

599XXX GENERAL PROVISIONS FOR SELECTED ITEMS OF COST THAT ARE NOT CHARGEABLE TO THE FEDERAL GOVERNMENT

599010 ADVERTISING AND PUBLIC RELATIONS COSTS.

- a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct mail, exhibits, electronic or computer transmittals, and the like.
- b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the institution or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.
- c. The only allowable advertising costs are those that are solely for:
 - (1) The recruitment of personnel required for the performance by the institution of obligations arising under a sponsored agreement (See also subsection b. of section 599240, Recruiting);
 - (2) The procurement of goods and services for the performance of a sponsored agreement;
 - (3) The disposal of scrap or surplus materials acquired in the performance of a sponsored agreement except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or
 - (4) Other specific purposes necessary to meet the requirements of the sponsored agreement.
- d. The only allowable public relations costs are:
 - (1) Costs specifically required by the sponsored agreement;
 - (2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored agreements (these costs are considered necessary as part of the outreach effort for the sponsored agreement); or
 - (3). Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.
- e. Costs identified in subsections c and d 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.
- f. Unallowable advertising and public relations costs include the following:
 - (1). All advertising and public relations costs other than as specified in sections c, d and e. above;

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(2). Costs of meetings, conventions, convocations, or other events related to other activities of the institution, including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3). Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4). Costs of advertising and public relations designed solely to promote the institution.

599020 ALCOHOLIC BEVERAGES. Costs of alcoholic beverages are unallowable.

599030 ALUMNI/ACTIVITIES. Costs incurred for, or in support of, alumni activities and similar services are unallowable.

599040 BAD DEBT. Bad debts, including losses (whether actual or estimated) arising from uncollectable accounts and other claims, related collection costs, and related legal costs, are unallowable.

599050 CIVIL DEFENSE COSTS. Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted. Costs of local civil defense projects not on the institution's premises are unallowable.

599060 COMMENCEMENT AND CONVOCATION COSTS. Costs incurred for commencements and convocations are unallowable, except as provided in OMB Circular No. A-21 Section F.9. ("student administration and services").

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599080 RULES FOR PENSION PLAN COSTS ARE AS FOLLOWS:

a. Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided:

- (1) such policies meet the test of reasonableness,
- (2) the methods of cost allocation are equitable for all activities,
- (3) the amount of pension cost assigned to each fiscal year is determined in accordance with subsection (b), and
- (4) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

b. The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and measurement of Pension Cost" (48 Part 9904 412).

c. Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93 406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under ERISA are also unallowable.

599090 INSTITUTION FURNISHED AUTOMOBILES. That portion of the cost of institution furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees.

599100 CONTINGENCY PROVISIONS. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable, (But see also section 59917)

599110 LEGAL EXPENSE DEFENSE AND PROSECUTION OF CRIMINAL AND CIVIL PROCEEDINGS, CLAIMS, APPEALS AND PATENT INFRINGEMENT.

a. Definitions.

"Conviction," as used herein, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

"Costs," include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in house or private counsel; the costs of the services of

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accountants, consultants, or others retained by the institution to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

"Fraud," as used herein, means –

(1) acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents;(2) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (3) acts which violate the False Claims Act, 31 U.S.C., sections 3729 3731, or the Anti kickback Act, 41 U.S.C., sections 51 and 54.

"Penalty," does not include restitution, reimbursement, or compensatory damages.

"Proceeding," includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation, by the institution (including its agents and employees); and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of institutional liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the institution, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subsections (a) through (d).

b. (2). If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in subsection b.

c. If a proceeding referred to in subsection b. is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the institution and the Federal Government, then the costs incurred by the institution in connection with such proceedings that are otherwise not allowable under subsection b. may be allowed to the extent specifically provided in such agreement.

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d. If a proceeding referred to in subsection b. is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the institution for such proceedings, if such authorized official determines that the costs were incurred as a result of – (1) a specific term or condition of a federally sponsored agreement; or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subsection b, but which are not made unallowable by that subsection, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored agreement;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subsection c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the institution in connection with the defense of suits brought by its employees or ex employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100 700), including the cost of all relief necessary to make such employee whole, where the institution was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

i. Costs, which may be unallowable under this section, including directly associated costs, shall be segregated and accounted for by the institution separately. During the pendency of any proceeding covered by subsections b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the institution to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

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599120 DONATIONS AND CONTRIBUTIONS.

a. Contributions or Donations rendered.

Contributions or donations, including cash, property, and services, made by the institution, regardless of the recipient, are unallowable.

b. Donated services received.

Donated or volunteer services may be furnished to a institution by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or F&A cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with Circular A-110.

c. Donated property.

The value of donated property is not reimbursable either as a direct or F&A cost, except that depreciation or use allowances on donated assets are permitted in accordance with **Section J.14**. The value of donated property may be used to meet cost sharing or matching requirements, in accordance with Circular A-110.

599130 ENTERTAINMENT COSTS. Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

599140 FINES AND PENALTIES. Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the sponsored agreement, or instructions in writing from the authorized official of the sponsoring agency authorizing in advance such payments.

599150 GOODS OR SERVICES FOR PERSONAL USE. Costs of goods or services for personal use of the institution's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

599160 HOUSING AND PERSONAL LIVING EXPENSES.

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the institution's officers are unallowable regardless of whether the cost is reported as taxable income to the employees.

b. The term "officers" includes current and past officers.

599170 INSURANCE AND INDEMNIFICATION.

a. Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

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(1) types and extent and cost of coverage must be in accordance with sound institutional practice;

(2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to federally owned property are unallowable, except to the extent that the Federal Government has specifically required or approved such costs; and

(3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for a self insurance program are allowable, to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (whether through purchased insurance or self insurance) are unallowable, unless expressly provided for in the sponsored agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in section d.

f. Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the institution's materials or workmanship are unallowable.

g. Medical liability (malpractice) insurance is an allowable cost of research programs only to the extent that the research involves human subjects. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

599180 INTEREST.

a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, however represented, are unallowable, except as indicated in (b) below.

b. However, interest on debt incurred after July 1, 1982 to acquire buildings, major reconstruction and remodeling, or the acquisition or fabrication of capital equipment costing \$10,000 or more, is allowable.

c. Interest on debt incurred after May 8, 1996 to acquire or replace capital assets (including construction, renovations, alterations, equipment, land, and capital assets acquired through capital leases) acquired after that date and used in support of sponsored agreements is allowable, subject to the following conditions:

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599190 FUND RAISING AND INVESTMENT COSTS. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

599200 INVESTMENT MANAGEMENT. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

a. Costs related to the physical custody and control of monies and securities are allowable.

599210 LOBBYING. Reference is made to the common rule published at 55 FR 6736 (2/26/90), and OMB's government-wide guidance, amendments to OMB's government-wide guidance, and OMB's clarification notices published at 54 FR 52306 (12/20/89), 61 FR 1412 (1/19/96), 55 FR 24540 (6/15/90) and 57 FR 1772 (1/15/92), respectively. In addition, the following restrictions shall apply:

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

- (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;
- (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) Any attempt to influence –(i) the introduction of Federal or State legislation; (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature, including efforts to influence State or local officials to engage in similar lobbying activity; or (iii) any government official or employee in connection with a decision to sign or veto enrolled legislation;
- (4) Any attempt to influence –(i) the introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
- (5) 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.

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b. The following activities are excepted from the coverage of subsection

(1) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(2) Any lobbying made unallowable by subsection a.(3) to influence 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 cost rate proposal, and thereafter treated as other unallowable costs.

d. Institutions shall submit as part of their annual F&A cost rate proposal a certification that the requirements and standards of this section have been complied with.

e. 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.

f. Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this section during any particular 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 allowable or unallowable costs of any nature, 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.

g. Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or

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application of this section. Any such advance resolutions shall be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this Circular, provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

h. Executive lobbying costs. 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. 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.

59922 MEMBERSHIPS, SUBSCRIPTIONS AND PROFESSIONAL ACTIVITY COSTS.

- a. Costs of the institution's membership in business, technical, and professional organizations are allowable.
- b. Costs of the institution's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of membership in any civic or community organization are unallowable.
- d. Costs of membership in any country club or social or dining club or organization are unallowable.

599230 PREAGREEMENT COSTS. Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

599240 RECRUITING COSTS.

- a. Subject to subsections b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.
- b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

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c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or F&A cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Federal Government.

599250 SELLING AND MARKETING. Costs of selling and marketing any products or services of the institution are unallowable (unless allowed under subsection J.1 as allowable public relations costs or under subsection J.38 as allowable proposal costs).

599260 SEVERANCE PAY.

a. Severance pay is compensation in addition to regular salary and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal recurring turnover and which otherwise meet the conditions of subsection (1) may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

d. Costs incurred in excess of the institution's normal severance pay policy applicable to all persons employed by the institution upon termination of employment are unallowable.

599270 STUDENT ACTIVITY COSTS. Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

599280 TRAVEL COSTS.

a. General. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the institution's non-federally sponsored activities.

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b. Lodging and subsistence. Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the institution in its regular operations as the result of the institution's written travel policy. In the absence of an acceptable, written institution policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57, Title 5, United States Code ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter shall apply to travel under sponsored agreements (48 CFR 31.205-46(a)).

c. Commercial air travel. (1) Airfare costs in excess of the customary standard commercial airfare (coach or equivalent), Federal Government contract airfare (where authorized and available), or the lowest commercial discount airfare are unallowable except when such accommodations would:

(1)

- (a) require circuitous routing;
 - (b) require travel during unreasonable hours; (c) excessively prolong travel;
 - (d) result in additional costs that would offset the transportation savings; or
 - (e) offer accommodations not reasonably adequate for the traveler's medical needs.
- The institution must justify and document these conditions on a case-by-case basis in order for the use of first-class airfare to be allowable in such cases.

(2). Unless a pattern of avoidance is detected, the Federal Government will generally not question a institution's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the institution can demonstrate either of the following:

- (a) that such airfare was not available in the specific case; or
- (b) that it is the institution's overall practice to make routine use of such airfare.

d. Air travel by other than commercial carrier. Costs of travel by institution-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of allowable commercial air travel.

599290 TRUSTEES. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs.