

FEDERAL GRANTS NEWS

for Colleges and Universities

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A-133 Compliance Supplement Warns Auditors About Cost Transfers

OMB Circular A-133 establishes the principles for the conduct of A-133 audits, and the *OMB A-133 Compliance Supplement*, issued annually, provides suggested audit procedures for compliance and internal controls testing. Part 5 of the supplement includes the guidance for auditing the research and development cluster, and the 2007 supplement (see *Federal Grants News* June 2007) appeared to contain few changes that would affect colleges and universities. However, the following language addressing cost transfers is much more ominous than in previous supplements, making it clear that they remain an audit target:

"Transfers of unallowable costs between cost centers or research projects are a common method used to circumvent the institution's internal control over the spending of R&D funds. These transfers of unallowable costs are often made to use unexpended funds from a project, as a source of available funding for overspent projects, or as a source of funds to complete projects." (Part 5, Clusters of Programs, p. 5-2-3)

This guidance for A-133 audits along with other recent audit initiatives the government is undertaking suggest that now may be a good time for institutions to review their policies on cost transfers. The National Institutes of Health (NIH) *Grants Policy Statement* (Part II, Subpart A) serves as a good reference for cost transfer issues, some of which are highlighted below.

(1) An excessive number of cost transfers within the institution. The NIH *Grants Policy Statement* contains language indicating that excessive cost transfers may be an

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'Combating Trafficking in Persons' Clause Revised in FAR to Ease Compliance

Federal Acquisition Regulation (FAR) 52.222-50 was published as an interim rule in April 2006 to implement the Trafficking Victims Protection Reauthorization Act of 2003 (amended in 2005). The act establishes a "zero tolerance" toward the trafficking of persons and requires federal awards to include a clause allowing the funding agency to terminate a grant, contract, or cooperative agreement if the grantee or contractor (or subcontractor) engages in severe forms of human trafficking, procures a commercial sex act during the period of performance, or uses forced labor.

Unfortunately, the interim FAR went well beyond the statutory requirements. Those institutions that could not negotiate the clause out of the federal agreement have been required to develop a policy to combat trafficking in persons, communicate the policy to employees, require certification of compliance from employees, and monitor and report violations to the federal government. While these requirements applied only to contractors with non-commercial contracts for services, their employees, and subcontractors, they still imposed a significant burden on institutions with contracts.

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could be a "risk of inflicting psychological, social or other harm by contacting individuals or families."

◆ Whether there is a scientifically and ethically justifiable rationale why the research could not be conducted with a population from whom consent can be obtained.

The recommendations regarding minimal risk and informed consent were forwarded to the secretary of HHS, and if approved, should result in guidance. The presentations and transcripts of the discussions are posted on SACHRP's Web site—www.hhs.gov/ohrp/sachrp/mtgings/mtg07-07/mtg07-07.htm. ◇

Reviewing Cost Transfers

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indication of poor internal controls. This concern is also reflected in the Department of Health and Human Services Office of Inspector General work plan. In essence, an excessive number of cost transfers begs the question, "Why can't you charge the correct project the first time?"

(2) **Transfers made near or after the end of a project that result in additional charges to a federal project.** Transfers of this nature are suspect because they give the appearance of either utilizing unexpended funds or moving deficits to another project, and, in both instances, the presumption is that the costs are unallowable.

(3) **Transfers that give the appearance of moving deficits from one federal project to another.** These types of cost transfers are specifically mentioned as highly questionable in the NIH guidance and often are questioned by auditors. These transfers are difficult to adequately defend.

(4) **Salary cost transfers that are made after effort has been certified.** Effort certification indicates that effort has been reviewed and judged to be reasonable. Auditors view any change in effort that constitutes an additional charge to a federal project and occurs after this certification as highly suspect.

(5) **Transfers that provide an inadequate explanation.** Transfers explained by statements such as "to charge correct project" or "to correct error" would not be considered sufficient documentation in the event of an audit. Proper documentation includes an adequate explanation of the specific nature of the error and/or any other reason for the cost transfer; the way in which the error occurred; and if 90 days or more have passed since the original charge, the reason why the transfer was not processed in a timely manner and how the situation will be prevented in the future.

(6) **Transfers made more than 90 days after the discovery of the error.** The NIH *Grants Policy Statement* indicates

Correction/Clarification

The June 2007 *Federal Grants News* (p. 4) referred to the new *National Science Foundation Proposal & Award Policies & Procedures Guide* and explained a policy change made in Part II of the guide, the "Award and Administration Guide" (AAG). The discussion indicated that NSF had changed its policy regarding indirect costs and participant support costs in V.D. This is not the case: NSF still does not provide indirect costs for participant support costs except in unusual circumstances such as extraordinarily large programs. However, NSF did change its policy regarding direct costs and participant support costs for local school districts in V.B.

that transfers should be accomplished within 90 days of the discovery of the error. Does this mean that if an error is discovered 120 days after the date of the transaction that you have an additional 90 days to correct the error? In discussions with federal auditors, it is clear that they expect responsible individuals to review charges on a monthly basis; thus, many institutions are adopting a 90 days from the date of the initial transaction rule in their cost transfer policies, rather than adopting the NIH language.

To mitigate the risk associated with cost transfers, institutions should ensure that their policies are current, their practices comply with their policy, and training is provided periodically. Of greatest interest to the government auditors are those transfers that result in additional charges to federal programs.

Cost transfers should be monitored centrally to determine that the institution does not have an excessive number of transfers and that each transfer has an adequate explanation and a certification of the correctness of the new charge by a responsible organizational official.

Additional review and approval processes should be in place for cost transfers that occur more than 90 days from the date of discovery, are made near the end of the project, give the appearance of moving deficits to another federal project, or recertify effort. Approval of these transfers should be made on an exception basis. Institutions should discuss each of these transfer scenarios and decide under what circumstances they are willing to approve these transfers. One common approach is to review each transfer individually based on the circumstances. Above all, careful written documentation is a key to successfully defending these transfers. ◇