GSA

MAR 3 1 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2001-021, Training and Education Cost Principle

Attached are comments received on the subject FAR case published at 69 FR 4436; January 29, 2004; The comment closing date was March 29, 2004

| Response Number | Date Received | Comment Date | Commenter |
|---|---|---|---|
| 2001-021-1 | 01/30/04 | 01/30/04 | Dr. Linda L. Jacobs |
| 2001-021-2 | 03/10/04 | 03/03/04 | FEI Executives International |
| 2001-021-3 | 03/29/04 | 03/29/04 | Raytheon |
| 2001-021-4 | 03/29/04 | 03/29/04 | Boeing |
| 2001-021-5 | 03/29/04 | 03/29/04 | AIA |
| 2001-021-6 | 03/29/04 | 03/29/04 | AFGE, AFL-CIO |
| 2001-021-7 | 03/29/04 | 03/29/04 | Lockheed Martin |
| 2001-021-8 | 03/29/04 | 03/26/04 | NDIA |
| 2001-021-9 | 04/29/04 | 04/24/04 | United Technologies |

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2001-021-1

GSA

**Linda L. Jacobs**

01/30/2004 09:07 AM

To: farcase.2001-021@gsa.gov
cc:
Subject: Training & Education Cost Principle

GSA does not pay for subjects now requiring a degree. The combination of training and education for the 1102 series is critical, without the government paying for the required courses and training most employees could not afford to get the degree required.

The lack of funding for these courses programs the 1102 series to fail. Only paying for business courses such as accounting, business ethics, etc makes sure that the employee cannot complete the required education for their job.

Is this new rule meant to discourage employees from going into the contracting series? Right now only persons who already have a business or law degree can get into the 1102 series, contracting. This cost principle will make it impossible for current employees to complete the education needed for the job.

Please reconsider and completely fund the education and training of current employees.

Dr. Linda L. Jacobs
DC Service Center
Phone: (202) 205-0274
Fax: (202) 708-6838

2001-021-2

financial executives
international

March 3, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

*In Reference: FAR Case 2001-021*

Dear Ms. Duarte:

The Financial Executives International Committee on Government Business (CGB) wishes to express its concerns regarding the proposed changes to the Training and Education cost principle (FAR Part 31.205-44; FAR Case 2001-021).

FEI is a professional organization representing the interests of more than 15,000 CFOs, Treasurers, Controllers and other senior financial executives in over 8,000 corporations throughout the United States and Canada. FEI represents both the providers and users of financial information. FEI's Committee on Government Business formulates positions and comments on government policies that impact FEI members doing business with all sectors of the federal government. The members of our Committee are drawn from a broad cross-section of companies that do business with the Government.

We are concerned that the positions adopted in this proposed rule are contrary to, and inconsistent with, public policy. We strongly believe that the utilization of government payment of federal employee degree costs is the inappropriate basis for determining cost allowability. Instead, we endorse the position that government payment for the education and training of federal employees should be based upon commercial practices that encourage the continued training and education of our workforce. Accordingly, we believe that 31.205-44 (a) in this proposed rule:

> "The cost of education and training for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement is unallowable."

Rec'd 10-04

1325 G street, nw, suite 1020, washington, DC 20005 202.626.7801 fax 202.626.6555 www.fei.org

must be eliminated.

Congress has consistently endorsed and supported the adoption of commercial practices – not government practices – in the government procurement arena. The most recent example is the 2004 DoD Authorization Legislation, (P.L.108-136), Section 1423. This section prescribes the establishment of a panel to propagate the use of commercial practices by, among other things, reviewing all regulations.

Industry, on the whole, has embraced training and education programs for all of its employees. The record clearly shows that endorsement of such lifetime learning initiatives results in a more productive and invigorated work force with such employees taking active leadership roles in Quality Circle, Process Improvement Councils, etc. The ever evolving and rapidly changing technological environment we live in leads to skill sets that will become obsolete unless they are constantly updated and refreshed.

Equally important, many of the employees who take advantage of private sector training and education are in government-authorized, socio-economic/disadvantaged programs that encourage upward mobility.

These are all best commercial practices whose costs could significantly, if not entirely, be made unallowable by the provisions in the proposed rule at FAR Part 31.205-44(a). While Congress and the President continue to move towards the adoption of commercial practices, we find the Councils' attempt to tie allowability to government practices both alarming and contradictory to public policy.

We also find this provision to be inconsistent with the Councils' own comments:

> "The Councils support upward mobility, job retraining, and educational advancement. Training that is beneficial for the contractor is also beneficial for the Government. But, while Government support for training and education is sound overall public policy, there are certain related costs the taxpayers should not reimburse. The Councils believe the six public policy exceptions in this second proposed rule are appropriate."

We fail to understand how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and could be treated as unallowable costs. We also have no idea how one is to discern whether the training and education relates "solely" to obtaining an academic degree or to a particular position. Implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that "increases[s] the clarity of the cost principle."

In summary, the proposed provision of FAR Part 31.205-44(a) is contrary to existing public policy, which encourages the upward mobility of a contractor's workforce, specifically in the area of socio-economic/disadvantaged programs. It prevents the adoption of commercial, best practices and creates an unnecessary and unsupportable administrative burden. It should be eliminated. At the same time CGB strongly supports

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changing the reimbursement of federal employees' training and education costs to align with commercial, best practices that support continuous learning.

Respectfully submitted,

Dean Luchsinger

Dean Luchsinger
Chair
FEI Committee on Government Business

2001-021-3

**"James D Pflaumer" <James_D_Pflaumer@raytheon.com>**

03/29/2004 04:41 PM

To: farcase.2001-021@gsa.gov
cc: "Terence J Murphy" <terence_j_murphy@raytheon.com>, "Robert A Cann" <Robert_A_Cann@raytheon.com>
Subject: FAR Case 2001-021

Attached below is Raytheon Company's response to the subject FAR Case. A hard-copy letter is also being sent via USPS. Thank you.

**Raytheon**

**James D. Pflaumer**
Manager, Corporate Government Accounting
781.522.3024
781.522.6425 fax
James_D_Pflaumer@raytheon.com

FAR Case 2001-021 Raytheon Letter

021-3

**Raytheon**

**Raytheon Company**
870 Winter Street
Waltham, Massachusetts
02451-1449 USA
781.522.3000
781.522.6425 fax

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: Training and Education Cost Principle (**FAR Case 2001-021**)

Dear Ms. Duarte:

Raytheon Company is pleased to provide its comments on the proposed rule published in the January 29, 2004 Federal Register regarding Training and Education Costs. Raytheon supports the Councils' efforts to address unnecessary and restrictive cost principle language. Further, Raytheon Company agrees with the Federal Register Background comments that the reasonableness of specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*. Raytheon is also pleased to note the Councils' elimination of the disparate treatment in the current cost principle regarding full-time and part-time undergraduate education.

However, while those positive revisions made to the cost principle are most welcomed, the proposed addition of paragraph (a) is not and is most troubling as mentioned below. In addition to proposed paragraph (a), Raytheon Company has the following recommendations for the Councils to consider before finalizing the proposed rule:

**Proposed paragraph (a)**
Proposed paragraph (a) should be deleted, as it is inconsistent with the tenor of the remaining cost principle language. It also conflicts with the Councils' Background comments made in response to Comment 6 regarding the Councils' support for upward mobility, job retraining, and educational advancement. Furthermore, the Councils neglected to explain why these types of training and education costs should be unallowable or why they are a public policy exception. To add such contrary and restrictive language to the cost principle without fully explaining why, is inappropriate.

Embracing and fostering learning initiatives among our workforce is not only beneficial to Raytheon Company, but also to the Government. Continuous learning results in a more productive and effective workforce. Raytheon, as well as others within Industry, need to develop the best technical and managerial skills through programs of training and education. By doing so, the technological superiority of defense weapons and equipment will be assured to continue. Therefore, Raytheon Company deeply urges the Councils to eliminate proposed paragraph (a) in its entirety from the final rule.

2001-021-3



**Proposed paragraph (d)**
Proposed paragraph (d) as written will make currently allowable costs unallowable. Currently, for costs covered by this paragraph, only the costs in excess of two years or length of the degree program are unallowable. The proposed wording makes the entire cost (not just the excess) of the same course or degree program unallowable if it exceeded the two years or length of the degree program. The proposed wording only provides for the costs to be either all allowable or all unallowable; it does not explicitly address the excess. This proposed language should be clarified to make only the excess costs unallowable.

**Paragraph (h) proposed elimination**
The Councils state in the Background comments that they believe that in light of the changes made to the cost principle, the need for an advance agreement provision has been eliminated. We disagree. Because proposed paragraph (d) still exists with a two-year or length of the degree program limitation, the advance agreement provisions must remain as part of this cost principle; otherwise those costs covered by that provision, which are currently allowable, would become unallowable.

**Proposed paragraph (g)**
Although the Councils addressed administrative costs of the plans in their response to Comment 5 in the Background, the costs still could be challenged by an auditor or contracting officer based upon their misapplication of the cost principle's wording in this proposed paragraph. To help mitigate misapplication, Raytheon recommends that the Councils consider clarifying proposed paragraph (g) by including a comment that either states (1) the administrative costs of these plans are allowable, or (2) paragraph (g) does not include the administrative costs of the plans.

In addition to the above comments, Raytheon Company supports the comments made in the Financial Executives International (FEI), National Defense Industrial Association (NDIA), and Aerospace Industries Association (AIA) letters regarding this FAR Case.

We will be pleased to discuss any questions or comments you may have regarding this correspondence. Please contact Mr. Roby Cann, Director of Government Accounting on (781) 522-3022. Thank you for your consideration.

Sincerely,

Terence J. Murphy
Assistant Controller, Government Accounting

Copy furnished:
R. Cann, J. Pflaumer

2001-021-4

**Michael D. Lem**
Assistant Controller
Cost Accounting & Estimating

The Boeing Company
100 N. Riverside Drive MC 5003-2730
Chicago, IL 60606

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

BOEING

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The Boeing Company is pleased to submit its comments on the proposed rule to amend the Training and Education Cost Principle. We support the Councils' efforts to provide clarity to the cost principle and remove unnecessary and restrictive language. However, we are disappointed with the inclusion of the proposed paragraph 31.205-44(a), which completely contradicts the adoption of commercial practices and the resulting economic benefits.

We endorse the positions stated by the National Defense Industries Association (NDIA) and the Financial Executives International (FEI).

We support the proposed rule "... to increase the clarity of this cost principle." We are in agreement that "...the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness.*" These are both positive steps and consistent with adoption of commercial practices.

However, we must take strong exception that the Council's intent is also to "...to make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training." This statement and the corresponding change to proposed paragraph 31.205-44(a) undermines the benefits of simplification and is contrary to adoption of commercial practices. Allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is sound public policy. As such, these costs should be classified as allowable, not as potentially unallowable under the proposed cost principle.

We strongly support the position, expressed by the NDIA, of: "For many years, industry has endorsed training and education programs for all of its employees. Industry efforts have resulted in a more enlightened and productive work force. A result that is mutually beneficial to both the contractor and Government. Today's

2001-021-4

business and technical environment is constantly and rapidly changing. Unless our workforce is continually updated and, in some cases, completely retrained, industry would face massive lay-offs, which is hardly in the interest of public policy. Additionally, many of the people who take advantage of private sector training and education are in government-authorized, socio-economic and disadvantaged programs that encourage upward mobility. These best practices would be jeopardized by the proposed provision at FAR Part 31.205-44(a), which will significantly, if not entirely, affect the allowability of these costs." In brief, concern for jobs and the need for employees to continually retrain for new areas as technology changes warrant the investment in training and education. The investment in training helps avoid layoffs and unemployment issues, plus it aids in the revitalization of the defense industrial base. The investment is good public policy.

Further, the proposed change to FAR 31.205-44(a) would be difficult to administer, specifically as it relates solely to obtaining an academic degree related to a particular position. Compliance with this provision would be burdensome, costly and very likely lead to costly litigation. This is inconsistent with the Councils' stated intent to simplify and to "increases[s] the clarity of the cost principle." An example demonstrates this point: "if a non-exempt accounting clerk is attempting to get an accounting degree in order to qualify for an exempt accounting position that requires said degree, that cost would be unallowable in accordance with the proposed paragraph (a)." However, if that same employee is attending the classes to increase knowledge, it would be allowable, because the degree and the qualification are not the purposes for taking the course(s).

In summary, we find the proposed revision to FAR Part 31.205-44(a) contrary to public policy by discouraging the upward mobility of a contractor's workforce, adds administrative complexities not eliminates them, contradicts the Councils' intent to simplify and clarify the cost principle, prevents the adoption of commercial, best practices and creates an unnecessary administrative burden. Paragraph 31.205-44(a) must be eliminated.

Proposed paragraph (d), as written, could make currently allowable costs unallowable. Presently, only the costs in excess of two school years or the length of the degree program of courses or degrees related to the field in which the employee is working or expected to work are unallowable. The proposed wording could be read as the entire cost of that same course or degree program would be unallowable if the period exceeded the two years or length of the degree program time period. The proposed language requires that both the criteria (the job relationship requirement and the time requirement) must be met in order for any of the costs to be allowable. The proposed rule could be interpreted to say that the costs are either all allowable or unallowable. We recommend that the proposed wording be changed to make clear that the unallowable portion only relates to the excess time period.

024-4

We recommend that paragraph (e) on grants be eliminated because this subject matter is adequately covered by FAR 31.205-8 *Contributions or donations.*

The word "Costs", in paragraph (g) university and college plans, could be misinterpreted to include the administrative costs of the plans. The Councils addressed this concern in their response to Background Comment 5. The costs still could be challenged by an auditor or contracting officer based upon their misinterpretation of the proposed wording. To clarify the intent, we recommend that the words "Costs of..." be changed to "Contractor contributions to...".

BOEING

If you have questions regarding our comments, please contact Keith Corey. Keith can be reached at (312) 544-3074, or by email at Keith.Corey@Boeing.com.

Sincerely,

Michael D. Lem
Assistant Controller
Cost Accounting & Estimation

2001-024-5

AEROSPACE INDUSTRIES ASSOCIATION

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The Aerospace Industries Association (AIA) is pleased to submit comments on the proposed rule to amend the cost principle on Training and Education Costs. The AIA member companies applaud the Councils' efforts to increase the clarity of the cost principle and are pleased to see that the Councils are proposing a rule to address unnecessary and restrictive cost principle language.

Our members agree that, as the Background section in the Federal Register issuance on the proposed rule stated, the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*. In addition, we concur with elimination of the disparate treatment of full-time and part-time undergraduate education.

However, while we are in agreement with many of the revisions made to the cost principle, we believe the revision made to proposed paragraph (a) should be deleted, as explained in the Attachment to this letter. The proposed change to paragraph (a) runs counter to the public policy imbedded in the cost principle as well as the Council's background comments.

Also, our member companies have identified certain other areas where we believe the proposed language is not appropriate or could be further streamlined. Please refer to the Attachment for those specific comments.

We strongly recommend that the final rule incorporate our recommendations, otherwise the final rule will result in inconsistent application of the principle, and make currently allowable costs unallowable.

Aerospace Industries Association of America, Inc
1000 Wilson Boulevard, Suite 1700 Arlington, VA 22209-3901 (703) 358-1000 www.aia-aerospace.org

2001-024-5



If you would like to meet to discuss our recommendations for changes to the proposed rule, please contact Mr. Dick Powers of my staff. Dick can be reached on (703) 358-1042. His e-mail address is powers@aia-aerospace.org. Thank you for your consideration.

Sincerely,

Robert T. Marlow
Vice President, Government Division

Attachment

024-5

**Attachment**

1. **Proposed paragraph (a) on obtaining an academic degree or qualifying for appointment to a particular position.**

   In the Background comments, the Councils state that they "support upward mobility, job retraining, and educational advancement. Training that is beneficial for the contractor is also beneficial for the Government." Yet, if a non-exempt accounting clerk employed by a member company is attempting to get an accounting degree in order to qualify for an exempt accounting position that requires an accounting degree, the cost of that training would be unallowable in accordance with paragraph (a). This is not in accord with the Council's goal to "support upward mobility."

   Moreover, encouraging learning initiatives among the workforce results in a more productive and effective workforce. Contractors must cultivate excellent technical and management skills through proper training and educational programs to ensure the continued technological excellence of defense weapons and equipment.

   We strongly recommend that proposed paragraph (a) be deleted.

2. **Proposed paragraph (d) on training related to the field in which the employee is working and not to exceed 2 school years.**

   Proposed paragraph (d) as written will make currently allowable costs unallowable. Currently, only the costs in excess of two years or length of the degree program of courses or degrees related to the field in which the employee is working or expected to work are unallowable. Under the proposed wording, the entire cost (not just the excess) of that same course or degree program would be unallowable if it exceeds the two years or the length of the degree program criteria. This occurs because both proposed criteria (i.e., the current or future job requirement and no more than two years or length of degree program requirement) must be met in order for any of the costs to be considered allowable; the criteria do not address the cost of training in excess of two years or the length of degree program.

   We recommend that the proposed change be clarified to make only "excess" costs unallowable.

3. **Proposed paragraph (e) on grants.**

   We recommend the elimination of the entire paragraph because this subject matter is adequately covered by FAR 31.205-8 *Contributions or donations*.

**4. Proposed elimination of paragraph (h) on advance agreements.**

The current provisions of 31.205-44(h)(1) that allow training and education costs in excess of those otherwise allowable if set forth in an Advance Agreement must not be eliminated as the proposed limitations and restrictions in paragraph (d) require its existence. The specific mention to Advance Agreements in this cost principle goes beyond the clarification and interpretation aspects of 31.109 as it gives the contracting officer the ability to allow otherwise unallowable costs. This has helped to narrow the disparity between the other provisions in the current cost principle and the evolution of a public policy that encourages continuous learning. If the proposed provisions in (d) become final and the current advance agreement provisions are eliminated, some costs of continuous learning, which are currently allowable, would become unallowable.

**5. Proposed paragraph (g) on university and college plans.**

The word "Costs" could be misconstrued to include the administrative costs of the plans. While the Councils appropriately addressed this concern in their Response to Comment 5 in the Background, the costs still could be challenged by an auditor or contracting officer based upon their misapplication of the cost principle's wording in proposed paragraph (g). To prevent this from occurring, we recommend that proposed paragraph (g) include a comment that either (1) the administrative costs of these plans are allowable, or (2) paragraph (g) does not include the administrative costs of the plans.

2001-024-6

15/138414

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405
ATTN: Laurie Duarte

Re: FAR Case 2001-021

Dear Ms Duarte:

On behalf of the American Federation of Government Employees (AFGE), AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the nation and around the world, I thank you for the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at 48 CFR, Part 31, "Training and Education Cost Principle" that was published in the Federal Register on January 29, 2004 (69 FR 4436). In addition to aggressively representing the interests of its members, AFGE takes a keen interest in ensuring the fairness and integrity of federal rulemaking.

The proposal would amend FAR 31.205-44 "Training and education costs," to substantially liberalize allowability rules for contractor employee education and training. This appears to be another attempt on the part of the Director of Procurement and Acquisition Policy at DOD to accord contractors and contractor employees further benefits not granted to federal employees in similar circumstances.

The proposed rule makes at least one extremely offensive change to the contract cost allowability rules that is not accorded to federal employees, despite the misleading statement contained in the proposal's preamble. Permitting contractors to claim as an allowable cost, the costs of providing employees with full-time undergraduate education, amounts to nothing more than a contractor scholarship program, at taxpayer expense. While AFGE, as a matter of public policy, encourages federal employees to further their education and training, it is well understood, that when taxpayers pick up these costs, such education and training must reasonably relate to the employee's actual or anticipated duties.

024-6



There is a misleading statement contained in the preamble to the proposed rule that suggests that the FY 2001 DOD Authorization Act (as well as the Homeland Security Act), authorizes Government payment of the cost of academic degrees for federal employees. While the laws cited do permit the Government to pay for employee degrees under certain circumstances, they place significant restrictions on those payments. We would find it impossible to envision a situation where the Government would be authorized to pay for a federal employee's full-time undergraduate degree program, in a field unrelated to the employee's current or anticipated duties. Indeed, the proposed changes to the cost principle implicitly recognize this restriction in paragraph (d) of proposed FAR 31.205-44 by restricting the allowability of full-time graduate level education to two school years, and then only if the education is related to the employee's actual or reasonably anticipated line of work.

AFGE considers the above described proposed change to the contract cost principles to be yet another in a long line of accommodations to private contractors who seek to profit from performing the government's work. Despite claims to the contrary, the proposed cost principle's allowability criteria are significantly more liberal than those accorded to federal employees, particularly with respect to providing contractor employees with the benefit of receiving a full-time undergraduate "scholarship program" in a field unrelated to their job functions.

AFGE urges the FAR Councils to withdraw this proposal, which amounts to another proposed waste of public funds on behalf of private interests. In no event should this proposal proceed unless it can be justified on economic grounds, and federal employees are afforded the same advantages as their contractor counterparts.

Sincerely,

Jacqueline Simon, Director
Public Policy Department
American Federation of Government
Employees, AFL-CIO

JS/dao

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2001-021-7

LOCKHEED MARTIN

**Anthony M. DiPasquale**
Vice President
Government Financial Management

March 29, 2004

General Services Administrator
FAR Secretariat (MVA)
1800 F Street, N.W., Room 4035
Washington D.C., 20405

ATTN: Laurie Duarte

Subject: FAR Case 2001-021

Dear Ms. Duarte:

Lockheed Martin Corporation (LMC) appreciates the opportunity to submit comments concerning the second set of proposed revisions to FAR 31-205-44, Training and Education Costs.

LMC acknowledges that this proposal is a vast improvement over the current cost principle and the previous proposal. However, LMC concurs with the points made in FEI and AIA comments, and wants to emphasize our strong disagreement with the unallowable provisions as stated in paragraph (a). The Council is effectively disallowing **ALL** costs related to undergraduate degrees no matter what their value is to the company and employee, and appears to be contrary to the exceptions as specified in paragraph (d) for graduate level education.

This disallowance also appears to be contrary to the Council's support of upward mobility, job retraining and educational advancement. Our Government DCAA auditors have already informed us that all undergraduate costs will become unallowable based on this proposal. We recommend that the proposed paragraph be deleted in order for LMC to continue to provide the educational opportunities that we have provided for decades.

LMC believes that our suggested change is mutually beneficial. It supports our U.S. Government customers with the best-trained workforce to provide goods and services. If you have any questions concerning our comments, please call me at (301) 897-6781.

Sincerely,

A.M. DiPasquale

2001-021-8


March 26, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The National Defense Industrial Association (NDIA) is pleased to submit comments on the proposed rule to amend the cost principle on Training and Education Costs. NDIA is a non-partisan, non-profit organization with a membership that includes over 1,100 companies and more than 27,000 individuals. NDIA has a specific interest in government policies and practices concerning the government's acquisition of goods and services, including research and development, procurement, and logistics support. Our members, who provide a wide array of goods and services to the government, include some of the nation's largest defense contractors.

We support the Councils' efforts to increase the clarity of the cost principle and to remove unnecessary and restrictive cost principle language. However, we are surprised and disappointed at the inclusion of the proposed paragraph 31.205-44(a), which contradicts the adoption of commercial practices and the resulting economic benefits.

The *Federal Register* comment section states that the purpose of the proposed rule is "... to increase the clarity of this cost principle." The comment section also states that "...the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*." We support both of these statements and applaud the Council's continuing efforts to adopt commercial practices.

However, we are troubled by the statement in the comment section that the Council's intent is also to "...make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training." This statement and the resulting proposed paragraph 31.205-44(a) nullify the benefits of simplification and adopting commercial practices. We are perplexed as to how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and how these costs potentially could be classified as unallowable.

021-8

We believe that utilization of the test of whether the Federal government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The benchmark for measuring the cost reasonableness of payments for education and training should be based upon commercial practices that encourage the continued training and education of our workforce. Accordingly, we recommend that paragraph 31.205-44 (a) of the proposed rule ("The cost of education and training for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement is unallowable.") be deleted prior to issuing the final rule.

For many years, industry has endorsed training and education programs for all of its employees. Industry efforts have resulted in a more skilled and productive work force -- a result that is mutually beneficial to both contractors and Government. These long-standing industry practices are subject to company policies and procedures requiring internal controls and routines to be in place prior to reimbursing employee education costs. Over the years, these commercial practices have been proven to be cost effective with long-term customer and contractor benefits. Today's business and technical environment is constantly and rapidly changing. Unless our workforce is continually updated and, in some cases, completely retrained, industry might face massive lay-offs, which is hardly in the interest of public policy. Additionally, many of the people who take advantage of private sector training and education are in government-authorized, socio-economic and disadvantaged programs that encourage upward mobility. These best practices would be jeopardized by the proposed provision at FAR Part 31.205-44(a), which will significantly, if not entirely, affect the allowability of these costs.

We believe that the proposed paragraph 31.205-44(a) contradicts the remainder of the proposed cost principle and the Councils' stated intent to adopt the FAR 31.201-3 reasonableness standard and to simplify the cost principle. Further, it would be administratively challenging and costly to determine which training and education costs relate solely to obtaining an academic degree related specifically to a particular position. Implementation of this provision would not only be burdensome and costly; it could lead to costly litigation. We doubt that this type of result is in keeping with the Councils' stated intent to simplify and to clarify the cost principle.

In summary, the proposed revision to FAR Part 31.205-44(a) contradicts public policy, which encourages the upward mobility of a contractor's workforce, contradicts the Councils' intent to simplify and clarify the cost principle, prevents the adoption of commercial best practices, and creates an unnecessary administrative burden. We recommend the elimination of paragraph 31.205-44(a) prior to issuing a final rule.

If you have questions regarding our comments, please contact NDIA Procurement Director Ruth Franklin at (703) 247-2598, or at rfranklin@ndia.org.

Sincerely,

Peter M. Steffes
Vice President, Government Policy

2001-021-1

GSA

**Linda L. Jacobs**

01/30/2004 09:07 AM

To: farcase.2001-021@gsa.gov
cc:
Subject: Training & Education Cost Principle

GSA does not pay for subjects now requiring a degree. The combination of training and education for the 1102 series is critical, without the government paying for the required courses and training most employees could not afford to get the degree required.

The lack of funding for these courses programs the 1102 series to fail. Only paying for business courses such as accounting, business ethics, etc makes sure that the employee cannot complete the required education for their job.

Is this new rule meant to discourage employees from going into the contracting series? Right now only persons who already have a business or law degree can get into the 1102 series, contracting. This cost principle will make it impossible for current employees to complete the education needed for the job.

Please reconsider and completely fund the education and training of current employees.

Dr. Linda L. Jacobs
DC Service Center
Phone: (202) 205-0274
Fax: (202) 708-6838

2001-021-2

financial executives
international

March 3, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

*In Reference: FAR Case 2001-021*

Dear Ms. Duarte:

The Financial Executives International Committee on Government Business (CGB) wishes to express its concerns regarding the proposed changes to the Training and Education cost principle (FAR Part 31.205-44; FAR Case 2001-021).

FEI is a professional organization representing the interests of more than 15,000 CFOs, Treasurers, Controllers and other senior financial executives in over 8,000 corporations throughout the United States and Canada. FEI represents both the providers and users of financial information. FEI's Committee on Government Business formulates positions and comments on government policies that impact FEI members doing business with all sectors of the federal government. The members of our Committee are drawn from a broad cross-section of companies that do business with the Government.

We are concerned that the positions adopted in this proposed rule are contrary to, and inconsistent with, public policy. We strongly believe that the utilization of government payment of federal employee degree costs is the inappropriate basis for determining cost allowability. Instead, we endorse the position that government payment for the education and training of federal employees should be based upon commercial practices that encourage the continued training and education of our workforce. Accordingly, we believe that 31.205-44 (a) in this proposed rule:

> "The cost of education and training for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement is unallowable."

Rec'd 10-8-04

1325 G street, nw, suite 1020, washington, DC 20005 202.626.7801 fax 202.626.6555 www.fei.org

021-2

must be eliminated.

Congress has consistently endorsed and supported the adoption of commercial practices – not government practices – in the government procurement arena. The most recent example is the 2004 DoD Authorization Legislation, (P.L.108-136), Section 1423. This section prescribes the establishment of a panel to propagate the use of commercial practices by, among other things, reviewing all regulations.

Industry, on the whole, has embraced training and education programs for all of its employees. The record clearly shows that endorsement of such lifetime learning initiatives results in a more productive and invigorated work force with such employees taking active leadership roles in Quality Circle, Process Improvement Councils, etc. The ever evolving and rapidly changing technological environment we live in leads to skill sets that will become obsolete unless they are constantly updated and refreshed.

Equally important, many of the employees who take advantage of private sector training and education are in government-authorized, socio-economic/disadvantaged programs that encourage upward mobility.

These are all best commercial practices whose costs could significantly, if not entirely, be made unallowable by the provisions in the proposed rule at FAR Part 31.205-44(a). While Congress and the President continue to move towards the adoption of commercial practices, we find the Councils' attempt to tie allowability to government practices both alarming and contradictory to public policy.

We also find this provision to be inconsistent with the Councils' own comments:

> "The Councils support upward mobility, job retraining, and educational advancement. Training that is beneficial for the contractor is also beneficial for the Government. But, while Government support for training and education is sound overall public policy, there are certain related costs the taxpayers should not reimburse. The Councils believe the six public policy exceptions in this second proposed rule are appropriate."

We fail to understand how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and could be treated as unallowable costs. We also have no idea how one is to discern whether the training and education relates "solely" to obtaining an academic degree or to a particular position. Implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that "increases[s] the clarity of the cost principle."

In summary, the proposed provision of FAR Part 31.205-44(a) is contrary to existing public policy, which encourages the upward mobility of a contractor's workforce, specifically in the area of socio-economic/disadvantaged programs. It prevents the adoption of commercial, best practices and creates an unnecessary and unsupportable administrative burden. It should be eliminated. At the same time CGB strongly supports

021-2

changing the reimbursement of federal employees' training and education costs to align with commercial, best practices that support continuous learning.

Respectfully submitted,

Dean Luchsinger

Dean Luchsinger
Chair
FEI Committee on Government Business

2001-021-3

Raytheon

Raytheon Company
870 Winter Street
Waltham, Massachusetts
02451-1449 USA
781.522.3000
781.522.6425 fax

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: Training and Education Cost Principle **(FAR Case 2001-021)**

Dear Ms. Duarte:

Raytheon Company is pleased to provide its comments on the proposed rule published in the January 29, 2004 Federal Register regarding Training and Education Costs. Raytheon supports the Councils' efforts to address unnecessary and restrictive cost principle language. Further, Raytheon Company agrees with the Federal Register Background comments that the reasonableness of specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*. Raytheon is also pleased to note the Councils' elimination of the disparate treatment in the current cost principle regarding full-time and part-time undergraduate education.

However, while those positive revisions made to the cost principle are most welcomed, the proposed addition of paragraph (a) is not and is most troubling as mentioned below. In addition to proposed paragraph (a), Raytheon Company has the following recommendations for the Councils to consider before finalizing the proposed rule:

**Proposed paragraph (a)**
Proposed paragraph (a) should be deleted, as it is inconsistent with the tenor of the remaining cost principle language. It also conflicts with the Councils' Background comments made in response to Comment 6 regarding the Councils' support for upward mobility, job retraining, and educational advancement. Furthermore, the Councils neglected to explain why these types of training and education costs should be unallowable or why they are a public policy exception. To add such contrary and restrictive language to the cost principle without fully explaining why, is inappropriate.

Embracing and fostering learning initiatives among our workforce is not only beneficial to Raytheon Company, but also to the Government. Continuous learning results in a more productive and effective workforce. Raytheon, as well as others within Industry, need to develop the best technical and managerial skills through programs of training and education. By doing so, the technological superiority of defense weapons and equipment will be assured to continue. Therefore, Raytheon Company deeply urges the Councils to eliminate proposed paragraph (a) in its entirety from the final rule.

**Proposed paragraph (d)**
Proposed paragraph (d) as written will make currently allowable costs unallowable. Currently, for costs covered by this paragraph, only the costs in excess of two years or length of the degree program are unallowable. The proposed wording makes the entire cost (not just the excess) of the same course or degree program unallowable if it exceeded the two years or length of the degree program. The proposed wording only provides for the costs to be either all allowable or all unallowable; it does not explicitly address the excess. This proposed language should be clarified to make only the excess costs unallowable.

**Paragraph (h) proposed elimination**
The Councils state in the Background comments that they believe that in light of the changes made to the cost principle, the need for an advance agreement provision has been eliminated. We disagree. Because proposed paragraph (d) still exists with a two-year or length of the degree program limitation, the advance agreement provisions must remain as part of this cost principle; otherwise those costs covered by that provision, which are currently allowable, would become unallowable.

**Proposed paragraph (g)**
Although the Councils addressed administrative costs of the plans in their response to Comment 5 in the Background, the costs still could be challenged by an auditor or contracting officer based upon their misapplication of the cost principle's wording in this proposed paragraph. To help mitigate misapplication, Raytheon recommends that the Councils consider clarifying proposed paragraph (g) by including a comment that either states (1) the administrative costs of these plans are allowable, or (2) paragraph (g) does not include the administrative costs of the plans.

In addition to the above comments, Raytheon Company supports the comments made in the Financial Executives International (FEI), National Defense Industrial Association (NDIA), and Aerospace Industries Association (AIA) letters regarding this FAR Case.

We will be pleased to discuss any questions or comments you may have regarding this correspondence. Please contact Mr. Roby Cann, Director of Government Accounting on (781) 522-3022. Thank you for your consideration.

Sincerely,

T. J. Murphy

Terence J. Murphy
Assistant Controller, Government Accounting

Copy furnished:
R. Cann, J. Pflaumer

2001-021-4

**Michael D. Lem**
Assistant Controller
Cost Accounting & Estimating

The Boeing Company
100 N. Riverside Drive MC 5003-2730
Chicago, IL 60606

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

BOEING

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The Boeing Company is pleased to submit its comments on the proposed rule to amend the Training and Education Cost Principle. We support the Councils' efforts to provide clarity to the cost principle and remove unnecessary and restrictive language. However, we are disappointed with the inclusion of the proposed paragraph 31.205-44(a), which completely contradicts the adoption of commercial practices and the resulting economic benefits.

We endorse the positions stated by the National Defense Industries Association (NDIA) and the Financial Executives International (FEI).

We support the proposed rule "... to increase the clarity of this cost principle." We are in agreement that "...the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness.*" These are both positive steps and consistent with adoption of commercial practices.

However, we must take strong exception that the Council's intent is also to "...to make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training." This statement and the corresponding change to proposed paragraph 31.205-44(a) undermines the benefits of simplification and is contrary to adoption of commercial practices. Allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is sound public policy. As such, these costs should be classified as allowable, not as potentially unallowable under the proposed cost principle.

We strongly support the position, expressed by the NDIA, of: "For many years, industry has endorsed training and education programs for all of its employees. Industry efforts have resulted in a more enlightened and productive work force. A result that is mutually beneficial to both the contractor and Government. Today's

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business and technical environment is constantly and rapidly changing. Unless our workforce is continually updated and, in some cases, completely retrained, industry would face massive lay-offs, which is hardly in the interest of public policy. Additionally, many of the people who take advantage of private sector training and education are in government-authorized, socio-economic and disadvantaged programs that encourage upward mobility. These best practices would be jeopardized by the proposed provision at FAR Part 31.205-44(a), which will significantly, if not entirely, affect the allowability of these costs." In brief, concern for jobs and the need for employees to continually retrain for new areas as technology changes warrant the investment in training and education. The investment in training helps avoid layoffs and unemployment issues, plus it aids in the revitalization of the defense industrial base. The investment is good public policy.

Further, the proposed change to FAR 31.205-44(a) would be difficult to administer, specifically as it relates solely to obtaining an academic degree related to a particular position. Compliance with this provision would be burdensome, costly and very likely lead to costly litigation. This is inconsistent with the Councils' stated intent to simplify and to "increases[s] the clarity of the cost principle." An example demonstrates this point: "if a non-exempt accounting clerk is attempting to get an accounting degree in order to qualify for an exempt accounting position that requires said degree, that cost would be unallowable in accordance with the proposed paragraph (a)." However, if that same employee is attending the classes to increase knowledge, it would be allowable, because the degree and the qualification are not the purposes for taking the course(s).

In summary, we find the proposed revision to FAR Part 31.205-44(a) contrary to public policy by discouraging the upward mobility of a contractor's workforce, adds administrative complexities not eliminates them, contradicts the Councils' intent to simplify and clarify the cost principle, prevents the adoption of commercial, best practices and creates an unnecessary administrative burden. Paragraph 31.205-44(a) must be eliminated.

Proposed paragraph (d), as written, could make currently allowable costs unallowable. Presently, only the costs in excess of two school years or the length of the degree program of courses or degrees related to the field in which the employee is working or expected to work are unallowable. The proposed wording could be read as the entire cost of that same course or degree program would be unallowable if the period exceeded the two years or length of the degree program time period. The proposed language requires that both the criteria (the job relationship requirement and the time requirement) must be met in order for any of the costs to be allowable. The proposed rule could be interpreted to say that the costs are either all allowable or unallowable. We recommend that the proposed wording be changed to make clear that the unallowable portion only relates to the excess time period.

021-4

We recommend that paragraph (e) on grants be eliminated because this subject matter is adequately covered by FAR 31.205-8 *Contributions or donations.*

The word "Costs", in paragraph (g) university and college plans, could be misinterpreted to include the administrative costs of the plans. The Councils addressed this concern in their response to Background Comment 5. The costs still could be challenged by an auditor or contracting officer based upon their misinterpretation of the proposed wording. To clarify the intent, we recommend that the words "Costs of..." be changed to "Contractor contributions to...".

BOEING

If you have questions regarding our comments, please contact Keith Corey. Keith can be reached at (312) 544-3074, or by email at Keith.Corey@Boeing.com.

Sincerely,

Michael D. Lem
Assistant Controller
Cost Accounting & Estimation

2001-024-5

AEROSPACE INDUSTRIES ASSOCIATION

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The Aerospace Industries Association (AIA) is pleased to submit comments on the proposed rule to amend the cost principle on Training and Education Costs. The AIA member companies applaud the Councils' efforts to increase the clarity of the cost principle and are pleased to see that the Councils are proposing a rule to address unnecessary and restrictive cost principle language.

Our members agree that, as the Background section in the Federal Register issuance on the proposed rule stated, the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*. In addition, we concur with elimination of the disparate treatment of full-time and part-time undergraduate education.

However, while we are in agreement with many of the revisions made to the cost principle, we believe the revision made to proposed paragraph (a) should be deleted, as explained in the Attachment to this letter. The proposed change to paragraph (a) runs counter to the public policy imbedded in the cost principle as well as the Council's background comments.

Also, our member companies have identified certain other areas where we believe the proposed language is not appropriate or could be further streamlined. Please refer to the Attachment for those specific comments.

We strongly recommend that the final rule incorporate our recommendations, otherwise the final rule will result in inconsistent application of the principle, and make currently allowable costs unallowable.

Aerospace Industries Association of America, Inc.
1000 Wilson Boulevard, Suite 1700 Arlington, VA 22209-3901 (703) 358-1000 www.aia-aerospace.org

2001-024-5



If you would like to meet to discuss our recommendations for changes to the proposed rule, please contact Mr. Dick Powers of my staff. Dick can be reached on (703) 358-1042. His e-mail address is powers@aia-aerospace.org. Thank you for your consideration.

Sincerely,

Robert T. Marlow
Vice President, Government Division

Attachment

024-5

**Attachment**

1. **Proposed paragraph (a) on obtaining an academic degree or qualifying for appointment to a particular position.**

   In the Background comments, the Councils state that they "support upward mobility, job retraining, and educational advancement. Training that is beneficial for the contractor is also beneficial for the Government." Yet, if a non-exempt accounting clerk employed by a member company is attempting to get an accounting degree in order to qualify for an exempt accounting position that requires an accounting degree, the cost of that training would be unallowable in accordance with paragraph (a). This is not in accord with the Council's goal to "support upward mobility."

   Moreover, encouraging learning initiatives among the workforce results in a more productive and effective workforce. Contractors must cultivate excellent technical and management skills through proper training and educational programs to ensure the continued technological excellence of defense weapons and equipment.

   We strongly recommend that proposed paragraph (a) be deleted.

2. **Proposed paragraph (d) on training related to the field in which the employee is working and not to exceed 2 school years.**

   Proposed paragraph (d) as written will make currently allowable costs unallowable. Currently, only the costs in excess of two years or length of the degree program of courses or degrees related to the field in which the employee is working or expected to work are unallowable. Under the proposed wording, the entire cost (not just the excess) of that same course or degree program would be unallowable if it exceeds the two years or the length of the degree program criteria. This occurs because both proposed criteria (i.e., the current or future job requirement and no more than two years or length of degree program requirement) must be met in order for any of the costs to be considered allowable; the criteria do not address the cost of training in excess of two years or the length of degree program.

   We recommend that the proposed change be clarified to make only "excess" costs unallowable.

3. **Proposed paragraph (e) on grants.**

   We recommend the elimination of the entire paragraph because this subject matter is adequately covered by FAR 31.205-8 *Contributions or donations*.

4. **Proposed elimination of paragraph (h) on advance agreements.**

   The current provisions of 31.205-44(h)(1) that allow training and education costs in excess of those otherwise allowable if set forth in an Advance Agreement must not be eliminated as the proposed limitations and restrictions in paragraph (d) require its existence. The specific mention to Advance Agreements in this cost principle goes beyond the clarification and interpretation aspects of 31.109 as it gives the contracting officer the ability to allow otherwise unallowable costs. This has helped to narrow the disparity between the other provisions in the current cost principle and the evolution of a public policy that encourages continuous learning. If the proposed provisions in (d) become final and the current advance agreement provisions are eliminated, some costs of continuous learning, which are currently allowable, would become unallowable.

5. **Proposed paragraph (g) on university and college plans.**

   The word "Costs" could be misconstrued to include the administrative costs of the plans. While the Councils appropriately addressed this concern in their Response to Comment 5 in the Background, the costs still could be challenged by an auditor or contracting officer based upon their misapplication of the cost principle's wording in proposed paragraph (g). To prevent this from occurring, we recommend that proposed paragraph (g) include a comment that either (1) the administrative costs of these plans are allowable, or (2) paragraph (g) does not include the administrative costs of the plans.

2001-024-6

15/138414

March 29, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405
ATTN: Laurie Duarte

Re: FAR Case 2001-021

Dear Ms Duarte:

On behalf of the American Federation of Government Employees (AFGE), AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the nation and around the world, I thank you for the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at 48 CFR, Part 31, "Training and Education Cost Principle" that was published in the Federal Register on January 29, 2004 (69 FR 4436). In addition to aggressively representing the interests of its members, AFGE takes a keen interest in ensuring the fairness and integrity of federal rulemaking.

The proposal would amend FAR 31.205-44 "Training and education costs," to substantially liberalize allowability rules for contractor employee education and training. This appears to be another attempt on the part of the Director of Procurement and Acquisition Policy at DOD to accord contractors and contractor employees further benefits not granted to federal employees in similar circumstances.

The proposed rule makes at least one extremely offensive change to the contract cost allowability rules that is not accorded to federal employees, despite the misleading statement contained in the proposal's preamble. Permitting contractors to claim as an allowable cost, the costs of providing employees with full-time undergraduate education, amounts to nothing more than a contractor scholarship program, at taxpayer expense. While AFGE, as a matter of public policy, encourages federal employees to further their education and training, it is well understood, that when taxpayers pick up these costs, such education and training must reasonably relate to the employee's actual or anticipated duties.

024-6



There is a misleading statement contained in the preamble to the proposed rule that suggests that the FY 2001 DOD Authorization Act (as well as the Homeland Security Act), authorizes Government payment of the cost of academic degrees for federal employees. While the laws cited do permit the Government to pay for employee degrees under certain circumstances, they place significant restrictions on those payments. We would find it impossible to envision a situation where the Government would be authorized to pay for a federal employee's full-time undergraduate degree program, in a field unrelated to the employee's current or anticipated duties. Indeed, the proposed changes to the cost principle implicitly recognize this restriction in paragraph (d) of proposed FAR 31.205-44 by restricting the allowability of full-time graduate level education to two school years, and then only if the education is related to the employee's actual or reasonably anticipated line of work.

AFGE considers the above described proposed change to the contract cost principles to be yet another in a long line of accommodations to private contractors who seek to profit from performing the government's work. Despite claims to the contrary, the proposed cost principle's allowability criteria are significantly more liberal than those accorded to federal employees, particularly with respect to providing contractor employees with the benefit of receiving a full-time undergraduate "scholarship program" in a field unrelated to their job functions.

AFGE urges the FAR Councils to withdraw this proposal, which amounts to another proposed waste of public funds on behalf of private interests. In no event should this proposal proceed unless it can be justified on economic grounds, and federal employees are afforded the same advantages as their contractor counterparts.

Sincerely,

Jacqueline Simon, Director
Public Policy Department
American Federation of Government
Employees, AFL-CIO

JS/dao

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2001-021-7

LOCKHEED MARTIN

**Anthony M. DiPasquale**
Vice President
Government Financial Management

March 29, 2004

General Services Administrator
FAR Secretariat (MVA)
1800 F Street, N.W., Room 4035
Washington D.C., 20405

ATTN: Laurie Duarte

Subject: FAR Case 2001-021

Dear Ms. Duarte:

Lockheed Martin Corporation (LMC) appreciates the opportunity to submit comments concerning the second set of proposed revisions to FAR 31-205-44, Training and Education Costs.

LMC acknowledges that this proposal is a vast improvement over the current cost principle and the previous proposal. However, LMC concurs with the points made in FEI and AIA comments, and wants to emphasize our strong disagreement with the unallowable provisions as stated in paragraph (a). The Council is effectively disallowing **ALL** costs related to undergraduate degrees no matter what their value is to the company and employee, and appears to be contrary to the exceptions as specified in paragraph (d) for graduate level education.

This disallowance also appears to be contrary to the Council's support of upward mobility, job retraining and educational advancement. Our Government DCAA auditors have already informed us that all undergraduate costs will become unallowable based on this proposal. We recommend that the proposed paragraph be deleted in order for LMC to continue to provide the educational opportunities that we have provided for decades.

LMC believes that our suggested change is mutually beneficial. It supports our U.S. Government customers with the best-trained workforce to provide goods and services. If you have any questions concerning our comments, please call me at (301) 897-6781.

Sincerely,

A.M. DiPasquale

2001-021-8


March 26, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: FAR Case 2001-021 on the Training and Education Cost Principle

Dear Ms. Duarte:

The National Defense Industrial Association (NDIA) is pleased to submit comments on the proposed rule to amend the cost principle on Training and Education Costs. NDIA is a non-partisan, non-profit organization with a membership that includes over 1,100 companies and more than 27,000 individuals. NDIA has a specific interest in government policies and practices concerning the government's acquisition of goods and services, including research and development, procurement, and logistics support. Our members, who provide a wide array of goods and services to the government, include some of the nation's largest defense contractors.

We support the Councils' efforts to increase the clarity of the cost principle and to remove unnecessary and restrictive cost principle language. However, we are surprised and disappointed at the inclusion of the proposed paragraph 31.205-44(a), which contradicts the adoption of commercial practices and the resulting economic benefits.

The *Federal Register* comment section states that the purpose of the proposed rule is "... to increase the clarity of this cost principle." The comment section also states that "...the reasonableness of the specific contractor training and education costs that are not subject to one of the expressly unallowable cost exceptions can best be assessed by reference to FAR 31.201-3, *Determining reasonableness*." We support both of these statements and applaud the Council's continuing efforts to adopt commercial practices.

However, we are troubled by the statement in the comment section that the Council's intent is also to "...make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training." This statement and the resulting proposed paragraph 31.205-44(a) nullify the benefits of simplification and adopting commercial practices. We are perplexed as to how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and how these costs potentially could be classified as unallowable.

021-8

We believe that utilization of the test of whether the Federal government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The benchmark for measuring the cost reasonableness of payments for education and training should be based upon commercial practices that encourage the continued training and education of our workforce. Accordingly, we recommend that paragraph 31.205-44 (a) of the proposed rule ("The cost of education and training for the sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for appointment to a particular position for which the academic degree is a basic requirement is unallowable.") be deleted prior to issuing the final rule.

For many years, industry has endorsed training and education programs for all of its employees. Industry efforts have resulted in a more skilled and productive work force -- a result that is mutually beneficial to both contractors and Government. These long-standing industry practices are subject to company policies and procedures requiring internal controls and routines to be in place prior to reimbursing employee education costs. Over the years, these commercial practices have been proven to be cost effective with long-term customer and contractor benefits. Today's business and technical environment is constantly and rapidly changing. Unless our workforce is continually updated and, in some cases, completely retrained, industry might face massive lay-offs, which is hardly in the interest of public policy. Additionally, many of the people who take advantage of private sector training and education are in government-authorized, socio-economic and disadvantaged programs that encourage upward mobility. These best practices would be jeopardized by the proposed provision at FAR Part 31.205-44(a), which will significantly, if not entirely, affect the allowability of these costs.

We believe that the proposed paragraph 31.205-44(a) contradicts the remainder of the proposed cost principle and the Councils' stated intent to adopt the FAR 31.201-3 reasonableness standard and to simplify the cost principle. Further, it would be administratively challenging and costly to determine which training and education costs relate solely to obtaining an academic degree related specifically to a particular position. Implementation of this provision would not only be burdensome and costly; it could lead to costly litigation. We doubt that this type of result is in keeping with the Councils' stated intent to simplify and to clarify the cost principle.

In summary, the proposed revision to FAR Part 31.205-44(a) contradicts public policy, which encourages the upward mobility of a contractor's workforce, contradicts the Councils' intent to simplify and clarify the cost principle, prevents the adoption of commercial best practices, and creates an unnecessary administrative burden. We recommend the elimination of paragraph 31.205-44(a) prior to issuing a final rule.

If you have questions regarding our comments, please contact NDIA Procurement Director Ruth Franklin at (703) 247-2598, or at rfranklin@ndia.org.

Sincerely,

Peter M. Steffes
Vice President, Government Policy

2001-021-9

United Technologies Corporation
United Technologies Building
Hartford, Connecticut 06101
(860) 728-7000

United Technologies

Gregory J. Hayes
Vice President, Accounting and Control

March 24, 2004

General Service Administration
FAR Secretariat (MVA)
1800 F Street, NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Ref: **FAR Case 2001-021 on the Training and Education Cost Principle**

Dear Ms. Duarte:

United Technologies Corporation (UTC) is writing this letter to express its opposition to the inclusion of subsection (a) in the proposed modifications to FAR 31.205-44.

UTC provides high technology products and services to the aerospace and building systems industries worldwide. Pratt & Whitney, Hamilton Sundstrand and Sikorsky Aircraft primarily serve commercial and government customers in the aerospace industry and in industrial markets. Otis, Carrier and Chubb serve customers in the commercial and residential property industries. Sales to the U. S. Government, primarily Department of Defense, were $5.3 billion, or 17%, of UTC's revenue in 2003. At the end of 2003, UTC had approximately 203,000 employees.

We generally support the FAR Council's effort to streamline, clarify and make the Training and Education cost principle easier to apply and administer. We have read and agree with the comments provided by the Financial Executive International Committee on Government Business and the Aerospace Industries Association in their letters to the FAR Secretariat dated March 3, 2004 and March 2004, respectively. In particular, we believe it is inappropriate to tie cost allowability and reasonableness of a single benefit (e.g., the pursuit of an academic degree) to government payment of federal employee costs. Rather sound commercial business practices should prevail. Federal employees' and private workers' compensation and benefits (e.g., vacation pay, pension, sick-time benefits, hours worked) vary greatly. Many of these benefits are individually better for federal employees, while others may not be. We believe this "one-size fits all" approach is not the answer, particularly since most federal workers don't have to compete with other commercial enterprises, including international competitors.

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It is our belief that the proposed revision [subsection (a)] will decrease industry's ability to assist the U. S. Government in ensuring future economic strength. In recent presentations to the U. S. Congress, and subsequently to the Greater Omaha Chamber of Commerce 2004 Annual Meeting, Federal Reserve Chairman Alan Greenspan, noted that U. S. workers must be better educated and that providing "rigorous education and ongoing training to all members of our society" is critical for the economy overall. Further, Mr. Greenspan said U. S. workers face a "never-ending necessity to learn new skills…[1]" The education and training requirements necessary to meet our business needs are constantly and rapidly evolving. Business and industry is a key contributor in providing U. S. citizens with financial support for educational opportunities, and the comprehensive paid education and training provided by commercial enterprises and government contractors, such as UTC, are an important part of meeting the challenge.

UTC offers academic reimbursement benefits (i.e., 100% reimbursement for tuition, books and academic fees for courses completed as part of a college degree program) via our Employee Scholar Program (ESP) to approximately 70,000 U. S. employees (salary and hourly alike), of which about 40,000 could be involved directly or indirectly in government contract work through employment at UTC's aerospace businesses. The other 30,000 are employed by UTC's commercial enterprises.

We believe the rigor of an academic degree program from an accredited institution of higher education is far more valuable than an individual course here or there. The U. S. workforce will benefit only marginally from such an incremental approach. UTC, and many in industry, have been committed to attaining a quantum jump in the overall training and skills level of our employees irrespective of their current assignment.

In 2003, there were more than 24,000 individual course enrollments for U. S. employees involved directly or indirectly in government contract work, and the enrollment trend is increasing. As written, FAR 31.205-44 subsection (a) is unclear and open to various interpretations. For UTC to determine and segregate the costs of training and education for the "sole purpose of providing an employee an opportunity to obtain an academic degree or to qualify for a particular position…" would be costly and time-consuming, if at all possible, depending on what the phrase actually means, e.g., would the contractor need to know the intent of each individual employee for each course taken?

Footnote 1 – Henderson, Neil, "The Washington Post," 2/21/04, Pages E1 and E3

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The Financial Executives International Committee on Government Business has noted that, "Congress has consistently endorsed and supported the adoption of commercial practices – not government practices – in the government procurement arena. Lifetime learning initiatives results in a more productive and invigorated work force. Many of the employees who take advantage of private sector training and education are in government-authorized, socio-economic/disadvantaged programs that encourage upward mobility." UTC's program supports these ideals and public policy pronouncements.

There are over 9,000 U. S. employees (approximately 25% of whom are hourly workers) currently participating in UTC's ESP. These people are pursuing degrees from colleges and universities that many undoubtedly could not have afforded to fund on their own. ESP is encouraging educational pursuits that support social, political, and business needs, for example:

- Approximately 40% of UTC employees participating from the aerospace and defense business units in the ESP are obtaining first degrees;

- Over 80% of the degrees awarded to UTC employees from the aerospace and defense business units over the last 3 years are in the business/management or technical/engineering areas (less than 3% of degrees awarded were not in current or possible future job-related areas);

- Female and Hispanic employees participate in the ESP at about 1 ½ times their proportion in the UTC workforce;

- ESP participants have increased loyalty and motivation to remain with UTC. They leave their jobs at a lower rate than the general UTC population, thereby enhancing retention and reducing allowable recruiting, relocation and job training costs;

- ESP graduates are promoted at a higher rate than the general UTC population;

- The average age of a UTC ESP participant is 39 years old (suggesting that most participants are of an age where they are able to use their education on the job, and seek further education in the future to keep their skills current).

Education and training are the foundation of our economic growth. The proposed revision [subsection (a)] to FAR 31.205-44 deters UTC's efforts to improve the educational level of our employees while streamlining business costs and improving our product quality - all benefits to the government. Participants in the UTC ESP are better equipped to contribute to these efforts.

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UTC competes for the best engineers and managers with other aerospace and commercial companies (e.g., Lockheed Martin, Johnson Controls, Verizon Communications, AT&T, and Intel). Failure to provide this benefit/program would put UTC at a competitive disadvantage. Providing this benefit with no ability to recover allocable costs would put UTC (and other likeminded defense contractors) at a financial disadvantage as well and over time severely weaken the aerospace and defense industry; one of the few major exporting industries remaining in the U. S. economy.

Our CEO, George David, has stated he wants "to have the best educated work force on the planet." Our education and training program participants are embracing this business need. The addition of subsection (a) will unquestionably affect our associated education costs, and possibly lead to the reduction of some of the world-class education benefits that our company has been promoting for the last 8 years to hire and retain the best and brightest individuals.

Finally, President George W. Bush, speaking at the Women's Entrepreneurship in the 21st Century Forum on March 10, 2004 in Cleveland Ohio, said the following: "We have a responsibility in government to create an environment that increases more jobs and helps people find the skills to fill those jobs. That's a responsibility that we must do in government....And so any viable economic strategy, pro-growth strategy, must be to help people find new skills, to gain new skills, to be able to fill the new jobs of the 21st century. If you're in a period of transition, you must help people make that transition. All skills start with education....We'll keep this government on the side of growth and job creation, so American businesses can compete and prosper. We'll focus on job training and education, so Americans can improve their skills and improve their lives."

We strongly urge that you reconsider and remove subsection (a) from the proposed rule revision.

If you would like to meet to discuss the comments and recommended change to the proposed rule, please contact Mr. Steven Slitt at (860) 728-7769 or steve.slitt@utc.com.

Respectfully submitted,

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