Federal Demonstration Partnership (FDP) Task Force
Initiative to Reduce Administrative Burden (IRAB)

The FDP is a cooperative initiative among federal agencies and institutional recipients of federal funds. It was established to increase research productivity by streamlining the administrative process and minimizing the administrative burden on institutions while maintaining effective stewardship of federal funds. The IRAB Task Force was established in May 2002 to identify burdensome administrative requirements in the OMB Circulars that could be streamlined, simplified or eliminated without sacrificing accountability.

The IRAB task force provided comments on the August 12, 2002 proposed changes to OMB Circular A-21. In our response, we expressed concern that the proposed changes did not address many of the current administrative requirements that could be eliminated or streamlined with little or no loss of accountability over federal funds. These administrative requirements are overly complicated and unnecessary. We recommend that serious consideration be given to eliminating or streamlining the following requirements in the future revisions of Circular A-21:

1. Reasonableness of the Cost of New Construction
2. Monthly Cash Flow Analysis for Debt Arrangements in Excess of $1,000,000
3. Lease Purchase Analysis
4. Requirement to Use Depreciation Recoveries to Acquire or Improve Research Facilities
5. Requirement for Notification and Cost Adjustments for "Substantial Relocation" of Federal Programs from Financed Facilities
6. Simplify Language in Circular A-21

1. Reasonableness of the Cost of New Construction

Regulation – OMB A-21 Section F.2.c. Large Research Facilities:
(1) When an institution has large research facilities, of which 40 percent or more of total assignable space is expected for Federal use, the institution must maintain an adequate review and approval process to ensure that construction costs are reasonable. The review process shall address and document relevant factors affecting construction costs such as: Life cycle costs, Unique research needs, Special building needs…
(2) For research facilities costing more than $25 million, of which 50 percent or more of total assignable space is expected for Federal use, the institution must document the review steps performed to assure that construction costs are reasonable. The review should include an analysis of construction costs and a comparison of these costs with relevant construction data, including the National Science Foundation data for research facilities based on its biennial survey, "Science and Engineering Facilities at Colleges and Universities." The documentation must be made available for review by Federal negotiators, when requested.

Issue:
Circular A-21 already contains a provision for the reasonableness of costs in Section C.3. This provision applies to all costs and is sufficiently broad to mandate and allow for prudent financial management within institutions. Prescribing the review and documentation of factors affecting construction costs adds unnecessary complexity and adds confusion by leaving unanswered the question of what constitutes a satisfactory level of review, documentation, and ultimately, cost.
Section F.2.c. stipulates that construction costs must be compared to relevant construction data and includes the National Science Foundation's (NSF) biennial facilities survey as a reference document to compare facility costs. The NSF itself has stated that the data contained in the biennial survey is not appropriate for such cost comparisons. Additionally, the NSF no longer obtains cost data as part of its biennial survey so comparison is no longer possible. Further, Section F.2.c. does not specify what other data would be considered relevant for comparison. This leaves a big question as to what would constitute relevant data to meet the documentation requirements. It also does not specify how this comparative data should be interpreted and used to measure the actual construction costs.

Universities have no reason to ignore their normal financial controls and budgetary pressures simply because the Federal government will be using some portion of a facility to perform research and in return reimbursing the university for its use. The federal government assumes no financial responsibility for the facility and provides no guarantees to the institutions. Since institutions assume 100% of the risk, it is in the institutions' best interest to review and control costs no matter how the facility is used. The language in Section F.2.c. implies that any cost above the lowest cost must be reviewed, approved, and justified. It is not in the best interest of the institution and the Federal government to always consider the lowest cost as the only acceptable default

level of cost. There are many mitigating design, regulatory, programmatic, regional, and scheduling factors that drive the cost of a facility. Attempting to document and justify all of these factors on a building-by-building basis to the satisfaction of a government financial auditor is an unwarranted and valueless process.

It is not unreasonable to expect institutions to have a review and approval process in place for construction projects. Most institutions would not be able to function as an on-going concern if they did not have some process in place to control costs and approve funding within an acceptable design plan. The requirements for reasonable costs stated in Section C.3. are adequate to meet the government's concerns about costs.

Recommendation:
The overly specific levels of review and documentation stated in Section F.2.c, and the vagueness of what would be accepted as meeting that burden, is unwarranted and should be removed from the document. Furthermore, this requirement applies to universities only and not to other Federal grant recipients. Rescinding this requirement will correct this inequity.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

2. Monthly Cash Flow Analysis for Debt Arrangements in Excess of $1 million

Regulation – OMB A-21 Sections J. 22. f. (5)(a) & (6)(a):
Section J.22. (5)(a) – For debt arrangements over $1 million, unless the educational institution makes an initial equity contribution to the asset purchase of 25 percent or more, interest claims must be reduced by an amount equal to imputed interest earnings on excess cash flows. Section J.22.f. (6)(a) defines "asset costs" as the capitalizable costs of an asset, including construction costs, acquisition costs, and other costs capitalized in accordance with GAAP.

Issue:
The requirements for interest cost recovery for institutions incurring debt in excess of $1 million with equity contributions of less than 25% are inordinately complex and inequitable. Given their complexity, these requirements should be rescinded altogether or suspended until suitable alternatives can be developed.

The laborious and complicated calculations of monthly cash flow computations, from inception throughout the life of the project, add to the cost of compliance with A-21 and derive no significant benefit to either the government or institutions. Imposing penalties of reduced interest claims based on the prescribed excess cash flow calculations is inequitable. These requirements do not recognize institutions' economic costs of capital when using their own funds for research facilities. Because institutions are at risk when investing in research buildings in order to execute federally funded projects, hindering their cost recovery will not facilitate the much-needed additions or improvements to the nation's research infrastructure. To remedy the complexity and inequity of these requirements, they should be either rescinded or suspended.

If rescinding or suspending these requirements altogether is not possible, mitigating alternatives should be considered. In A-21 J. 22, "equity contributions" are not clearly defined and should include the fair market value of the land upon which projects are situated. Buildings and their underlying properties are inseparable and interdependent in function and value. Thus the fair market value of land associated with debt-financed buildings, or their capital renovations, should be allowed when equity contributions are necessary. To simplify the cash flow reporting requirements, reduce the frequency of analysis from monthly to annual. Also, equity contributions should not be limited to the initial equity contribution; they should be recognized anytime they are made.

Recommendation:
- Rescind or suspend section J. 22. f. (5) (a) altogether.
- If these requirements must remain, they should be simplified and more equitable, with the following remedies:
    - in section J. 22. f. (5) (a), replace the requirement for monthly cash flow reports with annual reports and simplify current language; and,

- in section J. 22. f. (6) (a), include the fair market value of the land associated with a debt-financed project, in the definition of "initial equity contribution."
- Simplify the wording by eliminating complicating factors such as the requirement to reduce principal payments by the amount attributable to land.

Proposed rewording of A-21 section on interest if it is not possible to rescind or suspend:

J. 22. *Interest, fundraising and investment management costs.*

f. (5) Educational institutions are also subject to the following conditions:

(a) For debt arrangements over $1 million, unless an equity contribution to the asset purchase of 25 percent or more is made, educational institutions shall reduce claims for interest cost by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, educational institutions shall prepare a cumulative (from the inception of the project) report of cash flows comprising inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. Outflows consist of equity contributions, debt principal payments and interest payments. When cumulative inflows exceed cumulative outflows, interest earnings shall be calculated on the excess derived for the year and be treated as a reduction to allowable interest cost recovery. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate at the end of the year in which the excess cash flow was determined.

Additional Proposed rewording of A-21 section on interest:

J. 22. *Interest, fundraising and investment management costs.*

f. (6) The following definitions are to be used for purposes of this section:

(a) "Initial equity contribution" means the amount or value of contributions made by non-Federal entities for the acquisition of the asset including the fair market value of land associated with building acquisition, renovation or alteration.

Impact of Implementing Recommendation:

This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

3. Lease Purchase Analysis

Regulation – OMB A-21 Section J.22.f. (1) Facilities Costing Over $500,000:

For facilities costing over $500,000, the educational institution shall prepare, prior to the acquisition or replacement of the facility, a lease-purchase analysis which shows that a financed purchase, including a capital lease is less costly to the educational institution than other operating lease alternatives, on a net present value basis. The lease-purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the educational institution. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates.

Issue:

This requirement has no real value in controlling costs and is largely an unproductive administrative exercise. Leasing research facilities is not an option for many institutions, and even when it is, leasing is virtually never less costly than purchasing. Purchasing does not include a profit factor associated with a lease, universities have access to low cost financing through tax-exempt debt that is not available when facilities are leased, and the institutions are exempt from property taxes.

Even if it was less expensive to lease space rather than building a new facility, an institution should have the right to include other factors in its decision-making process. For instance, often the physical location of leased facilities is not conducive to the interactive intellectual process necessary for successful research.

One of the basic concepts in A-21 is that costs are considered reasonable if they 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. Universities have their own extensive procedures to insure that facilities needed to carry out research and educational programs (including those sponsored by the government) are acquired with due prudence. Costs incurred for the construction of buildings must be incurred consistently with established institutional policies and practices. It is also important to recognize that universities are incurring all of the risk for facility investments, since the majority of the costs of facilities are not reimbursed by the government, the government provides no guarantee of continued funding. The institutions, therefore, already have a strong motivation to control costs, and a complex set of federal rules to accomplish this is unnecessary.

Recommendation:
Eliminate the requirement for a lease-purchase analysis as a condition for allowing interest costs.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

4. Requirement to Use Depreciation Recoveries to Acquire or Improve Research Facilities

Regulation – OMB A-21 Section J.12.f. (1) and (2)
(1) Institutions shall expend currently, or reserve for expenditure within the next five years, the portion of F&A cost payments made for depreciation or use allowances under sponsored research agreements, consistent with Section F.2, to acquire or improve research facilities. This provision applies only to Federal agreements which reimburse F&A costs at a full negotiated rate. These funds may only be used for (a) liquidation of the principal of debts incurred to acquire assets that are used directly for organized research activities, or (b) payments to acquire, repair, renovate, or improve buildings or equipment directly used for organized research. For buildings or equipment not exclusively used for organized research activity, only appropriately proportionate amounts will be considered to have been expended for research facilities.

(2) An assurance that an amount equal to the Federal reimbursements has been appropriately expended or reserved to acquire or improve research facilities shall be submitted as part of each F&A cost proposal submitted to the cognizant Federal agency which is based on costs incurred on or after October 1, 1991. This assurance will cover the cumulative amounts of funds received and expended during the period beginning after the period covered by the previous assurance and ending with the fiscal year on which the proposal is based. The assurance shall also cover any amounts reserved from a prior period in which the funds received exceeded the amounts expended.

Issue:
The requirement is unreasonable, overly prescriptive, and difficult to track and implement. Furthermore, it is inequitable since it applies to universities only and not to other Federal grant recipients. Depreciation is a reimbursement for expenses already incurred. An institution should not need to guarantee current or future expenditures or reserves in order to be reimbursed for expenses previously incurred. No other section in A-21 dictates how recovered F&A costs can be used. The over-riding principles in A-21 indicate that universities shall be reimbursed for their reasonable, allowable and allocable costs. The cost principles provide guidance on the composition, allowability and allocability of costs, not how reimbursements are to be used by institutions. This requirement applies only to universities and not to other Federal grant recipients, rescinding it will correct this inequity.

This regulation could also encourage unnecessary spending as institutions are compelled to keep up with prior building programs even when more facility space is not needed. For instance, an institution may undertake a major building program to create space for new research programs or rebuild after a natural disaster. It does not necessarily follow that further building or renovations need to be undertaken within a five-year period. Following the J.12.f. regulation would require the institution to spend or reserve an amount equal to the reimbursements during the next five years whether or not such

expenditures were needed. This regulation can therefore create an inefficient cycle of spending.

Recommendation:
The requirement should be withdrawn and eliminated from A-21.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

5. Requirement for notification and cost adjustments for "substantial relocation" of Federal Programs from financed facilities

Regulation – OMB A-21 Section J.22.f. (5)(b):
Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the cognizant agency.

Issue:
Compliance with requirements for notification and cost adjustments for "substantial relocation" of Federal programs is especially difficult because of A-21's vague guidance and ambiguous terminology.

The term "substantial" is not defined and is subject to wide interpretation. As well, A-21 is silent on when relocation would be considered to be "substantial." Institutions' facilities typically undergo gradual and continual changes in occupancy and use over time. For example, a research lab may begin its life with 100% occupancy by Federally funded projects. As projects and funding sources change, the lab's Federal project occupancy may continually change over time. Under these circumstances determining when a "substantial relocation" has occurred would be extremely difficult. Moreover, as the occupancy changes, reimbursement of the interest on the debt changes to reflect the use of the space.

If the original intent of this section was to prevent abuses due to relocating Federally-funded projects, it is unwarranted as no evidence of attempting such abuse has been documented. Given the vagueness of this requirement, the problems of implementing it in practice and the lack of apparent need, it should be rescinded from A-21.

Recommendation:
Eliminate the requirement for notification and cost adjustments for "substantial relocation" of Federal Programs from financed facilities.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

6. Simplify language in A-21

a) Lobbying Costs

Regulations – OMB A-21 Sections J.17 & J.24 Lobbying costs

Section J.17 – Costs incurred in attempting 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 a regulatory matter are unallowable. Section J.24 – References made to numerous federal documents on lobbying, plus voluminous additional text on lobbying cost restrictions.

Issue:

Lobbying is not a significant activity at educational institutions. When it does occur, the costs involved are relatively small. Given the minor role of lobbying, A-21 sections J.17 and J.24 are disproportionate and complex. Combining sections J.17 and J.24 and removing unnecessary language would simplify A-21 guidance on lobbying and facilitate compliance.

Recommendations:

- Remove section J. 17 but incorporate relevant parts into a revised section J. 24.
- Remove section J. 24's references to five other external CFR federal documents to focus attention on a few simple rules. Making the reader depend on five external documents complicates compliance.
- Remove section J.24. d. The lobbying cost certification is covered by A-21's overall certification of unallowable costs in institutions' F&A proposals. There is no need for additional certification for compliance.
- Remove section J.24. g. This section allows federal agencies to formalize individual exceptions to these rules, which could be inconsistent among agencies, and further complicate universities' compliance with the intent of lobbying cost restrictions.

Proposed rewording of A-21 section on lobbying costs, incorporating J.17 into J.24 and simplifying language:

J. 24 *Lobbying*.

a. The following costs of lobbying are unallowable:

(1) Attempting to influence outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Attempting to influence the Federal or State legislation;

(4) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of

legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.
(5) Attempting to improperly influence an employee or officer of the Executive Branch of the Federal Government to give consideration of or to act regarding a sponsored agreement or a regulatory matter. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a federally-sponsored agreement or regulatory matter on any basis other than the merits of the matter.

b. The following costs are allowable:
(1) Presentations on topics directly related to the performance of a grant, contract, or other agreement; or
(2) Any lobbying made unallowable by subsection a. (3) to influence Federal or State legislation in order to directly reduce the cost, or to avoid material impairment of the institution's authority to perform the grant, contract, or other agreement; or
(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. When an institution seeks reimbursement for F&A costs, total lobbying costs shall be separately identified in the F&A rate proposal, and be treated as "other institutional activity" in accordance with the procedures of Section B.1.d.

d. Institutions shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to this section complies with the requirements of this Circular.

e. Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any calendar month when:

(1) the employee engages in lobbying (as defined in subsections a and b) 25 percent or less of the employee's compensated hours of employment during that calendar month, and
(2) within the preceding five-year period, the institution has not materially misstated unallowable lobbying costs, including legislative lobbying costs.

When conditions (1) and (2) are met, institutions are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions (1) and (2) are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

b) Defense and prosecution costs
Regulation – OMB Section J. 11:
This section defines allowable and unallowable defense and prosecution costs.

Issue:
The rules in A-21 Section J.11 are lengthy and complex. The language in Sections J.11.a – f tracks language contained in 10 USC 2324(k) which is the US Code section cited in A-87 Attachment B (14). The A-87 provision and 10 USC 2324(k) are both limited to contracts with the Department of Defense.

Recommended modifications to A-21:

- Limit A-21 Section J.11. a – e to apply only to contracts with the Department of Defense. This would provide consistency with the language and intent of A-87 and USC 2324(k) to allow the costs of administrative appeals. Administrative appeals are an integral part of the decision making process of federal agencies. It makes no sense to deny reimbursement of the costs of following the administrative procedures the government itself has set up to resolve disputes.
- Revise J.11.g to allow for administrative costs. Rationale: agencies have extensive procedures in place that provide for an administrative process to handle the defense and prosecution of criminal and civil proceedings, claims appeals, and patent infringement. These proceedings are very valuable because they allow the parties to dispute or to adjudicate a dispute and move forward. It would be in the best interest of the Government and the Academic Community to maximize the use of these procedures by allowing the costs of administrative procedures.

Proposed rewording of A-21 section on criminal and civil proceedings costs:

J. 11. g.

> Costs of legal, accounting, consultant services, and related administrative costs incurred in connection with defense against Federal Government claims or appeals in a judicial proceeding, or the prosecution of claims or appeals against the Federal Government in a judicial proceeding, are unallowable. Costs of legal, accounting, consultant services, and related administrative costs incurred in an administrative proceeding are allowable.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

c) Advertising and public relations costs

Regulation – OMB Section J.1:
This section defines allowable and unallowable advertising and public relations costs.

Issue:
OMB Circular A-21 section J.1 addresses advertising and public relations costs in unnecessary detail. The wording of this section can be significantly streamlined and simplified.

Recommended deletions from A-21:

- Remove A-21 sections J. 1. a and f.
- Add new section J. 1. d.

Proposed rewording of A-21 section on advertising and public relations costs.

J. 1. Advertising and public relations costs.

a. The only allowable advertising costs are those which are solely for:
   (1) The recruitment of personnel;
   (2) The procurement of goods and services;
   (3) The disposal of scrap or surplus materials except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Circular A-110; or
   (4) Other specific purposes necessary to meet the requirements of the sponsored agreement.
b. The only allowable public relations costs are:
   (1) Costs specifically required by sponsored agreements;
   (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from the performance of sponsored agreements; or
   (3) Costs of conducting general liaison with news media and government public relations officers, limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.
c. Costs identified in subsections a and b if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in Sections D (Direct Costs) and E (F&A Costs) are observed.
d. All other advertising and public relations costs are unallowable.

Impact of Implementing Recommendation:

This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

d) Professional services costs

Regulation – OMB Section J.32:

This section defines unallowable and allowable professional service costs.

Issue:

Professional services are commonly used by educational institutions when needed for executing their missions or projects. Given the necessity of professional services, cost guidelines should be clear to facilitate their compliance. OMB Circular A-21's guidelines on professional services are complex, overly prescriptive, and should be rewritten for clarity and brevity.

Recommended deletions from A-21:

- Remove section J. 32. b as it contains conditions that are both confusing and irrelevant to the effective control of such costs.

Proposed rewording of A-21 section on professional services costs.
J. 32. *Professional services costs.*
Costs of professional, legal and consulting services rendered by members of a particular profession who are not employees of the institution are allowable, subject to Section J. 11. Such costs must be reasonable in relation to the services rendered and not contingent upon recovery from the Federal government. Retainer fees, to be allowable, must be reasonably supported by evidence of services rendered.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.

e) Recruitment costs
Regulation – OMB Section J.37:
This section defines allowable and unallowable recruitment costs.

Issue:
Like professional service costs, A-21's treatment of recruitment costs is complex and overly prescriptive. It should be rewritten for clarity and brevity.

Recommended deletions from A-21:
- Remove section J. 37. b. as it is overly prescriptive and adequately covered by guidelines in A-21 section J. 1.

Proposed rewording of A-21 section on recruiting costs
J. 37. *Recruiting costs.*
a. Subject to subsections b and c, recruitment and relocation costs are allowable. These costs include but are not limited to:
(1) costs of "help wanted" advertising;
(2) operating an employment office necessary to secure and maintain staff;
(3) operating an aptitude and educational testing program;
(4) travel by employees while engaged in recruiting personnel;
(5) travel by applicants for interviews for prospective employment; and,
(6) relocation costs incurred incident to recruitment of new employees.
b. Costs of recruitment and relocation incurred to attract professional personnel from other institutions that do not conform with the established practices of the institution are unallowable.
c. When relocation costs incurred in the recruitment of a new employee have been allowed either as an allocable direct or F&A cost, and the employee resigns for reasons within his control within 12 months after hired, the institution will be required to refund or credit such relocation costs to the Federal government.

Impact of Implementing Recommendation:
This change would eliminate an unnecessary administrative requirement without loss of accountability or increasing the cost to the government.