

months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(iii) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(iv) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

(2) For non-profit organizations subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of paragraph 19.a. do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

(3) The following definitions are to be used for purposes of paragraph 19:

(a) "Re-acquired assets" means assets held by the non-profit organization prior to the effective date of this revision that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(b) "Initial equity contribution" means the amount or value of contributions made by non-Federal entities for the acquisition of the asset or prior to occupancy of facilities.

(c) "Asset costs" means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in

accordance with General Accepted Accounting Principles (GAAP).

The following paragraph replaces paragraph 42.d. of Attachment B to Circular A-122):

42. Rental Costs.

d. Rental costs under leases which are required to be treated as capital leases under Generally Accepted Accounting Principles (GAAP), are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed, i.e., to the amount that minimally would pay for depreciation or use allowances, maintenance, taxes, and insurance. Interest costs related to capitalized leases are allowable to the extent they meet criteria in Attachment B, paragraph 19.a. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

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OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Non-Profit Organizations; Proposed Revisions

AGENCY: Office of Management and Budget.

ACTION: Proposed revisions to OMB Circular A-122, "Cost Principles for Non-Profit Organizations".

SUMMARY: This notice proposes changes to OMB Circular A-122, "Cost Principles for Non-Profit Organizations," to revise the definition of equipment, to make certain additional costs unallowable, to modify the multiple allocation base method for computing indirect cost rate(s), and to place a ceiling on the administrative portion of indirect costs for organizations with Federal funding over \$10 million. The proposed changes provide consistency across OMB's cost principles Circulars A-122; A-87, "Cost Principles for State and Local Governments;" and A-21, "Cost Principles for Educational Institutions."

DATES: Comments on these proposals are due December 5, 1995.

ADDRESSES: Comments should be mailed to Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, 725 17th Street, N.W., Room 6025, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to 202-395-3952. Electronic mail

comments may be submitted via Internet to TRAN_H@A1.EOP.GOV. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Non-Federal organizations should contact the organization's cognizant Federal agency. Federal agencies should contact Gilbert Tran, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3993.

SUPPLEMENTARY INFORMATION: In this issue of the Federal Register, the Office of Management and Budget (OMB) issued a final revision to OMB Circular A-122, "Cost Principles for Non-Profit Organizations," regarding interest allowability. The revision was made in a continuing effort to provide consistency across OMB's cost principles Circulars A-122; A-87, "Cost Principles for State and Local Governments;" and A-21, "Cost Principles for Educational Institutions," to ensure more comparable treatment of various types of institutions when seeking support from the Federal Government, and to promote cost effective funding decisions on the part of the Federal Government and non-profit organizations. Circular A-122 consists of the Circular as originally issued in 1980 (45 FR 46022; July 8, 1980), with amendments in 1984 (49 FR 18260; April 27, 1984), in 1987 (52 FR 19788; May 27, 1987) and in this issue. See also 60 FR 36316 (July 14, 1995) regarding equipment capitalization threshold waivers.

To further the goals stated previously, OMB proposes herein to revise the definition for equipment, to make certain additional types of costs unallowable, to modify the multiple allocation base method for computing indirect cost rate(s), and to place an upper-limit on payments for administrative expenses. The following describes each of the four proposals.

First, in the equipment definition in Attachment B, section 15, OMB is proposing to raise the threshold amount to \$5000 in conformance with the threshold established in Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (58 FR 62992; November 29, 1993). This revision will decrease burdens associated with accounting for property.

Second, OMB is proposing additional unallowable items. Some proposed unallowable costs, items (1) to (10), are already unallowable under Circulars A-87 and/or A-21 (See Circular A-87 (60 FR 26484; May 17, 1995) and Circular A-21 (56 FR 50224; October 1, 1991)) and/or the Federal Acquisition Regulation (at 48 CFR Part 31). These unallowable costs include:

- (1) Advertising and public relations costs.
- (2) Alcoholic beverages.
- (3) Organization-furnished automobiles for personal use.
- (4) Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.
- (5) Goods and services for personal uses.
- (6) Housing and living expenses of an organization's officers.
- (7) Insurance against defects.
- (8) Memberships in any civic, community or social organization or country club.
- (9) Selling or marketing of goods or services.
- (10) Trustees' travel.

OMB is proposing to make changes to items (11) to (17) for consistency with amendments made by the Federal Acquisition Streamlining Act of 1994 (FASA), Public Law 103-355. Section 2151 of FASA, by amending section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), specified certain items of costs as not allowable under Federal covered contracts. While most of the unallowable cost items listed in FASA are precisely identical or substantively the same as are currently in Circular A-122, some of the cost items differ. They are:

- (11) Payments of fines and penalties resulting from violations of, or failure to comply with, foreign laws and regulations.
- (12) Costs of membership in any social, dining, or country club or organization.
- (13) Costs incurred in certain severance pay package (commonly known as a "golden parachute" payment).
- (14) Costs of severance pay to foreign nationals in excess of customary or prevailing practices.
- (15) Costs of severance pay to foreign nationals in the case of termination due to closing of, or the curtailment of activities at, a United States facility in that country.
- (16) Costs of advertising designed to promote the organization or its products.
- (17) Costs of commercial insurance that protects against the costs for

correction of defects in materials or workmanship.

OMB is proposing to add items (1) through (17) to the costs in Attachment B that are unallowable under Circular A-122.

Third, OMB is proposing a revision to Attachment A under which an organization receiving more than \$10 million of Federal funding will be required to compute its indirect cost rate based on a modified total direct cost basis using the "multiple allocation method," and its rate should be determined separately for the two major categories: "Facilities" and "Administration." This proposed change would provide a standard and uniform method to calculate indirect cost rate(s) for organizations receiving more than \$10 million of Federal funding. This method is consistent with that required for colleges and universities with direct costs funding covered by Circular A-21 of more than \$10 million. Where the Federal funding covered in this Circular of an organization does not exceed \$10 million in a fiscal year, the organization will be able to use one of the three allocation methods described in Section D of Attachment A, Allocation of Indirect Costs and Determination of Indirect Costs Rates.

Fourth and finally, OMB is proposing an upper limit of 26 percent on the "Administration" component of the rate in Attachment A for an organization receiving more than \$10 million of Federal funding. The administrative cap is consistent with the one implemented for colleges and universities on October 1, 1991, under Circular A-21 (56 FR 50224). Organizations with an administrative component rate at or less than 26 percent will continue to recover at the current negotiated rate.

The effective date for the first, second and fourth proposals will be at the start of the next accounting period beginning on or after the first issuance of the revised Circular for which the organization has not yet established a predetermined indirect cost rate. The effective date for the second proposal is as follows. For costs charged directly, the effective date for the proposed unallowable costs will be 30 days after the final issuance of the revised Circular. For costs charged indirectly, the effective date will be at the start of the next accounting period beginning on or after the final issuance of the revised Circular for which the organization has

not established a predetermined indirect cost rate.

G. Edward DeSeve,
Controller.

Proposed Revisions

Revise Attachments A and B of Circular A-122, as follows.

A. Attachment A

1. Add Subsection 3 to Section C, Indirect Costs.

3. For organizations receiving more than \$10 million of Federal funding covered under this Circular, the indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, project administration (when it is not directly charged to projects), and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

2. Add Subsections f and g to Section D.1., Allocation of Indirect Costs and Determination of Indirect Cost Rates, General:

f. Where the Federal funding covered by this Circular of an organization does not exceed \$10 million in a fiscal year, the organization can use one of the three allocation methods herein described as: simple, multiple or direct allocation method. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subgrants or subgrants above \$25,000 of each subgrant or subcontract, regardless of the period covered by the subgrant or subcontract), direct salaries and wages, or modified total direct costs (MTDC). MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract. Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Where the Federal funding covered by this Circular of an organization exceeds \$10 million in a fiscal year, the

organization shall use the multiple allocation method. The distribution base shall be MTDC as described in subsection f.

3. Replace Section D.2.c. with the following:

c. The distribution basis shall comply with the conditions described in Section D.1.

4. Replace Section D.3 with the following:

3. Multiple Allocation Base Method

a. General. Where an organization receives more than \$10 million of Federal funding in a fiscal year covered under this Circular or where an organization's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings, as described in subsection b. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default bases by cost pool are described in subsection c.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in Section C.3. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section 11 ("Depreciation and use allowance").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with Section 23 ("Interest, fund raising, and investment management costs").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster

preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowance, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, and management information systems.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function

benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored agreements.

(1) Depreciation and use allowance. Depreciation and use allowance expenses shall be allocated in the following manner:

(a) Depreciation and use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation and use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation and use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of employees on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the

depreciation or use allowance on the buildings, equipment and capital equipments to which the interest relates.

(3) Operations and maintenance expenses. Operations and maintenance expenses shall be allocated in the same manner as the depreciation and use allowance.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on MTDC, as described in Section D.1.f. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowance, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subsection (2), this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with Section D.5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored agreements and other benefitting activities within each major function on the basis of MTDC, as described in Section D.1.f. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as

the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in Section C.3.

g. Limitation on reimbursement of administrative costs.

(1) The administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the organization's first fiscal year which begins on or after October 1, 1995, shall be limited to 26 percent of MTDC (as defined in Section D.1.f) for the administration costs (including their allocable share of depreciation and/or use allowance, interest costs, operation and maintenance, and fringe benefits) and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section C.3.

(2) For organizations that already established predetermined rates beyond October 1, 1995, the limitation shall be at the start of the next fiscal year beginning on or after October 1, 1995, for which the organization has not yet established an indirect cost rate.

(3) Organizations shall not change their accounting or cost allocations methods which were in effect on September 30, 1995, if the effect is to change the charging of a particular cost from indirect to direct to avoid the limitation on administrative costs. Cognizant Federal agencies are authorized to permit changes where an organization's charging practices are at variance with acceptable practices followed by a substantial majority of other similar organizations.

B. Attachment B

Revise the following cost items in Attachment B to Circular A-122 ("Selected Items of Cost").

1. Revise the Table of Contents for Attachment B to read:

1. Advertising and public relations costs
2. Alcoholic beverages
3. Bad debts
4. Bid and proposal costs (reserved)
5. Bonding costs
6. Communication costs
7. Compensation for personal services
8. Contingency provisions
9. Contributions
10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement
11. Depreciation and use allowances

12. Donations
13. Employee morale, health and welfare costs and credits
14. Entertainment costs
15. Equipment and other capital expenditures
16. Fines and penalties
17. Fringe benefits
18. Goods or services for personal use
19. Housing and personal living expenses
20. Idle facilities and idle capacity
21. Independent research and development (reserved)
22. Insurance and indemnification
23. Interest, fund raising, and investment management costs
24. Labor relations costs
25. Lobbying costs
26. Losses on other awards
27. Maintenance and repair costs
28. Materials and supplies
29. Meetings and conferences
30. Memberships, subscriptions, and professional activity costs
31. Organization costs
32. Overtime, extra-pay shift, and multi-shift premiums
33. Page charges in professional journals
34. Participant support costs
35. Patent costs
36. Pension plans
37. Plant security costs
38. Pre-award costs
39. Professional service costs
40. Profits and losses on disposition of depreciable property or other capital assets
41. Public information service costs
42. Publication and printing costs
43. Rearrangement and alteration costs
44. Reconversion costs
45. Recruiting costs
46. Relocation costs
47. Rental costs
48. Royalties and other costs for use of patents and copyrights
49. Selling and marketing
50. Severance pay
51. Specialized service facilities
52. Taxes
53. Termination costs
54. Training and education costs
55. Transportation costs
56. Travel costs
57. Trustees

2. Revise and retitle Section 1 to read:
1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of the obligations arising under a sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in Section 45 ("Recruiting costs");

(2) The procurement of goods and services for the performance of a sponsored agreement;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored agreement except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A-110, paragraph _____. 34, "Equipment"; or

(4) Other specific purposes necessary to meet the requirements of the sponsored agreement.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored agreements;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements; or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in subsections c. and d. if incurred for more than one sponsored agreement or for both sponsored work and other work of the organization, are allowable to the extent that the principles in Sections B ("Direct Costs") and C ("Indirect Costs") are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c., d., and e.;

(2) Costs of meeting or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

3. Renumber current sections 2 through 8 as sections 3 through 9, respectively.

4. Add the following new section 2: 2. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

5. In section 7 ("Compensation for personal services"), as renumbered above in item 3, rename the current subsection g, Pension costs, as subsection h. Add a new subsection g: g. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

6. Renumber current sections 9 through 15 as sections 11 through 17, respectively.

7. Add new section 10:

10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a. Definitions.

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) Costs include, but are not limited to: administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection

with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subsection b.(1).

c. If a proceeding referred to in subsection b. is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subsection b. may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subsection b. is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored agreement, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subsection b., but which are not made unallowable by that subsection, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subsection c. has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subsections b. and f. of this section, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if

the costs are subsequently determined to be unallowable.

8. In section 15 ("Equipment and other capital expenditures"), as renumbered in item 6 above, replace subsection 15.a.(1):

(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5000.

9. Renumber current sections 16 through 44 as sections 20 through 48, respectively.

10. Add new section 18:

18. Goods or services for personal use. Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

11. Add new section 19:

19. Housing and personal living expenses.

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable regardless of whether the cost is reported as taxable income to the employees.

b. The term "officers" includes current and past officers.

12. Add to renumbered section 22 ("Insurance and indemnification") subsections (f) and (g) to section 22.a.(2):

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

13. Revise section 30, as renumbered in item 9, to read:

30. Memberships, subscriptions and professional activity costs.

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information,

are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

d. Costs of membership in any civic or community organization are unallowable.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

14. Revise section 45, as renumbered in item 9, to read:

45. Recruiting costs.

a. Subject to subsections b., c., and d., and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

15. Current sections 45 through 51 are renumbered as sections 50 through 56, respectively.

16. Add new section 49:

49. Selling and marketing. Costs of selling and marketing any products or services of the organization (unless

allowed under section 1) are unallowable.

17. In section 50 ("Severance pay"), as renumbered in item 15, subsection a. is amended and new subsections c. and d. are added, as follows:

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, they are required by: (i) law; (ii) employer-employee agreement in effect at time of establishment of the contract or grant, or at commencement of employment; (iii) preexisting established policy that

constitutes, in effect, an implied agreement on the organization's part; or (iv) circumstances of the particular employment.

Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

c. Severance payments to foreign nationals employed by the organization outside the United States, to the extent

that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable.

18. Add new section 57:

57. Trustees. Travel and subsistence costs of trustees, regardless of the purpose of the trip, are unallowable.

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