



## OMB Revises Cost Circular A-122

*September 2004 CAPLAW Update*  
*By Maximillian J. Bodo, CAPLAW*

The Office of Management and Budget (OMB) recently amended the cost principles for federal grantees in OMB Circulars A-21, A-87, and A-122 in order to comply with the simplification objectives established in the Federal Financial Assistance Management Improvement Act (P.L. 106-107). OMB attempted to clarify the language in the three circulars in order to ensure consistency among the documents and to reduce the potential for misinterpretation. To further its effort to consolidate and centralize policy guidance and grant rules, OMB codified the revised versions of the circulars in Title 2 of the Code of Federal Regulations on May 11, 2004.

This article addresses changes made to [OMB Circular A-122](#), the cost principles applicable to non-profit organization federal grantees. OMB has indicated that, although the changes are “effective immediately,” the new version of A-122 will be phased in by incorporating the modified provisions into new awards made after the start of the next fiscal year. Moreover, the new cost principles may be immediately phased into existing awards or be subject to a delayed implementation if agreed to by the grantee and its cognizant federal agency.

### **Substantive Changes**

Although the vast majority of changes to A-122 were in form, rather than substance, a number of substantive changes were made. Below is a list of some of the more significant substantive amendments:

- **Audit costs and related services** (new paragraph 4): the previous version of A-122 did not specifically address audit costs. The revised version now explicitly states that costs for audits incurred due to the Single Audit Act, as implemented by Circular A-133, are allowable. Moreover, other audit costs are allowable if specifically approved by the awarding agency as a direct cost to an award.
- **Donations and contributions** (merging old paragraphs 9 and 12 into paragraph 12): the new version has clarified that donations by the grantee of cash, property, and services— regardless of the recipient—are unallowable.
- **Equipment and other capital expenditures** (paragraph 15): the revised version provides awarding agencies discretion to deviate from the general policy that capital expenditures, when approved as a direct charge, must be charged in the period in which the expenditure was incurred; grantees may now request approval from the awarding agency to charge an asset in a different period (subparagraph 15b.(4)). In addition, the new version has added a definition of “capital

expenditures”: expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life (subparagraph 15a.(1)).

- **Interest** (paragraph 23): OMB has now explicitly stated that interest attributable to fully depreciated assets is unallowable. In addition, provisions concerning fundraising and investment management costs have been moved from old paragraph 23 to a separate paragraph (17).
- **Lobbying costs** (paragraph 25): the prior version included within its scope attempts to influence legislation, ballot initiatives, referenda, and elections. The new version adds “executive lobbying costs,” defined as attempts to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the federal government to give consideration or to act regarding a sponsored agreement or regulatory matter, and declares such costs unallowable. This means that you cannot send your Congressman on a cruise or give him a new Lexus in order to get a grant!
- **Meetings and conferences** (paragraph 29): the provision in the prior version specifically allowing costs of meetings and conferences held to conduct the general administration of the organization has been deleted. The new version has moved to this paragraph a provision formerly in paragraph 31 (Membership, subscriptions, and professional activity costs) that specifically allows meeting and conference costs where the primary purpose is the dissemination of technical information.
- **Plant and homeland security costs** (new paragraph 35): this paragraph has been expanded to make facilities, personnel, and work products allowable as “homeland security” costs.
- **Publication and printing costs** (paragraphs 33 and 41): the revised version no longer requires grantees to obtain prior approval for publication costs that are directly allocable to federal awards.
- **Rental costs of buildings and equipment** (new paragraph 43, old paragraph 46): the revised version now states that rental arrangements should be reviewed periodically to determine if circumstances have changed and other options have been made available.
- **Travel costs** (new paragraph 51, old paragraph 55): Mexico is no longer considered foreign travel and, as such, a grantee no longer needs approval from the awarding agency prior to making a direct charge for travel to Mexico. Although a variety of cost methods may be used (actual cost basis, per diem, mileage basis, or a combination), a new provision requires that only one method be used for each trip. Costs incurred for travel including lodging, subsistence, and incidental expenses are allowable as long as the costs do not exceed charges normally allowed by an organization in its regular operations as a result of its written travel policy. If the organization does not have a written policy on travel costs, it must apply the rates and amounts established under U.S. Code’s provisions on travel, transportation and subsistence expenses for travel on federal government business (5 U.S.C. §§ 5701 - 5710).

### **Non-substantive Changes**

The revised version of A-122 has moved, removed, and added paragraphs that were not present in the original version, which has been reflected in the juxta-positioning of many paragraph numbers. OMB has also updated paragraphs to include modern terminology and to remove antiquated language. For example, paragraph 15 (equipment and other capital expenditures) has been expanded to include items such as “information technology equipment” in the general purpose equipment subsection and to

delete references to radiograms” in paragraph 7 (communication costs), as most people are no longer familiar with this term.

The drafters conflated several paragraphs, rewrote others, and restructured still more so that at first glance many of these modified paragraphs seem new, but are actually just moved from their original paragraphs. The result is that those familiar with the previous version of A-122 may, at first, find it difficult to locate particular language, or even whole sections.