

DAB Decision Highlights Importance of Thorough Documentation and Careful Cost Allocation

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A recent Departmental of Health and Human Services (HHS) Departmental Appeals Board (DAB)¹ decision² highlights how important it is for federal grant recipients to thoroughly and precisely document the basis for charging costs to federal awards. Many of the disallowed costs addressed in the decision may have been allowable if the proper documentation had been in place. The decision also discusses the allowability of a number of selected items of costs.

Background

This decision involves Delta Health Alliance (“Delta”³), a nonprofit organization in Mississippi whose mission is to provide health care, community outreach programs, and educational services in the Mississippi Delta region. During the relevant period, July 2009 – November 2011, Delta received multiple federal grants, including a \$25,000,000 award from HHS’s Health Resources and Services Administration (HRSA) to carry out the Medicare rural hospital flexibility grants program under the federal Social Security Act. In December, 2011, HRSA conducted an Incurred Cost Review for the

July 2009 – November 2011 period, and issued an initial report to which Delta was allowed to provide written responses and further documentation. Ultimately, HRSA’s cost review resulted in nearly \$1,000,000 in disallowances of costs that Delta charged to the HRSA award. Delta appealed that decision to the DAB. The DAB ultimately upheld the vast majority of the disallowances, reversing only \$25,000 in disallowed costs. Finally, Delta formally asked the DAB to reconsider its decision.⁴ However, because the issues raised by Delta in its request for reconsideration were not raised in its initial appeal, the DAB denied the request.

Applicable Laws

Although the DAB’s decision was published several months after the Office of Management and Budget (OMB) Uniform Guidance went into effect⁵, the DAB was required to apply the law that was in effect at the time of Delta’s award. Thus, the costs were disallowed under the administrative requirements in OMB Circular A-110 (HHS’s version of A-110 is found at 45 C.F.R. Part 74), and the cost principles in OMB Circular A-122, which exist as federal



regulations at 2 C.F.R. Part 230. Although there are differences between the old circulars and the new Uniform Guidance, many of the rules and fundamental principles of the circulars remain unchanged. In the discussion below, we have noted where the OMB circulars differ from the Uniform Guidance. When we discuss a requirement from an OMB circular without mentioning the Uniform Guidance, we have done so because the requirements are the same.

Key Takeaways

Document, Document, Document! The cost principles in both Circular A-122 and the Uniform Guidance include basic considerations of cost allocation. Among these are the requirements that, for a cost to be allowable, it must be adequately documented⁶ and must be allocable to a particular federal award or cost objective⁷. For a cost to be allocable to a federal award, the goods or services involved must be chargeable or assignable to that federal award in accordance with relative benefits received. Many of the costs at issue in this case were disallowed because Delta maintained insufficient documentation to show that costs were properly allocated. If Delta had maintained better records of its cost accounting—more thorough, detailed, and contemporaneous documentation for the basis of costs it charged to federal awards—many of the disallowed costs may have been allowed.

For example, HRSA disallowed nearly \$3,000 that Delta charged to the award for direct costs of hiring a consultant to create a budgeting tool.⁸ Relying on the cost principle in A-122 that a direct cost is one that can be identified specifically with a particular final cost objective, such as a federal award, the DAB upheld HRSA's disallowance.⁹ (This principle remains unchanged in the Uniform Guidance; see 2 C.F.R. § 200.413(a)). The DAB explained that for a cost to

be specifically identified with an award as a final cost objective, the grantee must show that the cost “can be specifically identified with only that award.”¹⁰ In other words, it was Delta's burden to show that the budgeting tool did not benefit any program other than the one it was being directly charged to. Although Delta provided a program narrative that described certain data analysis to be conducted, that narrative was not sufficient to show that a budgeting tool would be created and that this tool would be used only with the HRSA grant.

Another example of insufficient level of detail in documentation occurred with regard to travel costs. Delta charged over \$16,000 for between-office travel costs claimed by employees.¹¹ The costs were initially disallowed because HRSA claimed that the employees were not traveling in-between offices but rather were commuting from home to the office.¹² Upon review, the DAB reversed some of the travel disallowances and upheld others. The only costs that passed muster with the DAB were costs that were supported by documentation showing travel dates, starting and ending locations for each leg of travel, miles for each leg of travel, and documentation showing that the employee's home base was a location other than the starting or ending location for each legal of travel (in order to show that it was official travel and not commuting). Costs that were supported with anything less—e.g., documentation showing only the travel destination and not the location where the travel began—were disallowed. It is not clear what law the DAB used as a basis for this disallowance, although it appears to be the travel costs provisions in the federal cost principles; see below for a more detailed discussion about the allowability of travel costs.

Documentation must also be timely. Delta charged nearly \$19,000 in travel costs for



one of its employees, J.H., who Delta claimed worked from home and travelled to various offices.¹³ Several months after Delta hired J.H., Delta and J.H. signed a “Flexible Workplace Agreement.” Delta claimed that the arrangement whereby J.H. worked from home was in place since his hire date but that the agreement was not memorialized until four months into J.H.’s employment. The cost principles in both A-122, (Appendix B, par. 19), and the Uniform Guidance (2 C.F.R. § 200.445), consider the cost of goods or services for personal use to be unallowable. Because Delta could not provide any other documentation showing that J.H. worked from home in the months between being hired and signing the agreement, Delta did not have sufficient documentation to support J.H.’s travel costs during that time period and, therefore, the DAB considered those travel costs unallowable personal expenses. Similarly, the costs of an iPhone and printer for J.H.’s home office that were purchased before the agreement was signed were also unallowable personal expenses.

It’s Your Burden. Closely related to the need for thorough documentation is the fact that the grantee has the burden to show that any costs charged to a federal award are properly allocated.¹⁴ The requirements for proper cost allocation are found in Circular A-122 (2 C.F.R. Part 230, Appendix A, par. A(4)) and in the Uniform Guidance at 2 C.F.R. § 200.405. The placement of the burden on the grantee to show proper allocation is a concept that has been developed by the DAB over decades of decisions.¹⁵ Throughout this decision, Delta was repeatedly unable to meet its burden of showing proper cost allocation. For example, Delta charged nearly \$120,000 for “community outreach,” which included promotional items, sponsorships, and business card printing.¹⁶ These costs were disallowed by HRSA, which found that costs “may have benefitted the...grant, but

they also benefitted the other work of [Delta].” Delta responded by attacking the lack of detail in HRSA’s allegation and claiming that there was no “other work” for which could have benefitted from the community outreach. The DAB ruled that HRSA did not need to provide any further detail regarding what HRSA believed the money was spent on. Instead, the DAB explained, once a cost is

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questioned it is the grantee’s burden to prove that the cost was allowable. “Thus, where a grantee with multiple funding sources charges the cost of a particular activity solely to one award,” the DAB wrote, “the grantee (not the grantor agency) also has the burden to document that only the award charged benefits from the activity.” The DAB did not say if, had the proper documentation been made available, Delta’s community outreach costs would have been allowable as public relations costs. Certain public relations and advertising costs are allowable under both A-122 (2 C.F.R. Part 230, Appendix B(1)) and the Uniform Guidance (2 C.F.R. § 200.421).

Selected Items of Cost

In addition to the general takeaways discussed above, the DAB decision discusses a number of selected items of costs. Some of those items are discussed below.

Proposal Costs. The DAB overturned a disallowance of proposal costs. Delta charged \$27,575 to its HRSA award for payments to external grant reviewers to assist in evaluating proposals solicited by Delta for projects funded by the HRSA award.¹⁷ HRSA disallowed these



costs on the basis that they were allowable only as indirect costs pursuant to HHS's version of OMB Circular A-110, which states in part: "Bid and proposal costs are the immediate costs of preparing bids, proposals, and applications for Federal and non-Federal awards, contracts, and other agreements...Bid and proposal costs of the current accounting period are allowable as indirect costs."¹⁸ (It should be noted that this provision was not in OMB Circular A-110 itself (2 CFR Part 215) but had been specifically added by HHS to its own version of A-110). The Uniform Guidance now allows proposal costs but requires that they "normally should be treated as indirect costs."¹⁹ Ultimately, the DAB agreed with Delta's

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position that the costs were not charged for "preparing" proposals but rather for reviewing proposals directly related

to the HRSA grant. In other words, Delta was not using grant funds to obtain other awards but instead was evaluating proposals submitted by subgrantees for funds to be awarded under the HRSA grant by Delta as subawards. The DAB agreed that Delta's use of grant funds was appropriate but, by way of example, would not have been allowed if a successful subgrantee charged the HRSA subaward for its cost of preparing a proposal to Delta for that HRSA subaward.

Fundraising Costs. Delta put forth a creative argument for allowing certain fundraising costs, which the DAB ultimately rejected. Delta charged nearly \$70,000 in direct costs to contract with a company to "develop fundraising strategies to be employed by [Delta]...to enable [HRSA funded] programs to continue after HRSA funding has

come to an end."²⁰ HRSA disallowed these costs on the grounds that they were unallowable fundraising costs under OMB Circular A-122, which states: "Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable."²¹ Delta argued that these were not fundraising costs because the contractor was not engaged in direct solicitation of contributions but rather was tasked with developing fundraising strategies which would be implemented by Delta. The DAB rejected this argument, refusing to narrowly define fundraising as direct solicitation of contributions to the exclusion of "planning and development of various types of fundraising activities."

Delta also argued that the fundraising costs were allowable because they "fell squarely" under a project goal approved by HRSA: "Develop a comprehensive business plan for sustainability of [Delta's] core services." The DAB noted that the funding source could not by approving this broad goal authorize the use of federal funds for purposes specifically prohibited by Circular A-122. Note that the result may have been different under the Uniform Guidance (2 C.F.R. § 200.442), which makes fundraising costs for the purposes of meeting the federal program objectives allowable with prior written approval from the federal awarding agency.

Meals. The DAB provides a reminder to use caution when charging federal awards for the cost of meals. Delta charged over \$5,000 to the HRSA grant for the cost of meals during Delta meetings.²² HRSA disallowed the costs on the grounds that they were not consistent with the requirement in HHS's Grants Policy Statement (GPS)²³ that grant funds may only be used for meals when the meals are an "integral and



necessary part of a conference (i.e., a working meal where business is transacted)..."

Although the GPS applies only to discretionary grant programs, and not mandatory grant programs such as the Community Services Block Grant (CSBG)²⁴, the discussion in the DAB decision is helpful for understanding the factors considered when determining if the cost of a meal is allowable. Because the cost of meals is not specifically addressed in the federal cost principles, the basic considerations (i.e., reasonableness and allocability) are used to determine allowability. Under both the Uniform Guidance and the Circulars, for a cost to be allowable it must be "necessary and reasonable for the performance of the Federal award."²⁵ This generally means that the cost incurred must, in some way, further the grant purposes and be generally recognized as ordinary and necessary for the proper and efficient performance of an award.²⁶

The DAB reasoned that even if the documentation provided by Delta showed that the meetings at which the meals were served were activities within the scope of the grant, this was not sufficient for establishing that the cost of the meals was allowable. Delta needed to provide evidence that the meals themselves had a business purpose and did not solely serve a social purpose, i.e., that the meals were "working meals." This decision underlies the need for CAAs to maintain documentation to show that meals charged to a federal grant served a business purpose related to that grant, i.e., furthered the grant purposes in some way.²⁷

Travel Costs. The DAB addressed the use of projected versus actual costs for reimbursement of travel expenses. Delta charged nearly \$50,000 to the HRSA award for travel allowances.²⁸ Delta paid select employees travel allowances based on projected, rather than actual, travel. HRSA

disallowed these costs on the ground that Delta did not provide adequate documentation to show that the costs for travel and telephone were reimbursed consistently among Delta employees, as required by the cost principles in OMB Circular A-122.²⁹ The DAB did not decide whether this inconsistent treatment led to federal funding sources being charged at a higher rate than non-federal funding sources, but instead upheld the disallowance on the basis that Delta did not follow the plain language of the cost principle regarding travel costs. OMB Circular A-122 (2 C.F.R. Part 230, Appendix C, par. 51.a.), requires travel costs to "be charged on an actual costs basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two...." Despite Delta's assertion that the cost of providing up-front travel allowance for select employees who traveled frequently was less than they would have reimbursed "had they maintained an actual record of their travel expenses and filed periodic travel vouchers," Delta provided no evidence to support this claim and, because Delta did not follow the clear requirements for allowable travel costs, the DAB upheld the entire disallowance.

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Travel costs continue to be allowable under the Uniform Guidance, but now include more detailed documentation requirements. For a travel cost to be allowable the grantee must provide documentation justifying that the individual's travel is necessary to the federal award and that the costs are reasonable and consistent with the grantee's established travel policy.³⁰



VISA Expenses. The DAB disapproved of allowing select employees to charge a credit card without providing follow up documentation. Delta employees charged upwards of \$75,000 in costs for travel and other expenses to a VISA credit card account.³¹ Delta was not able to provide clear documentation about the basis for the costs charged to the VISA account because Delta permitted certain employees, “commensurate with their level of authority,” to charge the VISA account without follow-up documentation. HRSA disallowed the charges on the ground that Delta failed to document that they solely benefitted the HRSA grant. On appeal, Delta argued that even though there were no approved travel vouchers identifying the business purpose of the travel, the costs were allowable because Delta had had a policy in effect since 2008 allowing “pre-approved employees to charge the VISA card for amounts commensurate with their level of authority without follow-up documentation” and because the HRSA grant was so unique that it was clear that the charges applied to it.³²

(2 C.F.R. Part 230, Appendix A, p. A(4)) and the Uniform Guidance (2 C.F.R. § 200.405), a grantee bears the burden of showing that costs charged to a federal award are properly allocated.

The DAB did not accept Delta’s argument. Based on the basic principle of cost allocation that a grantee must be able to provide documentation adequate to establish that each cost charged to an award is allowable—a principle that runs throughout both Circular A-122 and the Uniform Guidance³³—the DAB affirmed the disallowance. Additionally, although Delta asserted that during the relevant period it had no other grants to which these charges could have applied, the DAB found this statement to be inconsistent with other statements by Delta describing multiple funding streams during this period. Because Delta did in fact have other grants to which these charges could have applied, Delta failed to show that the travel costs were solely allocable to the grant. Under the requirements of Circular A-122



End Notes

¹ DAB decisions can be found here: <http://www.hhs.gov/dab/search.html>

² Delta Health Alliance, Inc., DAB No. 2624 (2015) (<http://www.hhs.gov/dab/decisions/dabdecisions/2015/dab2624.pdf>)

³ The DAB decision refers to Delta Health Alliance as “DHA.” For clarity’s sake, this article refers to Delta Health Alliance as “Delta.”

⁴ Delta Health Alliance, Inc., Request for Reconsideration of Decision No. 2624, Ruling No. 2015-2 (2015) (<http://www.hhs.gov/dab/decisions/dabdecisions/2015/dab-2624.pdf>)

⁵ For more information on the applicability and effective dates of the Uniform Guidance, See CAPLAW’s 2014 Special Edition Update, Navigating the OMB Super Circular Changes (http://issuu.com/caplaw/docs/caplaw_specialedition2014/0)

⁶ 2 C.F.R. § 230, Appendix A, p. A(2)(g) (OMB Circular A-122); 2 C.F.R. § 200.403(g) (Uniform Guidance)

⁷ 2 C.F.R. § 230, Appendix A, p. A(4) (OMB Circular A-122); 2 C.F.R. § 200.405 (Uniform Guidance)

⁸ Delta Health Alliance, Inc., DAB No. 2624, at 7

⁹ 2 C.F.R. § 230, Appendix A, p. B(1)

¹⁰ Delta Health Alliance, Inc., DAB No. 2624, at 7 (emphasis added)

¹¹ Delta Health Alliance, Inc., DAB No. 2624, at 15

¹² Requirements for allowability of travel costs are similar but not identical in OMB Circular A-122 and the Uniform Guidance. See 2 C.F.R. 230, Appendix B., p. 51 (A-122) and 2 C.F.R. 200.474 (Uniform Guidance)

¹³ Delta Health Alliance, Inc., DAB No. 2624, at 17

¹⁴ Delta Health Alliance, Inc., DAB No. 2624, at 3

¹⁵ Delta Health Alliance, Inc., DAB No. 2624, at 3

¹⁶ Delta Health Alliance, Inc., DAB No. 2624, at 10

¹⁷ Delta Health Alliance, Inc., DAB No. 2624, at 6

¹⁸ 45 C.F.R. § 74.27(b)(1)

¹⁹ 2 C.F.R. § 200.460 states: “Proposal costs are the costs of preparing bids, proposals, or applications on

potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity’s bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.”

²⁰ Delta Health Alliance, Inc., DAB No. 2624, at 8

²¹ 2 C.F.R. § 230, Appendix B, p. 17.a.

²² Delta Health Alliance, Inc., DAB No. 2624, at 18

²³ The GPS was most recently updated in 2007 and can be found here: http://www.hhs.gov/asfr/ogapa/aboutog/ogpoe/grants_mgmt_policy_sources.html

²⁴ See HHS’s 2007 GPS at p. I-3 (<http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf>)

²⁵ 2 C.F.R. § 230, Appendix A, p. A(3) (OMB Circular A-122); 2 C.F.R. § 200.403 (Uniform Guidance)

²⁶ 2 C.F.R. § 230, Appendix A, p. A(4) (OMB Circular A-122); 2 C.F.R. § 200.405 (Uniform Guidance); the Uniform Guidance does, however, address the allowability of meals at conferences; see 2 C.F.R. § 200.432

²⁷ 2 C.F.R. § 200.405

²⁸ Delta Health Alliance, Inc., DAB No. 2624, at 9

²⁹ 2 C.F.R. § 230, Appendix A, p. A

³⁰ 2 C.F.R. § 200.474

³¹ Delta Health Alliance, Inc., DAB No. 2624, at 12

³² Delta Health Alliance, Inc., DAB No. 2624, at 13

³³ See 2 C.F.R. § 230, Appendix A, p. A (A-122) and 2 C.F.R. §§ 200.403 – 200.405 (Uniform Guidance)

