

Received

September 15, 2010

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER
Commission on
State Mandates



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September 14, 2010

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Higashi:

**LOS ANGELES COUNTY'S REVIEW OF STATE AGENCY COMMENTS
SHERIFF COURT-SECURITY SERVICES TEST CLAIM (CSM 09-TC-02)**

The County of Los Angeles respectfully submits its review of State agency comments on the test claim we filed on June 29, 2010 to recover the cost of security services provided to the Los Angeles County Superior Court. The Los Angeles County Sheriff's Department is the service provider and the related costs have been incurred since July 28, 2009 under the Superior Court Law Enforcement Act of 2002.

If you have any questions, please contact Leonard Kaye at (213) 974-9791 or via e-mail at lkaye@auditor.lacounty.gov.

Very truly yours,

A handwritten signature in black ink that reads "Wendy L. Watanabe".

Wendy L. Watanabe
Auditor-Controller

WLW:MMO:JN:CY:ik

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Enclosure

Los Angeles County's Review of State Agency Comments
Sheriff Court-Security Services Test Claim (CSM 09-TC-02)

Executive Summary

The State Department of Finance (Finance) and the Administrative Office of the Courts (AOC) commented on Los Angeles County's (County) test claim seeking recovery of its Sheriff's retiree health benefit costs. Payment for these costs was prohibited on July 28, 2009 in SB 13. This resulted in an unfunded State mandate to provide court security services required by the Superior Court Law Enforcement Act of 2002 (SCLEA).

Mr. Zlatko Theodorovic, Finance's commentator, indicates that the County's test claim should be denied because "... the costs of retiree health benefits were not explicitly included in the definition of "costs of service" in any of the statutory requirements plead by claimant".

The County respectfully disagrees. Article XIII (B), section 6 of the California Constitution does not require that costs be explicitly defined as "costs of service" in order to be reimbursable. Rather, requirements for reimbursement are that claimed costs are incurred in performing a "new program" or "higher level of service" and are not subject to funding disclaimers. And, both requirements were discussed and satisfied in the County's test claim.

Mr. Michael I. Giden, an attorney with AOC, finds that the County's test claim does not constitute an unfunded state mandate "... because there is no state law that requires the County to pay for sheriff retiree health benefits and because the County of Los Angeles actively supported recent legislation requiring sheriffs to provide security to the superior courts".

The County respectfully disagrees. There need be no state law that requires the County to pay for retiree health benefits in order to find an unfunded state mandate. All that is required, according to the State Controller's "Local Agencies Mandated Cost Manual", is that the "... compensation paid and benefits received are appropriately authorized by the governing board". And, this has been done.

Mr. Giden's assertion that active support for SCLEA and SB 13 legislation will defeat the County's claim has no legal basis. The pertinent funding disclaimer requires that the County request such legislation. And, this the County did not do.

“Costs Mandated by the State”

The County finds that retiree health benefit costs are reimbursable because these costs are “costs mandated by the State” which are not subject to funding disclaimers. On the other hand, Mr. Zlatko Theodorovic, Finance’s commentator, finds that retiree health benefit costs are not reimbursable because these costs are not explicitly included in the definition of “costs of service”.

Which is the proper analysis?

Determining if the test claim legislation¹ imposes reimbursable “costs mandated by the State” under article XIII (B), section 6 of the California Constitution and Government Code section 17500 et seq. is the proper analysis here. In this regard, Ms. Paula Higashi, Commission’s Executive Director, notified Finance, AOC, and other State agency commentators on July 7, 2010 that the County’s test claim was complete and that the “... key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514 of the Government Code?

¹ The test claim legislation here is: Government Code Section 69926 as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(a)(6) as amended and renumbered by Statutes 2009, Chapter 22 (SB 13) and as added as 69927(a)(5) by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Sections 69927(b) as amended by Statutes 2009, Chapter 22 (SB 13) and as added by Statutes 2002, Chapter 1010 (SB 1396); and Government Code Sections 69920, 69921, 69921.5, 69922, and 69925 added by Statutes 2002, Chapter 1010 (SB 1396); and, Government Code Section 77212.5 as added by Statutes 1998, Chapter 764 (AB 92) and repealed but replaced and modified by Statutes 2002, Chapter 1010 (SB 1396) under Government Code Section 69926; and, Rule 10.810 of the California Rules of Court Sections (a), (b), (c), (d) and Function 8 (Court Security). Rule 10.810 was amended and renumbered effective January 1, 2007; adopted as rule 810 effective July 1, 1988; previously amended effective July 1, 1989, July 1, 1990, July 1, 1991, and July 1, 1995. Subdivision (d) was amended effective January 1, 2007 and previously was amended and re-lettered effective July 1, 1995. Rule 10.810 is identical to former rule 810, except for the rule number. All references in statutes or rules to rule 810 apply to this rule.

- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source? “ (Emphasis added.)

And, the County met all three of these requirements.

The first step in Commission’s recommended analysis is to determine if ‘costs mandated by the State’, as defined in Government Code section 17514, are imposed on the County by the State. In order to satisfy this requirement, a ‘new program or higher level of service’ must be created by the test claim legislation.

The County found that a new program was created when the State shifted the costs of retiree health benefits, earned by Sheriff staff assigned to court security duties, to the County. This finding is similar to the one made by the California Supreme Court in finding in *Lucia Mar School District v. Bill Honig, et al.* (44 Cal.3d 830).

The *Lucia Mar* Court held that when local governments are compelled to pay the costs of State mandated programs such as SCLEA, a “new program”, within the meaning of article XIII B, section 6 of the California Constitution, is created. Specifically, the Court stated that:

“The intent of the section would plainly be violated if the state could, while retaining administrative control of programs it has supported with state tax retaining administrative control of programs it has supported with state tax money, simply shift the cost of the programs to local government on the theory that the shift does not violate section 6 of article XIII B because the programs are not “new.” Whether the shifting of costs is accomplished by compelling local governments to pay the cost of entirely new programs created by the state, or to accept financial responsibility in whole or in part for a program which was funded entirely by the state before the advent of article XIII B, seems equally violative of the fundamental purpose underlying section 6 of that article.^{FN7} We conclude, therefore, that because section 59300 shifts partial financial responsibility for the support of students in the state operated schools from the state to school districts-an obligation the school districts did not

have at the time article XIII B was adopted-it calls for plaintiffs to support a "new program" within the meaning of section 6." (44 Cal.3d 830, 834)

Here, of course, the partial financial responsibility shifted was for retiree health benefit costs. Like the shift in *Lucia Mar*, the result was that a new 'program' was created. Specifically, this 'program' was created on July 28, 2009 --- when Government Code Section 69926(b) was amended by SB13 (Chapter 22, Statutes of 2009) and shifted the costs of retiree health benefits from the State to the County.

Further, the AOC analysis indicates (on page 11) that the portion of *Lucia Mar* holding that a "new program" is created when costs are transferred to local governments, as is the case here under SB 13, was codified by initiative in 2004² as subdivision (c) of Article XIII B, section 6:

"A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility."

This, of course, supports the County's position that a reimbursable "new program" was created when SB 13 was enacted on July 28, 2009 and retiree health benefit costs were transferred to the County.

However, the AOC analysis continues and suggests a further requirement for finding that the transferred costs are reimbursable. AOC asserts that:

"Under either *Lucia Mar* or subdivision (c), to be reimbursable the cost transferred must nonetheless be *mandated* by the state. Here, the cost the County alleges was transferred was discretionary, not mandatory."

Here, the County respectfully disagrees. Subdivision (c) refers to a "required program", not required or mandated costs. Also, in the definition of 'costs mandated by the State', previously discussed, there is no reference to required costs. In addition, the cases cited by AOC only consider whether an activity is

² Proposition 1A, approved by the voters on November 2, 2004.

mandatory or discretionary, not whether the costs of performing that activity are mandatory or discretionary.

For example, consider the Department of Finance v. Commission on State Mandates (Kern High School Dist.)(2003) 30 Cal 4th 727, holding reported on page 12 of AOC's analysis. Here, the Supreme Court found that new laws imposing notice requirements on certain meetings did not constitute a reimbursable mandate because "... the districts were not legally compelled to hold the meetings in the first place ...".

So a finding of reimbursable costs depends on whether the activity is compelled by State law, not on whether the costs of performing that activity are compelled by State law.

Here, there is no dispute that the County is compelled to provide court security duties under the test claim legislation. And, there is no provision, under Article XIII B, section 6 of the California Constitution and Government Code section 17500 et seq. that requires the retiree health benefit portion of court security costs be compelled by State law. So our analysis continues and addresses whether any funding disclaimers in Government Code Section 17556 apply to the County's test claim.

Section 17556

There are seven disclaimers specified in Government Code Section 17556 which could serve to bar recovery of "costs mandated by the State", as defined in Government Code Section 17514. These seven disclaimers do not apply to the instant claim, as shown, in seriatim, for pertinent sections of Government Code Section 17556.

- (a) "The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the Program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency to implement a given

program shall constitute a request within the meaning of this paragraph.

- (a) is not applicable as the subject law was not requested by the County claimant or any local agency or school district. AOC maintains that active support for SCLEA and SB 13 legislation will defeat the County's claim. But this has no legal basis. Section 17556(a) plainly states that it applies when a local agency requests authorization for that local agency to implement a given program. And, this the County did not do.
- (b) The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
- (b) is not applicable because the subject law did not affirm what had been declared existing law or regulation by action of the courts.
- (c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
- (c) is not applicable as no federal law or regulation is implemented in the subject law.
- (d) The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
- (d) is not applicable because the subject law did not provide or include any authority to levy any service charges, fees, or assessments which are sufficient to reimbursement the county for all costs necessarily incurred in complying with the test claim legislation.
- (e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional

revenue that was specifically intended to fund the cost of the State mandate in an amount sufficient to fund the cost of the State mandate.

- (e) is not applicable as no offsetting savings are provided in the subject law and no revenue to fund the subject law was provided by the legislature. Any reimbursements for duplicative activities claimed herein will be deducted from those claimed under the test claim legislation detailed herein.
- (f) The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.
- (f) is not applicable as the duties imposed in the subject law were not included in a ballot measure.
- (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.
- (g) is not applicable as the subject law did not create or eliminate a crime or infraction and did not change that portion of the statute not relating directly to the penalty enforcement of the crime or infraction."

Therefore, the above seven disclaimers will not bar local governments' reimbursement of its costs in implementing the requirements set forth in the test claim legislation as these disclaimers are all not applicable to the subject claim.

The next question is whether retiree health benefit costs are allowable costs under reimbursement provisions of article XIII B, Section 6 of the California Constitution.

Allowable Costs

Retiree health benefit costs up until SB 13 was enacted on July 28, 2009 were allowable Sheriff court security costs. In fact, the AOC analysis indicates on page 11 that such costs were paid to five courts in 2008-09 based on documentation that these costs had been paid by AOC in the past. As AOC could not pay for costs that were unallowable, the conclusion here is that AOC found these costs to be allowable.

Further, in AOC's Exhibit 17, an AOC report dated October 8, 2008 on the "Allocation of Trial Court Funding", includes a schedule on page 8 showing "One-time Retiree Health Costs in MOEs" of \$4,976,000.

Therefore, AOC had recognized and paid retiree health benefit costs as allowable costs under SCLEA up until SB 13 was enacted on July 28, 2009.

However, SB 13 did not eliminate the County's right to reimbursement under article XIII B, Section 6 of the California Constitution as long as retiree health benefits are allowable costs under these funding provisions. In this regard, the State Controller's Office (SCO) has provided criteria for determining if retiree health benefit costs are allowable on page 8 of their "Local Agencies Cost Manual", Revised 10/09, found in Exhibit 2, as follows:

"Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, worker's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:

The amount of compensation is reasonable for the service rendered.

The compensation paid and benefits received are appropriately authorized by the governing board.

Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.

The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs."

The County has met all four criteria set forth by SCO for finding allowable retiree health benefit costs. A description and itemization of the County's retiree health benefit costs is found in Exhibit 3.

In addition, the County includes, in Exhibit 4, an excerpt from OMB A-87 (2 CFR Part 225) regarding cost principles for State, Local and Indian Tribal Government, also used by SCO in determining if claimed indirect and direct retirement health benefits costs are allowable. The section of OMB A-87 addressing "post-retirement health benefits" (PRHB) is found on page 3. According to OMB A-87, PRHB direct and indirect costs are allowable and "... may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit".

Therefore, the costs of retirement health benefits are allowable under the reimbursement provisions of article XIII B, Section 6 of the California Constitution.

The final question here is one asked by the Commission.

"Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available?"

The County's answer is that there is no appropriation for this program and no other sources of funds are available. The State commentators do not answer this question.

Conclusion

For the reasons stated, reimbursement of the costs of retiree health benefit compensation earned by County Sheriff staff providing State mandated court security services is required as claimed herein.

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Exhibit I



**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012-3873
PHONE: (213) 974-8301 FAX: (213) 626-5427

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**Los Angeles County's Review of State Agency Comments
Sheriff Court-Security Services Test Claim (CSM 09-TC-02)**

Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, am Los Angeles County's representative in this matter, and have prepared the subject review of State agency comments.

I declare that it is my information and belief that retiree health benefit costs incurred in performing State-mandated Sheriff court-security services are reimbursable "costs mandated by the State", as defined in Government Code section 17514.

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information and belief, and as to those matters I believe them to be true.

9/13/10, Los Angeles CA

Date and Place

Leonard Kaye

Signature

Commission on State Mandates

Table 1: Productive Hourly Rate, Annual Salary + Benefits Method

<p>Formula: $[(EAS + Benefits) \div APH] = PHR$ $[(\\$26,000 + \\$8,099)] \div 1,800 \text{ hrs} = 18.94$</p>	<p>Description: EAS = Employee's Annual Salary APH = Annual Productive Hours PHR = Productive Hourly Rate</p>
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- As illustrated in Table 1, if you assume an employee's compensation was \$26,000 and \$8,099 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the productive hourly rate would be \$18.94. To convert a biweekly salary to Annual Salary, multiply the biweekly salary by 26. To convert a monthly salary to Annual Salary, multiply the monthly salary by 12. Use the same methodology to convert other salary periods.
2. A claimant may also compute the productive hourly rate by using the "Percent of Salary Method."

Table 2: Productive Hourly Rate, Percent of Salary Method

Example:		
Step 1: Fringe Benefits as a Percent of Salary		Step 2: Productive Hourly Rate
Retirement	15.00 %	<p>Formula: $[(EAS \times (1 + FBR)) \div APH] = PHR$ $[(\\$26,000 \times (1.3115)) \div 1,800] = \\18.94</p>
Social Security & Medicare	7.65	
Health & Dental Insurance	5.25	
Workers Compensation	3.25	
Total	31.15 %	
Description:		
EAS = Employee's Annual Salary		APH = Annual Productive Hours
FBR = Fringe Benefit Rate		PHR = Productive Hourly Rate

- As illustrated in Table 2, both methods produce the same productive hourly rate.
- Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, worker's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:
- The amount of compensation is reasonable for the service rendered.
 - The compensation paid and benefits received are appropriately authorized by the governing board.
 - Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
 - The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs.

PART 10: RETIREE HEALTH CARE PROGRAM

Overview

The LACERA-administered Health Care Benefits Program offers an extensive choice of medical plans and dental/vision plans for retirees and their eligible dependents.

Program History

Prior to July 1, 1982, LACERA funded the retiree health care program using surplus earnings. Retirees' premiums were subsidized by LACERA based on the number of years of service. Retirees with 10 years of service had 40% of their premiums paid by LACERA. For each additional year of service, an additional 4% was paid by LACERA, with the result that retirees with 25 or more years of service had their entire premium subsidized.

In April 1982, an agreement was negotiated with the County that required the County to take over the funding of the health care program. The agreement provides for health care benefits at least equal to those being provided to retirees in April of 1982, and further provided:

"[LACERA] agrees not to lower retired members' current contributions toward insurance premiums or increase medical-dental-optical benefit levels without the consent of County."

Fully Vested Program

The obvious intent of this provision is to assure the County that it will not become financially responsible for additional health care benefits implemented without the County's consent.

If a retiree has less than 25 years of retirement service credit, or the plan chosen costs more than the maximum County contribution for the Provident Plans, the portion of the premium not subsidized will be deducted each month from the member's retirement allowance.

The agreement negotiated with the County in 1982 obligated the County to fund the health care program only so long as the County provided a health care program for active employees. That limitation has since been deleted, resulting in a fully-vested health care program for LACERA retirees.

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Exhibit 3
Commission on
State Mandates

County of Los Angeles
Pension Footnote
Summary of Retiree Health Care
FY 2009/2010

		FY2010
A01 - General Fund	1145 - Retiree Health Insurance	\$286,297,288.65
B04 - Public Works-Internal Service Fund	1145 - Retiree Health Insurance	\$13,831,959.00
B06 - Public Library Fund	1145 - Retiree Health Insurance	\$2,810,219.00
DA1 - Fire Department	1145 - Retiree Health Insurance	\$16,932,533.00
DA9 - Reporters Salary Fund	1145 - Retiree Health Insurance	\$212,619.30
MN1 - LAC Harbor-UCLA Medical Center Enterprise Fund	1145 - Retiree Health Insurance	\$14,029,340.00
MN3 - LAC Olive View-UCLA Medical Center Enterprise Fund	1145 - Retiree Health Insurance	\$12,140,568.00
MN4 - LAC+USC Healthcare Network	1145 - Retiree Health Insurance	\$28,383,973.00
MN5 - Martin Luther King Jr. General Hospital Enterprise Fund	1145 - Retiree Health Insurance	\$3,967,584.00
MN7 - Rancho Los Amigos National Rehabilitation Center	1145 - Retiree Health Insurance	\$5,642,961.00
197 - Trial Court Funding	1145 - Retiree Health Insurance	\$15,506,843.45
202 - LACBRA Retiree Health Care Program	1145 - Retiree Health Insurance	\$674,803.00
203 - County Employee Retirement Fund	1145 - Retiree Health Insurance	\$692,752.00
All Fund		\$401,123,443.40

Governmental	\$319,871,999.65
Proprietary	\$64,164,426.00
Total County	\$384,036,425.65
Non-County	\$17,087,017.75
Total	\$401,123,443.40
	\$0.00

Fund	FY2009	FY2010
A01 - General Fund	271,649,707.08	286,297,288.65
B04 - Public Works-Internal Service Fund	13,395,472.00	13,831,959.00
B06 - Public Library Fund	2,727,633.80	2,810,219.00
DA1 - Fire Department	16,028,844.00	16,932,533.00
DN4 - Reporters Salary Fund	207,979.10	212,619.30
MN1 - LAC Harbor-UCLA Medical Center Enterprise Fund	13,226,294.00	14,029,340.00
MN3 - LAC Olive View-UCLA Medical Center Enterprise Fund	11,649,110.00	12,140,568.00
MN4 - LAC+USC Healthcare Network	27,667,043.00	28,383,973.00
MN5 - Martin Luther King Jr. General Hospital Enterprise Fund	3,999,564.00	3,967,584.00
MN7 - Rancho Los Amigos National Rehabilitation Center	5,345,732.00	5,642,961.00
V97 - Trial Court Funding	15,207,769.30	15,506,843.45
Z02 - LACERA Retiree Health Care Program	-	674,803.00
Z03 - County Employee Retirement Fund	1,307,158.00	692,752.00
	382,412,306.28	401,123,443.40

Exhibit 3
Page 4 of 5

2010	15681	Sheriff	1145	Retiree Health Insurance	70,583,410.00
2009	15681	Sheriff	1145	Retiree Health Insurance	66,572,718.99
2008	15681	Sheriff	1145	Retiree Health Insurance	61,003,263.00

REQUIRED SUPPLEMENTARY INFORMATION
(Unaudited)
Schedule of Funding Progress-Other Post Employment Benefits
(Dollar amounts in thousands)

Retiree Health Care(1)

Actuarial Valuation Date	Actuarial Value of Assets (a)	Actuarial Accrued Liability (AAL) - Entry Age (b)	Unfunded AAL (b-a)	Funded Ratio (a/b)	Covered Payroll (c)	Unfunded AAL as a Percentage of Covered Payroll ((b-a)/c)
July 1, 2006	\$ 0	\$ 20,301,800	\$ 20,301,800	0%	\$ 5,205,804	389.98%
July 1, 2008	0	20,901,600	20,901,600	0%	6,123,888	341.31%

Long-Term Disability(1)

July 1, 2007	\$ 0	\$ 929,265	\$ 929,265	0%	\$ 5,615,736	16.55%
July 1, 2009	0	951,797	951,797	0%	6,123,888	15.54%

(1) There was no data available prior to the first valuation.

Commission on State Mandates

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Part 225

Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)

AGENCY: Office of Management and Budget

ACTION: Relocation of policy guidance to 2 CFR chapter II.

SUMMARY: The Office of Management and Budget (OMB) is relocating Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," to Title 2 in the Code of Federal Regulations (2 CFR), Subtitle A, Chapter II, part 225 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106-107).

DATES: This document is effective August 31, 2005. This document republishes the existing OMB Circular A-87, which already is in effect.

FOR FURTHER INFORMATION CONTACT: Gil Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202-395-3052 (direct) or 202-395-3993 (main office) and e-mail: Hai_M._Tran@omb.eop.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2004 [69 FR 25970], we revised the three OMB circulars containing Federal cost principles. The purpose of those revisions was to simplify the cost principles by making the descriptions of similar cost items consistent across the circulars where possible, thereby reducing the possibility of misinterpretation. Those revisions, a result of OMB and Federal agency efforts to implement Public Law 106-107, were effective on June 9, 2004.

In this document, we relocate OMB Circular A-87 to the CFR, in Title 2 which was established on May 11, 2004 [69 FR 26276] as a central location for OMB and Federal agency policies on grants and agreements.

Our relocation of OMB Circular A-87 does not change the substance of the circular. Other than adjustments needed to conform to the formatting requirements of the CFR, this notice relocates in 2 CFR the version of OMB

Circular A-87 as revised by the May 10, 2004 notice.

List of Subjects in 2 CFR Part 225

Accounting, Grant administration, Grant programs, Reporting and recordkeeping requirements, State, local, and Indian tribal governments.

Dated: August 8, 2005.

Joshua B. Bolten,
Director.

Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR Subtitle A, Chapter II, by adding a part 225 as set forth below.

PART 225—COST PRINCIPLES FOR STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS (OMB CIRCULAR A-87)

Sec.	
225.5	Purpose.
225.10	Authority
225.15	Background
225.20	Policy.
225.25	Definitions.
225.30	OMB responsibilities.
225.35	Federal agency responsibilities.
225.40	Effective date of changes.
225.45	Relationship to previous issuance.
225.50	Policy review date.
225.55	Information Contact.
Appendix A to Part 225—General Principles for Determining Allowable Costs	
Appendix B to Part 225—Selected Items of Cost	
Appendix C to Part 225—State/Local-Wide Central Service Cost Allocation Plans	
Appendix D to Part 225—Public Assistance Cost Allocation Plans	
Appendix E to Part 225—State and Local Indirect Cost Rate Proposals	

Authority: 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966-1970, p. 939.

§ 225.5 Purpose.

This part establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

§ 225.10 Authority.

This part is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

§ 225.15 Background.

As part of the government-wide grant streamlining effort under Public Law 106-107, Federal Financial Award Management Improvement Act of 1999, OMB led an interagency workgroup to simplify and make consistent, to the extent feasible, the various rules used to award Federal grants. An interagency task force was established in 2001 to review existing cost principles for Federal awards to State, local, and Indian tribal governments; colleges and universities; and non-profit organizations. The task force studied "Selected Items of Cost" in each of the three cost principles to determine which items of costs could be stated consistently and/or more clearly.

§ 225.20 Policy.

This part establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this part.

§ 225.25 Definitions.

Definitions of key terms used in this part are contained in Appendix A to this part, Section B.

§ 225.30 OMB responsibilities.

The Office of Management and Budget (OMB) will review agency regulations and implementation of this part, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

§ 225.35 Federal agency responsibilities.

Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue regulations to implement the provisions of this part and its appendices.

§ 225.40 Effective date of changes.

This part is effective August 31, 2005.

§ 225.45 Relationship to previous issuance.

(a) The guidance in this part previously was issued as OMB Circular

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- assets and substantial relocation of Federal programs
19. General government expenses
 20. Goods or services for personal use
 21. Idle facilities and idle capacity
 22. Insurance and indemnification
 23. Interest
 24. Lobbying
 25. Maintenance, operations, and repairs
 26. Materials and supplies costs
 27. Meetings and conferences
 28. Memberships, subscriptions, and professional activity costs
 29. Patent costs
 30. Plant and homeland security costs
 31. Pre-award costs
 32. Professional service costs
 33. Proposal costs
 34. Publication and printing costs
 35. Rearrangement and alteration costs
 36. Reconversion costs
 37. Rental costs of building and equipment
 38. Royalties and other costs for the use of patents
 39. Selling and marketing
 40. Taxes
 41. Termination costs applicable to sponsored agreements
 42. Training costs
 43. Travel costs

Sections 1 through 43 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Appendix A to this part. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *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 governmental unit 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 which are solely for:

- (1) The recruitment of personnel required for the performance by the governmental unit of obligations arising under a Federal award;
 - (2) The procurement of goods and services for the performance of a Federal award;
 - (3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when governmental units are reimbursed for disposal costs at a predetermined amount; or
 - (4) Other specific purposes necessary to meet the requirements of the Federal award.
- d. The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of Federal awards (these costs are considered necessary as part of the outreach effort for the Federal award); 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 Federal award or for both sponsored work and other work of the governmental unit, are allowable to the extent that the principles in Appendix A to this part, sections E. ("Direct Costs") and F. ("Indirect 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 subsections 1.c, d, and e of this appendix;
- (2) Costs of meetings, conventions, convocations, or other events related to other activities of the governmental unit, 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 governmental unit.

2. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

3. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

4. *Audit costs and related services.*

a. The costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" are allowable. Also see 31 U.S.C. 7505(b) and section 230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in a cost allocation plan or indirect cost proposal, or if specifically approved by the awarding agency as a direct cost to an award.

c. The cost of agreed-upon procedures engagements to monitor subrecipients who are exempted from A-133 under section 200(d) are allowable, subject to the conditions listed in A-133, section 230 (b)(2).

5. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from

uncollected accounts and other claims, related collection costs, and related legal costs, are unallowable.

6. *Bonding costs.*

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the governmental unit. They arise also in instances where the governmental unit requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the governmental unit in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

7. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, postage, messenger, electronic or computer transmittal services and the like are allowable.

8. *Compensation for personal services.*

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees:

- (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;
- (2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and
- (3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. *Fringe benefits.*

(1) Fringe benefits are allowances and services provided by employers to their

employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: They are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 22, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant

agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection 8.e. of this appendix for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employer-employee agreement, or established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection 8.h.(5) of this appendix unless a statistical sampling system (see subsection 8.h.(6) of this appendix) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.



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DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Lorraine Hadden states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 15th day of September 2010, I served the attached:

Documents: Los Angeles County's Review of State Agency Comments on Sheriff Court-Security Services Test Claim (CSM 09-TC-02) including a 1 page cover letter of Wendy L. Watanabe, a 9 page narrative and 4 exhibits, now pending before the Commission on State Mandates.

upon all Interested Parties listed on the attachment hereto and by

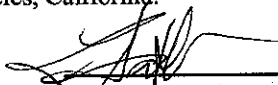
- by e-mailing a PDF copy of the document(s) listed above to the Commission on State Mandates and mailing the original-signed set to the Commission.
- by placing true copies original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.
- by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of September 2010 at Los Angeles, California.


Lorraine Hadden

Received
September 15, 2010

Commission on State Mandates
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State Mandates

Original List Date: 7/1/2010
Last Updated: 8/9/2010
List Print Date: 09/14/2010
Claim Number: 09-TC-02
Issue: Sheriff Court-Security Services

Mailing Information: Completeness Determination

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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