



# Director's Forum

## Non-Government Standards— Why Participate?

**Much can be said for owning your own documents, and DoD owns thousands of them. When you own the documents, you have the flexibility to do with them as you please. You have total control over the development, approval, publication, and distribution process, as well as the technology that goes into the documents. However, although many users think the documents we own are free, they're not.**

We have thousands of military specifications, standards, and handbooks essential for military applications. We distribute them free of charge from our world-class website ([assistdocs.com](http://assistdocs.com)), but it takes considerable technical resources to develop and maintain our library of MilSpecs. Furthermore, as more design and development work is being done by contractors, while at the same time our defense budgets dwindle, we are faced with the cold, hard truth that there simply are fewer technical people available to develop and maintain government-unique specifications and standards—creating an “expertise crisis” in the standards arena. One way to address this crisis is through continuous and engaged participation in the activities of non-government standards bodies (NGSBs).

I am frequently asked about participation in NGSB activities: Can we participate? Can we pay the necessary fees? Why would we want to contribute our expertise to an NGSB and then have to buy the standards from it?

*Can we participate?* Most certainly! Not only can we, but we are encouraged to participate through several different public policies. For many years, we have found the use of non-government standards (NGSs) and participation in NGSBs to be a good business model. In 1962, we recognized the benefits of using NGSs when we adopted 12 documents into DoD's standards system for repetitive use in procurement. Then, in the 1970s, we joined other government agencies to establish government-wide policy for using NGSs and participating in NGS organizations. This policy was documented in Office of Management and Budget (OMB) Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards,” published in 1978. Though revised several times since then, the

policy has remained the same: use NGSs to the greatest practical extent and participate in NGSB activities whenever possible.

In 1995, principles from the OMB circular were included in the National Technology Transfer and Advancement Act of 1995, Public Law 104-103 (NTTAA). Among other things, this law encouraged federal participation in NGSBs and reliance, whenever feasible, on standards and conformity assessment solutions developed or adopted by private, voluntary consensus standards bodies in lieu of developing government-unique standards or regulations.

Enactment of the NTTAA led OMB to revise Circular A-119. The 1998 revision established basic policies and guidance on NTTAA participation principles. I'd like to highlight two specific points on the nature of federal participation. First, the circular states that when a federal employee participates at agency expense, the employee represents the agency rather than his or her personal views; this applies equally to contractor personnel representing government



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employees or agencies. Second, the circular makes clear that we are to participate actively and on an equal basis with other members; this includes voting and serving as chair or in other official capacities.

*Can we pay the fees required for participation?* The OMB circular is clear: we can pay fees to participate. The circular contains language on agency support of NGSB activities. Support should be limited to that which clearly furthers agency missions and priorities and is within agency resource constraints. Further, support should be no greater than other participants' support except when timely development of a standard is of paramount importance to an agency's mission. The following are types of support that may be provided:

- Direct financial support, such as grants, memberships, and contracts
- Administrative support, including travel costs, hosting of meetings, and secretarial functions
- Technical support, for example, cooperative testing for standards evaluation and participation of agency personnel in the activities of voluntary consensus standards bodies
- Joint planning with voluntary consensus standards bodies to promote the identification and development of needed standards
- Participation of agency personnel.

Public policy clearly encourages participation in NGSB activities and even states that we can pay appropriate fees. But this continues to be an area in which different lawyers have different interpretations. Let me summarize. One federal law prohibits agencies from paying membership fees or dues of an employee.<sup>1</sup> The Government Accountability Office has repeatedly found that this prohibition does not apply to memberships in an agency's name: "the general rule regarding membership fees is that an agency may use its appropriation to pay for an agency membership in a private association when the membership furthers the purpose of the appropriation."<sup>2</sup> Even with this history, some general counsels asserted that law restricted such payment. So, Congress addressed the issue directly in an amendment to the NTTAA stating that the law prohibiting payment of membership fees does not apply to activity undertaken in carrying out standards activities.<sup>3</sup> (See [dsp.dla.mil](http://dsp.dla.mil), Non-Govt Standards, for the full text of the three cites.)

<sup>1</sup>United States Code, Title 5, Section 5946.

<sup>2</sup>Comptroller General Decision B-305095, December 2005.

<sup>3</sup>Public Law 107-107, Title XI, Section 1115.

*Why should we participate in NGSB activities?* There are many good reasons:

- We gain access to the commercial industrial base.
- We gain access to the latest technologies and dual-use products.
- We preserve and protect the standards expertise essential to the development of truly DoD-unique standardization documents.
- We gain opportunities to establish standards that serve national goals such as the use of environmentally sound and energy-efficient materials, products, systems, and services.
- We get a place at the private-sector standards table and can influence the shaping of industry standards to meet DoD requirements.
- We encourage long-term growth for U.S. enterprises and promote economic competition through harmonization of standards.

But, some say, now we have to pay for the standards we used to get for free. And we're the ones who contributed the intellectual property in the first place. Yes, we do have to buy the standards, and we require our contractors to buy them. But the long-term benefit far outweighs the short-term costs. In addition to the reasons cited above, we transfer the administrative cost to an organization for which standards development is a core competency, and we share that administrative cost with other users of the documents.

Participating in NGSBs and using NGSs is not free, but developing and maintaining military documents also cost money. And while flexibility and control over our own documents may provide a comfort level to some, partnering with industry in private-sector consensus bodies helps to spur innovation and give the warfighter a superior product. The standards we are helping to create not only are commercially acceptable, but, in the grand scheme of things, will aid the warfighter by improving performance, quality, safety, and reliability, while maximizing interoperability. The opportunity for us to leverage our shrinking resources by working closely with the hundreds of experts from all over the world who participate along with us makes this an essential part of our standards policy.

So can we participate? Resoundingly—yes. Can we pay appropriate fees? Yes, we can. And why should we do this? Although the answers to "why" are many, I believe that in today's environment, the key answer is that we simply can't afford *not* to participate.