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Use of Profit or Fee Under A Cooperative Agreement

Executive Summary

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In the attached memorandum, we analyze whether a non-profit institution with a cooperative agreement with the National Science Foundation ("NSF") can use management fees to pay for otherwise unallowable costs, such as alcohol and lobbying. Under both Office of Management and Budget ("OMB") Circular No. A-122 and the relevant NSF regulations and policies, it appears that management fees can be used to cover unallowable costs.

OMB Circular No. A-122 provides principles for determining the costs of work performed by non-profit organizations under cooperative agreements. The Circular explicitly states that "[p]rovision for profit or other increment above cost is outside the scope of this Circular." While the Circular notes that the costs of alcoholic beverages and lobbying are unallowable, the Circular's cost principles *do not apply* to any management fee or profit earned by an organization through a cooperative agreement. Accordingly, Circular No. A-122 does not prohibit a non-profit organization from using funds earned through management fees on a cooperative agreement for such costs. Nor does any other statute, rule or guidance of which we are aware.

Likewise, according to NSF regulations, as clarified by OMB guidance, management profit and fees earned under a cooperative agreement are excluded from the definition of "appropriated funds" for purposes of the prohibition on use of such funds for lobbying. Accordingly, it appears there is no prohibition on the use of management fees or profit for the purposes of lobbying, so long as proper disclosure is made in accordance with 45 C.F.R. § 604.100(c).