when they require a Federal contractor or grantee to forfeit reimbursement for legitimately incurred expenses merely because the contractor or grantee has engaged in perfectly proper political advocacy with non-Federal funds.

It is evident that revision of proposed cost principles which deal with unallowable costs is required and that changes in the scope of the definition of political advocacy are also needed. We support the willingness of the OMB officials to deal with the concerns which have been raised, and we are prepared to work with OMB in developing revised cost principles which will protect both the taxpayer's dollar and the Federal grantee or contractor's right to compensation for legitimate work performed on behalf of the United States.