



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D. C. 20503

OFFICE OF FEDERAL
FINANCIAL MANAGEMENT

M-03-12

May 8, 2003

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Linda M. Springer 
Controller

SUBJECT: Allowability of Contingency Fee Contracts for Recovery Audits

Costs of contingency fee contracts incurred by State and local governments for the recovery of erroneous payments charged against Federal programs are allowable costs under OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." State and local governments may use a portion of recovered erroneous or fraudulent payments from Federal programs to pay for recovery contracts. The portion used to pay for such contingency fees should be claimed as administrative costs.

OMB Circular A-87, Attachment B, Section 33 (a), Professional Services, states that the cost of professional and consultant services are allowable "when reasonable in relation to the services rendered and when not contingent upon the recovery of the costs from the Federal Government." Some Federal Government officials have interpreted this provision to disallow any contract costs where the fees are based on a percentage of the recoveries. As a result some States have instructed contractors not to recover any erroneous payments on Federal programs. This interpretation presents a disincentive for State and local governments to collect erroneous or fraudulent claims that would be returned to the Federal Government. The A-87 provision does not prohibit such contingency fee contracts for recovery audits.

Please contact Joseph L. Kull, Deputy Controller, Office of Federal Financial Management, telephone (202) 395-3993, for any questions regarding this Memorandum.