

be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 75.317 through 75.323 and 75.439.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

§ 75.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: Purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 75.436 and 75.468, for areas of potential application in the matter of Federal financing of activities.)

§ 75.407 Prior written approval (prior approval).

(a) Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subse-

quent disallowance or dispute based on unreasonableness or non-allocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the HHS awarding agency in advance of the in-currence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (1) § 75.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (2) § 75.306 Cost sharing or matching;
- (3) § 75.307 Program income;
- (4) § 75.308 Revision of budget and program plans;
- (5) § 75.309 Period of performance and availability of funds;
- (6) § 75.318 Real property;
- (7) § 75.320 Equipment;
- (8) § 75.353 Fixed amount subawards;
- (9) § 75.413 Direct costs, paragraph (c);
- (10) § 75.430 Compensation—personal services, paragraph (h);
- (11) § 75.431 Compensation—fringe benefits;
- (12) § 75.438 Entertainment costs;
- (13) § 75.439 Equipment and other capital expenditures;
- (14) § 75.440 Exchange rates;
- (15) § 75.441 Fines, penalties, damages and other settlements;
- (16) § 75.442 Fund raising and investment management costs;
- (17) § 75.445 Goods or services for personal use;
- (18) § 75.447 Insurance and indemnification;
- (19) § 75.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (20) § 75.455 Organization costs;
- (21) § 75.456 Participant support costs;
- (22) § 75.458 Pre-award costs;
- (23) § 75.462 Rearrangement and reconversion costs;
- (24) § 75.467 Selling and marketing costs;
- (25) § 75.470 Taxes (including Value Added Tax) paragraph (c); and

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(26) § 75.474 Travel costs.

(b) A request by a subrecipient for prior approval will be addressed in writing to the recipient. The recipient will promptly review such request and shall approve or disapprove the request in writing. A recipient will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal award to the recipient. If the revision, requested by the subrecipient would result in a change to the recipient's approved project which requires Federal prior approval, the recipient will obtain the HHS awarding agency's approval before approving the subrecipient's request.

(c) For cost-reimbursement contracts under the FAR, the recipient shall obtain prior written approval in accordance with FAR 52.244-2.

§ 75.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 75.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 75.412 through 75.415);

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 75.416 and 75.417); and

(c) Special Considerations for Institutions of Higher Education (§§ 75.418 and 75.419).

[79 FR 75889, Dec. 19, 2014, as amended at 81 FR 3017, Jan. 20, 2016]

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§ 75.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the HHS awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also subpart D of this part, §§ 75.300 through 75.309.

§ 75.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (pre-determined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.