

A-21 & A-122 Discussion

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Introductions

- Discussion of OMB Circulars A-21 and A-122 (now referred to in Title 2 of the Code of Federal Regulations, Subtitle A, Chapter II, Parts 220 and 230 respectively).
- The False Claims Act.
- Discussion of findings from recent OMB audits.
- Allowable, Reasonable, Allocable & Consistently Treated. What does this mean?
- Discussion of best practices of applying cost principles to day-to-day transactions and how to protect your institution from an OMB audit.

Objectives

- OMB Circular A-21 establishes the principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government.
- OMB Circular A-122 establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

A-21 & A-122 Discussion

- These principles govern costs that may be charged to Federal funding by educational and non-profit institutions either as direct or facilities & administrative (F&A; indirect) costs.
- Most Institutions apply these same cost principles to non-federal funding as well, although in some exceptional cases, non-federal sponsors may define allowable and unallowable costs differently than federal sponsors.

A-21 & A-122 Discussion

- Cost Principles
 - The codified law applicable to:
 - Universities - 2 CFR 220 (OMB Circular A21)
 - Non Profits - 2 CFR 230 (OMB Circular A122)
 - Hospitals - 45 CFR 74, Appendix E (OASC-3)
 - State and Local Governments - 2CFR 225 (OMB Circular A87)
 - Commercial Organizations: FAR 48 CFR part 31

Federal Law & Regulations

- 31 U.S.C. 3729
- Liability for Certain Acts. – Any person who –
- Knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- Knowingly makes, use, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
- has possession, custody, or control of property or money used or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or member of the Armed Forces, who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decreases an obligation to pay or transmit money or property to the Government ,

(http://www.law.cornell.edu/uscode/31/usc_sec_31_00003729----000-.html)

False Claims Act.

- Discussion of Findings of Recent Audits and how these findings relate to A-21 and A-122.

Findings from Recent Audits

A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefore, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made.

Considerations:

- The cost must be necessary for the performance of the agreement (grant or contract project).
- Consistent with the requirements imposed by arms-length bargaining, federal or state laws, and regulations, and ethical business practices.
- Whether or not the individuals involved acted with due prudence.
- Incurrence of the cost was consistent with existing institutional policies.

Reasonable?

- Directly benefits the project.
- Eligible for reimbursement by the sponsor; listed in the itemized budget.
- Sponsor guidelines do not place restrictions regarding the expense.
- Institution does not place restrictions on the expense.

Allowable?

- Be incurred solely to advance the work under a sponsored agreement, or
- Benefit both the sponsored agreement and other work of the institution, in proportions that can be approximated through the use of reasonable methods, and
- Be assignable to the benefitting activities without undue effort or cost (in accordance with the relative benefits received by the project)

Allocable?

- For a cost to meet the requirement of consistency, it must be treated in the same manner (i.e., as either direct or indirect) when used in like circumstances.
- “The fact that a cost requested in a budget is awarded, as requested, does not ensure a determination of allowability. The organization is responsible for presenting costs consistently and must not include costs associated with their F&A rate as direct costs.”
 - NIH Grants Policy Statement

Consistently Treated

- Open discussion.

Best Practices