

ITEM 4
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Former Education Code Section 72246 (Renumbered as 76355)¹
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1); and
Statutes 1987, Chapter 1118 (AB 2336)

Health Fee Elimination

Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

09-4206-I-24 and 10-4206-I-34

Foothill-DeAnza Community College District, Claimant

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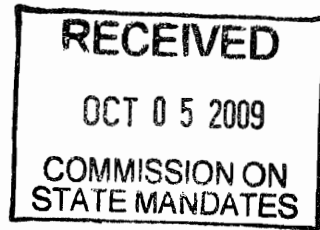
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¹ Statutes 1993, chapter 8.

Memorandum from the Chancellor of the California Community Colleges

SixTen and Associates Mandate Reimbursement Services

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Sacramento, CA 95834
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September 24, 2009

Exhibit A

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

RE: Foothill-De Anza Community College District
Health Fee Elimination
Fiscal Years: 2002-03 through 2005-06
Incorrect Reduction Claim

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced incorrect reduction claim for Foothill-De Anza Community College District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

W. Andrew Dunn, Vice Chancellor, Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Thank-you.

Sincerely,

Keith B. Petersen

COMMISSION ON STATE MANDATES

1. INCORRECT REDUCTION CLAIM TITLE

1/84, 1118/87 Health Fee Elimination

This is the second claim on this program.

2. CLAIMANT INFORMATION

Foothill-De Anza Community College District

W. Andrew Dunn, Vice Chancellor
Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022
Phone: 650-949-6201
Fax: 650-941-1638
E-mail: dunnandy@fhda.edu

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President
SixTen and Associates
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COMMISSION ON STATE MANDATES

IRC #: _____

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Statutes of 1984, Chapter 1, 2nd E.S.
Statutes of 1987, Chapter 1118

5. AMOUNT OF INCORRECT REDUCTION

<u>Fiscal Year</u>	<u>Amount of Reduction</u>
2002-03	\$ 13,738
2003-04	\$ 2,974
2004-05	\$403,644
2005-06	\$ 20,351
TOTAL:	\$440,752

6. NOTICE OF NO INTENT TO CONSOLIDATE

_____ This claim is not being filed with the intent to consolidate on behalf of other claimants.

Sections 7-14 are attached as follows:

- 7. **Written Detailed Narrative:** Pages 1 to 21
- 8. **SCO Results of Review Letters:** Exhibit A
- 9. **Parameters and Guidelines:** Exhibit B
- 10. **SCO Claiming Instructions:** Exhibit C
- 11. **SCO Audit Report:** Exhibit D
- 12. **SCO Mandated Cost Manual:** Exhibit E
- 13. **San Francisco Taxpayers Assn. V. Board of Supervisors:** Exhibit F
- 14. **Annual Reimbursement Claims:** Exhibit G

15. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

W. Andrew Dunn, Vice Chancellor


Signature _____ Date 9-14-09

1 Claim Prepared by:
2 Keith B. Petersen
3 SixTen and Associates
4 3270 Arena Blvd., Suite 400-363
5 Sacramento, California 95834
6 Voice: (916) 419-7093
7 Fax: (916) 263-9701
8 E-mail: kbpsixten@aol.com

9 BEFORE THE
10 COMMISSION ON STATE MANDATES
11 STATE OF CALIFORNIA

12	INCORRECT REDUCTION CLAIM OF:)	
13	)	No. CSM _____
14)	
15	)	Chapter 1, Statutes of 1984, 2nd E.S.
16	)	Chapter 1118, Statutes of 1987
17	Foothill-De Anza)	
18	Community College District,)	Education Code Section 76355
19)	
20	)	<u>Health Fee Elimination</u>
21	Claimant.)	
22	)	Annual Reimbursement Claims:
23)	
24	)	Fiscal Year 2002-2003
25	)	Fiscal Year 2003-2004
26	)	Fiscal Year 2004-2005
27	)	Fiscal Year 2005-2006
28	_____)	

29 INCORRECT REDUCTION CLAIM FILING

30 PART I. AUTHORITY FOR THE CLAIM

31 The Commission on State Mandates has the authority pursuant to Government
32 Code Section 17551(d) to "hear and decide upon a claim by a local agency or school
33 district filed on or after January 1, 1985, that the Controller has incorrectly reduced
34 payments to the local agency or school district pursuant to paragraph (2) of subdivision

1 (d) of Section 17561.” Foothill-De Anza Community College District (hereinafter
2 “District” or “Claimant”) is a school district as defined in Government Code Section
3 17519.¹ Title 2, California Code of Regulations (CCR), Section 1185(a), requires
4 claimants to file an incorrect reduction claim with the Commission.

5 This Incorrect Reduction Claim is timely filed. Title 2, CCR, Section 1185(b),
6 requires incorrect reduction claims to be filed no later than three years following the
7 date of the Controller’s “written notice of adjustment notifying the claimant of a
8 reduction.” A Controller’s audit report dated May 20, 2009, has been issued. The audit
9 report constitutes a demand for repayment and adjudication of the claim. The Claimant
10 also received four result of review letters dated May 30, 2009. Copies of these letters
11 are attached as Exhibit “A.”

12 There is no alternative dispute resolution process available from the Controller’s
13 office. The audit report states that an incorrect reduction claim should be filed with the
14 Commission if the claimant disagrees with the findings.

15 PART II. SUMMARY OF THE CLAIM

16 The Controller has conducted a field audit of the District’s annual reimbursement
17 claims for the actual costs of complying with the legislatively mandated Health Fee
18 Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and

¹ Government Code Section 17519, added by Chapter 1459, Statutes of 1984:

“School district” means any school district, community college district, or county superintendent of schools.

Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination

Chapter 1118, Statutes of 1987) for the period of July 1, 2002 through June 30, 2006.

As a result of the audit, the Controller determined that \$440,752 of the claimed costs were unallowable:

<u>Fiscal Year</u>	<u>Amount Claimed</u>	<u>Audit Adjustment</u>	<u>SCO Payments</u>	<u>Amount Due <State></u>
2002-03	\$479,709 ²	\$13,783	\$432,638	\$33,288
2003-04	\$537,473	\$2,974	\$ 0	\$534,499
2004-05	\$1,037,466	\$403,644	\$ 0	\$633,822
2005-06	<u>\$214,410³</u>	<u>\$20,351</u>	<u>\$ 0</u>	<u>\$194,059</u>
Totals	\$2,269,058	\$440,752	\$432,638	\$1,395,668

Since the District has been paid \$432,638 for these claims, the audit report concludes that \$1,395,668 is due to the District.

PART III. PREVIOUS INCORRECT REDUCTION CLAIMS

On September 15, 2005, the District filed an incorrect reduction claim for fiscal years 1999-00, 2000-01, and 2001-02 for this mandate. The District is not aware of any incorrect reduction claims having been adjudicated on the specific issues or subject matter raised by this incorrect reduction claim.

² The original claim amount was \$480,709. The audit report correctly applied a \$1,000 late filing penalty. The original claim had erroneously reported a 10% late-filing penalty (\$48,071) due to some contemporaneous confusion regarding a recent change in the Government Code section pertaining to late-fee penalties. The 10% rate applies only to "initial," that is, new program annual claims, and not to "ongoing" program annual claims.

³ \$215,410 less \$1,000 late filing penalty.

PART IV. BASIS FOR REIMBURSEMENT

1. Mandate Legislation

Chapter 1, Statutes of 1984, 2nd Extraordinary Session, repealed Education Code Section 72246 and added new Education Code Section 72246, which authorized community college districts to charge a student health services fee for the purposes of providing health supervision and services, and operating student health centers. This statute also required that the scope of student health services provided by any community college district during the 1983-84 fiscal year be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute were to automatically repeal on December 31, 1987.

Chapter 1118, Statutes of 1987, amended Education Code Section 72246 to require any community college district that provided student health services in fiscal year 1986-87 to maintain student health services at that level in 1987-88 and each fiscal year thereafter.

Chapter 753, Statutes of 1992, amended Education Code Section 72246 to increase the maximum fee that community college districts were permitted to charge for student health services. This statute also provided for future increases in the amount of the authorized fees that were linked to the Implicit Price Deflator for State and Local Government Purchase of Goods and Services.

Chapter 8, Statutes of 1993, repealed Education Code Section 72246, and

1 added Education Code Section 76355⁴ containing substantially the same provisions as

⁴ Education Code Section 76355, added by Chapter 8, Statutes of 1993, effective April 15, 1993, as last amended by Chapter 758, Statutes of 1995:

(a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

(b) If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

(c) The governing board of a district maintaining a community college shall adopt rules and regulations that exempt the following students from any fee required pursuant to subdivision (a):

(1) Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.

(2) Students who are attending a community college under an approved apprenticeship training program.

(3) Low-income students, including students who demonstrate financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid and students who demonstrate eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(d) All fees collected pursuant to this section shall be deposited in the fund of the district designated by the California Community Colleges Budget and Accounting Manual. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors.

Authorized expenditures shall not include, among other things, athletic trainers' salaries, athletic insurance, medical supplies for athletics, physical examinations for intercollegiate athletics, ambulance services, the salaries of health professionals for athletic events, any deductible portion of accident claims filed for athletic team members, or any other expense that is not available to all students. No student shall be denied a service supported by student health fees on account of participation in athletic programs.

(e) Any community college district that provided health services in the 1986-87 fiscal year shall maintain health services, at the level provided during the 1986-87 fiscal year,

Incorrect Reduction Claim of Foothill-De Anza Community College District
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1 former Section 72246, effective April 15, 1993. Chapter 320, Statutes of 2005,
2 amended Education Code Section 76355 to remove the fee exemption for low-income
3 students under 76355(c)(3).

4 2. Test Claim

5 On November 27, 1985, Rio Hondo Community College District filed a test claim
6 alleging that Chapter 1, Statutes of 1984, 2nd Extraordinary Session mandated
7 increased costs within the meaning of California Constitution Article XIII B, Section 6, by
8 requiring the provision of student health services that were previously provided at the
9 discretion of the community college districts.

10 On November 20, 1986, the Commission on State Mandates determined that
11 Chapter 1, Statutes of 1984, 2nd Extraordinary Session, imposed a new program upon
12 community college districts by requiring any community college district that provided
13 student health services for which it was authorized to charge a fee pursuant to former
14 Section 72246 in the 1983-1984 fiscal year, to maintain student health services at that
15 level in the 1984-1985 fiscal year and each fiscal year thereafter.

16 At a hearing on April 27, 1989, the Commission on State Mandates determined
17 that Chapter 1118, Statutes of 1987, amended this requirement to apply to all

and each fiscal year thereafter. If the cost to maintain that level of service exceeds the limits specified in subdivision (a), the excess cost shall be borne by the district.

(f) A district that begins charging a health fee may use funds for startup costs from other district funds and may recover all or part of those funds from health fees collected within the first five years following the commencement of charging the fee.

(g) The board of governors shall adopt regulations that generally describe the types of health services included in the health service program.

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1 community college districts that provided student health services in fiscal year 1986-
2 1987, and required them to maintain that level of student health services in fiscal year
3 1987-1988 and each fiscal year thereafter.

4 3. Parameters and Guidelines

5 On August 27, 1987, the original parameters and guidelines were adopted. On
6 May 25, 1989, those parameters and guidelines were amended. A copy of the May 25,
7 1989, parameters and guidelines is attached as Exhibit "B."

8 4. Claiming Instructions

9 The Controller has periodically issued or revised claiming instructions for the
10 Health Fee Elimination mandate. A copy of the September 2003 revision of the claiming
11 instructions is attached as Exhibit "C." The September 2003 claiming instructions are
12 believed to be substantially similar to the version extant at the time the claims that are
13 the subject of this Incorrect Reduction Claim were filed. However, because the
14 Controller's claim forms and instructions have not been adopted as regulations, they
15 have no force of law and no effect on the outcome of this claim.

16 PART V. STATE CONTROLLER CLAIM ADJUDICATION

17 The Controller conducted an audit of the District's annual reimbursement claims
18 for fiscal years 2002-03, 2003-04, 2004-05, and 2005-06. The audit concluded that
19 \$1,395,668 of the District's costs claimed were allowable. A copy of the May 20, 2009,
20 final audit report is attached as Exhibit "D."

21 /

1 VI. CLAIMANT'S RESPONSE TO THE STATE CONTROLLER

2 By letter dated February 6, 2009, the Controller transmitted a copy of its draft
3 audit report. The District objected to the proposed adjustments set forth in the draft
4 audit report by letter dated February 23, 2009. A copy of the District's response is
5 included in Exhibit "D," the final audit report. In addition to correcting several
6 inaccuracies in the narrative, the final audit report increased Finding 4 by \$228,113.
7 This change is attributed to "updated numbers of enrolled students and BOGG [Board
8 of Governors Grant] recipients provided by the CCCCCO [California Community Colleges
9 Chancellor's Office]." As a result of these changes, the final audit report concludes that
10 the District's unallowable claimed costs increased by \$91,118.

11 PART VII. STATEMENT OF THE ISSUES

12 **Finding 1: Misstated counseling-related salaries and benefits**

13 The District does not dispute this finding.

14 **Finding 2: Understated services and supplies - Student insurance costs**

15 The District does not dispute this finding.

16 **Finding 3: Overstated indirect cost rates**

17 The audit report asserts that the District overstated indirect costs by \$511,782 for
18 the audit period.

19 PARAMETERS AND GUIDELINES

20 No particular indirect cost rate calculation is required by law. The Controller
21 insists that the rate be calculated according to the claiming instructions. The

1 parameters and guidelines state that “[i]ndirect costs *may be claimed* in the manner
2 described by the State Controller in his claiming instructions.” (Emphasis added.) The
3 District claimed these indirect costs “in the manner” described by the Controller. The
4 correct forms were used and the claimed amounts were entered at the correct
5 locations. Further, “may” is not “shall”; the parameters and guidelines do not *require*
6 that indirect costs be claimed in the manner specified by the Controller. In the audit
7 report, the Controller asserts that because the parameters and guidelines specifically
8 reference the claiming instructions, the claiming instructions thereby become
9 authoritative criteria. Since the Controller’s claiming instructions were never adopted as
10 law, or regulations pursuant to the Administrative Procedure Act, the claiming
11 instructions are a statement of the Controller’s interpretation and not law.

12 The Controller’s interpretation of Section VI of the parameters and guidelines
13 would, in essence, subject claimants to underground rulemaking at the direction of the
14 Commission. The Controller’s claiming instructions are unilaterally created and modified
15 without public notice or comment. The Commission would violate the Administrative
16 Procedure Act if it held that the Controller’s claiming instructions are enforceable as
17 standards or regulations. In fact, until 2005, the Controller regularly included a “forward”
18 in the Mandated Cost Manual for Community Colleges (September 30, 2003 version
19 attached as Exhibit “E”) that explicitly stated the claiming instructions were “issued for
20 the sole purpose of assisting claimants” and “should not be construed in any manner to
21 be statutes, regulations, or standards.”

1 Neither state law or the parameters and guidelines make compliance with the
2 Controller's claiming instructions a condition of reimbursement. The District has
3 followed the parameters and guidelines. The burden of proof is on the Controller to
4 prove that the product of the District's calculation is unreasonable, not to recalculate the
5 rate according to its unenforceable ministerial preferences.

6 **EXCESSIVE OR UNREASONABLE**

7 The audit report did not conclude that the District's indirect cost rates were
8 excessive. The Controller is authorized to reduce a claim only if it determines the claim
9 to be excessive or unreasonable. Here, the District has computed its indirect cost rates
10 using the CCFS-311 report, and the Controller has disallowed it without a determination
11 of whether the product of the District's calculation is excessive, unreasonable, or
12 inconsistent with cost accounting principles.

13 The Controller has the burden to show that the indirect cost rate used by the
14 District is excessive or unreasonable, pursuant to Government Code Section
15 17561(d)(2). In response to this assertion, the audit report states:

16 Government Code section 17561, subdivision (d) (2), allows the SCO to audit the
17 district's records to verify actual mandate-related costs and reduce any claim that
18 the SCO determines is excessive or unreasonable. In addition, section 12410
19 states, "The Controller shall audit all claims against the State, and may audit the
20 disbursement of any State money, for correctness, legality, and for sufficient
21 provisions of law for payment."

22 The audit report then concludes, without any further discussion, that "the district's
23 contention is without merit." The Controller has failed to demonstrate how the cited
24 Government Code Sections relieve him of the burden to demonstrate that costs are

1 excessive or unreasonable prior to reducing an annual reimbursement claim.

2 Section 12410 is found in the part of the Government Code that provides a
3 general description of the duties of the Controller. It is not specific to the audit of
4 mandate reimbursement claims. It is a well-settled maxim of statutory interpretation that
5 “[a] specific provision relating to a particular subject will govern in respect to that
6 subject, as against a general provision, although the latter, standing alone, would be
7 broad enough to include the subject to which the more particular provision relates.”⁵

8 The audit authority in Section 17561(d)(2) is more specific than the Controller’s general
9 audit authority contained in Government Code Section 12410. Therefore, the Controller
10 only has the audit authority granted by Government Code Section 17561(d)(2) when
11 auditing mandate reimbursement claims.

12 Further, the audit report has not asserted or demonstrated that, if Section 12410
13 was the applicable standard, the audit adjustments were made in accordance with this
14 standard. The District’s claim was correct, in that it reported the actual costs incurred.
15 There is also no allegation in the audit report that the claim was in any way illegal.
16 Finally, the phrase “sufficient provisions of law for payment” refers to the requirement
17 that there be adequate appropriations prior to the disbursement of any funds. There is
18 no indication that any state funds were disbursed without sufficient appropriations.
19 Thus, even if the standards of Section 12410 were applicable to mandate

⁵ *San Francisco Taxpayers Assn. V. Board of Supervisors* (1992) 2 Cal.4th 571, 577. Attached as Exhibit “F.”

1 reimbursement audits, the audit report has failed to put forth any evidence that these
2 standards are not met.

3 There is no indication that the Controller is actually relying on the audit standards
4 put forth in Section 12410 for the adjustments to the District's reimbursement claims.
5 The audit report claims that the Controller did actually determine that the District's costs
6 were excessive, as required by Section 17561(d)(2), because the claimed costs were
7 not "proper" since the indirect cost rates used did not match the rates derived by the
8 auditors using the Controller's alternative methodology. This merely restates the
9 Controller's conclusion that indirect cost rates may only be derived using its preferred
10 methodology, and in no way demonstrates that the District's rates were actually
11 excessive. In fact, the rates derived by the auditors for FY 2004-05 and FY 2005-06
12 only differed from the District's claimed rates by 3.51% and 2.37%, respectively. This
13 tends to show that the claimed rates were actually reasonable and not excessive.

14 Neither State law nor the parameters and guidelines make compliance with the
15 Controller's claiming instructions a condition of reimbursement. The District has
16 followed the parameters and guidelines. The burden of proof is on the Controller to
17 prove that the product of the District's calculation is unreasonable, not to recalculate the
18 rate according to its unenforceable ministerial preferences.

19 **Finding 4: Understated authorized health service fees**

20 The final audit report asserts that the District understated offsetting health
21 service fees by \$716,795 for the audit period because the District claimed health

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1 service fees actually collected, rather than the amounts authorized by Education Code
2 Section 76355. The draft audit report asserted that the amount of this error was
3 \$488,682. The District complied with the parameters and guidelines for the Health Fee
4 Elimination mandate when it properly reported revenue actually received from student
5 health service fees.

6 Both the draft and final audit reports state that the auditors used *the same data*
7 *source* from the California Community College Chancellor's Office to calculate health
8 service fees authorized for each of the fiscal years, *with different quantitative results*.
9 There was no explanation as to how this data, which is "extracted" from data reported
10 by the District to the Chancellor's Office, is more reliable or relevant than the District's
11 own records. It is even more troubling that the auditors increased this finding by
12 \$228,113 from the draft to the final audit report based on "updated" data from the
13 Chancellor's Office without explanation of what prompted this change in the enrollment
14 numbers used. It would appear that the Chancellor's data is subject to subsequent
15 unilateral modification. However, this issue is not determinative of the outcome since
16 the proper offset for health service fee revenue is calculated by fees actually received in
17 accordance with the parameters and guidelines.

18 Parameters and Guidelines

19 The parameters and guidelines, which control reimbursement under the Health
20 Fee Elimination mandate, state:

21 Any offsetting savings that the claimant experiences as a direct result of this
22 statute must be deducted from the costs claimed. In addition, reimbursement for

1 this mandate received from any source, e.g., federal, state, etc., shall be
2 identified and deducted from this claim. This shall include the amount of
3 [student fees] as authorized by Education Code Section 72246(a)⁶.

4 In order for the District to “experience” these “offsetting savings” the District must
5 actually have collected these fees. Note that the student health fees are named as a
6 potential source of the reimbursement *received* in the preceding sentence. The use of
7 the term “any offsetting savings” further illustrates the permissive nature of the fees.
8 Student fees actually collected must be used to offset costs, but not student fees that
9 could have been collected and were not. Thus, the Controller’s conclusion is based on
10 an illogical interpretation of the parameters and guidelines.

11 The audit report claims that the Commission’s intent was for claimed costs to be
12 reduced by fees authorized, rather than fees received as stated in the parameters and
13 guidelines. It is true that the Department of Finance proposed, as part of the
14 amendments that were adopted on May 25, 1989, that a sentence be added to the
15 offsetting savings section expressly stating that if no health service fee was charged,
16 the claimant would be required to deduct the amount authorized. However, the
17 Commission declined to add this requirement and adopted the parameters and
18 guidelines without this language.

19 The fact that the Commission staff and the Chancellor’s Office agreed with the
20 Department of Finance’s interpretation does not negate the fact that the Commission

⁶ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, and was replaced by Education Code Section 76355.

1 adopted parameters and guidelines that *did not* include the additional language. It
2 would be nonsensical if the Commission held that every proposal that is discussed was
3 somehow implied into the adopted document, because the proposals of the various
4 parties are often contradictory. Therefore, it is evident that the Commission intends the
5 language of the parameters and guidelines to be construed as written, and only those
6 savings that are *experienced* are to be deducted.

7 Education Code Section 17556

8 The Controller continues to rely on Education Code Section 17556(d), while
9 neglecting its context and omitting a crucial clause. Section 17556(d) does specify that
10 the Commission on State Mandates shall not find costs mandated by the state if the
11 local agency has the authority to levy fees, but only if those fees are “*sufficient to pay*
12 *for the mandated program*” (emphasis added). Section 17556 pertains specifically to the
13 Commission’s determination on a test claim, and does not concern the development of
14 parameters and guidelines or the claiming process. The Commission has already found
15 state-mandated costs for this program, and the Controller cannot substitute its
16 judgment for that of the Commission through the audit process.

17 The two court cases the audit report relies upon (*County of Fresno v. California*
18 (1991) 53 Cal.3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are
19 similarly misplaced. Both cases concern the approval of a test claim by the
20 Commission. They do not address the issue of offsetting revenue in the reimbursement
21 stages, only whether there is fee authority *sufficient to fully fund* the mandate that would

1 prevent the Commission from finding costs mandated by the state.

2 In *County of Fresno*, the Commission had specifically found that the fee authority
3 was sufficient to fully fund the test claim activities and denied the test claim. The court
4 simply agreed to uphold this determination because Government Code Section
5 17556(d) was consistent with the California Constitution. The Health Fee Elimination
6 mandate, decided by the Commission, found that the fee authority is not sufficient to
7 fully fund the mandate. Thus, *County of Fresno* is not applicable because it concerns
8 the process of deciding a test claim and has no bearing on the annual claim
9 reimbursement process.

10 Similarly, although a test claim had been approved and parameters and
11 guidelines were adopted, the court in *Connell* focused its determination on whether the
12 initial approval of the test claim had been proper. It did not evaluate the parameters and
13 guidelines or the reimbursement process because it found that the initial approval of the
14 test claim had been in violation of Section 17556(d).

15 **Finding 5: Understated offsetting savings/reimbursements**

16 The District does not dispute this finding.

17 **Statute of Limitations**

18	January 12, 2005	FY 2002-03 and FY 2003-04 claims filed by the District
19	January 12, 2008	FY 2002-03 and FY 2003-04 statute of limitations for audit
20		expires
21	September 11, 2008	Audit entrance conference for all fiscal years

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1 This is not an audit finding. The District alleges that the audit of the FY 2002-03
2 and FY 2003-04 annual reimbursement claims commenced after the time limitation for
3 audit had passed. The final audit report asserts that initiation of the audit was proper
4 because the initial payment for the FY 2002-03 claim did not occur until October 25,
5 2006, and there has been no payment for the FY 2003-04 claim. However, the clause in
6 Government Code Section 17558.5 that delays the commencement of the time for the
7 Controller to audit to the date of initial payment is void because it is impermissibly
8 vague.

9 Prior to January 1, 1994, no statute specifically governed the statute of
10 limitations for audits of mandate reimbursement claims. Statutes of 1993, Chapter 906,
11 Section 2, operative January 1, 1994, added Government Code Section 17558.5 to
12 establish for the first time a specific statute of limitations for audit of mandate
13 reimbursement claims:

14 (a) A reimbursement claim for actual costs filed by a local agency or school
15 district pursuant to this chapter is subject to audit by the Controller no later than
16 four years after the end of the calendar year in which the reimbursement claim is
17 filed or last amended. However, if no funds are appropriated for the program for
18 the fiscal year for which the claim is made, the time for the Controller to initiate
19 an audit shall commence to run from the date of initial payment of the claim.

20 Thus, there are two standards. A funded claim is "subject to audit" for four years after
21 the end of the calendar year in which the claim was filed. An unfunded claim must have
22 its audit initiated within four years of first payment.

23 Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996, repealed and
24 replaced Section 17558.5, changing only the length of the period of limitations:

Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination

1 (a) A reimbursement claim for actual costs filed by a local agency or school
2 district pursuant to this chapter is subject to audit by the Controller no later than
3 two years after the end of the calendar year in which the reimbursement claim is
4 filed or last amended. However, if no funds are appropriated for the program for
5 the fiscal year for which the claim is made, the time for the Controller to initiate
6 an audit shall commence to run from the date of initial payment of the claim.

7 Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003

8 amended Section 17558.5 to state:

9 (a) A reimbursement claim for actual costs filed by a local agency or school
10 district pursuant to this chapter is subject to the initiation of an audit by the
11 Controller no later than three years after the ~~end of the calendar year in which~~
12 the date that the actual reimbursement claim is filed or last amended, whichever
13 is later. However, if no funds are appropriated or no payment is made to a
14 claimant for the program for the fiscal year for which the claim is ~~made~~ filed, the
15 time for the Controller to initiate an audit shall commence to run from the date of
16 initial payment of the claim.

17 The amendment is pertinent because this is the first time that the factual issue of
18 the date the audit is "initiated" is introduced for mandate programs for which funds are
19 appropriated. This amendment also means that it is impossible for the claimant to know
20 when the statute of limitations will expire at the time the claim is filed, which is contrary
21 to the purpose of a statute of limitations. It allows the Controller's own unilateral delay,
22 or failure to make payments from funds appropriated for the purpose of paying the
23 claims, to control the tolling of the statute of limitations, which is also contrary to the
24 purpose of a statute of limitations.

25 Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended
26 Section 17558.5 to state:

27 (a) A reimbursement claim for actual costs filed by a local agency or school
28 district pursuant to this chapter is subject to the initiation of an audit by the

Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination

1 Controller no later than three years after the date that the actual reimbursement
2 claim is filed or last amended, whichever is later. However, if no funds are
3 appropriated or no payment is made to a claimant for the program for the fiscal
4 year for which the claim is filed, the time for the Controller to initiate an audit
5 shall commence to run from the date of initial payment of the claim. In any case,
6 an audit shall be completed not later than two years after the date that the audit
7 is commenced.

8 The annual reimbursement claims for FY 2002-03 and FY 2003-04 are subject to this
9 version of Section 17558.5, which retains the same limitations period as the prior
10 version, but also adds the requirement that an audit must be completed within two
11 years of its commencement.

12 Section 17558.5 provides that the time limitation for audit “shall commence to
13 run from the date of initial payment” if no payment is made. However, this provision is
14 void because it is impermissibly vague. At the time a claim is filed, the claimant has no
15 way of knowing when payment will be made or how long the records applicable to that
16 claim must be maintained. The current billion-dollar backlog in mandate payments,
17 which continues to grow every year, could potentially require claimants to maintain
18 detailed supporting documentation for decades. Additionally, it is possible for the
19 Controller to unilaterally extend the audit period by withholding payment or directing
20 appropriated funds only to those claims that have already been audited.

21 Therefore, the only specific and enforceable time limitation to commence an
22 audit is three years from the date the claim was filed, and the annual reimbursement
23 claims for FY 2002-03 and FY 2003-04 were past this time period when the audit was
24 commenced on September 11, 2008. All adjustments to these two fiscal years are void

1 and should be withdrawn.

2 PART VIII. RELIEF REQUESTED

3 The District filed its annual reimbursement claims within the time limits
4 prescribed by the Government Code. The amounts claimed by the District for
5 reimbursement of the costs of implementing the program imposed by Chapter 1,
6 Statutes of 1984, 2nd Extraordinary Session, Chapter 1118, Statutes of 1987, and
7 Education Code Section 76355 represent the actual costs incurred by the District to
8 carry out this program. These costs were properly claimed pursuant to the
9 Commission's Parameters and Guidelines. Reimbursement of these costs is required
10 under Article XIII B, Section 6 of the California Constitution. The Controller denied
11 reimbursement without any basis in law or fact. The District has met its burden of going
12 forward on this claim by complying with the requirements of Section 1185, Title 2, CCR.
13 Because the Controller has enforced and is seeking to enforce these adjustments
14 without benefit of statute or regulation, the burden of proof is now upon the Controller to
15 establish a legal basis for its actions.

16 The District requests that the Commission make findings of fact and law on each
17 and every adjustment made by the Controller and each and every procedural and
18 jurisdictional issue raised in this claim, and order the Controller to correct its audit report
19 findings therefrom.

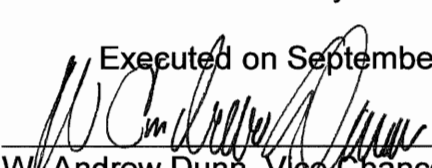
20 /

21 /

1 PART IX. CERTIFICATION

2 By my signature below, I hereby declare, under penalty of perjury under the laws
3 of the State of California, that the information in this incorrect reduction claim
4 submission is true and complete to the best of my own knowledge or information or
5 belief, and that the attached documents are true and correct copies of documents
6 received from or sent by the state agency that originated the document.

7 Executed on September 14th, 2009, at Los Altos Hills, California, by

8 
9 W. Andrew Dunn, Vice Chancellor Business Services
10 Foothill-De Anza Community College District
11 12345 El Monte Road
12 Los Altos Hills, CA 94022
13 Phone: 650-949-6201
14 Fax: 650-941-1638
15 E-mail: dunnandy@fhda.edu

16 APPOINTMENT OF REPRESENTATIVE

17 Foothill-De Anza Community College District appoints Keith B. Petersen, SixTen
18 and Associates, as its representative for this incorrect reduction claim.

19 
20 W. Andrew Dunn, Vice Chancellor Business Services
21 Foothill-De Anza Community College District

22 
Date

22 Attachments:

- 23 Exhibit "A" Controller's "results of review" letters dated May 30, 2009
- 24 Exhibit "B" Parameters and Guidelines as amended May 25, 1989
- 25 Exhibit "C" Controllers claiming instructions, September 2003
- 26 Exhibit "D" Controller's Audit Report, and the District's response, dated May 20, 2009
- 27 Exhibit "E" Controller's Mandated Cost Manual Community Colleges Forward
28 September 2003 version
- 29 Exhibit "F" *San Francisco Taxpayers Assn. V. Board of Supervisors* (1992) 2 Cal.4th
30 571
- 31 Exhibit "G" Annual Reimbursement Claims



JOHN CHIANG
California State Controller
Division of Accounting and Reporting
MAY 30, 2009

2009/05/30

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2002/2003 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		480,709.00
TOTAL ADJUSTMENTS (DETAILS BELOW)	-	14,783.00
TOTAL PRIOR PAYMENTS (DETAILS BELOW)		-432,638.00
AMOUNT DUE CLAIMANT	\$	33,288.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	13,783.00
LATE CLAIM PENALTY	-	1,000.00
TOTAL ADJUSTMENTS	-	14,783.00
PRIOR PAYMENTS:		
SCHEDULE NO. MA64136A		
PAID 10-25-2006	-	432,638.00
TOTAL PRIOR PAYMENTS		-432,638.00

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER



JOHN CHIANG
 California State Controller
 Division of Accounting and Reporting
 MAY 30, 2009

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 2009/05/30

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BOARD OF TRUSTEES
 FOOTHILL-DEANZA COMM COLL DIST
 SANTA CLARA COUNTY
 12345 EL MONTE RD
 LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2003/2004 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 537,473.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS - 2,974.00

TOTAL ADJUSTMENTS - 2,974.00

AMOUNT DUE CLAIMANT \$ 534,499.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Genny Brummels
 GENNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
 SACRAMENTO, CA 94250-5875



650 941 1638
JOHN CHIANG
 California State Controller
 Division of Accounting and Reporting
 MAY 30, 2009

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 2009/05/30

BOARD OF TRUSTEES
 FOOTHILL-DEANZA COMM COLL DIST
 SANTA CLARA COUNTY
 12345 EL MONTE RD
 LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2004/2005 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		1,037,466.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	403,644.00
TOTAL ADJUSTMENTS	-	403,644.00
AMOUNT DUE CLAIMANT		\$ 633,822.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Ginny Brummels
 GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
 P.O. BOX 942850 SACRAMENTO, CA 94250-5875



JOHN CHIANG
 California State Controller
 Division of Accounting and Reporting
 MAY 30, 2009

00234
 2009/05/30

BOARD OF TRUSTEES
 FOOTHILL-DEANZA COMM COLL DIST
 SANTA CLARA COUNTY
 12345 EL MONTE RD
 LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2005/2006 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED 215,410.00

ADJUSTMENT TO CLAIM:

FIELD AUDIT FINDINGS	-	20,351.00
LATE CLAIM PENALTY	-	1,000.00
TOTAL ADJUSTMENTS	-	21,351.00

AMOUNT DUE CLAIMANT \$ 194,059.00

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT FRAN STUART AT (916) 323-0766 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. DUE TO INSUFFICIENT APPROPRIATION, THE BALANCE DUE WILL BE FORTHCOMING WHEN ADDITIONAL FUNDS ARE MADE AVAILABLE.

SINCERELY,

Living Brummels
 LIVING BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
 SACRAMENTO, CA 94250-5875

Adopted: 8/27/87
Amended: 5/25/89

PARAMETERS AND GUIDELINES
Chapter 1, Statutes of 1984, 2nd E.S. .
Chapter 1118, Statutes of 1987
Health Fee Elimination

I. SUMMARY OF MANDATE

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during the 1983-84 fiscal year had to be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community colleges districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 to require any community college district that provided health services in 1986-87 to maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter.

II. COMMISSION ON STATE MANDATES DECISION

At its hearing on November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a 'new program' upon community college districts by requiring any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year to maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement applies to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal. year level.

At its hearing of April 27, 1989, the Commission determined that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to apply to all community college districts which provided health services in fiscal year 1986-87 and required them to maintain that level in fiscal year 1987-88 and each fiscal year thereafter.

III. ELIGIBLE CLAIMANTS

Community college districts which provided health services in 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1, Statutes of 1984, 2nd E.S., became effective July 1, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30th following a given fiscal year to establish for that fiscal year. The test claim for this mandate was filed on November 27, 1985; therefore, costs incurred on or after July 1, 1984, are reimbursable. Chapter 1118, Statutes of 1987, became effective January 1, 1988. Title 2, California Code of Regulations, section 1185.3(a) states that a parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines; therefore, costs incurred on or after January 1, 1988, for Chapter 1118, Statutes of 1987, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code Section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Eligible community college districts shall be reimbursed for the costs of providing a health services program. Only services provided in 1986-87 fiscal year may be claimed.

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year 1986-87:

ACCIDENT REPORTS

APPOINTMENTS

College Physician - Surgeon

Dermatology, Family Practice, Internal Medicine

Outside Physician

Dental Services

Outside Labs (X-ray, etc.)

Psychologist, full services

Cancel/Change Appointments

R.N.

Check Appointments

ASSESSMENT, INTERVENTION 81 COUNSELING

Birth Control
Lab Reports
Nutrition
Test Results (office)
VD
Other Medical Problems
CD
URI
ENT
Eye/Vision
Derm./Allergy
Gyn/Pregnancy Services
Neuro
Ortho
GU
Dental
GI
Stress Counseling
Crisis Intervention
Child Abuse Reporting and Counseling
Substance Abuse Identification and Counseling
Aids
Eating Disorders
Weight Control
Personal Hygiene
Burnout

EXAMINATIONS (Minor Illnesses)

Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

Sexually Transmitted Disease
Drugs
Aids
Child Abuse
Birth Control/Family Planning
Stop Smoking
Etc.
Library - videos and cassettes

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

Diphtheria/Tetanus
Measles/Rubella
Influenza
Information

INSURANCE

On Campus Accident
Voluntary
Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE

Inquiry/Interpretation
Pap Smears

PHYSICALS

Employees
Students
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)

Antacids
Antidiarrhial
Antihistamines
Aspirin, Tylenol, etc.
Skin rash preparations
Misc.
Eye drops
Ear drops
Toothache - Oil cloves
Stingkill
Midol - Menstrual Cramps

PARKING CARDS/ELEVATOR KEYS

Tokens
Return card/key
Parking inquiry
Elevator passes
Temporary handicapped parking permits

REFERRALS TO OUTSIDE AGENCIES

Private Medical Doctor
Health Department
Clinic
Dental
Counseling Centers
Crisis Centers
Transitional Living Facilities (Battered/Homeless Women)
Family Planning Facilities
Other Health Agencies

TESTS

Blood Pressure
Hearing
Tuberculosis
Reading
Information
Vision
Glucometer
Urinalysis

Hemoglobin
E.K.G.
Strep A testing
P.G. testing
Monospot
Hemacult
Misc.

MISCELLANEOUS

Absence Excuses/PE Waiver
Allergy Injections
Band-aids
Booklets/Pamphlets
Dressing Change
Rest
Suture Removal
Temperature
Weigh
Misc.
Information
Report/Form
Wart Removal

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a list of each item for which reimbursement is claimed under this mandate.

A. Description of Activity

1. Show the total number of full-time students enrolled per semester/quarter.
2. Show the total number of full-time students enrolled in the summer program.
3. Show the total number of part-time students enrolled per semester/quarter.
4. Show the total number of part-time students enrolled in the summer program.

B. Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee,(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no

less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) received from individuals other than students who are not covered by Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

HEALTH FEE ELIMINATION

1. Summary of Chapters 1/84, 2nd E.S., and Chapter 1118/87

Chapter 1, Statutes of 1984, 2nd E.S., repealed Education Code § 72246 which authorized community college districts to charge a fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required community college districts that charged a fee in the 1983/84 fiscal year to maintain that level of health services in the 1984/85 fiscal year and each fiscal year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community college districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987 amended Education Code § 72246 to require any community college district that provided health services in the 1986/87 fiscal year to maintain health services at that level in the 1986/87 fiscal year and each fiscal year thereafter. Chapter 8, Statutes of 1993, has revised the numbering of § 72246 to § 76355.

2. Eligible Claimants

Any community college district incurring increased costs as a result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

To determine if current funding is available for this program, refer to the schedule "Appropriations for State Mandated Cost Programs" in the "Annual Claiming Instructions for State Mandated Costs" issued in mid-September of each year to community college presidents.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement claim and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a), Government Code, provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds \$200 per program per fiscal year.

5. Filing Deadline

- (1) Refer to item 3 "Appropriations" to determine if the program is funded for the current fiscal year. If funding is available, an estimated claim must be filed with the State Controller's Office and postmarked by November 30, of the fiscal year in which costs are to be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by November 30, of the following fiscal year regardless whether the payment was more or less than the actual costs. If the local agency fails to file a reimbursement claim, monies received must be returned to the State. If no estimated claim was filed, the local agency may file a reimbursement

claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. (See item 3 above).

- (2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by November 30 following the fiscal year in which costs were incurred. If the claim is filed after the deadline but by November 30 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed \$1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Components

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code § 76355.

After January 1, 1993, pursuant to Chapter 8, Statutes of 1993, the fees students were required to pay for health supervision and services were not more than:

\$10.00 per semester

\$5.00 for summer school

\$5.00 for each quarter

Beginning with the summer of 1997, the fees are:

\$11.00 per semester

\$8.00 for summer school or

\$8.00 for each quarter

The district may increase fees by the same percentage increase as the Implicit Price Deflator (IPD) for the state and local government purchase of goods and services. Whenever the IPD calculates an increase of one dollar (\$1) above the existing amount, the fees may be increased by one dollar (\$1).

7. Reimbursement Limitations

- A. If the level at which health services were provided during the fiscal year of reimbursement is less than the level of health services that were provided in the 1986/87 fiscal year, no reimbursement is forthcoming.
- B. Any offsetting savings or reimbursement the claimant received from any source (e.g. federal, state grants, foundations, etc.) as a result of this mandate, shall be identified and deducted so only net local costs are claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer generated report in substitution for forms HFE-1.0, HFE-1.1, and form HFE-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated and reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form HFE- 2, Health Services

This form is used to list the health services the community college provided during the 1986/87 fiscal year and the fiscal year of the reimbursement claim.

B. Form HFE-1.1, Claim Summary

This form is used to compute the allowable increased costs an individual college of the community college district has incurred to comply with the state mandate. The level of health services reported on this form must be supported by official financial records of the community college district. A copy of the document must be submitted with the claim. The amount shown on line (13) of this form is carried to form HFE-1.0.

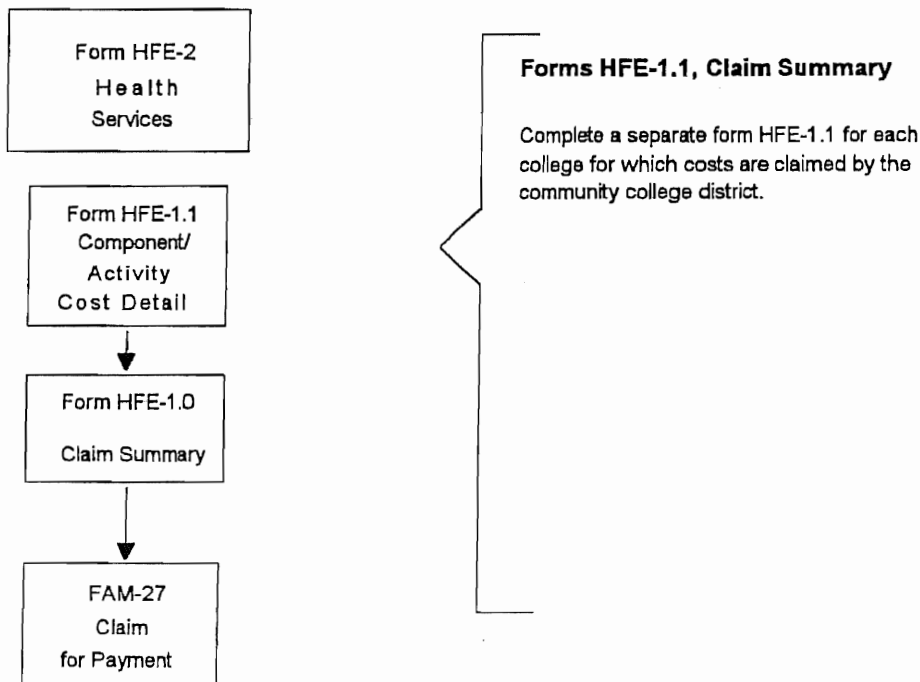
C. Form HFE-1.0, Claim Summary

This form is used to list the individual colleges that had increased costs due to the state mandate and to compute a total claimable cost for the district. The "Total Amount Claimed", line (04) on this form is carried forward to form FAM-27, line 13, for the reimbursement claim, or line (07) for the estimated claim.

D. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form HFE-1.0 and HFE 1.1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

Illustration of Claim Forms



CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use Only (19) Program Number 00234 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program 234
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LABEL HERE	(01) Claimant Identification Number	Reimbursement Claim Data	
	(02) Claimant Name	(22) HFE-1.0, (04)(b)	
	County of Location	(23)	
	Street Address or P.O. Box Suite	(24)	
	City State Zip Code	(25)	

Type of Claim	Estimated Claim	Reimbursement Claim	
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(26)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27)
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28)
			(29)
Fiscal Year of Cost	(06) 20 ___/___ 20 ___	(12) 20 ___/___ 20 ___	(30)
Total Claimed Amount	(07)	(13)	(31)
Less: 10% Late Penalty, not to exceed \$1,000		(14)	(32)
Less: Prior Claim Payment Received		(15)	(33)
Net Claimed Amount		(16)	(34)
Due from State	(08)	(17)	(35)
Due to State		(18)	(36)

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer _____ Date _____

 Type or Print Name _____ Title _____

(38) Name of Contact Person for Claim	Telephone Number () -	Ext.
E-Mail Address _____		

Program 234	HEALTH FEE ELIMINATION Certification Claim Form Instructions	FORM FAM-27
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- (01) Enter the payee number assigned by the State Controller's Office.
- (02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.
- (03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) Leave blank.
- (05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form HFE-1.1 and enter the amount from line (13).
- (08) Enter the same amount as shown on line (07).
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) Leave blank.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim from form HFE-1.1, line (13). The total claimed amount must exceed \$1,000.
- (14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or \$1,000, whichever is less.
- (15) If filing an actual reimbursement claim and an estimated claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., HFE-1.0, (04)(b), means the information is located on form HFE-1.0, block (04), column (b). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 7.548% should be shown as 8. **Completion of this data block will expedite the payment process.**
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the person whom this office should contact if additional information is required.

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents. **(To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)** Use the following mailing addresses:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 500
 Sacramento, CA 95816

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
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(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 19__/19__
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(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	

(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]
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HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.0
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- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office on behalf of its colleges.
- (02) Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which the expenses were/are to be incurred. A separate claim must be filed for each fiscal year.

Form HFE-1.0 must be filed for a reimbursement claim. Do not complete form HFE-1.0 if you are filing an estimated claim and the estimate is not more than 110% of the previous fiscal year's actual costs. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, forms HFE-1.0 and HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

- (03) List all the colleges of the community college district which have increased costs. A separate form HFE-1.1 must be completed for each college showing how costs were derived.
- (04) Enter the total claimed amount of all colleges by adding the Claimed Amount, line (3.1b) + line (3.2b) ...+ (3.21b).

Program <b style="font-size: 24pt;">234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
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(01) Claimant	(02) Type of Claim Reimbursement <input type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 20__/20__
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(03) Name of College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986-87 fiscal year. If the "Less" box is checked, **STOP**, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost	Total
(05) Cost of health services for the fiscal year of claim			
(06) Cost of providing current fiscal year health services in excess of 1986-87			
(07) Cost of providing current fiscal year health services at 1986-87 level [Line (05) - line (06)]			

(08) Complete columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Students Enrolled	(b) Students Exempt per EC 76355(c)(1)	(c) Students Exempt per EC 76355(c)(2)	(d) Students Exempt per EC 76355(c)(3)	(e) Number of Students Subject to Health Fee (a)-(b)-(-c)-(d)	(f) Unit Cost Per Student Per EC 76355	(g) Student Health Fees (e) x (f)
1. Per Fall Semester							
2. Per Spring Semester							
3. Per Summer Session							
4. Per First Quarter							
5. Per Second Quarter							
6. Per third Quarter							

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c))

(10) Subtotal [Line (07) - line (09)]

Cost Reduction

(11) Less: Offsetting Savings

(12) Less: Other Reimbursements

(13) Total Claimed Amount [Line (10) - {(line (11) + line (12))}]

Program 234	HEALTH FEE ELIMINATION CLAIM SUMMARY Instructions	FORM HFE-1.1
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- (01) Enter the name of the claimant. Only a community college district may file a claim with the State Controller's Office (SCO) on behalf of its colleges.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs.
- Form HFE-1.1 must be filed for a reimbursement claim. Do not complete form HFE-1.1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form HFE-1.1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) Enter the name of the college or community college district that provided student health services in the 1986-87 fiscal year and continue to provide the same services during the fiscal year of claim.
- (04) Compare the level of services provided during the fiscal year of reimbursement to the 1986-87 fiscal year and indicate the result by marking a check in the appropriate box. If the "Less" box is checked, STOP and do not complete the remaining part of this claim form. No reimbursement is forthcoming.
- (05) Enter the direct cost, indirect cost, and total cost of health services for the fiscal year of claim on line (05). Direct cost of health services is identified on the college expenditure report authorized by Education Code §76355 and included in the Community College Annual Financial and Budget Report CCFS-311, EDP Code 6440, column 5. If the amount of direct costs claimed is different than that shown on the expenditure report, provide a schedule listing those community college costs that are in addition to, or a reduction to expenditures shown on the report. For claiming indirect costs, college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, form FAM-29C, or a 7% indirect cost rate.
- (06) Enter the direct cost, indirect cost, and total cost of health services that are in excess of the level provided in the 1986-87 fiscal year.
- (07) Enter the difference of the cost of health services for the fiscal year of claim, line (05) and the cost of providing current fiscal year services that are in excess of the level provided in the 1986-87 fiscal year line (06).
- (08) Complete columns (a) through (g) to provide details on the number of students enrolled, the number of students exempt per EC Section 76355(c)(1), (2), and (3), and the amount of health service fees that could have been collected. After 05/01/01, the student fees for health supervision and services are \$12.00 per semester, \$9.00 for summer school, and \$9 for each quarter.
- (09) Enter the sum of student health fees that could have been collected, other than exempt students.
- (10) Enter the difference of the cost of providing health services at the 1986-87 level, line (07) and the total health fee that could have been collected, line (09). If line (09) is greater than line (07), no claim shall be filed.
- (11) Enter the total savings experienced by the school identified in line (03) as a direct cost of this mandate. Submit a detailed schedule of savings with the claim.
- (12) Enter the total of other reimbursements received from any source, (i.e., federal, other state programs, etc.) Submit a detailed schedule of reimbursements with the claim.
- (13) Subtract the sum of Offsetting Savings, line (11), and Other Reimbursements, line (12), from Total 1986-87 Health Service Cost excluding Student Health Fees.

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES	FORM HFE-2
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(01) Claimant:	(02) Fiscal Year costs were incurred:
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(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.	(a) FY 1986/87	(b) FY of Claim
Accident Reports		
Appointments		
College Physician, surgeon		
Dermatology, family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.)		
Psychologist, full services		
Cancel/Change Appointments		
Registered Nurse		
Check Appointments		
Assessment, Intervention and Counseling		
Birth Control		
Lab Reports		
Nutrition		
Test Results, office		
Venereal Disease		
Communicable Disease		
Upper Respiratory Infection		
Eyes, Nose and Throat		
Eye/Vision		
Dermatology/Allergy		
Gynecology/Pregnancy Service		
Neuralgic		
Orthopedic		
Genito/Urinary		
Dental		
Gastro-Intestinal		
Stress Counseling		
Crisis Intervention		
Child Abuse Reporting and Counseling		
Substance Abuse Identification and Counseling		
Acquired Immune Deficiency Syndrome		
Eating Disorders		
Weight Control		
Personal Hygiene		
Burnout		
Other Medical Problems, list		
Examinations, minor illnesses		
Recheck Minor Injury		
Health Talks or Fairs, Information		
Sexually Transmitted Disease		
Drugs		
Acquired Immune Deficiency Syndrome		

**MANDATED COSTS
HEALTH ELIMINATION FEE
HEALTH SERVICES**

**FORM
HFE-2**

(01) Claimant: _____ (02) Fiscal Year costs were incurred: _____

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.

	(a) FY 1986/87	(b) FY of Claim
Child Abuse		
Birth Control/Family Planning		
Stop Smoking		
Library, Videos and Cassettes		
First Aid, Major Emergencies		
First Aid, Minor Emergencies		
First Aid Kits, Filled		
Immunizations		
Diphtheria/Tetanus		
Measles/Rubella		
Influenza		
Information		
Insurance		
On Campus Accident		
Voluntary		
Insurance Inquiry/Claim Administration		
Laboratory Tests Done		
Inquiry/Interpretation		
Pap Smears		
Physical Examinations		
Employees		
Students		
Athletes		
Medications		
Antacids		
Antidiarrheal		
Aspirin, Tylenol, Etc		
Skin Rash Preparations		
Eye Drops		
Ear Drops		
Toothache, oil cloves		
Stingkill		
Midol, Menstrual Cramps		
Other, list		
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry		
Elevator Passes		
Temporary Handicapped Parking Permits		

MANDATED COSTS HEALTH ELIMINATION FEE HEALTH SERVICES	FORM HFE-2
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(01) Claimant:	(02) Fiscal Year costs were incurred:
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(03) Place an "X" in columns (a) and/or (b), as applicable, to indicate which health services were provided by student health service fees for the indicated fiscal years.	(a) FY 1986/87	(b) FY of Claim
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<p>Referrals to Outside Agencies</p> <ul style="list-style-type: none"> Private Medical Doctor Health Department Clinic Dental Counseling Centers Crisis Centers Transitional Living Facilities, battered/homeless women Family Planning Facilities Other Health Agencies <p>Tests</p> <ul style="list-style-type: none"> Blood Pressure Hearing Tuberculosis <ul style="list-style-type: none"> Reading Information Vision Glucometer Urinalysis Hemoglobin EKG Strep A testing PG Testing Monospot Hemacult Others, list <p>Miscellaneous</p> <ul style="list-style-type: none"> Absence Excuses/PE Waiver Allergy Injections Bandaids Booklets/Pamphlets Dressing Change Rest Suture Removal Temperature Weigh Information Report/Form Wart Removal Others, list <p>Committees</p> <ul style="list-style-type: none"> Safety Environmental Disaster Planning 		
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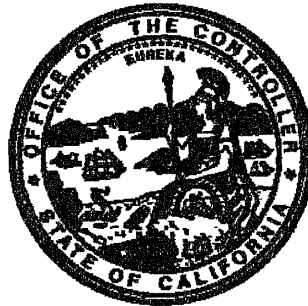
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987

July 1, 2002, through June 30, 2006



JOHN CHIANG
California State Controller

May 2009



JOHN CHIANG
California State Controller

May 20, 2009

Betsy Betchel, President
Board of Trustees
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Dear Ms. Betchel:

The State Controller's Office audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,828,306 is allowable and \$440,752 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated its indirect cost rates. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,395,668, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk:vb

cc: Martha J. Kanter, Ed.D., Chancellor
 Foothill-De Anza Community College District
 W. Andrew Dunn, Vice Chancellor, Business Services
 Foothill-De Anza Community College District
Brett Watson, Grants Monitor
 Foothill-De Anza Community College District
Kuldeep Kaur, Specialist
 Fiscal Planning and Administration
 California Community Colleges Chancellor's Office
Jeannie Oropeza, Program Budget Manager
 Education Systems Unit
 Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,828,306 is allowable and \$440,752 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated its indirect cost rates. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,395,668, contingent upon available appropriations.

Background

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as section 76355 by Chapter 8, Statutes of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year for FY 1987-88 and for each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year for FY 1984-85 and for each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level in FY 1987-88 and for each fiscal year thereafter.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted parameters and guidelines on August 27, 1987, and amended them on May 25, 1989. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2002, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. Except for the following issue, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We were unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment. The district did not respond based on its consultant's advice. As a result, we increased our substantive testing; however, this would not necessarily identify fraud or abuse that may have occurred.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Foothill-De Anza Community College District claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that \$1,828,306 is allowable and \$440,752 is unallowable. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,395,668, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on February 6, 2009. W. Andrew Dunn, Vice-Chancellor, Business Services, responded by letter dated February 23, 2009 (Attachment), stating that the district disagrees with the audit results in Finding 3 and 4 and does not dispute Findings 1 and 2 at this time. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the Foothill-De Anza Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

May 20, 2009

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 820,845	\$ 1,068,240	\$ 247,395	Finding 1
Services and supplies	395,930	430,805	34,875	Finding 2
Total direct costs	1,216,775	1,499,045	282,270	
Indirect costs	395,452	249,441	(146,011)	Findings 1, 2, 3
Total direct and indirect costs	1,612,227	1,748,486	136,259	
Less authorized health service fees	(1,131,518)	(1,269,162)	(137,644)	Finding 4
Subtotal	480,709	479,324	(1,385)	
Less offsetting savings/reimbursements	—	(12,398)	(12,398)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 479,709</u>	465,926	<u>\$ (13,783)</u>	
Less amount paid by the State		(432,638)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 33,288</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 1,039,659	\$ 1,279,571	\$ 239,912	Finding 1
Services and supplies	174,548	209,423	34,875	Finding 2
Total direct costs	1,214,207	1,488,994	274,787	
Indirect costs	381,990	279,037	(102,953)	Findings 1, 2, 3
Total direct and indirect costs	1,596,197	1,768,031	171,834	
Less authorized health service fees	(1,058,724)	(1,195,605)	(136,881)	Finding 4
Subtotal	537,473	572,426	34,953	
Less offsetting savings/reimbursements	—	(37,927)	(37,927)	Finding 5
Total program costs	<u>\$ 537,473</u>	534,499	<u>\$ (2,974)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 534,499</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 1,372,308	\$ 1,237,072	\$ (135,236)	Finding 1
Services and supplies	223,354	261,019	37,665	Finding 2
Total direct costs	1,595,662	1,498,091	(97,571)	
Indirect costs	473,274	391,751	(81,523)	Findings 1, 2, 3
Total direct and indirect costs	2,068,936	1,889,842	(179,094)	
Less authorized health service fees	(1,031,470)	(1,205,450)	(173,980)	Finding 4
Subtotal	1,037,466	684,392	(353,074)	
Less offsetting savings/reimbursements	—	(50,570)	(50,570)	Finding 5
Total program costs	<u>\$ 1,037,466</u>	633,822	<u>\$ (403,644)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 633,822</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 861,398	\$ 1,054,794	\$ 193,396	Finding 1
Services and supplies	261,562	297,562	36,000	Finding 2
Total direct costs	1,122,960	1,352,356	229,396	
Indirect costs	324,535	358,780	34,245	Findings 1, 2, 3
Total direct and indirect costs	1,447,495	1,711,136	263,641	
Less authorized health service fees	(1,213,971)	(1,482,261)	(268,290)	Finding 4
Subtotal	233,524	228,875	(4,649)	
Less offsetting savings/reimbursements	(18,114)	(33,816)	(15,702)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 214,410</u>	194,059	<u>\$ (20,351)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 194,059</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 4,094,210	\$ 4,639,677	\$ 545,467	
Services and supplies	<u>1,055,394</u>	<u>1,198,809</u>	<u>143,415</u>	
Total direct costs	5,149,604	5,838,486	688,882	
Indirect costs	<u>1,575,251</u>	<u>1,279,009</u>	<u>(296,242)</u>	
Total direct and indirect costs	6,724,855	7,117,495	392,640	
Less authorized health service fees	<u>(4,435,683)</u>	<u>(5,152,478)</u>	<u>(716,795)</u>	
Subtotal	2,289,172	1,965,017	(324,155)	
Less offsetting savings/reimbursements	(18,114)	(134,711)	(116,597)	
Less late filing penalty	<u>(2,000)</u>	<u>(2,000)</u>	<u>—</u>	
Total program costs	<u>\$ 2,269,058</u>	1,828,306	<u>\$ (440,752)</u>	
Less amount paid by the State		<u>(432,638)</u>		
Allowable costs claimed in excess of (less than) amount paid				<u>\$ 1,395,668</u>

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Misstated counseling-
related salaries and
benefits**

The district understated its counseling-related salaries and benefits by \$545,467 for the audit period. The related indirect costs total \$171,659. For fiscal year (FY) 2002-03, FY 2003-04, and FY 2005-06, the district understated its salaries and benefits by \$680,703, and for FY 2004-05, overstated salaries and benefits by \$135,236.

The district claimed estimated time instead of actual time spent by academic counselors on personal counseling tasks. During our fieldwork, the district elected to perform a time study to support the counseling-related salaries and benefits. The district’s time study plan identified the time study period as October 20, 2008, through October 31, 2008. The time study plan adequately supported the time spent in performing mandate-related activities.

The program’s parameters and guidelines state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Salaries and benefits	\$ 247,395	\$ 239,912	\$(135,236)	\$ 193,396	\$ 545,467
Indirect costs	80,403	75,476	(40,111)	55,891	171,659
Audit adjustment	<u>\$ 327,798</u>	<u>\$ 315,388</u>	<u>\$(175,347)</u>	<u>\$ 249,287</u>	<u>\$ 717,126</u>

Recommendation

We recommend that the district maintain records that document actual time spent on mandate-related activities.

District’s Response

The District does not dispute this finding at this time.

SCO’s Comment

Our finding and recommendation remain unchanged.

**FINDING 2—
Understated services
and supplies—
Student insurance costs**

The district understated allowable services and supplies by \$143,415 for costs related to student insurance. The related indirect costs total \$43,881.

The district did not claim any student accident premiums for the audit period. We allowed such costs based on documentation the insurance company provided to the district that showed actual student insurance costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Services and supplies	\$ 34,875	\$ 34,875	\$ 37,665	\$ 36,000	\$ 143,415
Indirect costs	11,334	10,972	11,171	10,404	43,881
Audit adjustment	\$ 46,209	\$ 45,847	\$ 48,836	\$ 46,404	\$ 187,296

For services and supplies, the parameters and guidelines state that the district may claim expenditures that can be identified as direct costs of the mandated program. They also state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that the district claim actual mandate-related costs that are supported by its accounting records and source documents.

District’s Response

The District does not dispute this finding at this time.

SCO’s Comment

Our finding and recommendation remain unchanged.

**FINDING 3—
Overstated indirect
cost rates**

The district claimed unallowable indirect costs totaling \$511,782 because it overstated allowable indirect cost rates.

For FY 2002-03 and FY 2003-04, the district claimed indirect costs based on an indirect cost rate prepared using Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget [OMB] Circular A-21). However, the district did not obtain federal approval for its ICRPs. For FY 2004-05 and FY 2005-06, the district prepared its ICRP using the SCO’s FAM-29C methodology. However, the district did not correctly compute the FAM-29C rates.

For FY 2002-03 and FY 2003-04, the SCO’s claiming instructions allow the district to use a federally-approved rate prepared in accordance with OMB Circular A-21. For FY 2004-05 and FY 2005-06, the parameters and guidelines and the SCO’s claiming instructions do not allow the district to use a federally-approved rate.

We calculated allowable indirect cost rates for FY 2002-03 and FY 2003-04 based on the FAM-29C methodology that the parameters and guidelines and the SCO claiming instructions allow. We also recalculated FY 2004-05 and FY 2005-06 rates based on the FAM-29C methodology. We calculated allowable indirect cost rates each year by using the information contained in the California Colleges Annual Financial and Budget Report, Expenditure by Activity (CCFS-311). Our calculations revealed that for all four fiscal years, the district overstated indirect cost rates claimed.

The following table summarizes the claimed and allowable indirect cost rates and the resulting audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable indirect cost rate	16.64%	18.74%	26.15%	26.53%	
Less claimed indirect cost rate	(32.50)%	(31.46)%	(29.66)%	(28.90)%	
Overstated indirect cost rate	(15.86)%	(12.72)%	(3.51)%	(2.37)%	
Allowable direct costs claimed	×\$1,499,045	×\$1,488,994	×\$1,498,091	×\$1,352,356	
Audit adjustment	\$ (237,749)	\$ (189,400)	\$ (52,583)	\$ (32,050)	\$ (511,782)

The parameters and guidelines state, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.”

For FY 2002-03 and FY 2003-04 the SCO’s claiming instructions state:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 “Cost Principles for Educational Institutions,” or the Controller’s [FAM-29C] methodology. . . .

For FY 2004-05 and FY 2005-06, the SCO's claiming instructions state:

A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C). . . . If specifically allowed by a mandated program's P's and G's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions. For the Health Fee Elimination Program, the district should prepare its indirect cost rate proposal using the SCO's FAM-29 methodology.

District's Response

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce difference audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

SCO's Comment

The fiscal effect of the finding remains unchanged.

We agree that the district prepared its FY 2004-05 and FY 2005-06 indirect cost rates using the SCO's FAM-29C methodology. Consequently, we updated the finding to clarify the methodology used by the district.

The parameters and guidelines (section VI) state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district interprets "may be claimed" as compliance with the claiming instructions is voluntary. Instead, "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions.

The district contends that "The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute. . . ." Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d) (2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is without merit.

Nevertheless, the SCO did, in fact, conclude that the district's indirect cost rates for FY 2002-03 through FY 2005-06 were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ."¹ The SCO calculated indirect cost rates using the FAM-29C methodology allowed in the claiming instructions. This method did not support the rates that the district claimed; thus, the rates claimed were excessive.

¹ Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

**FINDING 4—
Understated
authorized health
service fees**

The district understated authorized health service fees by \$716,795. The district reported actual health service fees that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized health service fees. Government Code section 17514 states that “costs mandated by the state” means any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. The California Community Colleges Chancellor’s Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). The authorized fees for each quarter and summer session is \$9 for FY 2002-03 and FY 2003-04, \$10 for FY 2004-05, and \$11 for FY 2005-06. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. The CCCCCO identified the district’s enrollment based on the CCCCCO’s MIS data element STD7, codes A through G. The CCCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, the CCCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

The following table shows the authorized health service fees calculation and audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Number of enrolled students	161,536	156,454	145,825	148,717	
Less number of BOGG recipients	(17,086)	(20,555)	(22,294)	(10,422)	
Less number of Apprenticeship enrollees	(3,432)	(3,054)	(2,986)	(3,544)	
Students subject to health service fee	141,018	132,845	120,545	134,751	
Authorized health service fee rate	× \$ (9)	× \$ (9)	× \$ (10)	× \$ (11)	
Authorized health service fees	\$ (1,269,162)	\$ (1,195,605)	\$ (1,205,450)	\$ (1,482,261)	\$ (5,152,478)
Less authorized health service fee claimed	1,131,518	1,058,724	1,031,470	1,213,971	4,435,683
Audit adjustment	\$ (137,644)	\$ (136,881)	\$ (173,980)	\$ (268,290)	\$ (716,795)

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G. We also recommend that the district identify the number of apprenticeship program enrollees based on data elements SB23, code 1, and STD7, codes A through G.

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district excludes any students from receiving health services, the district should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health service fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectable based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectable based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee... for health supervision and services..." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, *if any*, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional.*" (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that “[t]o the extent that community college districts can charge a fee, they are not required to incur a cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program within the meaning of Section 6 of Article XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenues to increased costs, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of services.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(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.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

SCO's Comment

We updated the fiscal impact of the findings based on updated numbers of enrolled students and BOGG recipients provided by the CCCCCO. The updated information increased the finding by \$228,113, from \$488,682 to \$716,795. The remaining finding was modified slightly for clarity.

“Authorized” Fee Amount

We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district's decision to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy the fee. The CCCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Government Code Section 76355

Education Code section 76355 (specifically, subdivision (a)) authorizes the health service fee rate. The statutory section also provides the basis for calculating the authorized rate applicable to each fiscal year. The statutory section states:

- (1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.
- (2) The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Government Code Section 17514

Government Code section 17514 states, ““Costs mandated by the state’ means any increased costs which a local agency or school district is *required* [emphasis added] to incur. . . .” The district ignores the direct correlation that if the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

Government Code Section 17556

The district presents an argument that the statutory language applies only when the fee authority is sufficient to offset the “entire” mandated costs. The CSM recognized that the Health Fee Elimination Program’s costs are not uniform between districts. Districts provided different levels of

service in FY 1986-87 (the “base year”). Furthermore, districts provided these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts’ mandated program costs, while it may be insufficient to pay the “entire” costs of other districts. Meanwhile, Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the CSM adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost.

Two court cases addressed the issue of fee authority.² Both cases concluded that “costs” as used in the constitutional provision, exclude “expenses that are recoverable from sources other than taxes.” In both cases, the source other than taxes was fee authority.

² County of Fresno v. California (1991) 53 Cal. 3d 482; Connell v. Santa Margarita (1997) 59 Cal. App. 4th 382.

Parameters and Guidelines

The CSM recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The CSM’s staff analysis of May 25, 1989, states the following regarding the proposed parameters and guidelines amendments that the CSM adopted that day:

Staff amended Item “VIII. Offsetting Savings and Other Reimbursements” to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants’ reimbursable costs:

“If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied.”

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, CSM intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from the CCCC dated April 3, 1989. In that letter, the CCCC concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, since the CSM’s staff concluded that DOF’s proposed language did not substantively change the scope of staff’s proposed language. The CSM’s meeting minutes of May 25, 1989, show that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM’s interpretation regarding authorized health service fees.

**FINDING 5—
Understated offsetting
savings/reimbursements**

The district understated offsetting savings/reimbursement by \$116,597. In addition to health service fees, the district received health services revenues of \$51,846 from students to offset services rendered and federal Medical Activities Administration funds for work performed by health center employees. The district reported only \$18,114 on its mandated cost claims; it was not able to provide any support for these costs.

The parameters and guidelines (section VIII) state that any offsetting savings/reimbursements the claimants experience as a direct result of this statute must be deducted from the costs claimed. It further states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) must be identified and deducted from this claim.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable offsetting revenues:					
Health services revenues	\$ (12,398)	\$ (12,101)	\$ (14,186)	\$ (13,161)	\$ (51,846)
Federal Medical Activities Administration funds	—	(25,826)	(36,384)	(20,655)	(82,865)
Subtotal	(12,398)	(37,927)	(50,570)	(33,816)	(134,711)
Less claimed offsetting revenues	—	—	—	18,114	18,114
Audit adjustment	\$ (12,398)	\$ (37,927)	\$ (50,570)	\$ (15,702)	\$ (116,597)

Recommendation

We recommend that the district report all health services program-related offsetting savings/reimbursements on its mandated cost claims.

District's Response

The District does not dispute this finding at this time.

SCO's Comment

Our finding and recommendation remain unchanged.

OTHER ISSUES

In its response to the draft audit report, the district addressed an issue related to SCO's authority to audit FY 2002-03 and FY 2003-04 claims within the statute of limitations and requested applicable laws and regulations in effect during the claiming period for Finding 3 and Finding 4.

Statutes of LimitationsDistrict's Issue

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

SCO's Comment

Government Code section 17558.5, subdivision (a) in effect for the audit period, states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

On January 13, 2005, the district amended its FY 2002-03 claim and filed its 2003-04 claim. The district received an initial payment for its FY 2002-03 claim on October 25, 2006. The State made no payment to the district for its FY 2003-04 claims. Therefore, FY 2002-03 claims are subject to the initiation of an SCO audit until October 25, 2009. FY 2003-04 claims are still subject to an SCO audit. We conducted an audit entrance conference on September 11, 2008. Therefore, the SCO initiated an audit within the period the claims were subject to audit.

Public Records Request

District's Issue

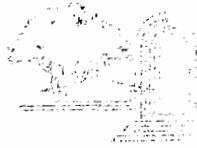
The District requires that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of record, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

SCO's Comment

SCO has made available to the district the requested records via letter and attachments dated March 25, 2009.

**Attachment—
District's Response to
Draft Audit Report**



**FOOTHILL-DE ANZA
Community College District**

12345 El Monte Road
Los Altos Hills, CA 94022

February 23, 2009

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
Annual Claim Fiscal Years: 2002-03, 2003-04, 2004-05, and 2005-06

Dear Mr. Spano:

This letter is the response of the Foothill De Anza Community College District to the draft audit report for the above referenced programs and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated February 6, 2009, and received by the District on February 12, 2009.

Finding 1 - Misstated counseling-related salaries and benefits

The District does not dispute this finding at this time.

Finding 2 - Understated services and supplies – student insurance costs

The District does not dispute this finding at this time.

Finding 3 - Unallowable indirect costs

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from

the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

Finding 4- Understated authorized health fee service fees

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health services fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "~~If~~ pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that "[t]o the extent that community college districts can charge a fee, they are not required to incur a

cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(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.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

Finding 5 - Understated offsetting savings/reimbursements

The District does not dispute this finding at this time.

Statute of Limitations

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.


The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

Sincerely,



W. Andrew Dunn
Vice-Chancellor, Business Services

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

If you have any questions concerning the enclosed material, write to the address below or call the Local Reimbursements Section at (916) 324-5729, or email to lrsdar@sco.ca.gov.

State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Prepared by the State Controller's Office
Updated September 30, 2003

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SECTION 3 State Mandated Cost Programs

Program Name	Chapter/Statute	Program Number
Absentee Ballots	Ch. 77/78	231
Collective Bargaining	Ch. 961/75	232
Health Benefits for Survivors of Peace Officers and Firefighters	Ch. 1120/96	233
Health Fee Elimination	Ch. 1/84	234
Investment Reports	Ch. 783/95	235
Law Enforcement College Jurisdiction Agreements	Ch. 284/98	212
Law Enforcement Sexual Harassment Training	Ch. 126/93	236
Mandate Reimbursement Process	Ch. 486/75	237
Open Meetings Act /Brown Act Reform	Ch. 641/86	238
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REIMBURSABLE STATE MANDATED COST PROGRAMS

Claims for the following State mandated cost programs may be filed with the SCO. For your convenience, the programs are listed in alphabetical order by program name. An "X" indicates the fiscal year for which a claim may be filed.

2002-03 Reimburse- ment Claims	2003-04 Estimated Claims	Community College Districts	
x	x	Chapter 77/78	Absentee Ballots
x	x	Chapter 961/75	Collective Bargaining
x	x	Chapter 1120/96	Health Benefits for Survivors of Peace Officers & Firefighters
x	x	Chapter 1/84	Health Fee Elimination
x	x	Chapter 783/95	Investment Reports
x	x	Chapter 284/98	Law Enforcement College Jurisdiction Agreements
x	x	Chapter 126/93	Law Enforcement Sexual Harassment Training
x	x	Chapter 486/75	Mandate Reimbursement Process
x	x	Chapter 641/86	Open Meetings Act/Brown Act Reform
x	x	Chapter 465/76	Peace Officers Procedural Bill of Rights
x	x	Chapter 875/85	Photographic Record of Evidence
x	x	Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers
x	x	Chapter 1249/92	Threats Against Peace Officers

APPROPRIATIONS FOR THE 2003-04 FISCAL YEAR

Source of State Mandated Cost Appropriations			
Schedule		Program	Amount Appropriated
Chapter 379/02, Item 6110-295-0001 ¹			
(1)	Chapter 77/78	Absentee Ballots	\$ 0
(2)	Chapter 961/75	Collective Bargaining	0
(3)	Chapter 1120/96	Health Benefits for Survivors of Peace Officers and Firefighters	0
(4)	Chapter 783/95	Investment Reports	0
(5)	Chapter 284/98	Law Enforcement College Jurisdiction Agreements	0
(6)	Chapter 126/93	Law Enforcement Sexual Harassment Training	0
(7)	Chapter 486/75	Mandate Reimbursement Process	0
(8)	Chapter 641/86	Open Meetings Act/Brown Act Reform	0
(9)	Chapter 465/76	Peace Officers Procedural Bill of Rights	0
(10)	Chapter 875/85	Photographic Record of Evidence	0
(11)	Chapter 908/96	Sex Offenders: Disclosure by Law Enforcement Officers	0
(12)	Chapter 1249/92	Threats Against Peace Officers	0
Total Appropriations, Item 6110-295-001			\$ 0
Chapter 379/02, Item 6870-295-0001			
(13)	Chapter 1/84	Health Fee Elimination	1,000
TOTAL - Funding for the 2003-04 Fiscal Year			\$1,000

¹ Pursuant to provision 5, "The Controller shall not make any payment from this item to reimburse community college districts for claimed costs of state-mandated education programs. Reimbursements to community college districts for education mandates shall be paid from the appropriate item within the community colleges budget."

FILING A CLAIM

1. Introduction

The law in the State of California, (Government Code Sections 17500 through 17616), provides for the reimbursement of costs incurred by school districts for costs mandated by the State. Costs mandated by the State means any increased costs which a school district is required to incur after July 1, 1980, as a result of any statute enacted after January 1, 1975, or any executive order implementing such statute which mandates a new program or higher level of service of an existing program.

Estimated claims that show costs to be incurred in the current fiscal year and reimbursement claims that detail the costs actually incurred for the prior fiscal year may be filed with the State Controller's Office (SCO). Claims for on-going programs are filed annually by January 15. Claims for new programs are filed within 120 days from the date claiming instructions are issued for the program. A 10 percent penalty, (up to \$1,000 for continuing claims, no limit for initial claims), is assessed for late claims. The SCO may audit the records of any school district to verify the actual amount of mandated costs and may reduce any claim that is excessive or unreasonable.

When a program has been reimbursed for three or more years, the COSM may approve the program for inclusion in the State Mandates Apportionment System (SMAS). For programs included in SMAS, the SCO determines the amount of each claimant's entitlement based on an average of three consecutive fiscal years of actual costs adjusted by any changes in the Implicit Price Deflator (IPD). Claimants with an established entitlement receive an annual apportionment adjusted by any changes in the IPD and, under certain circumstances, by any changes in workload. Claimants with an established entitlement do not file further claims for the program.

The SCO is authorized to make payments for costs of mandated programs from amounts appropriated by the State Budget Act, by the State Mandates Claims Fund, or by specific legislation. In the event the appropriation is insufficient to pay claims in full, claimants will receive prorated payments in proportion to the dollar amount of approved claims for the program. Balances of prorated payments will be made when supplementary funds are made available.

The instructions contained in this manual are intended to provide general guidance for filing a mandated cost claim. Since each mandate is administered separately, it is important to refer to the specific program for information relating to established policies on eligible reimbursable costs.

2. Types of Claims

There are three types of claims: Reimbursement, Estimated, and Entitlement. A claimant may file a reimbursement claim for actual mandated costs incurred in the prior fiscal year or may file an estimated claim for mandated costs to be incurred during the current fiscal year. An entitlement claim may be filed for the purpose of establishing a base year entitlement amount for mandated programs included in SMAS. A claimant who has established a base year entitlement for a program would receive an automatic annual payment which is reflective of the current costs for the program.

All claims received by the SCO will be reviewed to verify actual costs. An adjustment of the claim will be made if the amount claimed is determined to be excessive, improper, or unreasonable. The claim must be filed with sufficient documentation to support the costs claimed. The types of documentation required to substantiate a claim are identified in the instructions for the program. The certification of claim, form FAM-27, must be signed and dated by the entity's authorized officer in order for the SCO to make payment on the claim.

A. Reimbursement Claim

A reimbursement claim is defined in GC Section 17522 as any claim filed with the SCO by a local agency for reimbursement of costs incurred for which an appropriation is made for the purpose of paying the claim. The claim must include supporting documentation to substantiate the costs claimed.

Initial reimbursement claims are first-time claims for reimbursement of costs for one or more prior fiscal years of a program that was previously unfunded. Claims are due 120 days from the date of issuance of the claiming instructions for the program by the SCO. The first statute that appropriates funds for the mandated program will specify the fiscal years for which costs are eligible for reimbursement.

Annual reimbursement claims must be filed by January 15 following the fiscal year in which costs were incurred for the program. A reimbursement claim must detail the costs actually incurred in the prior fiscal year.

An actual claim for the 2002-03 fiscal year may be filed by January 15, 2004, without a late penalty. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. However, initial reimbursement claims will be reduced by a late penalty of 10% with no limitation. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. Claims filed more than one year after the deadline or without the requested supporting documentation will not be accepted.

B. Estimated Claim

An estimated claim is defined in GC Section 17522 as any claim filed with the SCO, during the fiscal year in which the mandated costs are to be incurred by the local agency, against an appropriation made to the SCO for the purpose of paying those costs.

An estimated claim may be filed in conjunction with an initial reimbursement claim, annual reimbursement claim, or at other times for estimated costs to be incurred during the current fiscal year. Annual estimated claims are due January 15 of the fiscal year in which the costs are to be incurred. Initial estimated claims are due on the date specified in the claiming instructions. Timely filed estimated claims are paid before those filed after the deadline.

After receiving payment for an estimated claim, the claimant must file a reimbursement claim by January 15 following the fiscal year in which costs were incurred. If the claimant fails to file a reimbursement claim, monies received for the estimated claims must be returned to the State.

C. Entitlement Claim

An entitlement claim is defined in GC Section 17522 as any claim filed by a local agency with the SCO for the sole purpose of establishing or adjusting a base year entitlement for a mandated program that has been included in SMAS. An entitlement claim should not contain nonrecurring or initial start-up costs. There is no statutory deadline for the filing of entitlement claims. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. When the claims are approved and a base year entitlement amount is determined, the claimant will receive an apportionment reflective of the program's current year costs. School mandates included in SMAS are listed in Section 2, number 6.

Once a mandate has been included in SMAS and the claimant has established a base year entitlement, the claimant will receive automatic payments from the SCO for the mandate. The automatic apportionment is determined by adjusting the claimant's base year entitlement for changes in the implicit price deflator of costs of goods and services to governmental agencies, as determined by the State Department of Finance. For programs approved by the COSM for inclusion in SMAS on or after January 1, 1988, the payment for each year succeeding the three year base period is adjusted according to any changes by both the deflator and average daily attendance. Annual apportionments for programs included in the system are paid on or before November 30 of each year.

A base year entitlement is determined by computing an average of the claimant's costs for any three consecutive years after the program has been approved for the SMAS process. The amount is first adjusted according to any changes in the deflator. The deflator is applied separately to each year's costs for the three years, which comprise the base year. The SCO will perform this computation for each claimant who has filed claims for three consecutive years. If a claimant has incurred costs for three consecutive years but has not filed a claim in each of those years, the claimant may file an entitlement claim, form FAM-43, to establish a base year entitlement. An entitlement claim does not result in the claimant being reimbursed for the costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

3. Minimum Claim Amount

For initial claims and annual claims filed on or after September 30, 2002, if the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by GC Section 17564. The county shall determine if the submission of a combined claim is economically feasible and shall be responsible for disbursing the funds to each special district. Combined claims may be filed only when the county is the fiscal agent for the special districts. A combined claim must show the individual claim costs for each eligible school district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a special district, provides to the county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

GC Section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such a claim exceeds one thousand dollars (\$1,000), provided that a county superintendent of schools may submit a combined claim on behalf of school districts within their county if the combined claim exceeds \$1,000, even if the individual school district's claim does not each exceed \$1,000. The county superintendent of schools shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school district. These combined claims may be filed only when the county superintendent of schools is the fiscal agent for the districts. A combined claim must show the individual claim costs for each eligible district. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district provides a written notice of its intent to file a separate claim to the county superintendent of schools and to the SCO at least 180 days prior to the deadline for filing the claim.

4. Filing Deadline for Claims

Initial reimbursement claims (first-time claims) for reimbursement of costs of a previously unfunded mandated program must be filed within 120 days from the date of issuance of the program's claiming instructions by the SCO. If the initial reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% penalty. A claim filed more than one year after the deadline cannot be accepted for reimbursement.

Annual reimbursement claims for costs incurred during the previous fiscal year and estimated claims for costs to be incurred during the current fiscal year must be filed with the SCO and postmarked on or before January 15. If the annual or estimated reimbursement claim is filed after the deadline, but within one year of the deadline, the approved claim must be reduced by a 10% late penalty, not to exceed \$1,000. Claims must include supporting data to show how the amount claimed was derived. Without this information, the claim cannot be accepted.

Entitlement claims do not have a filing deadline. However, entitlement claims and supporting documents should be filed by January 15 to permit an orderly processing of claims. Entitlement claims are used to establish a base year entitlement amount for calculating automatic annual payments. Entitlement does not result in the claimant being reimbursed for costs incurred, but rather entitles the claimant to receive automatic payments from SMAS.

5. Payment of Claims

In order for the SCO to authorize payment of a claim, the Certification of Claim, form FAM-27, must be properly filled out, signed, and dated by the entity's authorized officer.

Reimbursement and estimated claims are paid within 60 days of the filing deadline for the claim. A claimant is entitled to receive accrued interest at the pooled money investment account rate if the payment was made more than 60 days after the claim filing deadline or the actual date of claim receipt, whichever is later. For an initial claim, interest begins to accrue when the payment is made more than 365 days after the adoption of the program's statewide cost estimate. The SCO may withhold up to 20 percent of the amount of an initial claim until the claim is audited to verify the actual amount of the mandated costs. The 20 percent withheld is not subject to accrued interest.

In the event the amount appropriated by the Legislature is insufficient to pay the approved amount in full for a program, claimants will receive a prorated payment in proportion to the amount of approved claims timely filed and on hand at the time of proration.

The SCO reports the amounts of insufficient appropriations to the State Department of Finance, the Chairperson of the Joint Legislative Budget Committee, and the Chairperson of the respective committee in each house of the Legislature which considers appropriations in order to assure appropriation of these funds in the Budget Act. If these funds cannot be appropriated on a timely basis in the Budget Act, this information is transmitted to the COSM which will include these amounts in its report to assure that an appropriation sufficient to pay the claims is included in the next local government claims bill or other appropriation bills. When the supplementary funds are made available, the balance of the claims will be paid.

Unless specified in the statutes, regulations, or parameters and guidelines, the determination of allowable and unallowable costs for mandates is based on the Parameters and Guidelines adopted by the COSM. The determination of allowable reimbursable mandated costs for unfunded mandates is made by the COSM. The SCO determines allowable reimbursable costs, subject to amendment by the COSM, for mandates funded by special legislation. Unless specified, allowable costs are those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. In order for costs to be allowable and thus eligible for reimbursement, the costs must meet the following general criteria:

1. The cost is necessary and reasonable for proper and efficient administration of the mandate and not a general expense required to carry out the overall responsibilities of government.
2. The cost is allocable to a particular cost objective identified in the Parameters and Guidelines.
3. The cost is net of any applicable credits that offset or reduce expenses of items allocable to the mandate.

The SCO has identified certain costs that, for the purpose of claiming mandated costs, are unallowable and should not be claimed on the claim forms unless specified as reimbursable under the program. These expenses include, but are not limited to, subscriptions, depreciation, memberships, conferences, workshops general education, and travel costs.

6. State Mandates Apportionment System (SMAS)

Chapter 1534, Statutes of 1985, established SMAS, a method of paying certain mandated programs as apportionments. This method is utilized whenever a program has been approved for inclusion in SMAS by the COSM.

When a mandated program has been included in SMAS, the SCO will determine a base year entitlement amount for each school district that has submitted reimbursement claims, (or entitlement claims), for three consecutive fiscal years. A base year entitlement amount is determined by averaging the approved reimbursement claims, (or entitlement claims), for 1982-83, 1983-84, and 1984-85 years or any three consecutive fiscal years thereafter. The amounts are first adjusted by any change in IPD, which is applied separately to each year's costs for the three years

that comprise the base period. The base period means the three fiscal years immediately succeeding the COSM's approval.

Each school district with an established base year entitlement for the program will receive automatic annual payments from the SCO reflective of the program's current year costs. The amount of apportionment is adjusted annually for any change in the IPD. If the mandated program was included in SMAS after January 1, 1988, the annual apportionment is adjusted for any change in both the IPD and workload.

In the event a school district has incurred costs for three consecutive fiscal years but did not file a reimbursement claim in one or more of those fiscal years, the school district may file an entitlement claim for each of those missed years to establish a base year entitlement. An "entitlement claim" means any claim filed by a county with the SCO for the sole purpose of establishing a base year entitlement. A base year entitlement shall not include any nonrecurring or initial start-up costs.

Initial apportionments are made on an individual program basis. After the initial year, all apportionments are made by November 30. The amount to be apportioned is the base year entitlement adjusted by annual changes in the IPD for the cost of goods and services to governmental agencies as determined by the State Department of Finance.

In the event the county determines that the amount of apportionment does not accurately reflect costs incurred to comply with a mandate, the process of adjusting an established base year entitlement upon which the apportionment is based, is set forth in GC Section 17615.8 and requires the approval of the COSM.

School Mandates Included In SMAS

Program Name	Chapter/Statute	Program Number
Immunization Records	Ch. 1176/77	32

Pupil Expulsion Transcripts, program #91, Chapter 1253/75 was removed from SMAS for the 2002-03 fiscal year. This program was consolidated with other mandate programs that are included in Pupil Suspension, Expulsions, and Expulsion Appeals, program #176.

7. Direct Costs

A direct cost is a cost that can be identified specifically with a particular program or activity. Each claimed reimbursable cost must be supported by documentation as described in Section 12. Costs that are typically classified as direct costs are:

(1) Employee Wages, Salaries, and Fringe Benefits

For each of the mandated activities performed, the claimant must list the names of the employees who worked on the mandate, their job classification, hours worked on the mandate, and rate of pay. The claimant may, in-lieu of reporting actual compensation and fringe benefits, use a productive hourly rate:

(a) Productive Hourly Rate Options

A local agency may use one of the following methods to compute productive hourly rates:

- Actual annual productive hours for each employee
- The weighted-average annual productive hours for each job title, or
- 1,800* annual productive hours for all employees

If actual annual productive hours or weighted-average annual productive hours for each job title is chosen, the claim must include a computation of how these hours were computed.

* 1,800 annual productive hours excludes the following employee time:

- o Paid holidays
- o Vacation earned
- o Sick leave taken
- o Informal time off
- o Jury duty
- o Military leave taken.

(b) Compute a Productive Hourly Rate

1. Compute a productive hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a productive hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual productive hours.

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

Formula: $[(EAS + Benefits) + APH] = PHR$ $[(\$26,000 + \$8,099)] + 1,800 \text{ hrs} = 18.94$	Description: EAS = Employee's Annual Salary APH = Annual Productive Hours PHR = Productive Hourly Rate
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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 EAS, multiply the biweekly salary by 26. To convert a monthly salary to EAS, 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 %	Formula: $[(EAS \times (1 + FBR)) + APH] = PHR$ $[(\$26,000 \times (1.3115)) + 1,800] = \18.94
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 3, 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, workmen'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.

For each of the employees included in the claim, the claimant must use reasonable rates and hours in computing the wage cost. If a person of a higher-level job position performs an activity which normally would be performed by a lower-level position, reimbursement for time spent is allowable at the average salary range for the lower-level position. The salary rate of the person at the higher level position may be claimed if it can be shown that it was more cost effective in comparison to the performance by a person at the lower-level position under normal circumstances and conditions. The number of hours charged to an activity should reflect the time expected to complete the activity under normal circumstances and conditions. The numbers of hours in excess of normal expected hours are not reimbursable.

(c) Calculating an Average Productive Hourly Rate

In those instances where the claiming instructions allow a unit as a basis of claiming costs, the direct labor component of the unit cost should be expressed as an average productive hourly rate and can be determined as follows:

Table 4 Calculating an Average Productive Hourly Rate			
	<u>Time Spent</u>	<u>Productive Hourly Rate</u>	<u>Total Cost by Employee</u>
Employee A	1.25 hrs	\$6.00	\$7.50
Employee B	0.75 hrs	4.50	3.38
Employee C	3.50 hrs	10.00	35.00
Total	5.50 hrs		\$45.88
Average Productive Hourly Rate is \$45.88/5.50 hrs. = \$8.34			

(d) Employer's Fringe Benefits Contribution

A local agency has the option of claiming actual employer's fringe benefit contributions or may compute an average fringe benefit cost for the employee's job classification and claim it as a percentage of direct labor. The same time base should be used for both salary and fringe benefits when computing a percentage. For example, if health and dental insurance payments are made annually, use an annual salary. After the percentage of salary for each fringe benefit is computed, total them.

For example:

<u>Employer's Contribution</u>	<u>% of Salary</u>
Retirement	15.00%
Social Security	7.65%
Health and Dental	5.25%
Insurance	0.75%
Worker's Compensation	0.75%
Total	<u>28.65%</u>

(e) Materials and Supplies

Only actual expenses can be claimed for materials and supplies, which were acquired and consumed specifically for the purpose of a mandated program. The claimant must list the materials and supplies that were used to perform the mandated activity, the number of units consumed, the cost per unit, and the total dollar amount claimed. Materials and supplies purchased to perform a particular mandated activity are expected to be reasonable in quality, quantity and cost. Purchases in excess of reasonable quality, quantity and cost are not reimbursable. Materials and supplies withdrawn from inventory and charged to the mandated activity must be based on a recognized method of pricing, consistently applied. Purchases shall be claimed at the actual price after deducting discounts, rebates and allowances received by local agencies.

(f) Calculating a Unit Cost for Materials and Supplies

In those instances where the claiming instructions suggest that a unit cost be developed for use as a basis of claiming costs mandated by the State, the materials and supplies component of the unit cost should be expressed as a unit cost of materials and supplies as shown in Table 1 or Table 2:

Table 1 Calculating A Unit Cost for Materials and Supplies

Supplies	<u>Cost Per Unit</u>	<u>Amount of Supplies Used Per Activity</u>	<u>Unit Cost of Supplies Per Activity</u>
Paper	0.02	4	\$0.08
Files	0.10	1	0.10
Envelopes	0.03	2	0.06
Photocopies	0.10	4	<u>0.40</u>
			<u>\$0.64</u>

Table 2 Calculating a Unit Cost for Materials and Supplies

Supplies	Supplies <u>Used</u>	Unit Cost of Supplies Per Activity
Paper (\$10.00 for 500 sheet ream)	250 Sheets	\$5.00
Files (\$2.50 for box of 25)	10 Folders	1.00
Envelopes (\$3.00 for box of 100)	50 Envelopes	1.50
Photocopies (\$0.05 per copy)	40 Copies	2.00
		<u>\$9.50</u>
<p>If the number of reimbursable instances, is 25, then the unit cost of supplies is \$0.38 per reimbursable instance (\$9.50 / 25).</p>		

(g) Contract Services

The cost of contract services is allowable if the local agency lacks the staff resources or necessary expertise, or it is economically feasible to hire a contractor to perform the mandated activity. The claimant must give the name of the contractor; explain the reason for having to hire a contractor; describe the mandated activities performed; give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the claiming instructions for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the claiming instructions for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the claiming instructions specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the claiming instructions may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation,

number of private auto mileage traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits derived by the mandate.

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES					FORM FAM-29C	
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		\$24,201,764	\$1,576,523	\$22,625,241	\$0	\$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES					FORM FAM-29C	
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Extended Opportunity Programs & Services	6430					
Health Services	6440	0	0	0	0	0
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735
Job Placement Services	6470	83,663	0	83,663	0	83,663
Veterans Services	6480	25,427	0	25,427	0	25,427
Miscellaneous Student Services	6490	0	0	0	0	0
Operation & Maintenance of Plant	6500					
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	0	1,035,221
Custodial Services	6530	1,227,668	33,677	1,193,991	0	1,193,991
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	0	525,450
Utilities	6570	1,236,305	0	1,236,305	0	1,236,305
Other	6590	3,454	3,454	0	0	0
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0
General Inst. Support Services	6700					
Community Relations	6710	0	0	0	0	0
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151
Human Resources Management	6730					
Noninstructional Staff Benefits & Incentives	6740					
Staff Development	6750					
Staff Diversity	6760					
Logistical Services	6770					
Management Information Systems	6780					
Subtotal		\$30,357,605	\$1,801,898	\$28,555,707	\$1,118,550	\$27,437,157

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
General Inst. Sup. Serv. (cont.)	6700					
Other General Institutional Support Services	6790					
Community Services	6800					
Community Recreation	6810	703,858	20,509	683,349	0	683,349
Community Service Classes	6820	423,188	24,826	398,362	0	398,362
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781
Economic Development	6840					
Other Community Svcs. & Economic Development	6890					
Ancillary Services	6900					
Bookstores	6910	0	0	0	0	0
Child Development Center	6920	89,051	1,206	87,845	0	87,845
Farm Operations	6930	0	0	0	0	0
Food Services	6940	0	0	0	0	0
Parking	6950	420,274	6,857	413,417	0	413,417
Student Activities	6960	0	0	0	0	0
Student Housing	6970	0	0	0	0	0
Other	6990	0	0	0	0	0
Auxiliary Operations	7000					
Auxiliary Classes	7010	1,124,557	12,401	1,112,156	0	1,112,156
Other Auxiliary Operations	7090	0	0	0	0	0
Physical Property Acquisitions	7100	814,318	814,318	0	0	0
(05) Total		\$34,022,728	\$2,692,111	\$31,330,617	\$1,118,550	\$30,212,067
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				3,70233%		
(07) Notes						
(a) Mandated Cost activities designated as direct costs per claim instructions.						

9. Offset Against Mandated Claims

As noted previously, allowable costs are defined as those direct and indirect costs, less applicable credits, considered to be eligible for reimbursement. When all or part of the costs of a mandated program are specifically reimbursable from local assistance revenue sources (e.g., state, federal, foundation, etc.), only that portion of any increased costs payable from school district funds is eligible for reimbursement under the provisions of GC Section 17561.

Example 1:

As illustrated in Table 5, this example shows how the "Offset against State Mandated Claims" is determined for school districts receiving block grant revenues not based on a formula allocation. Program costs for each of the situations equals \$100,000.

Table 5 Offset Against State Mandates, Example 1

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	\$100,000	\$95,000	\$2,500	\$-0-	\$2,500
2.	100,000	97,000	2,500	-0-	2,500
3.	100,000	98,000	2,500	500	2,000
4.	100,000	100,000	2,500	2,500	-0-
5.	100,000 *	50,000	2,500	1,250	1,250
6.	100,000 *	49,000	2,500	250	2,250

* School district share is \$50,000 of the program cost.

Numbers (1) through (4), in Table 5, show intended funding at 100% from local assistance revenue sources. Numbers (5) and (6) show cost sharing on a 50/50 basis with the district. In numbers (1) through (6), included in the program costs of \$100,000 are state mandated costs of \$2,500. The offset against state mandated claims is the amount of actual local assistance revenues which exceeds the difference between program costs and state mandated costs. This offset cannot exceed the amount of state mandated costs.

In (1), local assistance revenues were less than expected. Local assistance funding was not in excess of the difference between program costs and state mandated costs. As a result, the offset against state mandated claims is zero and \$2,500 is claimable as mandated costs.

In (4), local assistance revenues were fully realized to cover the entire cost of the program, including the state mandate activity; therefore, the offset against state mandated claims is \$2,500, and claimable costs are \$0.

In (5), the district is sharing 50% of the project cost. Since local assistance revenues of \$50,000 were fully realized, the offset against state mandated claims is \$1,250.

In (6), local assistance revenues were less than the amount expended and the offset against state mandated claims is \$250. Therefore, the claimable mandated costs are \$2,250.

Example 2:

As illustrated in Table 6, this example shows how the offset against state mandated claims is determined for school districts receiving special project funds based on approved actual costs. Local assistance revenues for special projects must be applied proportionately to approved costs.

Table 6 Offset Against State Mandates, Example 2

	Program Costs	Actual Local Assistance Revenues	State Mandated Costs	Offset Against State Mandated Claims	Claimable Mandated Costs
1.	\$100,000	\$100,000	\$2,500	\$2,500	\$-0-
2.	100,000 **	75,000	2,500	1,875	625
3.	100,000 **	45,000	1,500	1,125	375

** School district share is \$25,000 of the program cost.

In (2), the entire program cost was approved. Since the local assistance revenue source covers 75% of the program cost, it also proportionately covered 75% of the \$2,500 state mandated costs, or \$1,875.

If in (3) local assistance revenues are less than the amount expected because only \$60,000 of the \$100,000 program costs were determined to be valid by the contracting agency, then a proportionate share of state mandated costs is likewise reduced to \$1,500. The offset against state mandated claims is \$1,125. Therefore, the claimable mandated costs are \$375.

Federal and State Funding Sources

The listing in Appendix C is not inclusive of all funding sources that should be offset against mandated claims but contains some of the more common ones. State school fund apportionments and federal aid for education, which are based on average daily attendance and are part of the general system of financing public schools as well as block grants which do not provide for specific reimbursement of costs (i.e., allocation formulas not tied to expenditures), should not be included as reimbursements from local assistance revenue sources.

Governing Authority

The costs of salaries and expenses of the governing authority, such as the school superintendent and governing board, are not reimbursable. These are costs of general government as described in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments".

10. Notice of Claim Adjustment

All claims submitted to the SCO are reviewed to determine if the claim was prepared in accordance with the claiming instructions. If any adjustments are made to a claim, the claimant will receive a "Notice of Claim Adjustments" detailing adjustments made by the SCO.

11. Audit of Costs

All claims submitted to the State Controller's Office (SCO) are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the Parameters and Guidelines (P's & G's) adopted by the Commission on State Mandates (COSM). If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to Government Code (GC) Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, must be

retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of three years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for three years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

12. Source Documents

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge." Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

13. Claim Forms and Instructions

A claimant may submit a computer generated report in substitution for Form-1 and Form-2, provided the format of the report and data fields contained within the report are identical to the claim forms included with these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file an estimated or reimbursement claim. The SCO will revise the manual and claim forms as necessary.

A. Form-2, Component/Activity Cost Detail

This form is used to segregate the detail costs by claim component. In some mandates, specific reimbursable activities have been identified for each component. The expenses reported on this form must be supported by the official financial records of the claimant and copies of supporting documentation, as specified in the claiming instructions, must be submitted with the claims. All supporting documents must be retained for a period of not less than three years after the reimbursement claim was filed or last amended.

B. Form-1, Claim Summary

This form is used to summarize direct costs by component and compute allowable indirect costs for the mandate. The direct costs summarized on this form are derived from Form-2 and are carried forward to form FAM-27.

Community colleges have the option of using a federally approved rate (i.e., utilizing the cost accounting principles from the Office of Management and Budget Circular A-21) or form FAM-29C.

C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized officer of the county. All applicable information from Form-1 must be carried forward onto this form in order for the SCO to process the claim for payment. An original and one copy of the FAM-27 is required.

Claims should be rounded to the nearest dollar. Submit a signed original and one copy of form FAM-27, Claim for Payment, and all other forms and supporting documents (**To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.**) Use the following mailing addresses:

If delivered by
U.S. Postal Service:

If delivered by
Other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

14. RETENTION OF CLAIMING INSTRUCTIONS

For your convenience, the revised claiming instructions in this package have been arranged in alphabetical order by program name. These revisions should be inserted in the School Mandated Cost Manual and the old forms they replace should be removed. The instructions should then be retained permanently for future reference, and the forms should be duplicated to meet your filing requirements. Annually, updated forms and any other information or instructions claimants may need to file claims, as well as instructions and forms for all new programs released throughout the year will be placed on the SCO's web site at www.sco.ca.gov/ard/local/locreim/index/shtml.

If you have any questions concerning mandated cost reimbursements, please write to us at the address listed for filing claims, send e-mail to lrsdar@sco.ca.gov, or call the Local Reimbursements Section at (916) 324-5729.

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the SCO's claiming instructions and the COSM's P's and G's. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Pursuant to GC Section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district is subject to audit by the State Controller no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. Therefore, all documentation to support actual costs claimed must be retained for the same period, and shall be made available to the SCO on request.

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Cases Citing This Case

San Francisco Taxpayers Assn. v. Board of Supervisors (1992) 2 Cal.4th 571, 7 Cal.Rptr.2d 245; 828 P.2d 147

[No. S018200. May 4, 1992.]

SAN FRANCISCO TAXPAYERS ASSOCIATION, Plaintiff and Respondent, v. BOARD OF SUPERVISORS OF
THE CITY AND COUNTY OF SAN FRANCISCO, Defendant and Appellant.

(Superior Court of the City and County of San Francisco, No. 901018, Raymond J. Arata, Jr., Judge.)

(Opinion by Panelli, J., with Lucas, C. J., Arabian, Baxter and George, JJ., concurring. Separate dissenting
opinions by Mosk and Kennard, JJ.)

COUNSEL

Louise H. Renne, City Attorney, Burke E. DeLeventhal and Thomas J. Owen, Deputy City Attorneys, for
Defendant and Appellant.

Ronald A. Zumbrun, Anthony T. Caso and Jonathan M. Coupal for Plaintiff and Respondent.

OPINION

PANELLI, J.

California's voters, by adopting Proposition 4, placed a constitutional spending limit on appropriations by the state and local governments. (See Cal. Const., art. XIII B, § 1, added by initiative measure in **[2 Cal.4th 574]** Special Statewide Elec. (Nov. 6, 1979).) The measure sets out, for the purpose of calculating each governmental entity's spending limit, those categories of appropriations that are and are not subject to limitation. We granted review to decide which of the measure's provisions determines the treatment of a city's contributions to employee retirement funds that were established before Proposition 4 took effect. Section 5 fn. 1 provides that appropriations to "retirement" funds are "subject to limitation." Section 9 provides that appropriations for "debt service" are not. In accordance with the plain language of section 5, the more specific provision, we hold that retirement contributions are subject to limitation.

Background

The electorate approved Proposition 4 in 1979, thus adding article XIII B to the state Constitution. While the earlier Proposition 13 limited the state and local governments' power to increase taxes (see Cal. Const., art. XIII A, added by initiative measure in Primary Elec. (June 6, 1978)), Proposition 4, the so-called "Spirit of 13," imposed a complementary limit on the rate of growth in governmental spending. Article XIII B operates by subjecting each state and local governmental entity's appropriations to a limit equal to the entity's appropriations in the prior year, adjusted for changes in population and the cost of living. (§§ 1, 8, subs. (e), (f).)

Not all appropriations are subject to the constitutional spending limit. In general, "[a]ppropriations subject to limitation" include "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity and the proceeds of state subventions to that entity" (§ 8, subd. (b) [applicable to local governments].) However, the voters specifically excluded some categories of appropriations from the spending limit. Section 9, for example, permits appropriations beyond the limit for "[d]ebt service" and to "comply[] with mandates of the courts or the federal government" (§ 9, subs. (a), (b).) Conversely, the voters specifically determined that the spending limit would apply to other types of appropriations. The provision at issue in this case, section 5, declares that contributions to a "retirement" fund are "subject to limitation."

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Article XIII B took effect during the 1980-1981 fiscal year. Pursuant to its provisions, defendant and appellant Board of Supervisors (Board) of the City [2 Cal.4th 575] and County of San Francisco (City) established an appropriations limit that included the City's contributions to retirement funds. The Board continued to treat such contributions as subject to the spending limit for six consecutive fiscal years.

The Board changed its historical position in 1986. That year, the City Attorney advised the Board that appropriations for certain "mandatory employee benefits," including retirement contributions, were exempt from the spending limit as "debt service" under section 9. fn. 2 Adopting that position, the Board revised the City's base-year spending limit by subtracting \$59,388,698, which represented the amount of the City's appropriations for such benefits in the year the voters approved Proposition 4. The Board derived the 1986-1987 spending limit by adjusting the revised base-year limit to reflect intervening increases in population and the cost of living. (See § 1.) Each subsequent fiscal year's spending limit has excluded retirement contributions.

In September 1987, a decision of the Court of Appeal cast doubt on the City Attorney's interpretation of article XIII B. The County of Santa Barbara, like the City of San Francisco, had decided several years after Proposition 4 to exclude retirement contributions from its spending limit as "debt service." The Second District Court of Appeal rejected the county's position, holding that "the plain language of section 5 requires the inclusion of such contributions as appropriations subject to the appropriations limit" and that the more specific language of section 5 takes precedence over section 9, the more general provision governing debt service. (Santa Barbara County Taxpayers Assn. v. County of Santa Barbara (1987) 194 Cal.App.3d 674, 678 [239 Cal.Rptr. 769] [hereafter Santa Barbara Taxpayers].) We denied a petition for review in that case on November 18, 1987.

In calculating the City's spending limit for the 1988-1989 fiscal year, the Board recognized that its exclusion of retirement contributions was inconsistent with the Santa Barbara Taxpayers decision. Even without the benefit of the exclusion, the City's projected "appropriations subject to limitation" did not exceed its annual spending limit. However, based on the City Attorney's advice that the Court of Appeal's opinion was "wrongly decided" the Board determined to continue to exclude retirement contributions. [2 Cal.4th 576]

The consequence of the Board's decision was to increase by \$40,336,171 the total amount (\$97,640,070) by which the City's spending limit exceeded its appropriations subject to limitation in the 1988- 1989 fiscal year. fn. 3 However, based on the City Attorney's opinion that the decision would "entail time consuming and difficult litigation," the City Controller recommended that the Board not "collect or appropriate revenues based upon [the \$40 million] spread until the impact of the Santa Barbara [Taxpayers] decision on the City of San Francisco has been clarified."

In December 1988, plaintiff and respondent San Francisco Taxpayers Association (hereafter Taxpayers) initiated this action to challenge the Board's exclusion of retirement contributions from the City's spending limit. Taxpayers alleged that the Board's action violated section 5, which provides that "contributions" to "retirement" funds are "subject to limitation." Following the Second District's decision in Santa Barbara Taxpayers (supra, 194 Cal.App.3d 674), the superior court granted Taxpayers' motion for summary judgment and entered judgment against the Board. In its judgment, the court declared the Board's action invalid and ordered the Board, by injunction and writ of mandate, to revise the City's appropriations limit to include retirement contributions. On appeal, the First District declined to follow Santa Barbara Taxpayers and reversed the judgment. We granted review to resolve the conflict.

Discussion

[1a] The question before us is whether section 5 or section 9 governs the treatment of retirement contributions for the purpose of calculating the City's spending limit. Section 5 expressly provides that a governmental entity's contributions to "retirement" funds are "subject to limitation." fn. 4 [2 Cal.4th 577] Section 9, which does not mention retirement contributions, provides that appropriations for "debt service" are not subject to limitation. fn. 5

Ordinary principles of interpretation point to the conclusion that section 5, the more specific provision, governs. [2] "It is well settled ... that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." (Rose v. State of California (1942) 19 Cal.2d 713, 723-724 [123 P.2d 505].) [1b] Thus, even if we were to assume for argument's sake that the term "debt service" (§§ 8(g), 9(a)) might be broad enough to include retirement contributions, the treatment of such contributions is nevertheless governed by the voters' specific declaration that they are "subject to limitation." (§ 5.) This was the correct conclusion of the Court of Appeal in Santa Barbara Taxpayers (supra, 194 Cal.App.3d at pp. 681-682). fn. 6

The Board does not view this case as an example of a specific provision taking precedence over a general provision. Instead, the Board argues that sections 5 and 9(a) conflict and that we should "harmonize" them by giving effect to both so far as possible. (Cf. Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299]; Dyna-Med, Inc. v. Fair Employment & Housing Com. (1987) 43 Cal.3d 1379, 1387 [241 Cal.Rptr. 67, 743 P.2d 1323].) The Board would achieve harmony by distinguishing between payments required

by pension contracts, on one hand, and discretionary payments to reserve funds, on the other. As the Board would interpret the law, required payments constitute debt service while discretionary payments do not.

Two flaws render the Board's argument untenable. First, there is no conflict between sections 5 and 9(a) unless one assumes that the voters did not mean what they said in section 5—that "retirement" contributions are "subject to limitation." Read according to its plain meaning, section 5 creates an exception to section 9(a) rather than a conflict. **[2 Cal.4th 578]**

Second, the Board's argument would permit the City to evade section 5 completely, simply by satisfying its contractual obligations. According to the Board, so long as the City does not employ reserve funds for its own convenience its retirement contributions will never become subject to limitation. The voters could not reasonably have intended such a result, which would in effect nullify their express declaration that retirement contributions are subject to limitation. Such an interpretation is obviously to be avoided. (See, e.g., *Lungren v. Deuknejian*, supra, 45 Cal.3d at p. 735; *People v. Craft* (1986) 41 Cal.3d 554, 561 [224 Cal.Rptr. 626, 715 P.2d 585].) In contrast, to give full effect to section 5 does not nullify section 9(a), which continues to apply to a wide variety of other obligations.

The Board offers several additional arguments against this conclusion. None is persuasive.

First, the Board argues that retirement contributions must be treated as debt service in order to achieve consistency with article XIII A. Article XIII A limits the maximum rate of ad valorem taxes on real property but permits taxes in excess of that rate to repay certain voter-approved indebtedness. fn. 7 In *Carman v. Alvord* (1982) 31 Cal.3d 318, 324-333 [182 Cal.Rptr. 506, 644 P.2d 192] (*Carman*), we held that article XIII A's exemption for "indebtedness" was broad enough to include a city's retirement obligations. Thus, a city may levy taxes in excess of the maximum rate to satisfy such obligations. (*Ibid.*)

Because articles XIII A and XIII B address the treatment of indebtedness in similar language, the Board argues that retirement contributions cannot be debt service under the former (see *Carman*, supra, 31 Cal.3d 318) but not under the latter. The argument, however, ignores both the reasoning of *Carman* and the language of article XIII B. Our conclusion in *Carman* that retirement obligations constituted "indebtedness" was expressly based on article XIII A's failure to articulate a distinction for retirement contributions. (*Carman*, supra, 31 Cal.3d at p. 330.) In contrast, article XIII B does articulate a distinction between retirement contributions and other obligations. (§ 5.) Article XIII B also provides that its definition of "debt service" applies only in the context of that article and is subject to exceptions as "expressly provided" therein. (§ 8.) As already discussed, the specific provision governing retirement contributions (§ 5) must be viewed as an **[2 Cal.4th 579]** exception to the more general provisions governing debt service (§§ 8(g), 9(a)).

The Board's argument for "consistent" interpretations of articles XIII A and XIII B is not based solely on similarities in language. It would also be "meaningless," according to the Board, to permit the City to raise taxes to satisfy retirement obligations while denying it the power to spend the resulting revenues. However, the argument misconceives the purpose of subjecting retirement contributions to the overall spending limit. The purpose is not to prevent the City from satisfying its contractual obligations but simply to control the overall rate of growth in appropriations, if necessary by reducing other spending. Indeed, each year's spending limit reflects the fact that the City made retirement contributions in the prior year and the assumption that it will continue to do so. (See §§ 1, 5.) In contrast, to exclude a category of appropriations from the spending limit would in effect remove that category from the budget, permitting both it and overall spending to increase faster than the rate that the voters adopted as the measure of acceptable growth. (§ 1.)

The relationship between the *Carman* rule and the treatment of retirement contributions under article XIII B must be understood in this light. *Carman* permits the City to pass through directly to the voters the cost of any retirement contributions, regardless of the maximum tax rate set out in article XIII A. Unless such contributions are subject to the spending limit set out in article XIII B, as the voters expressly provided (§ 5), one of the largest categories of local governmental spending fn. 8 would be completely insulated from fiscal control. The result would be a material impairment of article XIII B's effectiveness in limiting the overall growth of appropriations.

The Board finds support for its contrary interpretation of article XIII B in a remark by the Legislative Analyst. In his report on the proposed measure, the Legislative Analyst concluded that "a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal 'indebtedness' under this ballot measure." (*Ballot Pamp., Special Statewide Elec.* (Nov. 6, 1979) p. 20.) [3a] In this case, as always, we consider the Legislative Analyst's views because we assume the voters considered them along with the other materials in the ballot pamphlet. (See, e.g., *Raven v. Deuknejian* (1990) 52 Cal.3d 336, 349 [276 Cal.Rptr. 326, 801 P.2d 1077].) **[2 Cal.4th 580]**

Nevertheless, a nonjudicial interpretation of the Constitution is entitled only to as much deference as its logic and persuasiveness demand. [1c] In this case, the Legislative Analyst's views are not persuasive because there is no indication that they take into account the most directly relevant provision, section 5.

[3b] The Legislative Analyst's comment regarding the treatment of retirement contributions is based on a memorandum to him from the Legislative Counsel dated June 15, 1979. In the memorandum, the Legislative Counsel concludes that "any legally binding obligation existing or legally authorized as of January 1, 1979, would be considered as 'indebtedness' for purposes of subdivision (g) of Section 8" and that "such a legally binding obligation would include the unfunded liability of a public employee retirement system." However, the memorandum does not mention or consider the effect of section 5, which expressly contradicts the memorandum's conclusion. In the Ballot Pamphlet, the Legislative Analyst merely repeated the Legislative Counsel's conclusion, again without any consideration of section 5.

The Legislative Analyst's comments, like other materials presented to the voters, "may be helpful but are not conclusive in determining the probable meaning of initiative language." (Carman, *supra*, 31 Cal.3d at p. 330.) Thus, when other statements in the election materials contradict the Legislative Analyst's comments we do not automatically assume that the latter accurately reflects the voters' understanding. (*Id.*, at pp. 330-331.) In Carman, for example, the official title and summary of Proposition 13 led us to reject the Legislative Analyst's conclusion that the measure's exemption from the maximum tax rate for voter-approved indebtedness applied only to bonded debt. (*Ibid.*) [1d] The case for rejecting the Legislative Analyst's views is even more compelling here, where the contradiction is in the language of the initiative. (§ 5.) Under circumstances such as these, to prefer an "extrinsic source" over "a clear statement in the Constitution itself" would be "a strained approach to constitutional analysis." (Cf. *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 802-803 [268 Cal.Rptr. 753, 789 P.2d 934] [rejecting, as contrary to the language of the proposed measure, the Legislative Analyst's inference that the newsperson's shield law would apply only to confidential information].)

[4a] The Board's final argument for interpreting article XIII B to exclude retirement contributions is that such an interpretation will "eliminate doubts" as to the measure's constitutionality. According to the Board, to restrict the City's spending power impairs the security of its pension obligations and, thus, constitutes a "potential" violation of the contract clause of **[2 Cal.4th 581]** the federal Constitution. *fn. 9* The Board expressly disclaims any intent to assert a cause of action or to raise an affirmative defense under the clause. "Rather," to quote the Board's brief, "the City has raised the potential impairment of contracts to explain and support its choice among competing interpretations of Article XIII B."

Taxpayers contend that the Board lacks standing to make the constitutional argument for two reasons. First, as a creation of the state, the City may not invoke the contract clause "in opposition to the will of [its] creator." (*Coleman v. Miller* (1939) 307 U.S. 433, 441 [83 L.Ed. 1385, 1390, 59 S.Ct. 972, 122 A.L.R. 695]; see also *Williams v. Mayor* (1933) 289 U.S. 36, 40 [77 L.Ed. 1015, 1020, 53 S.Ct. 431]; *State of California v. Marin Mun. W. Dist.* (1941) 17 Cal.2d 699, 705 [111 P.2d 651]; *Cox Cable San Diego, Inc. v. City of San Diego* (1987) 188 Cal.App.3d 952, 967 [233 Cal.Rptr. 735].) Second, any impairment of the City's retirement obligations would cause actual harm only to those persons entitled to receive retirement benefits. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 242 [149 Cal.Rptr. 239, 583 P.2d 1281] [in dictum].)

These arguments about the Board's standing are irrelevant because the Board is not challenging article XIII B's validity under the contract clause. Instead, we are called upon to decide what the article means. [5] In doing so, we assume that the voters intended the measure to be valid and construe it to avoid "serious" doubts as to its constitutionality if that can be done "without doing violence to the reasonable meaning of the language." (*Miller v. Municipal Court* (1943) 22 Cal.2d 818, 828 [142 P.2d 297]; see also *Gollust v. Mendell* (1991) ___ U.S. ___ [115 L.Ed.2d 109, 111 S.Ct. 2173, 2181]; *Crowell v. Benson* (1932) 285 U.S. 22, 62 [76 L.Ed. 598, 619, 52 S.Ct. 285].) [4b] These well established rules provide us with ample warrant to consider the Board's argument about how the contract clause should affect our interpretation of article XIII B.

We turn, then, to the argument's merits. In essence, the Board contends that the City's power to spend is the security for its pension obligations and that any restriction of the power ipso facto reduces the value of its employees' pension rights. This reduction in value, according to the Board, constitutes a "potential" impairment of the City's contractual obligations.

To establish this point on summary judgment, the Board submitted declarations in which experts applied techniques of financial analysis to predict **[2 Cal.4th 582]** the effect of a spending limit on the hypothetical market value of an employee's interest in retirement benefits. The trial court sustained objections to these declarations on relevance grounds. Even without such declarations, however, we may assume for argument's sake, as do the parties, that a spending limit has at least a theoretical effect on the security of the City's retirement obligations. In the Board's view, "an impairment occurs when the State changes the law so as to erode the ability of the City to perform, whether a breach necessarily follows or not." *fn. 10*

The Board relies, by analogy, on cases in which the high court refused to enforce state laws that purported to disable cities from levying taxes to repay municipal bonds. (See, e.g., *Wolff v. New Orleans* (1881) 103 U.S. 358, 365-369 [26 L.Ed. 395, 398-399]; *Von Hoffman v. City of Quincy* (1867) 71 U.S. 535, 554-555 [18 L.Ed. 403, 410].) These cases stand for the proposition that a state may not authorize a city to contract and then restrict its taxing power so that it cannot fulfill its obligations. *fn. 11* (*Wolff v. New Orleans*, *supra*, 103 U.S. at pp. 367-369 [26 L.Ed. at pp. 399-400]; *Von Hoffman v. City of Quincy*, *supra*, 71 U.S. at pp. 554-555 [18 L.Ed. at p.

410]; cf. *United States Trust Co. v. New Jersey* (1977) 431 U.S. 1, 24, fn. 22 [52 L.Ed.2d 92, 111, 97 S.Ct. 1505].) Underlying such decisions, at least implicitly, is the idea that "[t]he principal asset of a municipality is its taxing power" and that "[a]n unsecured municipal security is therefore merely a draft on the good faith of a municipality in exercising its taxing power." (*Faitoute Co. v. Asbury Park* (1942) 316 U.S. 502, 509 [86 L.Ed. 1629, 1635, 62 S.Ct. 1129]; cf. *Von Hoffman v. City of Quincy*, supra, 71 U.S. at p. 555 [18 L.Ed. at p. 410].)

By analogy to these cases, the Board argues that the contract clause would also invalidate a state law purporting to disable a municipality from spending money to satisfy its contractual obligations. While there is support for the proposition, the relevant cases involve statutes specifically enacted for the purpose of repudiating particular contractual duties rather than laws imposing budgetary restrictions. In *United States Trust Co. v. New Jersey* (supra, 431 U.S. 1, 17-28 [52 L.Ed.2d 92, 106-113]) the high court declared unenforceable a statute intended to abrogate a port authority's express covenant to its bondholders not to make unauthorized expenditures out of revenues designated for repayment of the bonds. Similarly, in *Valdes v. Cory* ((1983) 139 Cal.App.3d 773, 789-791 [189 Cal.Rptr. 212]), the Court of Appeal ordered the state Controller and other public employers to make [2 Cal.4th 583] periodic payments to the Public Employees' Retirement Fund despite legislation intended to abrogate the underlying contractual and statutory duties.

Unlike the laws at issue in the cited cases, article XIII B does not repudiate, or even modify, any contractual right or obligation. fn. 12 Article XIII B can more accurately be said to bring retirement obligations under the umbrella of an overall spending limit, but even this limited statement is an oversimplification. In fact, other provisions of the law provide substantial protection for retirement obligations, even in the face of budgetary competition. Specifically, the City has mandatory duties to make periodic payments to its retirement funds in amounts sufficient to keep the funds actuarially sound (Gov. Code, §§ 20741 et seq. [contributions to Public Employees' Retirement Fund], 45341 et seq. [contributions to single-employer plans]; see generally *Valdes v. Cory*, supra, 139 Cal.App.3d 773); and article XIII A permits the City to recover the cost of such contributions without regard to the constitutional maximum tax rate. (See *Carman*, supra, 31 Cal.3d 318.)

Nor does article XIII B provide a strong incentive for a governmental entity to attempt to avoid its retirement obligations. This is because each year's spending limit reflects the prior year's retirement contributions and other appropriations, adjusted to account for the change in population and the cost of living. fn. 13 (§§ 1, 5.) Thus, the City's high retirement costs in the base year have been reflected in subsequent years by higher and higher adjusted spending limits. Under section 11, this court's determination that retirement contributions are subject to limitation will entail a corresponding increase in the City's base-year and current spending limits. Moreover, if the voters wish to increase discretionary spending in other areas they may do so by the vote of a simple majority. (§ 4.) We note that as of March 1990, voters in 117 jurisdictions had considered proposals to increase spending limits to permit the appropriation of revenues already collected. Of these proposals, 106 were approved. (Cal. Leg., 1990 Revenue and Taxation Reference Book, at p. 196 (1990).)

While it can be argued that any budget entails a theoretical reduction in the security of the budgeted obligations, more is required to establish a serious doubt as to a law's validity under the contract clause. Particularly in [2 Cal.4th 584] this area, "[t]he Constitution is 'intended to preserve practical and substantial rights, not to maintain theories' [citation]." (*City of El Paso v. Simmons* (1965) 379 U.S. 497, 515 [13 L.Ed.2d 446, 458, 85 S.Ct. 577], quoting *Faitoute Co. v. City of Asbury Park*, supra, 316 U.S. at p. 514 [86 L.Ed. at p. 1637].) While the contract clause "appears literally to proscribe 'any' impairment ... 'the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.'" (*United States Trust Co. v. New Jersey*, supra, 431 U.S. at p. 21 [52 L.Ed. 2d at p. 109], quoting *Home Building & Loan Assn. v. Blaisdell* (1934) 290 U.S. 398, 428 [78 L.Ed. 413, 423, 54 S.Ct. 231, 88 A.L.R. 1481].)

The threshold inquiry under the contract clause is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." (*Allied Structural Steel Co. v. Spannaus* (1978) 438 U.S. 234, 244 [57 L.Ed.2d 727, 736, 98 S.Ct. 2716].) Viewing article XIII B with reference to the whole system of law of which it is a part (cf. *Bowland v. Municipal Court* (1976) 18 Cal.3d 479, 489 [134 Cal.Rptr. 630, 556 P.2d 1081]), it cannot fairly be said that article XIII B has operated as a substantial impairment. Its effect, rather, has been to require governmental entities to reduce the overall growth in appropriations by reducing expenditures not required by law, except where the voters have chosen to increase the spending limit. A governmental entity that decided to make discretionary appropriations in other areas rather than legally required contributions to retirement funds might well thereby violate the contract clause (*Valdes v. Cory*, supra, 139 Cal.App.3d 773), but it would not be acting under the aegis or compulsion of article XIII B.

While we must construe a provision to avoid serious doubts as to its constitutionality, the "avoidance of a difficulty will not be pressed to the point of disingenuous evasion." (*Moore Ice Cream Co. v. Rose* (1933) 289 U.S. 373, 379 [77 L.Ed. 1265, 1270, 53 S.Ct. 620].) The manifest purpose of Proposition 4 was to limit the overall growth of governmental appropriations. To remove from the spending limit such a large category of appropriations as retirement contributions would do violence to that goal. Under these circumstances, the Board's constitutional arguments do not justify a departure from the plain statement that contributions to retirement funds are subject to limitation.

The decision of the Court of Appeal is reversed.

Lucas, C. J., Arabian, J., Baxter, J., and George, J., concurred. [2 Cal.4th 585]

MOSK, J.

I dissent. The majority's holding that retirement contributions are subject to the limitation of section 1 of article XIII B of the California Constitution is based entirely on a literal reading of the language of section 5 of article XIII B (hereafter section 5) and the rule of statutory construction that a specific provision relating to a particular subject will govern over a more general provision relating to the same subject. That is, even though retirement contributions may be classified as an indebtedness under subdivision (a) of section 9 of article XIII B (hereafter section 9(a)), the majority conclude that section 5 must prevail because it refers specifically to contributions to retirement funds. In the view of the majority, the section 5 inclusion of retirement fund contributions is an exception to the general provision of section 9(a).

This holding is not only in violation of well-established rules of statutory construction, but is contrary to the intent of the voters in adopting article XIII B of the state Constitution (hereafter article XIII B). It is clear from the legislative history of that provision that the voters intended to exclude retirement contributions as an indebtedness under section 9(a). They were specifically told in the ballot pamphlet analysis by the Legislative Analyst that the government's liability to make payments into a retirement fund was an "indebtedness" under article XIII B. This statement is a persuasive indication of the intent of the voters since, as the majority recognize, it must be assumed that they considered it in voting on the measure.

The majority reject the conclusion that logically follows from the Legislative Analyst's statement. They cast doubt on its correctness because it is a "nonjudicial interpretation" of the language of article XIII B. But this may be said of any statement in the ballot pamphlet. In attempting to discern the intent of the voters, the legal persuasiveness of the analysis is not the standard; the purpose of consulting the ballot pamphlet is to determine what the voters intended, assuming, as we must, that they considered the statements made therein. The majority find the Legislative Analyst's conclusion to be unpersuasive because "there is no indication" that he considered the language of section 5 in making his analysis. But there is no reason to suppose that he informed the voters that pension contributions are an indebtedness under article XIII B without considering the other provisions of the article, including section 5. The issue is not whether he was correct in his analysis of the measure in the hindsight of a court considering the issue more than a decade after it was adopted, but the understanding of the voters as to the meaning of these provisions.

Another reason given by the majority for rejecting the Legislative Analyst's conclusion is that it contradicts section 5. But this is circular reasoning, for it assumes the answer to the question at issue. The problem posed by [2 Cal.4th 586] this case is whether pension contributions are excluded from the spending limitation as an indebtedness under section 9(a), or whether they are included in view of the language of section 5. To conclude, as do the majority, that contributions are not an indebtedness because such a determination would be contrary to the meaning of section 5, presupposes that section 5 prevails over section 9(a). That, of course, is the very issue under consideration.

In sum, there is no escaping the fact that the voters were expressly told by the Legislative Analyst that pension contributions were exempt from the spending limitation under article XIII B. The majority, instead of accepting the fact that this was the voters' understanding and attempting to harmonize sections 5 and 9(a) in accordance with that understanding, hold that section 5 dominates, thereby disregarding the intent of the electorate.

The result reached by the majority is particularly inappropriate in the present case because sections 5 and 9(a) may be harmonized so as to give effect to both provisions. The majority disregard a rule of construction critical in the present context, i.e., that a court must attempt to reconcile provisions relating to the same subject matter to the extent possible, so as to avoid substantially nullifying the effect of any part of an enactment. (Lungren v. Deukmejian (1988) 45 Cal.3d 727, 735 [248 Cal.Rptr. 115, 755 P.2d 299]; County of Los Angeles v. State of California (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202]; People v. Craft (1986) 41 Cal.3d 554, 560 [224 Cal.Rptr. 626, 715 P.2d 585].) The holding that section 5 is an exception to section 9(a) results in practically nullifying the effect of the latter provision. According to the majority's own analysis, retirement contributions constitute "one of the largest categories of local governmental spending." Such contributions are undoubtedly indebtedness of the city, a proposition the majority accept, at least for the sake of argument. To assume that the electorate chose in section 9(a) to except all indebtedness existing on January 1, 1979, from the spending limitation, *in* 1 but not to include within such indebtedness "one of the largest categories of governmental spending," results in a significant abrogation of section 9(a).

This consequence is particularly unwarranted in the present case because sections 5 and 9(a) may be reconciled so as to give effect to both provisions. That is, section 5 may be construed as referring to pension funds established [2 Cal.4th 587] after January 1, 1979. Section 9(a), on the other hand, applies to funds established prior to that date to fulfill the city's obligations to meet an "indebtedness." This construction is consistent with both the language of section 5-it provides that a government entity "may establish" such funds

as it "shall deem reasonable and proper," implying establishment of funds at a future time-and the general rule that constitutional provisions are applied prospectively. (In re Marriage of Bouquet (1976) 16 Cal.3d 583, 587 [128 Cal.Rptr. 427, 546 P.2d 1371]; Mannheim v. Superior Court (1970) 3 Cal.3d 678, 686 [91 Cal.Rptr. 585, 478 P.2d 17].)

The majority reject an alternate means offered by the Board of Supervisors for the City and County of San Francisco (board) to harmonize the two sections. The board asserts that if the government is required by contract to satisfy its obligation to pay pensions by making appropriations to a fund for that purpose, this constitutes a debt, not subject to the spending limitation under section 9(a). But if no such contractual requirement exists, and the government chooses as a matter of discretion to establish a pension fund as a means of accruing a reserve for the payment of pensions, then this is not an indebtedness, and the contributions to such a fund would be subject to the limitation.

The majority respond to this suggested means of harmonizing the two sections by asserting that section 5 creates an exception to section 9(a), and therefore there is no reason to attempt to harmonize the two sections. As discussed above, however, the view that section 5 is an exception to section 9(a) is untenable because it results in practically negating the effect of the latter provision.

The second answer to the board's theory offered by the majority is that the city could evade section 5 by "satisfying its contractual obligations." But this is exactly what section 9(a) requires, if such obligations are indebtedness incurred before January 1, 1979. Contrary to the majority, the board's suggestion would not nullify the express declaration in section 5 that retirement contributions are subject to limitation, for contributions to a pension fund not required to be established by contract would be included in the limitation.

Finally, in my view Carman v. Alvord (1982) 31 Cal.3d 318 [182 Cal.Rptr. 506, 644 P.2d 192] (Carman), supports the conclusion that retirement contributions are an indebtedness under section 9(a). Carman involved the construction of article XIII A of the California Constitution (hereafter article XIII A). Subdivision (b) of section 1 of article XIII A (hereafter subdivision [2 Cal.4th 588] (b)) exempts from the 1 percent limit on ad valorem taxes on real property imposed by section 1, subdivision (a) of the article "taxes to pay the interest and redemption charges on ... any indebtedness approved by the voters prior to January 1, 1978" The voters of the City of San Gabriel had, many years prior to 1978, approved a measure authorizing the city to levy a tax to fund the city's employee retirement system. After article XIII A became effective, the city levied a special tax for that purpose. The plaintiff filed an action alleging that the tax was unconstitutional because it exceeded the 1 percent limit on ad valorem real property taxes.

We held that an employer's duty to pay pensions promised and earned on terms substantially equivalent to those offered when the employee entered public service was a vested contractual right. Our opinion reasoned that the term "any indebtedness," as used in subdivision (b), includes obligations arising out of a city's pension plan, and the term "interest and redemption charges" refers to "the sums ... necessary to avoid default on obligations to pay money, including those for pensions." (Carman, supra, 31 Cal.3d at p. 328; accord, City of Fresno v. Superior Court (1984) 156 Cal.App.3d 1137, 1145-1146 [202 Cal.Rptr. 313]; City of Watsonville v. Merrill (1982) 137 Cal.App.3d 185, 193 [186 Cal.Rptr. 857].)

The language of subdivision (b) is similar to that of sections 9(a) and 8(g) of article XIII B. Unless there is some persuasive reason to interpret the provisions in the two articles differently, they should be construed as having the same meaning. Nevertheless the majority assert that the term "indebtedness" has a different meaning in the two provisions because article XIII A does not have a provision similar to section 5, making contributions to retirement funds subject to the spending limitation.

But the majority fail to point to any substantive difference in a city's obligations under article XIII A and article XIII B which would justify the conclusion that the duty to pay pensions or to fund a pension system for that purpose constitutes an "indebtedness" under one but not the other. Even if the meaning of the term "indebtedness" may vary, depending on the context in which it is used, the meaning attributed to it must relate to the nature of the obligation involved. Carman points out that the term "indebtedness" encompasses "obligations which are yet to become due as [well as] those which are already matured" (31 Cal.3d at p. 327), and in support of its conclusion it relies on a case holding that the term "indebtedness" means "a complete and absolute liability to the extent that payment must ultimately be made" (County of Shasta v. County of Trinity (1980) 106 Cal.App.3d 30, 38 [165 Cal.Rptr. 18].) There can be no question that the obligation to [2 Cal.4th 589] pay pensions comes within these definitions. It is, therefore, an indebtedness, and is exempt from the spending limitation.

Moreover, as the Court of Appeal noted, articles XIII A and XIII B "are complementary fiscal measures designed to limit the government's ability to raise and spend tax revenues." This view is subscribed to by this court. (City of Sacramento v. State of California (1990) 50 Cal.3d 51, 59, fn. 1 [266 Cal.Rptr. 139, 785 P.2d 522].) Since, as we held in Carman, a government entity may impose a tax to fund pension payments without regard to the tax limitation of article XIII A, it is anomalous to hold, as do the majority, that the voters intended to prohibit the use of the funds generated for this purpose without a compensating reduction in other government expenditures.

I would affirm the judgment of the Court of Appeal.

KENNARD, J.

I dissent. Article XIII B of the California Constitution (hereafter article XIII B) limits state and local governments' ability to spend tax revenues. In general, a public entity can spend no more than it spent the year before, adjusted for changes in population and the cost of living. This limitation does not apply to all government spending, but only to spending falling within the constitutional definition of "appropriations subject to limitation." (Art. XIII B, § 1.) The majority holds that all contributions that a public entity makes to a retirement fund for its employees are "appropriations subject to limitation" and therefore subject to the article XIII B limit. This holding is based on a superficial analysis of the relevant constitutional provisions. A more complete analysis reveals that contributions to employee retirement funds are exempt from the article XIII B limit when the public entity makes them under an obligation that existed on January 1, 1979.

A provision of article XIII B exempts all "debt service" appropriations from the spending limit. (Art. XIII B, § 9, subd. (a).) In this context, "debt service" is defined as "appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose." (Id., § 8, subd. (g).)

A public entity's mandatory contributions to an employee retirement fund constitute debt service. This court so held in *Carman v. Alvord* (1982) 31 Cal.3d 318, 327-328 [182 Cal.Rptr. 506, 644 P.2d 192]. Although in that case we construed a provision of article XIII A of the California Constitution, rather than the "debt service" provisions of article XIII B, these two articles [2 Cal.4th 590] are closely related and the language of the relevant provisions is virtually identical. fn. 1 There is no sound reason to conclude that the electorate intended to give the same words different meanings in these related and complementary parts of the state Constitution. Accordingly, mandatory contributions to an employee retirement fund are exempt from the article XIII B spending limit as "debt service" if the contributions are made under an obligation existing on January 1, 1979.

The conclusion that mandatory payments to pre-1979 retirement funds are exempt as debt service is fortified by the analysis of the Legislative Analyst included in the voter pamphlet for the election at which article XIII B was enacted. In relevant part, it read: "[A] local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal 'indebtedness' under this ballot measure." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Special Statewide Elec. (Nov. 6, 1979) p. 20, italics added.) Stated more simply, payments to existing employee retirement funds will be exempt from the article XIII B spending limit as debt service. The majority concedes this is what the Legislative Analyst's words mean, but it asserts that the Legislative Analyst was mistaken. On the contrary, the Legislative Analyst's conclusion is the most reasonable interpretation of article XIII B's language. Moreover, the Legislative Analyst's words are persuasive evidence of the voters' intent in enacting article XIII B because the voters had those words before them, as part of the voters' pamphlet, when they were deciding how to vote, and none of the other statements in the pamphlet disputed this interpretation.

The majority relies on a provision of article XIII B that expressly refers to employee retirement contributions. It states: "Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of ... such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation." (Art. XIII B, § 5, italics added.)

To be sure, this provision (hereafter section 5) necessarily contemplates that some contributions to employee retirement funds are subject to the [2 Cal.4th 591] article XIII B spending limit. But the majority reads it more expansively. The majority concludes that under section 5 all contributions to employee retirement funds are subject to the article XIII B spending limit, and that the debt service provisions, to the extent they provide a basis for exempting such retirement contributions from the article XIII B spending limit, must be disregarded because they fail to mention retirement fund contributions by name. This reasoning does not withstand scrutiny.

Putting aside retirement contributions, there is a need to reconcile section 5 with article XIII B's "debt service" provisions because both refer expressly to reserve and sinking funds. Section 5 includes payments to reserve and sinking funds with retirement contributions as appropriations subject to the article XIII B spending limit, whereas the "debt service" provisions state that payments to reserve and sinking funds may qualify as debt service that is exempt from the article XIII B limit. The only way to give effect to both provisions, as required by accepted rules of statutory and constitutional construction (see, e.g., *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58 [233 Cal.Rptr. 38, 729 P.2d 202]), is to divide reserve and sinking funds into

two categories, so that some of the funds are subject to limitation under section 5 while others are exempt from limitation under the "debt service" provisions. This is easily done.

Section 5 speaks prospectively ("Each entity ... may establish such [reserve and sinking] ... funds") and therefore it is reasonably interpreted to apply only to reserve or sinking funds established after article XIII B appeared on the legal horizon. The "debt service" provisions, by contrast, look generally to the past. They provide an exemption for "indebtedness existing or legally authorized as of January 1, 1979." All payments made to reserve or sinking funds in existence on that date, and which otherwise meet the constitutional definition of "debt service," are exempt.

Thus, a fair reading of article XIII B compels the conclusion that payments to reserve and sinking funds can and must be divided between those made to funds established on or before January 1, 1979 (and therefore exempt) and those made to funds established afterward (and so not exempt). If payments to reserve and sinking funds can and must be so divided, then should not contributions to retirement funds (which are a kind of reserve fund) be divided in the same manner? The majority gives no satisfactory answer to this question.

Had section 5 been intended to establish an exception to the "debt service" exemption, as the majority concludes, it would have been logical to place [2 Cal.4th 592] section 5 with the "debt service" provisions, or at least to include within section 5 a reference to those provisions. Section 5's location distinctly apart from the "debt service" provisions, and the absence of any cross-reference to those provisions, suggests that section 5 was intended to serve a different purpose. That purpose is not difficult to discern. Rather than specifying whether particular funds are or are not exempt from the article XIII B limit, the primary purpose of section 5 is to explain how the article XIII B limit works when applied to those funds that are not exempt. The main point of section 5 is that in the case of various kinds of nonexempt reserve funds maintained by public entities, the article XIII B limit applies when the government makes payments into the fund, and not when payments are made out of the fund. This overriding purpose is in no way frustrated by a conclusion that certain fund payments (that is, those to service preexisting debt) are not subject to the article XIII B limit at all.

The majority relies on the rule of statutory and constitutional construction that a specific provision prevails over a general provision. But this rule applies only when the provisions at issue are inconsistent. (See Code Civ. Proc., § 1859 ["[W]hen a general and particular provision are inconsistent, the latter is paramount to the former."]; *International Assn. of Fire Fighters Union v. City of Pleasanton* (1976) 56 Cal.App.3d 959, 976 [129 Cal.Rptr. 68].) "Two statutes dealing with the same subject are given concurrent effect if they can be harmonized, even though one, is specific and the other general." (*People v. Price* (1991) 1 Cal.4th 324, 385 [3 Cal.Rptr. 106, 821 P.2d 610].) Properly read, section 5 is not inconsistent with the "debt service" provisions of article XIII B; these provisions can and should be harmonized. Under the "debt service" provisions, a public entity's contributions to an employee retirement fund are exempt from the article XIII B limit if they are made to discharge an obligation that existed on January 1, 1979; all other contributions to employee retirement funds are subject to that limit. I would so hold.

FN 1. All further references to section numbers, unless otherwise noted, are to sections of article XIII B of the California Constitution.

FN 2. The Board also excluded appropriations for certain other employee benefits, including contributions to the health service and social security systems. Only the treatment of retirement contributions is at issue in this case.

FN 3. The \$40,336,171 amount represents the effect of excluding "mandatory employee benefits" (see fn. 2, ante), which include retirement contributions, from both the base-year limit and the 1988-1989 limit. In other words, \$40,336,171 is the amount by which the City's appropriations for "mandatory employee benefits" grew, between the base year and 1988-1989, in excess of the permissible rate of growth set out article XIII B.

FN 4. Section 5 provides: "Each entity of government may establish such contingency, emergency, unemployment, reserve, retirement, sinking fund, trust, or similar funds as it shall deem reasonable and proper. Contributions to any such fund, to the extent that such contributions are derived from the proceeds of taxes, shall for purposes of this Article constitute appropriations subject to limitation in the year of contribution. Neither withdrawals from any such fund, nor expenditures of (or authorizations to expend) such withdrawals, nor transfers between or among such funds, shall for purposes of this Article constitute appropriations subject to limitation." (Italics added.)

FN 5. Section 9, subdivision (a) (hereafter section 9(a)), provides: "'Appropriations subject to limitation' ... do not include ... Appropriations for debt service." (Italics added.)

Section 8, subdivision (g) (hereafter section 8(g)), provides: "'Debt service' means appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979, or on bonded indebtedness thereafter approved according to law by a vote of the electors of the issuing entity voting in an election for that purpose." (Italics added.)

FN 6. The Legislature has similarly concluded that the state's retirement contributions are subject to limitation. (See 1991-1992 Budget, Stats. 1991, ch. 118, § 3.60, subd. (c).)

FN 7. Specifically, the maximum tax rate does not apply "to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition." (Cal. Const., art. XIII A, § 1, subd. (b).)

FN 8. The City, in its Comprehensive Annual Financial Report for the year ended June 30, 1988, reported retirement contributions of approximately \$240 million. The City's appropriations limit for that year, which excluded retirement contributions, was approximately \$700 million.

FN 9. "No state shall ... pass any ... law impairing the obligation of contracts" (U.S. Const., art. I, § 10, cl. 1.)

FN 10. Because the Board's argument is so broad, and because the Board expressly disclaims any intent to assert a cause of action or defense under the contract clause, there is no need to remand for additional evidentiary proceedings.

FN 11. We rejected a similar challenge to article XIII A as premature in *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, supra, 22 Cal.3d at pages 238-242.

FN 12. For this reason, the rule that "alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation" (*Miller v. State of California* (1977) 18 Cal.3d 808, 816 [135 Cal.Rptr. 386, 557 P.2d 970], quoting *Allen v. City of Long Beach* (1955) 45 Cal.2d 128, 131 [287 P.2d 765]), has no bearing on this case.

FN 13. Proposition 111 liberalized the definition of "cost of living," thus permitting greater annual increases to the spending limit. (See § 8, subd. (e)(2), added by initiative measure in Primary Elec. (June 5, 1990).)

FN 1. Under subdivision (g) of section 8 of article XIII B (hereafter section 8(g)), "debt service" is defined as "appropriations required to pay the cost of interest and redemption charges, including the funding of any reserve or sinking fund required in connection therewith, on indebtedness existing or legally authorized as of January 1, 1979."

FN 1. Article XIII A limits real property taxes, but it exempts from this limit real property taxes imposed "to pay the interest and redemption charges on ... any indebtedness approved by the voters" before article XIII A was enacted. (Cal. Const., art. XIII A, § 1, subd. (b).)

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Fiscal Year

2002 - 2003

SixTen and Associates

Mandate Reimbursement Services

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January 12, 2005

CERTIFIED MAIL # 7003 1010 0003 2876 5476

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claims
Foothill-De Anza Community College District CC43045

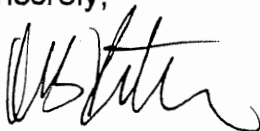
Dear Ms. Brummels:

Enclosed please find the original claims and extra copies of the FAM-27 for Foothill-De Anza Community College District's reimbursement claims listed below:

961/75	Collective Bargaining	2003-2004
1/84	Health Fee Elimination	2002-2003
1/84	Health Fee Elimination	2003-2004

If you have any questions regarding these claims, please contact me at (858) 514-8605.

Sincerely,



Keith B. Petersen

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use Only	Program 234
	(19) Program Number 00234	
	(20) Date Filed <u> / / </u>	
	(21) LRS Input <u> / / </u>	

L A B E L H E R E	(01) Claimant Identification Number: CC43045		Reimbursement Claim Data	
	(02) Claimant Name Foothill-De Anza Community College District		(22) HFE-1.0, (04)(b)	480,709
	County of Location Santa Clara		(23)	
	Street Address 12345 El Monte Road		(24)	
	City	State	Zip Code	(25)
	Los Altos Hills	CA	94022	
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)	
Fiscal Year of Cost	(06)	(12) 2002-2003	(30)	
Total Claimed Amount	(07)	(13) \$ 480,709	(31)	
Less : 10% Late Penalty		(14) \$ 48,071	(32)	
Less : Prior Claim Payment Received		(15) \$ -	(33)	
Net Claimed Amount		(16) \$ 432,638	(34)	
Due from State	(08)	(17) \$ 432,638	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK) Date

1/11/04

Mike Brandy Vice Chancellor, Business Services

Type or Print Name Title

Name of Contact Person for Claim Telephone Number: (858) 514-8605

SixTen and Associates E-mail Address: kbpsixten@aol.com

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
---	--	------------------------------

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Foothill College	\$213,152.93
2. De Anza College	\$267,555.95
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
11.	
12.	
13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
120	

(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 480,709
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PROGRAM 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
-----------------------	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
---	--	--------------------------

(03) Name of College: Foothill College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 32.50%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 541,649	\$ 176,036	\$ 717,685
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 541,649	\$ 176,036	\$ 717,685

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) \$ 504,532

(10) Subtotal [Line (07) - line (09)] \$ 213,153

Cost Reduction

(11) Less: Offsetting Savings, if applicable \$ -

(12) Less: Other Reimbursements, if applicable \$ -

(13) Total Amount Claimed [Line (10) - {(line (11) + line (12))}] \$ 213,153

GRAM 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.2
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(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2002-2003
---	--	--------------------------

(03) Name of College: De Anza College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS	SAME	MORE
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

	Direct Cost	Indirect Cost of: 32.50%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 675,126	\$ 219,416	\$ 894,542
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 675,126	\$ 219,416	\$ 894,542

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c))	\$ 626,986
(10) Subtotal	[Line (07) - line (09)]	\$ 267,556

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ -
(13) Total Amount Claimed	\$ 267,556

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------------	--	-----------------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2002-2003
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
--	----------------------	-----------------------

Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling	X	X
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling	X	X
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list	X	X
Examinations, minor illnesses	X	X
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2	
(01) Claimant Foothill-De Anza Community College District		(02) Fiscal Year costs were incurred: 2002-2003	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.		(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning		X	X
Stop Smoking		X	X
Library, Videos and Cassettes		X	X
First Aid, Major Emergencies		X	X
First Aid, Minor Emergencies		X	X
First Aid Kits, Filled		X	X
Immunizations		X	X
Diphtheria/Tetanus		X	X
Measles/Rubella		X	X
Influenza		X	X
Information		X	X
Insurance		X	X
On Campus Accident		X	X
Voluntary		X	X
Insurance Inquiry/Claim Administration		X	X
Laboratory Tests Done		X	X
Inquiry/Interpretation		X	X
Pap Smears		X	X
Physical Examinations		X	X
Employees		X	X
Students		X	X
Athletes		X	X
Medications		X	X
Antacids		X	X
Antidiarrheal		X	X
Aspirin, Tylenol, etc.,		X	X
Skin Rash Preparations		X	X
Eye Drops		X	X
Ear Drops		X	X
Toothache, oil cloves		X	X
Stingkill		X	X
Midol, Menstrual Cramps		X	X
Other, list--->		X	X
Parking Cards/Elevator Keys			
Tokens			
Return Card/Key			
Parking Inquiry		X	X
Elevator Passes			
Temporary Handicapped Parking Permits			

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------------	--	-----------------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2002-2003
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
--	----------------------	-----------------------

Referrals to Outside Agencies	X	X
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests	X	X
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG	X	X
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list	X	X
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X

Fiscal Year

2003 - 2004

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

January 12, 2005

CERTIFIED MAIL # 7003 1010 0003 2876 5476

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claims
Foothill-De Anza Community College District CC43045

Dear Ms. Brummels:

Enclosed please find the original claims and extra copies of the FAM-27 for Foothill-De Anza Community College District's reimbursement claims listed below:

961/75	Collective Bargaining	2003-2004
1/84	Health Fee Elimination	2002-2003
1/84	Health Fee Elimination	2003-2004

If you have any questions regarding these claims, please contact me at (858) 514-8605.

Sincerely,



Keith B. Petersen

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller Use only (19) Program Number 00234 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	Program 234
--	---	------------------------

(01) Claimant Identification Number: CC43045	Reimbursement Claim Data	
(02) Claimant Name: Foothill-De Anza Community College District	(22) HFE-1.0, (04)(b)	537,473
County of Location: Santa Clara	(23)	
Street Address: 12345 El Monte Road	(24)	
City: Los Altos Hills State: CA Zip Code: 94022	(25)	

Type of Claim	Estimated Claim	Reimbursement Claim	
(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(26)	
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(27)	
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(28)	
(06) Fiscal Year of Cost: 2004-2005	(12) Fiscal Year of Cost: 2003-2004	(29)	
(07) Total Claimed Amount: \$ 591,000	(13) Total Claimed Amount: \$ 537,473	(30)	
Less: 10% Late Penalty	(14) \$ -	(31)	
Less: Prior Claim Payment Received	(15) \$ -	(32)	
Net Claimed Amount	(16) \$ 537,473	(33)	
Due from State (08) \$ 591,000	(17) \$ 537,473	(34)	
Due to State	(18)	(35)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK) Date

1/11/04 Mike Brandy

Mike Brandy Vice Chancellor, Business Services

Type or Print Name Title

3) Name of Contact Person for Claim: SixTen and Associates

Telephone Number: (858) 514-8605

E-mail Address: kbpsixten@aol.com


MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: <table style="width: 100%; border: none;"> <tr> <td style="padding: 2px;">Reimbursement</td> <td style="text-align: center; border: 1px solid black; width: 30px;"><input checked="" type="checkbox"/></td> <td style="padding: 2px;">Fiscal Year</td> </tr> <tr> <td style="padding: 2px;">Estimated</td> <td style="text-align: center; border: 1px solid black;"><input type="checkbox"/></td> <td style="padding: 2px;">2003-2004</td> </tr> </table>	Reimbursement	<input checked="" type="checkbox"/>	Fiscal Year	Estimated	<input type="checkbox"/>	2003-2004
Reimbursement	<input checked="" type="checkbox"/>	Fiscal Year					
Estimated	<input type="checkbox"/>	2003-2004					

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Foothill College	\$100,424.59
2. De Anza College	\$437,047.93
3.	
4.	
5.	
6.	
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21.	

(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 537,473
----------------------------------	---	-------------------

 PROGRAM 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
--	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2003-2004
---	--	--------------------------

(03) Name of College: Foothill College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 31.46%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 431,890	\$ 135,873	\$ 567,763
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 431,890	\$ 135,873	\$ 567,763

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) \$ 467,338


(10) Subtotal [Line (07) - line (09)] \$ 100,425

Reduction

(11) Less: Offsetting Savings, if applicable \$ -

(12) Less: Other Reimbursements, if applicable \$ -

(13) Total Amount Claimed **130** [Line (10) - {(line (11) + line (12))}] \$ 100,425

	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.2
--	--	-------------------------------

(01) Claimant: <p style="text-align: center;">Foothill-De Anza Community College District</p>	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2003-2004
--	--	--------------------------

(03) Name of College: De Anza College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 31.46%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 782,317	\$ 246,117	\$ 1,028,434
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 782,317	\$ 246,117	\$ 1,028,434

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected: The sum of (Line (08)(1)(c) through line (08)(6)(c)) \$ 591,386

(10) Subtotal [Line (07) - line (09)] \$ 437,048

† Reduction

(11) Less: Offsetting Savings, if applicable \$ -

(12) Less: Other Reimbursements, if applicable \$ -

(13) Total Amount Claimed **131** [Line (10) - {line (11) + line (12)}] \$ 437,048

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2003-2004
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
--	----------------------	-----------------------

Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling	X	X
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling	X	X
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list	X	X
Examinations, minor illnesses	X	X
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2003-2004
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations	X	X
Diphtheria/Tetanus	X	X
Measles/Rubella	X	X
Influenza	X	X
Information	X	X
Insurance	X	X
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done	X	X
Inquiry/Interpretation	X	X
Pap Smears	X	X
Physical Examinations	X	X
Employees	X	X
Students	X	X
Athletes	X	X
Medications	X	X
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list---> Ibuprofen	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2003-2004
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies	X	X
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests	X	X
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG	X	X
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list	X	X
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X

Fiscal Year

2004 - 2005

SixTen and Associates

Mandate Reimbursement Services

TH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Telephone: (858) 514-8605
Fax: (858) 514-8645
E-Mail: Kbpsixten@aol.com

Claim File Copy

December 13, 2005

CERTIFIED MAIL # 7004 2510 0004 4007 0602

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Foothill-De Anza Community College District CC43045

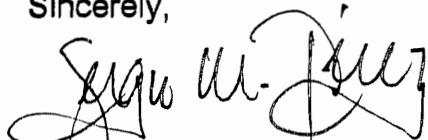
Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Foothill-De Anza Community College District's reimbursement claims listed below:

1/84	Health Fee Elimination	2004-2005
------	------------------------	-----------

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,



Sergio M. Perez, Vice-President
Claims Processing Manager

CLAIM FOR PAYMENT
 Pursuant to Government Code Section 17561
HEALTH FEE ELIMINATION

For State Controller Use only
 (19) Program Number 00234
 (20) Date Filed ___/___/___
 (21) LRS Input ___/___/___

Program
234

L
A
B
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L

H
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E

(01) Claimant Identification Number: CC 43045

(02) Claimant Name: Foothill-De Anza Community College District

County of Location: Santa Clara

Street Address: 12345 El Monte Road

City: Los Altos Hills State: CA Zip Code: 94022

Reimbursement Claim Data	
(22) HFE-1.0, (04)(b)	1,037,466
(23)	
(24)	
(25)	
(26)	
(27)	
(28)	
(29)	
(30)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

Type of Claim	Estimated Claim	Reimbursement Claim
(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	
(06) 2005-2006	(12) 2004-2005	
(07) \$ 1,141,000	(13) \$ 1,037,466	
Less: 10% Late Penalty	(14) \$ -	
Less: Prior Claim Payment Received	(15) \$ -	
Net Claimed Amount	(16) \$ 1,037,466	
(08) Due from State \$ 1,141,000	(17) Due from State \$ 1,037,466	
Due to State	(18)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK)

Date

Mike Brandy 12-7-05

Mike Brandy

Type or Print Name

Vice Chancellor, Business Services

Title

(20) Name of Contact Person for Claim

SixTen and Associates

Telephone Number: (858) 514-8605

E-mail Address: kbpsixten@aol.com

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2004-2005
---	--	------------------------------

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Foothill College	\$ 350,585.58
2. De Anza College	\$ 686,880.27
3.	
4.	
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13.	
14.	
15.	
16.	
17.	
18.	
19.	
20.	
21.	

(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 1,037,466
----------------------------------	---	--------------

PROGRAM 234	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
------------------------------	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2004-2005
---	--	--------------------------

(03) Name of College: Foothill College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS <input type="checkbox"/>	SAME <input checked="" type="checkbox"/>	MORE <input type="checkbox"/>
----------------------------------	---	----------------------------------

	Direct Cost	Indirect Cost of: 29.66%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 632,593	\$ 187,627	\$ 820,220
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 632,593	\$ 187,627	\$ 820,220

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	\$ 469,635
(10) Subtotal	[Line (07) - line (09)]	\$ 350,586

Cost Reduction

11) Less: Offsetting Savings, if applicable	\$ -
12) Less: Other Reimbursements, if applicable	\$ -
13) Total Amount Claimed	\$ 350,586

PROGRAM 224	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.2
------------------------------	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2004-2005
---	--	--------------------------

(03) Name of College: De Anza College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS

SAME

MORE

	Direct Cost	Indirect Cost of: 29.66%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 963,069	\$ 285,646	\$ 1,248,715
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 963,069	\$ 285,646	\$ 1,248,715

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	\$ 561,835
(10) Subtotal	[Line (07) - line (09)]	\$ 686,880

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ -
(13) Total Amount Claimed	\$ 686,880

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2004-2005
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Accident Reports	X	X
Appointments		
College Physician, surgeon		
Dermatology, Family practice		
Internal Medicine		
Outside Physician		
Dental Services		
Outside Labs, (X-ray, etc.,)	X	X
Psychologist, full services	X	X
Cancel/Change Appointments	X	X
Registered Nurse	X	X
Check Appointments	X	X
Assessment, Intervention and Counseling	X	X
Birth Control	X	X
Lab Reports	X	X
Nutrition	X	X
Test Results, office	X	X
Venereal Disease	X	X
Communicable Disease	X	X
Upper Respiratory Infection	X	X
Eyes, Nose and Throat	X	X
Eye/Vision	X	X
Dermatology/Allergy	X	X
Gynecology/Pregnancy Service	X	X
Neuralgic	X	X
Orthopedic	X	X
Genito/Urinary	X	X
Dental	X	X
Gastro-Intestinal	X	X
Stress Counseling	X	X
Crisis Intervention	X	X
Child Abuse Reporting and Counseling	X	X
Substance Abuse Identification and Counseling	X	X
Eating Disorders	X	X
Weight Control	X	X
Personal Hygiene	X	X
Burnout	X	X
Other Medical Problems, list	X	X
Examinations, minor illnesses	X	X
Recheck Minor Injury	X	X
Health Talks or Fairs, Information		
Sexually Transmitted Disease	X	X
Drugs	X	X
Acquired Immune Deficiency Syndrome	X	X
Child Abuse	X	X

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2004-2005
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations	X	X
Diphtheria/Tetanus	X	X
Measles/Rubella	X	X
Influenza	X	X
Information	X	X
Insurance	X	X
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done	X	X
Inquiry/Interpretation	X	X
Pap Smears	X	X
Physical Examinations	X	X
Employees	X	X
Students	X	X
Athletes	X	X
Medications	X	X
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list---> Ibuprofen	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 029	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2004-2005
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies	X	X
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests	X	X
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG	X	X
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list	X	X
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X

Fiscal Year

2005 - 2006

Six Ten and Associates Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

Claim File Copy

July 2, 2007

CERTIFIED MAIL # 7006 3450 0000 3941 8543

Ms. Virginia Brummels, Section Manager
Local Reimbursement Section
Division of Accounting and Reporting
Office of the State Controller
P.O. Box 942850
Sacramento, CA 94250

RE: Annual Reimbursement Claim
Foothill-De Anza Community College District CC43045

Dear Ms. Brummels:

Enclosed please find the original claim and an extra copy of the FAM-27 for Foothill-De Anza Community College District's reimbursement claim listed below:


1/84

Health Fee Elimination

2005-2006

If you have any questions regarding this claim, please contact me at (858) 514-8605.

Sincerely,


For Keith B. Petersen, President

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 HEALTH FEE ELIMINATION	For State Controller-Use only	Program 234
	(19) Program Number 00234 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	

LABEL HERE	(01) Claimant Identification Number: CC 43045		Reimbursement Claim Data	
	(02) Claimant Name Foothill-De Anza Community College District		(22) HFE-1.0, (04)(b)	215,410
	(03) County of Location Santa Clara		(23)	
	(04) Street Address 12345 El Monte Road		(24)	
	(05) City Los Altos Hills	(06) State CA	(07) Zip Code 94022	(25)
	Type of Claim	Estimated Claim	Reimbursement Claim	(26)
		(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)	
Fiscal Year of Cost	(06)	(12) 2005-2006	(30)	
Total Claimed Amount	(07)	(13) \$ 215,410	(31)	
Less : 10% Late Penalty, not to exceed \$1,000		(14) \$ 1,000	(32)	
Less : Prior Claim Payment Received		(15) \$ -	(33)	
Net Claimed Amount		(16) \$ 214,410	(34)	
Due from State	(08)	(17) \$ 214,410	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the community college district to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer (USE BLUE INK) _____ Mike Brandy Type or Print Name	Date 6/28/07 _____ Vice Chancellor, Business Services Title
---	--

(38) Name of Contact Person for Claim Telephone Number: (858) 514-8605

SixTen and Associates E-mail Address: kbpsixten@aol.com

MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.0
--	-------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: <table style="width: 100%; border: none;"> <tr> <td style="padding: 2px;">Reimbursement</td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> <td style="padding: 2px;">Fiscal Year</td> </tr> <tr> <td style="padding: 2px;">Estimated</td> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> <td style="padding: 2px;">2005-2006</td> </tr> </table>	Reimbursement	<input checked="" type="checkbox"/>	Fiscal Year	Estimated	<input type="checkbox"/>	2005-2006
Reimbursement	<input checked="" type="checkbox"/>	Fiscal Year					
Estimated	<input type="checkbox"/>	2005-2006					

(03) List all the colleges of the community college district identified in form HFE-1.1, line (03)

(a) Name of College	(b) Claimed Amount
1. Foothill College	\$ 127,018
2. De Anza College	\$ 88,392
3.	
4.	
5.	
6.	
7.	
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21.	

(04) Total Amount Claimed	[Line (3.1b) + line (3.2b) + line (3.3b) + ...line (3.21b)]	\$ 215,410
----------------------------------	---	------------

PROGRAM 34	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
--	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> <input type="checkbox"/> Estimated <input type="checkbox"/> <input type="checkbox"/>	Fiscal Year 2005-2006
---	--	--------------------------

(03) Name of College: Foothill College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 28.90%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 530,315	\$ 153,261	\$ 683,576
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 530,315	\$ 153,261	\$ 683,576

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c)	\$ 546,487
(10) Subtotal	[Line (07) - line (09)]	\$ 137,089

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ 10,071
(13) Total Amount Claimed	\$ 127,018

PROGRAM 34	MANDATED COSTS HEALTH FEE ELIMINATION CLAIM SUMMARY	FORM HFE-1.1
--	--	-------------------------------

(01) Claimant: Foothill-De Anza Community College District	(02) Type of Claim: Reimbursement <input checked="" type="checkbox"/> Estimated <input type="checkbox"/>	Fiscal Year 2005-2006
---	--	--------------------------

(03) Name of College: De Anza College

(04) Indicate with a check mark, the level at which health services were provided during the fiscal year of reimbursement in comparison to the 1986/87 fiscal year. If the "Less" box is checked, STOP, do not complete the form. No reimbursement is allowed.

LESS SAME MORE

	Direct Cost	Indirect Cost of: 28.90%	Total
(05) Cost of Health Services for the Fiscal year of Claim	\$ 592,645	\$ 171,274	\$ 763,919
(06) Cost of providing current fiscal year health services in excess of 1986/87	\$ -	\$ -	\$ -
(07) Cost of providing current fiscal year health services at 1986/87 level [Line (05) - line (06)]	\$ 592,645	\$ 171,274	\$ 763,919

(08) Complete Columns (a) through (g) to provide detail data for health fees

Collection Period	(a) Number of Full-time Students	(b) Number of Part-time Students	(c) Unit Cost for Full-time Student per Educ. Code §76355	(d) Full-time Student Health Fees (a) x (c)	(e) Unit Cost for Part-time Student per Educ. Code §76355	(f) Part-time Student Health Fees (b) x (e)	(g) Student Health Fees That Could Have Been Collected (d) + (f)
1. Per Fall Semester				\$ -		\$ -	\$ -
2. Per Spring Semester				\$ -		\$ -	\$ -
3. Per Summer Session				\$ -		\$ -	\$ -
4. Per First Quarter				\$ -		\$ -	\$ -
5. Per Second Quarter				\$ -		\$ -	\$ -
6. Per Third Quarter				\$ -		\$ -	\$ -

(09) Total health fee that could have been collected:	The sum of (Line (08)(1)(c) through line (08)(6)(c))	\$ 667,484
(10) Subtotal	[Line (07) - line (09)]	\$ 96,435

Cost Reduction

(11) Less: Offsetting Savings, if applicable	\$ -
(12) Less: Other Reimbursements, if applicable	\$ 8,043
(13) Total Amount Claimed	\$ 88,392 [Line (10) - {line (11) + line (12)}]

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL		FORM HFE-2	
(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred:		2005-2006	
(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim		
Accident Reports	X	X		
Appointments				
College Physician, surgeon				
Dermatology, Family practice				
Internal Medicine				
Outside Physician				
Dental Services				
Outside Labs, (X-ray, etc.,)	X	X		
Psychologist, full services	X	X		
Cancel/Change Appointments	X	X		
Registered Nurse	X	X		
Check Appointments	X	X		
Assessment, Intervention and Counseling				
Birth Control	X	X		
Lab Reports	X	X		
Nutrition	X	X		
Test Results, office	X	X		
Venereal Disease	X	X		
Communicable Disease	X	X		
Upper Respiratory Infection	X	X		
Eyes, Nose and Throat	X	X		
Eye/Vision	X	X		
Dermatology/Allergy	X	X		
Gynecology/Pregnancy Service	X	X		
Neuralgic	X	X		
Orthopedic	X	X		
Genito/Urinary	X	X		
Dental	X	X		
Gastro-Intestinal	X	X		
Stress Counseling	X	X		
Crisis Intervention	X	X		
Child Abuse Reporting and Counseling	X	X		
Substance Abuse Identification and Counseling	X	X		
Acquired Immune Deficiency Syndrome	X	X		
Eating Disorders	X	X		
Weight Control	X	X		
Personal Hygiene	X	X		
Burnout	X	X		
Other Medical Problems, list				
Examinations, minor illnesses	X	X		
Recheck Minor Injury	X	X		
Health Talks or Fairs, Information				
Sexually Transmitted Disease	X	X		
Drugs	X	X		
Acquired Immune Deficiency Syndrome	X	X		
Child Abuse				

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2005-2006
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Birth Control/Family Planning	X	X
Stop Smoking	X	X
Library, Videos and Cassettes	X	X
First Aid, Major Emergencies	X	X
First Aid, Minor Emergencies	X	X
First Aid Kits, Filled	X	X
Immunizations	X	X
Diphtheria/Tetanus	X	X
Measles/Rubella	X	X
Influenza	X	X
Information	X	X
Insurance	X	X
On Campus Accident	X	X
Voluntary	X	X
Insurance Inquiry/Claim Administration	X	X
Laboratory Tests Done	X	X
Inquiry/Interpretation	X	X
Pap Smears	X	X
Physical Examinations	X	X
Employees	X	X
Students	X	X
Athletes	X	X
Medications	X	X
Antacids	X	X
Antidiarrheal	X	X
Aspirin, Tylenol, etc.,	X	X
Skin Rash Preparations	X	X
Eye Drops	X	X
Ear Drops	X	X
Toothache, oil cloves	X	X
Stingkill	X	X
Midol, Menstrual Cramps	X	X
Other, list-->	X	X
Parking Cards/Elevator Keys		
Tokens		
Return Card/Key		
Parking Inquiry	X	X
Elevator Passes		
Temporary Handicapped Parking Permits		

Program 234	MANDATED COSTS 1/84 HEALTH FEE ELIMINATION COMPONENT/ACTIVITY COST DETAIL	FORM HFE-2
------------------------	--	-----------------------

(01) Claimant Foothill-De Anza Community College District	(02) Fiscal Year costs were incurred: 2005-2006
--	--

(03) Place an "X" in column (a) and/or (b), as applicable, to indicate which health Service was provided by student health service fees for the indicated fiscal year.	(a) FY 1986/87	(b) FY of Claim
Referrals to Outside Agencies	X	X
Private Medical Doctor	X	X
Health Department	X	X
Clinic	X	X
Dental	X	X
Counseling Centers	X	X
Crisis Centers	X	X
Transitional Living Facilities, battered/homeless women	X	X
Family Planning Facilities	X	X
Other Health Agencies	X	X
Tests	X	X
Blood Pressure	X	X
Hearing	X	X
Tuberculosis	X	X
Reading	X	X
Information	X	X
Vision	X	X
Glucometer	X	X
Urinalysis	X	X
Hemoglobin	X	X
EKG	X	X
Strep A Testing	X	X
PG Testing	X	X
Monospot	X	X
Hemacult	X	X
Others, list	X	X
Miscellaneous		
Absence Excuses/PE Waiver	X	X
Allergy Injections	X	X
Band-aids	X	X
Booklets/Pamphlets	X	X
Dressing Change	X	X
Rest	X	X
Suture Removal	X	X
Temperature	X	X
Weigh	X	X
Information	X	X
Report/Form	X	X
Wart Removal	X	X
Others, list	X	X
Committees		
Safety	X	X
Environmental	X	X
Disaster Planning	X	X

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, President
3270 Arena Blvd. Suite 400-363
Sacramento, CA 95834
Telephone: (916) 419-7093
Fax: (916) 263-9701

E-Mail: Kbpsixten@aol.com
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

November 18, 2010

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



RE: Foothill-De Anza Community College District
Health Fee Elimination #2
Fiscal Years: 2002-03 through 2005-06
Incorrect Reduction Claim

Dear Ms. Higashi:

Enclosed is the original and two copies of the above referenced *revised* incorrect reduction claim for Foothill-De Anza Community College District.

SixTen and Associates has been appointed by the District as its representative for this matter and all interested parties should direct their inquiries to me, with a copy as follows:

Kevin McElroy, Vice Chancellor
Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Thank-you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith Petersen".

Keith B. Petersen

COMMISSION ON STATE MANDATES

1. REVISED INCORRECT REDUCTION CLAIM TITLE

1/84, 1118/87 Health Fee Elimination #2

Original Incorrect No: 09-4206-I-24

2. CLAIMANT INFORMATION

Foothill-De Anza Community College District

Kevin McElroy, Vice Chancellor
 Business Services
 Foothill-De Anza Community College District
 12345 El Monte Road
 Los Altos Hills, CA 94022
 Phone: 650-949-6201
 Fax: 650-941-1638
 E-mail: mcelroykevin@fhda.edu

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Keith B. Petersen, President
 SixTen and Associates
 3270 Arena Blvd., Suite 400-363
 Sacramento, CA 95834
 Voice: (916) 419-7093
 Fax: (916) 263-9701
 E-mail: Kbpsixten@aol.com

<i>For CSM Use Only</i>
Filing Date: NOV 22 2010 COMMISSION ON STATE MANDATES
IRC #:

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

**Statutes of 1984, Chapter 1, 2nd E.S.
 Statutes of 1987, Chapter 1118**

5. AMOUNT OF INCORRECT REDUCTION

<u>Fiscal Year</u>	<u>REVISED Amount of Reduction</u>
2002-03	\$ 13,783
2003-04	\$ 12,652
2004-05	\$258,180
2005-06	\$ 0
TOTAL:	\$284,615

6. NOTICE OF NO INTENT TO CONSOLIDATE

____ This claim is not being filed with the intent to consolidate on behalf of other claimants.

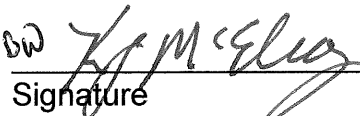
Sections 7-9 are attached as follows:

- 7. Written Detailed Narrative:** Pages 1 to 11
- 8. SCO Results of Review Letters:** Exhibit A
- 9. SCO Revised Audit Report:** Exhibit B

10. CLAIM CERTIFICATION

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

Kevin McElroy, Vice Chancellor
 Business Services



 Signature 11/16/10
Date

1 Claim Prepared by:
2 Keith B. Petersen
3 SixTen and Associates
4 3270 Arena Blvd., Suite 400-363
5 Sacramento, California 95834
6 Voice: (916) 419-7093
7 Fax: (916) 263-9701
8 E-mail: kbpsixten@aol.com

9
10 BEFORE THE
11 COMMISSION ON STATE MANDATES
12 STATE OF CALIFORNIA

12	REVISED)	
13	INCORRECT REDUCTION CLAIM OF:)	
14		)	No. CSM <u>09-4206-I-24</u>
15)	
16		)	Chapter 1, Statutes of 1984, 2nd E.S.
17		)	Chapter 1118, Statutes of 1987
18	Foothill-De Anza)	
19	Community College District,	)	Education Code Section 76355
20)	
21		)	<u>Health Fee Elimination # 2</u>
22	Claimant.)	
23		)	Annual Reimbursement Claims:
24)	
25		)	Fiscal Year 2002-2003
26		)	Fiscal Year 2003-2004
27		)	Fiscal Year 2004-2005
28		)	Fiscal Year 2005-2006
29)	

30 INCORRECT REDUCTION CLAIM FILING

31 PART I. AUTHORITY FOR THE CLAIM

32 The Commission on State Mandates has the authority pursuant to Government
33 Code Section 17551(d) to "hear and decide upon a claim by a local agency or school
34 district filed on or after January 1, 1985, that the Controller has incorrectly reduced
35 payments to the local agency or school district pursuant to paragraph (2) of subdivision

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 (d) of Section 17561.” Foothill-De Anza Community College District (hereinafter
2 “District” or “Claimant”) is a school district as defined in Government Code Section
3 17519. Title 2, California Code of Regulations (CCR), Section 1185(a), requires
4 claimants to file an incorrect reduction claim with the Commission.

5 Original Incorrect Reduction Claim

6 The Controller issued the original final audit report on May 20, 2009. The District
7 submitted an incorrect reduction claim on September 24, 2009. By letter dated October
8 13, 2009, the Commission on State Mandates notified the District that the incorrect
9 reduction claim was received and accepted for filing.

10 Revised Incorrect Reduction Claim

11 The Controller issued a “revised” final audit report on August 18, 2010. The
12 revised final audit report is attached as Exhibit “B.” The revised audit report constitutes
13 a new and separate demand for repayment and an adjudication of the claim. The
14 District also received “results of review” letters dated September 10, 2010, for all four
15 fiscal years that are notices of payment action. Copies of these letters are attached as
16 Exhibit “A.”

17 The revised audit report transmittal letter states that the District may file an
18 amended incorrect reduction claim if the District disagrees with the audit findings.
19 There is no other dispute resolution process. Title 2, CCR, Section 1185 (b), requires
20 incorrect reduction claims to be filed no later than three years following the date of the
21 Controller’s action. There are no regulations specific to “revised” incorrect reduction

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84, 1118/87 Health Fee Elimination**

1 claims, but the District infers the same three-year period of limitations would be
2 applicable for filing a “revised” incorrect reduction claim in response to a “revised” audit
3 report. Thus, this “revised” incorrect reduction claim is timely filed.

4 **PART II. SUMMARY OF THE CLAIM**

5 The Controller has conducted a field audit of the District’s annual reimbursement
6 claims for the actual costs of complying with the legislatively mandated Health Fee
7 Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session and
8 Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

9 Original Final Audit Report Dated May 20, 2009

10 As a result of the audit, the Controller determined that \$440,752 of the claimed
11 costs were unallowable:

12	Fiscal	Amount	Audit	SCO	Amount Due
13	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u><State></u>
14	2002-03	\$ 479,709 ¹	\$ 13,783	\$432,638	\$ 33,288
15	2003-04	\$ 537,473	\$ 2,974	\$ 0	\$534,499
16	2004-05	\$1,037,466	\$403,644	\$ 0	\$633,822
17	2005-06	<u>\$ 214,410²</u>	<u>\$ 20,351</u>	<u>\$ 0</u>	<u>\$194,059</u>
18	Totals	\$2,269,058	\$440,752	\$432,638	\$1,395,668

¹ The original claim amount was \$480,709. The audit report correctly applied a \$1,000 late filing penalty. The original claim had erroneously reported a 10% late-filing penalty (\$48,071) due to some contemporaneous confusion regarding a recent change in the Government Code section pertaining to late-fee penalties. The unlimited 10% rate applies only to “initial” reimbursement claims, that is, new program annual claims, and not to “ongoing” program annual claims.

² \$215,410 less \$1,000 late filing penalty.

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

1 The audit report stated that the District was paid \$432,638 for these claims and that
2 \$1,395,668 is due to the District.

3 Revised Audit Report Dated August 18, 2010

4 As a result of the revised final audit, the Controller determined that \$284,615 of
5 the claimed costs were unallowable:

6	Fiscal	Amount	Audit	SCO	Amount Due
7	<u>Year</u>	<u>Claimed</u>	<u>Adjustment</u>	<u>Payments</u>	<u><State></u>
8	2002-03	\$ 479,709	\$ 13,783	\$432,638	\$ 33,288
9	2003-04	\$ 537,473	\$ 12,652	\$ 0	\$524,821
10	2004-05	\$1,037,466	\$258,180	\$ 0	\$779,286
11	2005-06	<u>\$ 214,410</u>	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$214,410</u>
12	Totals	\$2,269,058	\$284,615	\$432,638	\$1,551,805

13 The revised audit report states that the District has been paid \$432,638 for these claims
14 and that \$1,551,805 is due to the District.

15 **PART III. PREVIOUS INCORRECT REDUCTION CLAIMS**

16 The District filed a previous incorrect reduction claim for this mandate program
17 on September 24, 2009, in response to the original audit report dated May 20, 2009.
18 This previous incorrect reduction claim is pending Commission action. This "revised"
19 incorrect reduction claim incorporates that incorrect reduction claim in its entirety and
20 supplements that claim to the extent that the findings of the revised final audit report
21 differ from the original final audit report.

22 /

1 PART IV. BASIS FOR REIMBURSEMENT

2 No change.

3 PART V. STATE CONTROLLER CLAIM ADJUDICATION

4 The Controller conducted an audit of the District’s annual reimbursement claims
5 for Fiscal Years 2002-03, 2003-04, 2004-05, and 2005-06. The revised audit report
6 dated August 18, 2010, concluded that \$1,984,443 of the District’s costs claimed were
7 allowable. A copy of the revised audit report is attached as Exhibit “B.”

8 VI. CLAIMANT’S RESPONSE TO THE STATE CONTROLLER

9 No draft revised audit report or other notice of the revised audit findings was
10 provided to the District, so no District response was possible.

11 PART VII. STATEMENT OF THE ISSUES

12 **Finding 1-- Misstated counseling-related salaries and benefits**

13 No change.

14 **Finding 2-- Understated services and supplies-Student insurance costs**

15 No change.

16 **Finding 3-- Overstated and understated indirect cost rates**

17 The revised audit report concludes that the District both overstated indirect costs
18 because the District did not obtain federal approval for the indirect cost rate used for FY
19 2002-03 and FY 2003-04, and understated indirect costs because the District did not
20 correctly compute the FAM-29 C indirect cost rate for FY 2004-05 and FY 2005-06.
21 The unallowable amount as stated in the original audit report was \$511,782. The

**REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination**

revised audit report reduces the adjustment by \$270,751 to \$241,031. The revised audit report (p.11) states:

“Subsequent to our final audit report issued May 20, 2009, we revised the allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. For FY 2003-04, our original calculation included an incorrect amount for one direct cost line item. For FY 2004-05 and FY 2005-06, our original calculations excluded allowable depreciation expense. As a result, we revised the total audit adjustment from \$511,782 to \$241,031. Our recommendation is unchanged. The revised calculations do not affect issues that the district discussed in its draft audit report response or the remainder of our comments below.”

The District agrees that the correction made by the revised audit report does not mitigate any of the issues raised in the original incorrect reduction claim.

Indirect Cost Rates Claimed and Audited

<u>Fiscal Year</u>	<u>As Claimed</u>	<u>Difference</u>	<u>As Audited</u>	<u>Difference</u>	<u>Revised Audit</u>	<u>Net Difference</u>
2002-03	32.50%	<15.86%>	16.64%	0	16.64%	<15.86%>
2003-04	31.46%	< 12.72%>	18.74%	<0.65%>	18.09%	<13.37%>
2004-05	29.66%	< 3.51%>	26.15%	9.71%	35.86%	6.20%
2005-06	28.90%	< 2.37%>	26.53%	9.98%	36.51%	7.61%

The indirect cost rates calculated by the District are more consistent from year-to-year and recognize capital costs in the fiscal years incurred. The District rates are reasonable and not excessive. The revised audited indirect cost rates for FY 2002-03 and FY 2003-04, where the Controller recognizes neither capital costs nor depreciation expenses, are significantly different (about 50% less) than the claimed rate. The revised audited indirect cost rates for FY 2004-05 and FY 2005-06, where the Controller recognizes depreciation expenses, vary less than the two prior years (6% to 7%), but in

REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84,1118/87 Health Fee Elimination

1 this case the revised rates are higher, which indicates the accounting timing differences
2 between the CCFS-311 capital costs used by the District and the financial statement
3 depreciation expenses used by the Controller.

4 Because the Controller's method of utilizing depreciation expenses in lieu of
5 CCFS-311 capital costs is also a reasonable method, the District does not dispute that
6 choice of methods for FY 2004-05 and FY 2005-06 and will utilize that method in future
7 annual claims to insure consistency. The District still disputes the audit findings for FY
8 2002-03 and FY 2003-04 because neither capital costs nor depreciation expenses are
9 allowed.

10 **Finding 4 -- Understated authorized health service fees**

11 No change.

12 **Finding 5 -- Understated offsetting savings/reimbursements**

13 No change.

14 **OTHER ISSUES**

15 **Limit on audited costs**

16 As a result of the revised audit findings for the indirect cost rate calculation, the
17 revised audit report increases the indirect cost rate amount for FY 2005-06 to \$102,915
18 from the previous amount of <\$32,050>, an increase of \$134,965. As a result, the total
19 "allowable costs" exceeds the total claimed cost by \$114,614. The audit report deducts
20 from its findings of total reimbursable "program costs" the \$114,614 as "less allowable
21 costs that exceed cost claimed." The stated basis for this limitation on allowable costs

REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84, 1118/87 Health Fee Elimination

1 is Government Code Section 17568, cited in footnote 2 on page 6 of the audit report,
2 that states "that the State will not reimburse any claim more than one year after the
3 filing deadline."

4 Section 17561 (and Section 17568 for late claims) pertains to the timely filing of
5 an annual claim in order to be eligible for payment, not to the contents of the claim
6 itself. There is no Government Code Section cited that prohibits the Controller from
7 reimbursement of *audited* costs in excess of claimed costs. Government Code Section
8 17561(d)(2), as amended by Statutes of 2002, Chapter 1124³, effective September 30,
9 2002, states:

10 "[T]he Controller (A) may audit the records of any local agency or school district
11 to verify the actual amount of the mandated costs . . . and (C) shall adjust the
12 payment to correct for any underpayments or overpayments which occurred in
13 previous fiscal years."

14 The use of the word "shall" makes the adjustment of *both* underpayments and
15 overpayments mandatory. Thus, the Controller does not have the discretion to
16 unilaterally determine that it will require reimbursement for audit adjustments in favor of
17 the State and simply ignore audit adjustments in favor of the claimants. The Controller
18 has no legal basis to exclude any unclaimed allowable mandated cost discovered as
19 the result of an audit.

20 /

³ There have been subsequent technical amendments to this code section. However, this is the version that was in effect at the time the annual reimbursement claims that are the subject of this Incorrect Reduction Claim were filed.

1 **Statute of limitation for audit**

2 This issue is not an audit report finding. The District asserted in the original
3 incorrect reduction claim that the FY 2002-03 and FY 2003-04 annual claims were
4 beyond the statute of limitations for audit when the Controller commenced the original
5 audit on September 11, 2008. The District now additionally asserts that the revised
6 audit for all four fiscal years was beyond the statute of limitations when the revised
7 audit was commenced and the revised audit report was issued on August 18, 2010.

8 The new findings of the revised audit report appear to have been initiated as a
9 result of the original incorrect reduction claim filed on September 24, 2009. However,
10 the revised audit was not noticed to the District until the revised audit report was
11 published on August 18, 2010, which is more than three years after the last annual
12 claim was filed (FY 2005-06 on July 2, 2007). Clearly, the Controller did not initiate
13 these new findings during the statutory period allowed to initiate an audit for all four
14 fiscal years that are the subject of this audit. Notwithstanding, the changes made by
15 the Controller in the revised audit report are for substantive reasons that are now a
16 matter of record for the original incorrect reduction claim and can be adjudicated by the
17 Commission.

18 **Errata**

19 On page 5 of the revised audit report, the audit adjustment amount for “indirect
20 costs” for FY 2004-05 is stated as <\$63,941>. The correct amount is \$63,941.

21 /

PART VIII. RELIEF REQUESTED

The District filed its annual reimbursement claims within the time limits prescribed by the Government Code. The amounts claimed by the District for reimbursement of the costs of implementing the program imposed by Chapter 1, Statutes of 1984, 2nd Extraordinary Session, Chapter 1118, Statutes of 1987, and Education Code Section 76355 represent the actual costs incurred by the District to carry out this program. These costs were properly claimed pursuant to the Commission's parameters and guidelines. Reimbursement of these costs is required under Article XIII B, Section 6 of the California Constitution. The Controller denied reimbursement without any basis in law or fact. The District has met its burden of going forward on this claim by complying with the requirements of Section 1185, Title 2, CCR. Because the Controller has enforced and is seeking to enforce these adjustments without benefit of statute or regulation, the burden of proof is now upon the Controller to establish a legal basis for these actions.

The District requests that the Commission make findings of fact and law on each and every adjustment made by the Controller and each and every procedural and jurisdictional issue raised in this claim, and order the Controller to correct the audit report findings therefrom.

/

/

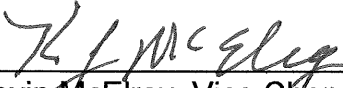
/

REVISED Incorrect Reduction Claim of Foothill-De Anza Community College District
1/84, 1118/87 Health Fee Elimination

1 PART IX. CERTIFICATION

2 By my signature below, I hereby declare, under penalty of perjury under the laws
3 of the State of California, that the information in this incorrect reduction claim
4 submission is true and complete to the best of my own knowledge or information or
5 belief, and that the attached documents are true and correct copies of documents
6 received from or sent by the state agency that originated the document.

7 Executed on ^{Nov} October 16, 2010, at Los Altos Hills, California, by

8 
9 Kevin McElroy, Vice Chancellor Business Services
10 Foothill-De Anza Community College District
11 12345 El Monte Road
12 Los Altos Hills, CA 94022
13 Phone: 650-949-6201
14 Fax: 650-941-1638
15 E-mail: mcelroykevin@fhda.edu

16 APPOINTMENT OF REPRESENTATIVE

17 Foothill-De Anza Community College District appoints Keith B. Petersen, SixTen
18 and Associates, as its representative for this incorrect reduction claim.

19 
20 Kevin McElroy, Vice Chancellor Business Services
21 Foothill-De Anza Community College District

11/16/10
Date

22 Attachments:

23 Exhibit "A" Controller's "results of review" letters dated September 10, 2010

24 Exhibit "B" Controller's revised audit report dated August 18, 2010

10-13-10 02:49pm From-Foothill De Anza CCD

850 941 1638

T-827

P.005/005

F-911



California State Controller 2010/09/10
Division of Accounting and Reporting
SEPTEMBER 10, 2010

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2002/2003 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		480,709.00
TOTAL ADJUSTMENTS (DETAILS BELOW)	-	14,783.00
TOTAL PRIOR PAYMENTS (DETAILS BELOW)		-432,638.00
AMOUNT DUE CLAIMANT	\$	<u>33,288.00</u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	13,783.00
LATE CLAIM PENALTY	-	1,000.00
TOTAL ADJUSTMENTS	-	14,783.00
PRIOR PAYMENTS:		
SCHEDULE NO. MA64136A		
PAID 10-25-2006	-432,638.00	
TOTAL PRIOR PAYMENTS		-432,638.00

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10

02:49pm

From-Foothill De Anza CCD

650 941 1638

T-827

P.004/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2003/2004 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED	537,473.00
ADJUSTMENT TO CLAIM:	
FIELD AUDIT FINDINGS	- 12,652.00
TOTAL ADJUSTMENTS	<u>- 12,652.00</u>
AMOUNT DUE CLAIMANT	<u>\$ 524,821.00</u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10

02:49pm

From-Foothill De Anza CCD

650 941 1638

T-627

P.003/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LDS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2004/2005 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED		1,037,466.00
ADJUSTMENT TO CLAIM:		
FIELD AUDIT FINDINGS	-	258,180.00
TOTAL ADJUSTMENTS	-	<u>258,180.00</u>
AMOUNT DUE CLAIMANT		<u>\$ 779,286.00</u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

10-13-10

02:49pm

From-Foothill De Anza CCD

650 941 1628

T-627

P.002/005

F-911



California State Controller
Division of Accounting and Reporting
SEPTEMBER 10, 2010

2010/09/10

BOARD OF TRUSTEES
FOOTHILL-DEANZA COMM COLL DIST
SANTA CLARA COUNTY
12345 EL MONTE RD
LOS ALTOS CA 94022

DEAR CLAIMANT:

RE: HEALTH FEE ELIMINATION (CC)

WE HAVE REVIEWED YOUR 2005/2006 FISCAL YEAR REIMBURSEMENT CLAIM FOR THE MANDATED COST PROGRAM REFERENCED ABOVE. THE RESULTS OF OUR REVIEW ARE AS FOLLOWS:

AMOUNT CLAIMED	215,410.00
ADJUSTMENT TO CLAIM:	
LATE CLAIM PENALTY	- 1,000.00
TOTAL ADJUSTMENTS	- 1,000.00
AMOUNT DUE CLAIMANT	<u>\$ 214,410.00</u>

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT RYAN JESKE AT (916) 323-2363 OR IN WRITING AT THE STATE CONTROLLER'S OFFICE, DIVISION OF ACCOUNTING AND REPORTING, P.O. BOX 942850, SACRAMENTO, CA 94250-5875. THE PAYMENT WILL BE FORTHCOMING WITHIN 30 DAYS.

SINCERELY,

Ginny Brummels
GINNY BRUMMELS, MANAGER

LOCAL REIMBURSEMENT SECTION
P.O. BOX 942850 SACRAMENTO, CA 94250-5875

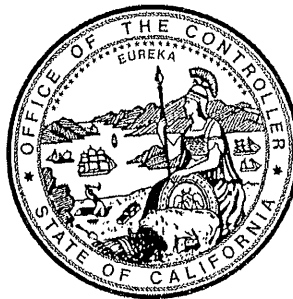
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT

Revised Audit Report

HEALTH FEE ELIMINATION PROGRAM

Chapter 1, Statutes of 1984, 2nd Extraordinary Session,
and Chapter 1118, Statutes of 1987

July 1, 2002, through June 30, 2006



JOHN CHIANG
California State Controller

August 2010



JOHN CHIANG
California State Controller

August 18, 2010

Bruce Swenson, President
Board of Trustees
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Dear Mr. Swenson:

The State Controller's Office audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session, and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

This revised final report supersedes our previous report dated May 20, 2009. We revised Finding 3 to correct errors in the allowable indirect cost rate calculations for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06. As a result, allowable costs increased by \$156,137 for the audit period.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated indirect costs. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

The district previously filed an Incorrect Reduction Claim (IRC) on September 14, 2009. The district may file an amended IRC with the Commission on State Mandates (CSM) based on this revised final audit report. The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk:vb

cc: Linda M. Thor, Ed.D., Chancellor
Foothill-De Anza Community College District
W. Andrew Dunn, Vice Chancellor, Business Services
Foothill-De Anza Community College District
Brett Watson, Grants Monitor
Foothill-De Anza Community College District
Christine Atalig, Auditor
Fiscal Services Unit
California Community Colleges Chancellor's Office
Thomas Todd, Principal Program Budget Analyst
Education Systems Unit
Department of Finance
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

Contents

Revised Audit Report

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Conclusion	2
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Restricted Use	3
Revised Schedule 1—Summary of Program Costs	4
Revised Findings and Recommendations	7
Attachment—District’s Response to Draft Audit Report	

Revised Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Foothill-De Anza Community College District for the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session (E.S.), and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006.

The district claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for the mandated program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenues, and overstated indirect costs. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

Background

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code section 72246 which authorized community college districts to charge a health fee for providing health supervision and services, providing medical and hospitalization services, and operating student health centers. This statute also required that health services for which a community college district charged a fee during fiscal year (FY) 1983-84 had to be maintained at that level in FY 1984-85 and every year thereafter. The provisions of this statute would automatically sunset on December 31, 1987, reinstating the community college districts' authority to charge a health service fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 (subsequently renumbered as section 76355 by Chapter 8, Statutes of 1993). The law requires any community college district that provided health services in FY 1986-87 to maintain health services at the level provided during that year for FY 1987-88 and for each fiscal year thereafter.

On November 20, 1986, the Commission on State Mandates (CSM) determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring specified community college districts that provided health services in FY 1983-84 to maintain health services at the level provided during that year for FY 1984-85 and for each fiscal year thereafter. This maintenance-of-effort requirement applied to all community college districts that levied a health service fee in FY 1983-84.

On April 27, 1989, the CSM determined that Chapter 1118, Statutes of 1987, amended this maintenance-of-effort requirement to apply to all community college districts that provided health services in FY 1986-87, requiring them to maintain that level in FY 1987-88 and for each fiscal year thereafter.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted parameters and guidelines on August 27, 1987, and amended them on May 25, 1989. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist school districts in claiming mandated program reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Health Fee Elimination Program for the period of July 1, 2002, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. Except for the following issue, we conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We were unable to assess fraud risk because the district did not respond to our inquiries regarding fraud assessment. The district did not respond based on its consultant's advice. As a result, we increased our substantive testing; however, this would not necessarily identify fraud or abuse that may have occurred.

We asked the district's representative to submit a written representation letter regarding the district's accounting procedures, financial records, and mandated cost claiming procedures as recommended by generally accepted government auditing standards. However, the district declined our request.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Revised Summary of Program Costs (Schedule 1) and in the Revised Findings and Recommendations section of this report.

For the audit period, Foothill-De Anza Community College District claimed \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims) for costs of the Health Fee Elimination Program. Our audit disclosed that \$1,984,443 is allowable and \$284,615 is unallowable. The State paid the district \$432,638. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,551,805, contingent upon available appropriations.

**Views of
Responsible
Official**

We issued a draft audit report on February 6, 2009. W. Andrew Dunn, Vice-Chancellor, Business Services, responded by letter dated February 23, 2009 (Attachment), stating that the district disagrees with the audit results in Finding 3 and 4 and does not dispute Findings 1 and 2 at this time. We issued a final audit report on May 20, 2009.

Subsequently, we revised Finding 3 to recalculate allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. As a result, we revised the Finding 3 audit adjustment from \$511,782 to \$241,031. We advised Brett Watson, Grants Monitor, of the revisions on August 11, 2010.

Restricted Use

This report is solely for the information and use of the Foothill-De Anza Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

August 18, 2010

**Revised Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries and benefits	\$ 820,845	\$ 1,068,240	\$ 247,395	Finding 1
Services and supplies	395,930	430,805	34,875	Finding 2
Total direct costs	1,216,775	1,499,045	282,270	
Indirect costs	395,452	249,441	(146,011)	Findings 1, 2, 3
Total direct and indirect costs	1,612,227	1,748,486	136,259	
Less authorized health service fees	(1,131,518)	(1,269,162)	(137,644)	Finding 4
Subtotal	480,709	479,324	(1,385)	
Less offsetting savings/reimbursements	—	(12,398)	(12,398)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 479,709</u>	465,926	<u>\$ (13,783)</u>	
Less amount paid by the State		(432,638)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 33,288</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries and benefits	\$ 1,039,659	\$ 1,279,571	\$ 239,912	Finding 1
Services and supplies	174,548	209,423	34,875	Finding 2
Total direct costs	1,214,207	1,488,994	274,787	
Indirect costs	381,990	269,359	(112,631)	Findings 1, 2, 3
Total direct and indirect costs	1,596,197	1,758,353	162,156	
Less authorized health service fees	(1,058,724)	(1,195,605)	(136,881)	Finding 4
Subtotal	537,473	562,748	25,275	
Less offsetting savings/reimbursements	—	(37,927)	(37,927)	Finding 5
Total program costs	<u>\$ 537,473</u>	524,821	<u>\$ (12,652)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 524,821</u>		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries and benefits	\$ 1,372,308	\$ 1,237,072	\$ (135,236)	Finding 1
Services and supplies	223,354	261,019	37,665	Finding 2
Total direct costs	1,595,662	1,498,091	(97,571)	
Indirect costs	473,274	537,215	(63,941)	Findings 1, 2, 3
Total direct and indirect costs	2,068,936	2,035,306	(33,630)	
Less authorized health service fees	(1,031,470)	(1,205,450)	(173,980)	Finding 4
Subtotal	1,037,466	829,856	(207,610)	
Less offsetting savings/reimbursements	—	(50,570)	(50,570)	Finding 5
Total program costs	<u>\$ 1,037,466</u>	779,286	<u>\$ (258,180)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 779,286</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 861,398	\$ 1,054,794	\$ 193,396	Finding 1
Services and supplies	261,562	297,562	36,000	Finding 2
Total direct costs	1,122,960	1,352,356	229,396	
Indirect costs	324,535	493,745	169,210	Findings 1, 2, 3
Total direct and indirect costs	1,447,495	1,846,101	398,606	
Less authorized health service fees	(1,213,971)	(1,482,261)	(268,290)	Finding 4
Subtotal	233,524	363,840	130,316	
Less offsetting savings/reimbursements	(18,114)	(33,816)	(15,702)	Finding 5
Less late filing penalty	(1,000)	(1,000)	—	
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)	
Total program costs	<u>\$ 214,410</u>	214,410	<u>\$ —</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 214,410</u>		

Revised Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2006</u>				
Direct costs:				
Salaries and benefits	\$ 4,094,210	\$ 4,639,677	\$ 545,467	
Services and supplies	1,055,394	1,198,809	143,415	
Total direct costs	5,149,604	5,838,486	688,882	
Indirect costs	1,575,251	1,549,760	(25,491)	
Total direct and indirect costs	6,724,855	7,388,246	663,391	
Less authorized health service fees	(4,435,683)	(5,152,478)	(716,795)	
Subtotal	2,289,172	2,235,768	(53,404)	
Less offsetting savings/reimbursements	(18,114)	(134,711)	(116,597)	
Less late filing penalty	(2,000)	(2,000)	—	
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)	
Total program costs	<u>\$ 2,269,058</u>	1,984,443	<u>\$ (284,615)</u>	
Less amount paid by the State		(432,638)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,551,805</u>		

¹ See the Revised Findings and Recommendations section.

² Government Code section 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in Government Code section 17560. That deadline has expired for FY 2005-06.

Revised Findings and Recommendations

**FINDING 1—
Misstated counseling-
related salaries and
benefits**

The district understated its counseling-related salaries and benefits by \$545,467 for the audit period. The related indirect costs total \$171,659. For fiscal year (FY) 2002-03, FY 2003-04, and FY 2005-06, the district understated its salaries and benefits by \$680,703, and for FY 2004-05, overstated salaries and benefits by \$135,236.

The district claimed estimated time instead of actual time spent by academic counselors on student health-related counseling tasks. During our fieldwork, the district elected to perform a time study to support the counseling-related salaries and benefits. The district’s time study plan identified the time study period as October 20, 2008, through October 31, 2008. The time study plan adequately supported the time spent in performing mandate-related activities.

The program’s parameters and guidelines state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Salaries and benefits	\$ 247,395	\$ 239,912	\$(135,236)	\$ 193,396	\$ 545,467
Indirect costs	80,403	75,476	(40,111)	55,891	171,659
Audit adjustment	<u>\$ 327,798</u>	<u>\$ 315,388</u>	<u>\$(175,347)</u>	<u>\$ 249,287</u>	<u>\$ 717,126</u>

Recommendation

We recommend that the district maintain records that document actual time spent on mandate-related activities.

District’s Response

The District does not dispute this finding at this time.

SCO’s Comment

Our finding and recommendation remain unchanged.

**FINDING 2—
Understated services
and supplies—
Student insurance costs**

The district understated allowable services and supplies by \$143,415 for costs related to student insurance. The related indirect costs total \$43,881.

The district did not claim any student accident premiums for the audit period. We allowed such costs based on documentation the insurance company provided to the district that showed actual student insurance costs.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Services and supplies	\$ 34,875	\$ 34,875	\$ 37,665	\$ 36,000	\$ 143,415
Indirect costs	11,334	10,972	11,171	10,404	43,881
Audit adjustment	<u>\$ 46,209</u>	<u>\$ 45,847</u>	<u>\$ 48,836</u>	<u>\$ 46,404</u>	<u>\$ 187,296</u>

For services and supplies, the parameters and guidelines state that the district may claim expenditures that can be identified as direct costs of the mandated program. They also state that all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs.

Recommendation

We recommend that the district claim actual mandate-related costs that are supported by its accounting records and source documents.

District's Response

The District does not dispute this finding at this time.

SCO's Comment

Our finding and recommendation remain unchanged.

**FINDING 3—
Overstated and
understated indirect
cost rates**

The district claimed unallowable indirect costs totaling \$241,031 because it overstated and understated allowable indirect cost rates.

For FY 2002-03 and FY 2003-04, the district claimed indirect costs based on an indirect cost rate prepared using Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget [OMB] Circular A-21). However, the district did not obtain federal approval for its indirect cost rate proposals (ICRPs). For FY 2004-05 and FY 2005-06, the district prepared its ICRP using the SCO’s FAM-29C methodology. However, the district did not correctly compute the FAM-29C rates.

For FY 2002-03 and FY 2003-04, the SCO’s claiming instructions allow the district to use a federally-approved indirect cost rate prepared in accordance with OMB Circular A-21. For FY 2004-05 and FY 2005-06, the parameters and guidelines and the SCO’s claiming instructions do not allow the district to use a federally-approved rate.

We calculated allowable indirect cost rates for FY 2002-03 and FY 2003-04 based on the FAM-29C methodology that the parameters and guidelines and the SCO claiming instructions allow. We also recalculated FY 2004-05 and FY 2005-06 rates based on the FAM-29C methodology. We calculated allowable indirect cost rates each year by using the information contained in the California Colleges Annual Financial and Budget Report, Expenditure by Activity (CCFS-311). Our calculations revealed that the district overstated and understated indirect cost rates claimed.

The following table summarizes the allowable and claimed indirect cost rates and the resulting audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable indirect cost rate	16.64%	18.09%	35.86%	36.51%	
Less claimed indirect cost rate	(32.50)%	(31.46)%	(29.66)%	(28.90)%	
Overstated indirect cost rate	(15.86)%	(13.37)%	6.20%	7.61%	
Allowable direct costs claimed	×\$1,499,045	×\$1,488,994	×\$1,498,091	×\$1,352,356	
Audit adjustment ¹	\$ (237,748)	\$ (199,079)	\$ 92,881	\$ 102,915	\$ (241,031)

¹ Calculation differences due to rounding.

The parameters and guidelines state, “Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.”

For FY 2002-03 and FY 2003-04 the SCO’s claiming instructions state:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 “Cost Principles for Educational Institutions,” or the Controller’s [FAM-29C] methodology. . . .

For FY 2004-05 and FY 2005-06, the SCO's claiming instructions state:

A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C). . . . If specifically allowed by a mandated program's P's and G's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate.

Recommendation

We recommend that the district claim indirect costs based on indirect cost rates computed in accordance with the SCO's claiming instructions. For the Health Fee Elimination Program, the district should prepare its indirect cost rate proposal using the SCO's FAM-29 methodology.

District's Response

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions." (Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce difference audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

SCO's Comment

Subsequent to our final audit report issued May 20, 2009, we revised the allowable indirect cost rates for FY 2003-04, FY 2004-05, and FY 2005-06. For FY 2003-04, our original calculation included an incorrect amount for one direct cost line item. For FY 2004-05 and FY 2005-06, our original calculations excluded allowable depreciation expense. As a result, we revised the total audit adjustment from \$511,782 to \$241,031. Our recommendation is unchanged. The revised calculations do not affect issues that the district discussed in its draft audit report response or the remainder of our comments below.

We agree that the district prepared its FY 2004-05 and FY 2005-06 indirect cost rates using the SCO's FAM-29C methodology. Consequently, we updated the finding to clarify the methodology used by the district.

The parameters and guidelines (section VI) state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district interprets "may be claimed" as compliance with the claiming instructions is voluntary. Instead, "may be claimed" permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the district must comply with the SCO's claiming instructions.

The district contends that "The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute. . . ." Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d) (2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment." Therefore, the district's contention is without merit.

Nevertheless, the SCO did, in fact, conclude that the district's indirect cost rates for FY 2002-03 through FY 2005-06 were excessive. "Excessive" is defined as "exceeding what is usual, proper, necessary, or normal. . . . Excessive implies an amount or degree too great to be reasonable or acceptable. . . ." ¹ The SCO calculated indirect cost rates using the FAM-29C methodology allowed in the claiming instructions. This method did not support the rates that the district claimed; thus, the rates claimed were excessive.

¹ Merriam-Webster's Collegiate Dictionary, Tenth Edition, © 2001.

**FINDING 4—
Understated
authorized health
service fees**

The district understated authorized health service fees by \$716,795. The district reported actual health service fees that it collected rather than authorized health service fees.

Mandated costs do not include costs that are reimbursable from authorized health service fees. Government Code section 17514 states that “costs mandated by the state” means any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

Education Code section 76355, subdivision (c), states that health fees are authorized for all students except those who: (1) depend exclusively on prayer for healing; (2) are attending a community college under an approved apprenticeship training program; or (3) demonstrate financial need. The California Community Colleges Chancellor’s Office (CCCCO) identified the fees authorized by Education Code section 76355, subdivision (a). The authorized fees for each quarter and summer session is \$9 for FY 2002-03 and FY 2003-04, \$10 for FY 2004-05, and \$11 for FY 2005-06. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

We obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO. The CCCCCO identified enrollment and BOGG recipient data from its management information system (MIS) based on student data that the district reported. The CCCCCO identified the district’s enrollment based on the CCCCCO’s MIS data element STD7, codes A through G. The CCCCCO eliminated any duplicate students based on their social security numbers. From the district enrollment, the CCCCCO identified the number of BOGG recipients based on MIS data element SF21, all codes with first letter of B or F. Effective January 1, 2006, Education Code section 76355, subdivision (c), no longer excludes students who have a financial need.

The following table shows the authorized health service fees calculation and audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Number of enrolled students	161,536	156,454	145,825	148,717	
Less number of BOGG recipients	(17,086)	(20,555)	(22,294)	(10,422)	
Less number of Apprenticeship enrollees	(3,432)	(3,054)	(2,986)	(3,544)	
Students subject to health service fee	141,018	132,845	120,545	134,751	
Authorized health service fee rate	× \$ (9)	× \$ (9)	× \$ (10)	× \$ (11)	
Authorized health service fees	\$ (1,269,162)	\$ (1,195,605)	\$ (1,205,450)	\$ (1,482,261)	\$ (5,152,478)
Less authorized health service fee claimed	1,131,518	1,058,724	1,031,470	1,213,971	4,435,683
Audit adjustment	\$ (137,644)	\$ (136,881)	\$ (173,980)	\$ (268,290)	\$ (716,795)

Recommendation

We recommend that the district deduct authorized health service fees from mandate-related costs claimed. To properly calculate authorized health service fees, we recommend that the district identify the number of enrolled students based on CCCCCO data element STD7, codes A through G. We also recommend that the district identify the number of apprenticeship program enrollees based on data elements SB23, code 1, and STD7, codes A through G.

In addition, we recommend that the district maintain documentation that identifies the number of students excluded from the health service fee based on Education Code section 76355, subdivision (c)(1). If the district excludes any students from receiving health services, the district should maintain contemporaneous documentation of a district policy that excludes those students and documentation identifying the number of students excluded.

District's Response

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health service fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectable based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectable based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee. . . for health supervision and services. . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "*If*, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, *if any*, that a part-time student is required to pay. *The governing board may decide whether the fee shall be mandatory or optional.*" (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that “[t]o the extent that community college districts can charge a fee, they are not required to incur a cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program within the meaning of Section 6 of Article XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenues to increased costs, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of services.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(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.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “*Any* offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “*any* offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

SCO's Comment

We updated the fiscal impact of the findings based on updated numbers of enrolled students and BOGG recipients provided by the CCCCCO. The updated information increased the finding by \$228,113, from \$488,682 to \$716,795. The remaining finding was modified slightly for clarity.

“Authorized” Fee Amount

We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount. Regardless of the district's decision to levy or not levy the authorized health service fee, Education Code section 76355, subdivision (a), provides districts the *authority* to levy the fee. The CCCCCO *notifies* districts when the authorized rate increases pursuant to Education Code section 76355, subdivision (a)(2). Therefore, the Administrative Procedures Act is irrelevant.

Government Code Section 76355

Education Code section 76355 (specifically, subdivision (a)) authorizes the health service fee rate. The statutory section also provides the basis for calculating the authorized rate applicable to each fiscal year. The statutory section states:

- (1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.
- (2) The governing board of each community college district may increase this fee by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).

Government Code Section 17514

Government Code section 17514 states, “Costs mandated by the state’ means any increased costs which a local agency or school district is *required* [emphasis added] to incur. . . .” If the district has authority to collect fees attributable to health service expenses, then it is not *required* to incur a cost. Therefore, those health service expenses do not meet the statutory definition of mandated costs.

Government Code Section 17556

The district presents an argument that the statutory language applies only when the fee authority is sufficient to offset the “entire” mandated costs. The CSM recognized that the Health Fee Elimination Program's costs are not uniform among districts. Districts provided different levels of service in FY 1986-87 (the “base year”). Furthermore, districts provided

these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts' mandated program costs, while it may be insufficient to pay the "entire" costs of other districts. While health service costs vary among districts, Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the CSM adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. To the extent that districts have authority to charge a fee, they are not required to incur a cost.

Two court cases addressed the issue of fee authority.² Both cases concluded that "costs" as used in the constitutional provision, exclude "expenses that are recoverable from sources other than taxes." In both cases, the source other than taxes was fee authority.

² County of Fresno v. California (1991) 53 Cal. 3d 482; Connell v. Santa Margarita (1997) 59 Cal. App. 4th 382.

Parameters and Guidelines

The CSM recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The CSM's staff analysis of May 25, 1989, states the following regarding the proposed parameters and guidelines amendments that the CSM adopted that day:

Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:

"If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied."

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Thus, CSM intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from the CCCCCO dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the CSM regarding authorized health service fees.

The CSM did not revise the proposed parameters and guidelines amendments further, since the CSM's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language. The CSM's meeting minutes of May 25, 1989, show that the CSM adopted the proposed parameters and guidelines on consent, with no additional discussion. Therefore, no community college districts objected and there was no change to the CSM's interpretation regarding authorized health service fees.

**FINDING 5—
Understated offsetting
savings/reimbursements**

The district understated offsetting savings/reimbursement by \$116,597. In addition to health service fees, the district received health services revenues of \$51,846 from students to offset services rendered and federal Medical Activities Administration funds for work performed by health center employees. The district reported only \$18,114 on its mandated cost claims; it was not able to provide any support for these costs.

The parameters and guidelines (section VIII) state that any offsetting savings/reimbursements the claimants experience as a direct result of this statute must be deducted from the costs claimed. It further states that reimbursement for this mandate received from any source (e.g., federal, state, etc.) must be identified and deducted from this claim.

The following table summarizes the audit adjustment:

	Fiscal Year				Total
	2002-03	2003-04	2004-05	2005-06	
Allowable offsetting revenues:					
Health services revenues	\$ (12,398)	\$ (12,101)	\$ (14,186)	\$ (13,161)	\$ (51,846)
Federal Medical Activities Administration funds	—	(25,826)	(36,384)	(20,655)	(82,865)
Subtotal	(12,398)	(37,927)	(50,570)	(33,816)	(134,711)
Less claimed offsetting revenues	—	—	—	18,114	18,114
Audit adjustment	\$ (12,398)	\$ (37,927)	\$ (50,570)	\$ (15,702)	\$ (116,597)

Recommendation

We recommend that the district report all health services program-related offsetting savings/reimbursements on its mandated cost claims.

District's Response

The District does not dispute this finding at this time.

SCO's Comment

Our finding and recommendation remain unchanged.

OTHER ISSUES

In its response to the draft audit report, the district addressed an issue related to SCO's authority to audit FY 2002-03 and FY 2003-04 claims within the statute of limitations and requested applicable laws and regulations in effect during the claiming period for Finding 3 and Finding 4.

Statutes of LimitationsDistrict's Issue

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.

The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

SCO's Comment

Government Code section 17558.5, subdivision (a), in effect for the audit period, states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

On January 13, 2005, the district amended its FY 2002-03 claim and filed its FY 2003-04 claim. The district received an initial payment for its FY 2002-03 claim on October 25, 2006. The State made no payment to the district for its FY 2003-04 claim. Therefore, the FY 2002-03 claim is subject to the initiation of an SCO audit until October 25, 2009. The FY 2003-04 claim is still subject to an SCO audit. We conducted an audit entrance conference on September 11, 2008. Therefore, the SCO initiated an audit within the period the claims were subject to audit.

Public Records Request

District's Issue

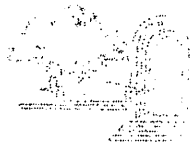
The District requires that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of record, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

SCO's Comment

SCO has made available to the district the requested records via letter and attachments dated March 25, 2009.

**Attachment—
District's Response to
Draft Audit Report**



**FOOTHILL-DE ANZA
Community College District**

12345 El Monte Road
Los Altos Hills, CA 94022

February 23, 2009

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Chapter 1, Statutes of 1984
Health Fee Elimination
Annual Claim Fiscal Years: 2002-03, 2003-04, 2004-05, and 2005-06

Dear Mr. Spano:

This letter is the response of the Foothill De Anza Community College District to the draft audit report for the above referenced programs and fiscal years transmitted by the letter from Jeffrey Brownfield, Chief, Division of Audits, State Controller's Office, dated February 6, 2009, and received by the District on February 12, 2009.

Finding 1 - Misstated counseling-related salaries and benefits

The District does not dispute this finding at this time.

Finding 2 - Understated services and supplies - student insurance costs

The District does not dispute this finding at this time.

Finding 3 - Unallowable indirect costs

The draft audit report concludes that the District overstated indirect costs by \$511,782 for the four-year audit period. The draft audit report states that the District developed indirect cost rates proposals based on OMB Circular A-21 that were not federally approved as required by Controller's claiming instructions. As a point of clarification, the OMB A-21 method was used for FY 2002-03 and FY 2003-04 only. The District used the FAM-29C method for FY 2004-05 and FY 2005-06. For all four fiscal years, the District used the same source document as the auditor, the CCSF-311.

The draft audit report asserts that the indirect cost method used by the District was inappropriate because it was not a cost study specifically approved by the federal government as required by the Controller's claiming instructions. The Controller's claiming instructions state that when claiming indirect costs college districts have the option of using a federally approved rate from

the Office of Management and Budget Circular A-21, a rate calculated using form FAM-29C, or a 7% indirect cost rate.

The parameters and guidelines for the Health Fee Elimination program (as last amended on May 25, 1989), which are legally enforceable standards for claiming costs, state: that "Indirect costs *may be claimed* in the manner described by the Controller in his claiming instructions."

(Emphasis added) Therefore, the parameters and guidelines *do not require* that indirect costs be claimed in the manner described by the Controller. Since the Controller's claiming instructions were never adopted as rules or regulations, they have no force of law. The burden is on the Controller to show that the indirect cost rate used by the District is excessive or unreasonable, which is the only mandated cost audit standard in statute (Government Code Section 17651(d)(2)). If the Controller wishes to enforce different audit standards for mandated cost reimbursement, the Controller should comply with the Administrative Procedure Act.

Since the draft audit report has stated no legal basis to disallow the indirect cost rate calculation method used by the District, and has not shown a factual basis to reject the rates as unreasonable or excessive, the adjustments should be withdrawn.

Finding 4- Understated authorized health fee service fees

The draft audit report states that student health service fee revenue offsets were understated by \$488,682 for the four-year audit period. This adjustment is due to the fact that "[t]he District reported actual health services fees that it collected rather than authorized health service fees." The auditor instead calculated "authorized health fee revenues," that is, the student fees collectible based on the highest student health service fee chargeable, rather than the full-time or part-time student health service fee actually charged to the student and actually collected.

"Authorized" Fee Amount

The draft audit report alleges that claimants must compute the total student health fees collectible based on the highest "authorized" rate. The draft audit report does not provide the statutory basis for the calculation of the "authorized" rate, nor the source of the legal right of any state entity to "authorize" student health services rates absent rulemaking or compliance with the Administrative Procedure Act by the "authorizing" state agency.

Education Code Section 76355

Education Code Section 76355, subdivision (a), states that "[t]he governing board of a district maintaining a community college *may require* community college students to pay a fee . . . for health supervision and services . . ." There is no requirement that community colleges levy these fees. The permissive nature of the provision is further illustrated in subdivision (b) which states: "If, pursuant to this section, a fee is required, the governing board of the district shall decide the amount of the fee, if any, that a part-time student is required to pay. The governing board may decide whether the fee shall be mandatory or optional." (Emphasis supplied in both instances)

Government Code Section 17514

The draft audit report relies upon Government Code Section 17514 for the conclusion that "[t]o the extent that community college districts can charge a fee, they are not required to incur a

cost.” First, charging a fee has no relationship to whether costs are incurred to provide the student health services program. Second, Government Code Section 17514, as added by Chapter 1459, Statutes of 1984, actually states:

“Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

There is nothing in the language of the statute regarding the authority to charge a fee, any nexus of fee revenue to increased cost, nor any language that describes the legal effect of fees collected.

Government Code Section 17556

The draft audit report relies upon Government Code Section 17556 for the conclusion that “the Commission on State Mandates (CSM) shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.” Government Code Section 17556 as last amended by Statutes of 2004, Chapter 895, actually states:

The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if after a hearing, the commission finds that: . . .

(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.

The draft audit report misrepresents the law. Government Code Section 17556 prohibits the Commission on State Mandates from finding costs subject to reimbursement, that is, approving a test claim activity for reimbursement, where the authority exists to levy fees in an amount sufficient to offset the entire mandated costs. Here, the Commission has already approved the test claim and made a finding of a new program or higher level of service for which the claimants do not have the ability to levy a fee in an amount sufficient to offset the entire mandated costs.

Parameters and Guidelines

The parameters and guidelines, as last amended on May 25, 1989, state, in relevant part: “*Any* offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed . . . This shall include the amount of [student fees] as authorized by Education Code Section 72246(a).” The use of the term “*any* offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not, because uncollected fees are “offsetting savings” that were not “experienced.”

The audit report should be changed to comply with the appropriate application of the parameters and guidelines and the Government Code concerning audits of mandate claims.

Finding 5 - Understated offsetting savings/reimbursements

The District does not dispute this finding at this time.

Statute of Limitations

The District's Fiscal Year 2002-03 and FY 2003-04 claims were mailed to the Controller on January 12, 2005. According to Government Code Section 17558.5, the Controller has three years to commence an audit of claims filed after January 1, 2005. The entrance conference date for this audit was September 11, 2008, which is after the three-year period to commence the audit expired. Therefore, the proposed audit adjustments for FY 2002-03 and FY 2003-04 are barred by the statute of limitations set forth in Government Code Section 17558.5.


The audit report should be changed to exclude findings for the FY 2002-03 and FY 2003-04 annual claims.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memorandums, or other writings in effect and applicable during the claiming period to Finding 3 (indirect cost rate calculation standards) and Finding 4 (calculation of the student health services fees offset).

Government Code section 6253, subdivision (c), requires the state agency that is the subject of the request, within 10 days from receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in your possession and promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, please state the estimated date and time when the records will be made available.

Sincerely,


W. Andrew Dunn
Vice-Chancellor, Business Services

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

S09-MCC-016



Exhibit C

RECEIVED
December 02, 2014
Commission on
State Mandates

JOHN CHIANG
California State Controller

December 1, 2014

LATE FILING

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: **Incorrect Reduction Claim (IRC)**
Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34
Education Code Section 76355
Statutes 1984, Chapter 1, 2nd E.S.; Statutes 1987, Chapter 1118
Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006
Foothill-De Anza Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) is transmitting our response to the above-titled IRC.

The district did not comply with the requirements of the claiming instructions in developing its indirect cost rates. The SCO's adjustment to the indirect cost rates based on the SCO's FAM-29C methodology is supported by the Commission's decisions on previous IRCs (e.g., statement of decision adopted on January 24, 2014, for the San Mateo County and San Bernardino community college districts on this same program). The parameters and guidelines, which were duly adopted at a Commission hearing, require compliance with the claiming instructions. The claiming instructions and related general provisions of the SCO's Mandated Cost Manual provide ample notice for claimants to properly claim indirect costs.

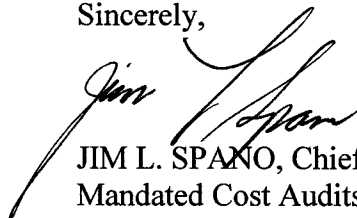
The district offset revenues collected from student health fee rather than by the fee amount the district was authorized to impose. The SCO's reduction of reimbursement to the extent of fee authority is supported by Education Code section 76355, the Commission decisions on previous IRCs, as mentioned above, and the appellate court decision in *Clovis Unified School District v. Chiang*.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 700, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 (323) 981-6802

Heather Halsey, Executive Director
December 1, 2014
Page 2

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano". The signature is written in a cursive style with a large, sweeping initial "J".

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/sk

9546

Attachments

**RESPONSE BY THE STATE CONTROLLER'S OFFICE
TO THE INCORRECT REDUCTION CLAIMS (IRCS) BY
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
Health Fee Elimination Program**

Table of Contents

<u>Description</u>	<u>Page</u>
SCO's Response to District's Comments	
Declaration (Affidavit of Bureau Chief)	Tab 1
State Controller's Office Analysis and Response	Tab 2
State Controller's Office's Claiming Instructions, Section 8, Indirect Costs – September 2003	Tab 3
State Controller's Office's Claiming Instructions, Section 8, Indirect Costs – September 2004	Tab 4
State Controller's Office's Claiming Instructions, Section 8, Indirect Costs – December 2005	Tab 5
State Controller's Office's Claiming Instructions, Section 8, Indirect Costs – December 2006	Tab 6
Commission on State Mandates Staff Analysis, Proposed Parameters and Guidelines – May 25, 1989.....	Tab 7
Commission on State Mandates Meeting Minutes – May 25, 1989.....	Tab 8
References to Exhibits relate to the district's IRC:	

Filed on October 5, 2009 (09-4206-I-24):

- Exhibit A, PDF, page 24
- Exhibit B, PDF, page 29
- Exhibit C, PDF, page 37
- Exhibit D, PDF, page 50
- Exhibit E, PDF, page 80
- Exhibit F, PDF, page 105
- Exhibit G, PDF, page 116

Filed on November 22, 2010 (10-4206-I-34):

- Exhibit A, PDF, page 14
- Exhibit B, PDF, page 19

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

2 Division of Audits
3 3301 C Street, Suite 725
4 Sacramento, CA 95816
5 Telephone No.: (916) 323-5849

6 BEFORE THE
7 COMMISSION ON STATE MANDATES
8 STATE OF CALIFORNIA
9

10 INCORRECT REDUCTION CLAIMS ON:

11 *Health Fee Elimination Program*

12 Chapter 1, Statutes of 1984, 2nd Extraordinary
13 Session; and Chapter 1118, Statutes of 1987

14 FOOTHILL-DE ANZA COMMUNITY
15 COLLEGE DISTRICT, Claimant

Nos.: CSM 09-4206-I-24 and
CSM 10-4206-I-34

AFFIDAVIT OF BUREAU CHIEF

16 I, Jim L. Spano, make the following declarations:

- 17 1) I am an employee of the State Controller's Office (SCO) and am over the age of
- 18 18 years.
- 19 2) I am currently employed as a Bureau Chief, and have been so since April 21, 2000.
- 20 Before that, I was employed as an audit manager for two years and three months.
- 21 3) I am a California Certified Public Accountant.
- 22 4) I reviewed the work performed by the SCO auditor.
- 23 5) Any attached copies of records are true copies of records, as provided by the Foothill-De
- 24 Anza Community College District or retained at our place of business.
- 25 6) The records include claims for reimbursement, along with any attached supporting
- documentation, explanatory letters, or other documents relating to the above-entitled
- Incorrect Reduction Claim.

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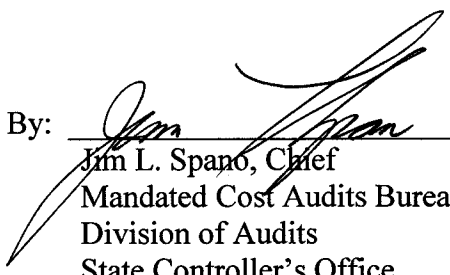
7) A field audit of the claims for fiscal year (FY) 2002-03, FY 2003-04, FY 2004-05, and FY 2005-06 commenced on September 11, 2008, and ended on November 20, 2008.

8) The SCO issued a final audit report on May 20, 2009. The SCO issued a revised final audit report on August 18, 2010, to account for technical corrections to Finding 3.

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: December 1, 2014

OFFICE OF THE STATE CONTROLLER

By: 

Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIMS BY
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
For Fiscal Year (FY) 2002-03, FY 2003-04, FY 2004-05, and FY 2005-06**

Health Fee Elimination Program

Chapter 1, Statutes of 1984, 2nd Extraordinary Session; and Chapter 1118, Statutes of 1987

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claims (IRCs) that the Foothill-De Anza Community College District filed on October 5, 2009, and November 22, 2010. The SCO audited the district's claims for costs of the legislatively mandated Health Fee Elimination Program for the period of July 1, 2002, through June 30, 2006. The SCO issued its final report on May 20, 2009 (IRC 09-4206-I-24, Exhibit D). The SCO issued a revised final audit report on August 18, 2010 (IRC 10-4206-I-34, Exhibit B).

The district submitted reimbursement claims totaling \$2,269,058 (\$2,271,058 less a \$2,000 penalty for filing late claims)—\$479,709 for FY 2002-03 (\$480,709 less a \$1,000 penalty for filing a late claim), \$537,473 for FY 2003-04, \$1,037,466 for FY 2004-05, and \$214,410 for FY 2005-06 (\$215,410 less a \$1,000 penalty for filing a late claim) (IRC 09-4206-I-24, Exhibit G). Subsequently, the SCO performed an audit for the period of July 1, 2002, through June 30, 2006, and determined that \$284,615 is unallowable. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenue, and overstated and understated its indirect cost rates.

In IRC 09-4206-I-24, the district contests Findings 3 and 4 of our final audit report issued May 20, 2009 (IRC 09-4206-I-24, Exhibit D). The district also alleges that the SCO initiated its audit of FY 2002-03 and FY 2003-04 beyond the statute of limitations applicable to those fiscal years. In IRC 10-4206-I-34, the district amends its position regarding Finding 3 and the statute of limitations, raises a new issue regarding the limitation on FY 2005-06 allowable costs, and identifies a non-substantive typographical error in the revised final audit report dated August 18, 2010 (IRC 10-4206-I-34, Exhibit B).

The district states that IRC 10-4206-I-34 incorporates IRC 09-4206-I-24 "in its entirety." Therefore, our comments address all district responses from both IRCs. The following table summarizes the audit results:

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2002, through June 30, 2003</u>			
Direct costs:			
Salaries and benefits	\$ 820,845	\$ 1,068,240	\$ 247,395
Services and supplies	395,930	430,805	34,875
Total direct costs	1,216,775	1,499,045	282,270
Indirect costs	395,452	249,441	(146,011)
Total direct and indirect costs	1,612,227	1,748,486	136,259
Less authorized health service fees	(1,131,518)	(1,269,162)	(137,644)
Subtotal	480,709	479,324	(1,385)
Less offsetting savings/reimbursements	—	(12,398)	(12,398)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	\$ 479,709	465,926	\$ (13,783)
Less amount paid by the State ¹		(432,638)	
Allowable costs claimed in excess of (less than) amount paid		\$ 33,288	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>July 1, 2003, through June 30, 2004</u>			
Direct costs:			
Salaries and benefits	\$ 1,039,659	\$ 1,279,571	\$ 239,912
Services and supplies	174,548	209,423	34,875
Total direct costs	1,214,207	1,488,994	274,787
Indirect costs	381,990	269,359	(112,631)
Total direct and indirect costs	1,596,197	1,758,353	162,156
Less authorized health service fees	(1,058,724)	(1,195,605)	(136,881)
Subtotal	537,473	562,748	25,275
Less offsetting savings/reimbursements	—	(37,927)	(37,927)
Total program costs	<u>\$ 537,473</u>	524,821	<u>\$ (12,652)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 524,821</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Direct costs:			
Salaries and benefits	\$ 1,372,308	\$ 1,237,072	\$ (135,236)
Services and supplies	223,354	261,019	37,665
Total direct costs	1,595,662	1,498,091	(97,571)
Indirect costs	473,274	537,215	63,941
Total direct and indirect costs	2,068,936	2,035,306	(33,630)
Less authorized health service fees	(1,031,470)	(1,205,450)	(173,980)
Subtotal	1,037,466	829,856	(207,610)
Less offsetting savings/reimbursements	—	(50,570)	(50,570)
Total program costs	<u>\$ 1,037,466</u>	779,286	<u>\$ (258,180)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 633,822</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Direct costs:			
Salaries and benefits	\$ 861,398	\$ 1,054,794	\$ 193,396
Services and supplies	261,562	297,562	36,000
Total direct costs	1,122,960	1,352,356	229,396
Indirect costs	324,535	493,745	169,210
Total direct and indirect costs	1,447,495	1,846,101	398,606
Less authorized health service fees	(1,213,971)	(1,482,261)	(268,290)
Subtotal	233,524	363,840	(130,316)
Less offsetting savings/reimbursements	(18,114)	(33,816)	(15,702)
Less late filing penalty	(1,000)	(1,000)	—
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)
Total program costs	<u>\$ 214,410</u>	214,410	<u>\$ —</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 214,410</u>	

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>Summary: July 1, 2002, through June 30, 2006</u>			
Direct costs:			
Salaries and benefits	\$ 4,094,210	\$ 4,639,677	\$ 545,467
Services and supplies	1,055,394	1,198,809	143,415
Total direct costs	5,149,604	5,838,486	688,882
Indirect costs	1,575,251	1,549,760	(25,491)
Total direct and indirect costs	6,724,855	7,388,246	663,391
Less authorized health service fees	(4,435,683)	(5,152,478)	(716,795)
Subtotal	2,289,172	2,235,768	(53,404)
Less offsetting savings/reimbursements	(18,114)	(134,711)	(116,597)
Less late filing penalty	(2,000)	(2,000)	—
Less allowable costs that exceed costs claimed ²	—	(114,614)	(114,614)
Total program costs	<u>\$ 2,269,058</u>	1,984,443	<u>\$ (284,615)</u>
Less amount paid by the State ¹		(432,638)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,551,805</u>	

¹ Payment information current as of April 19, 2011.

² Government Code section 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in the SCO's claiming instructions. That deadline has expired for FY 2005-06.

I. HEALTH FEE ELIMINATION PROGRAM CRITERIA

Parameters and Guidelines – May 25, 1989

On August 27, 1987, the Commission on State Mandates (Commission) adopted the parameters and guidelines for Chapter 1, Statutes of 1984, 2nd Extraordinary Session. The Commission amended the parameters and guidelines on May 25, 1989 (IRC 09-4206-I-24, Exhibit B), because of Chapter 1118, Statutes of 1987.

Section VI.B provides the following claim preparation criteria:

VI. CLAIM PREPARATION

B. Actual Costs of Claim Year for Providing 1986-87 Fiscal Year Program Level of Service

Claimed costs should be supported by the following information:

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

Section VII defines supporting data as follows:

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

Section VIII defines offsetting savings and other reimbursements as follows:

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount . . . authorized by Education Code section 72246(a) [now Education Code section 76355]. . . .

SCO Claiming Instructions

The SCO annually issues mandated costs claiming instructions, which contain filing instructions for mandated cost programs. The September 2003 claiming instructions provide indirect cost claiming instructions for FY 2002-03 (**Tab 3**). The September 2004 claiming instructions provide indirect cost claiming instructions for FY 2003-04 (**Tab 4**). The December 2005 claiming instructions provide indirect cost claiming instructions for FY 2004-05 (**Tab 5**). The December 2006 claiming instructions provide indirect cost claiming instructions for FY 2005-06 (**Tab 6**). The September 2003 Health Fee Elimination Program claiming instructions (**IRC 09-4206-I-24, Exhibit C**) are substantially similar to the version extant for each fiscal year during the audit period.

II. DISTRICT OVERSTATED ITS INDIRECT COST RATES CLAIMED

Issue

For FY 2002-03 and FY 2003-04, the district claimed indirect costs based on indirect cost rates that it calculated using the principles of Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget Circular A-21). However, the district did not obtain federal approval for its indirect cost rate proposals (ICRPs).

For FY 2004-05 and FY 2005-06, the district claimed indirect costs based on indirect cost rates that it prepared using the SCO's FAM-29C methodology. However, the district did not allocate direct and indirect costs as specified in the SCO's claiming instructions (**Tabs 5 and 6**).

SCO Analysis:

The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions."

For FY 2002-03 and FY 2003-04, the SCO's claiming instructions (**Tabs 3 and 4**) state:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's [FAM-29C] methodology. . . .

For FY 2004-05 and FY 2005-06, the SCO's claiming instructions (**Tabs 5 and 6**) state:

A CCD [community college district] may claim indirect costs using the Controller's methodology (FAM-29C) . . . If specifically allowed by a mandated program's P's & G's [parameters and guidelines], a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate. . . .

. . . In summary, FAM-29C indirect costs include Operation and Maintenance of Plant; Planning, Policy Making, and Coordination; General Institutional Support Services (excluding Community Relations); and depreciation or use allowance. . . .

District's Response – IRC 09-4206-I-24

PARAMETERS AND GUIDELINES

No particular indirect cost rate calculation is required by law. The Controller insists that the rate be calculated according to the claiming instructions. The parameters and guidelines for the Health Fee Elimination mandate state that "[i]ndirect costs *may be claimed* in the manner described by the State Controller in his claiming instructions." (Emphasis added.) The District claimed these indirect costs "in the manner" described by the Controller. The correct forms were used and the claimed amounts were entered at the correct locations. Further, "may" is not "shall"; the parameters and guidelines do not *require* that indirect costs be claimed in the manner specified by the Controller. In the audit report, the Controller asserts that because the parameters and guidelines specifically reference the claiming instructions, the claiming instructions thereby become authoritative criteria. Since the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are a statement of the Controller's interpretation and not law.

The Controller's interpretation of Section VI of the parameters and guidelines would, in essence, subject claimants to underground rulemaking at the direction of the Commission. The Controller's claiming instructions are unilaterally created and modified without public notice or comment. The Commission would violate the Administrative Procedure Act if it held that the Controller's claiming instructions are enforceable as standards or regulations. In fact, until 2005, the Controller regularly included a "forward" in the Mandated Cost Manual for Community Colleges (September 30, 2003 version attached as Exhibit "E") that explicitly stated the claiming instructions were "issued for the sole purpose of assisting claimants" and "should not be construed in any manner to be statutes, regulations, or standards."

Neither State law or the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. . . .

EXCESSIVE OR UNREASONABLE

The audit did not conclude that the District's indirect cost rates were excessive. The Controller is authorized to reduce a claim only if it determines the claim to be excessive or unreasonable. Here, the District has computed its indirect cost rates using the CCFS-311 report, and the Controller has disallowed it without a determination of whether the product of the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

The Controller has the burden to show that the indirect cost rate used by the District is excessive or unreasonable, pursuant to Government Code Section 17561(d)(2). In response to this assertion, the audit report states:

Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs and reduce any claim that the SCO determines is excessive or unreasonable. In addition, section 12410 states, "The Controller shall audit all claims against the State, and may audit the disbursement of any State money, for correctness, legality, and for sufficient provisions of law for payment."

The audit report then concludes, without any further discussion, that "the district's contention is without merit." The Controller has failed to demonstrate how the cited Government Code Sections relieve him of the burden to demonstrate that costs are excessive or unreasonable prior to reducing an annual reimbursement claim.

Section 12410 is found in the part of the Government Code that provides a general description of the duties of the Controller. It is not specific to the audit of mandate reimbursement claims. It is a well-settled maxim of statutory interpretation that "[a] specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."² The audit authority in Section 17561(d)(2) is more specific than the Controller's general audit authority contained in Government Code Section 12410. Therefore, the Controller only has the audit authority granted by Government Code Section 17561 (d)(2) when auditing mandate reimbursement claims.

Further, the audit report has not asserted or demonstrated that, if Section 12410 was the applicable standard, the audit adjustments were made in accordance with this standard. The District's claim was correct, in that it reported the actual costs incurred. There is also no allegation in the audit report that the claim was in any way illegal. Finally, the phrase "sufficient provisions of law for payment" refers to the requirement that there be adequate appropriations prior to the disbursement of any funds. There is no indication that any state funds were disbursed without sufficient appropriations. Thus, even if the standards of Section 12410 were applicable to mandate reimbursement audits, the audit report has failed to put forth any evidence that these standards are not met.

There is no indication that the Controller is actually relying on the audit standards put forth in Section 12410 for the adjustments to the District's reimbursement claims. The audit report claims that the Controller did actually determine that the District's costs were excessive, as required by Section 17561(d)(2), because the claimed costs were not "proper" since the indirect cost rates used did not match the rates derived by the auditors using the Controller's alternative methodology. . . .

Neither State law or the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines. . . .

² *San Francisco Taxpayers Assn. V. Board of Supervisors* (1992) 2 Cal.4th 571, 577. Attached as Exhibit "F."

SCO's Comment – IRC 09-4206-I-24

Parameters and Guidelines

The district states, "No particular indirect cost rate calculation is required by law." The district infers that it may calculate an indirect cost rate in any manner that it chooses. We disagree with the district's interpretation of the parameters and guidelines. The phrase "may be claimed" simply permits the district to claim indirect costs. However, if the district chooses to claim indirect costs, then the parameters and guidelines require that it comply with the SCO's claiming instructions. If the district believes that the program's parameters and guidelines are deficient, it should initiate a request to amend the parameters and guidelines pursuant to Government Code section 17557, subdivision (d). However, any such amendment would not apply to this audit period.

The district states that it “claimed these indirect costs ‘in the manner’ described by the Controller.” The district did *not* claim indirect costs in accordance with the SCO’s claiming instructions. The district prepared its FY 2002-03 and FY 2003-04 indirect cost rates using Title 2, *Code of Federal Regulations*, Part 220 (Office of Management and Budget (OMB) Circular A-21). However, the district did not obtain federal approval of those rates. The district prepared its FY 2004-05 and FY 2005-06 indirect cost rates using the SCO’s FAM-29C methodology. However, the district did not correctly compute the FAM-29C rates.

The district believes that the SCO incorrectly interprets the parameters and guidelines. We disagree. The parameters and guidelines are clear and unambiguous. They state, “Indirect costs may be claimed *in the manner described by the State Controller in his claiming instructions* [emphasis added]. In this case, the parameters and guidelines specifically identify the claiming instructions as authoritative criteria for indirect costs. The district also states:

The Controller’s interpretation of Section VI of the parameters and guidelines would, in essence, subject claimants to underground rulemaking. . . The Controller’s claiming instructions are unilaterally created and modified without public notice or comment.

We disagree. Title 2, CCR, Section 1186, allows districts to request that the Commission review the SCO’s claiming instructions. Section 1186, subdivisions (e) through (h), provides districts an opportunity for public comment during the review process. Neither this district nor any other district requested that the Commission review the SCO’s claiming instructions (i.e., the district did not exercise its right for public comment). The district may not now request a review of the claiming instructions applicable to the audit period. Title 2, CCR, section 1186, subdivision (j)(2), states, “A request for review filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.”

The district further states, “The Commission would violate the Administrative Procedure Act if it held that the Controller’s claiming instructions are enforceable as standards or regulations.” We disagree. The Commission adopted the parameters and guidelines pursuant to Government Code section 17557. The parameters and guidelines specifically reference the SCO’s claiming instructions for claiming indirect costs. Government Code section 17527, subdivision (g), states that in carrying out its duties and responsibilities, the Commission shall have the following powers:

(g) To adopt, promulgate, amend, and rescind rules and regulations, *which shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act* [emphasis added]

The district also references the Foreword section to the SCO’s claiming instructions (**IRC 09-4206-I-24, Exhibit E**); however, the district quotes the Foreword section out of context. The Foreword section actually states:

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller’s Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, *unless otherwise specified* [emphasis added], these instructions should not be construed in any manner to be statutes, regulations, or standards.

The parameters and guidelines state that claimants may claim indirect costs in accordance with the SCO’s claiming instructions. Therefore, the Foreword section does not conflict with our conclusion that the SCO’s claiming instructions are authoritative in this instance.

Finally, the district states:

Neither State law or the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines.

We disagree. Government Code section 17564, subdivision (b), states "Claims for direct *and indirect costs* filed pursuant to Section 17561 shall be filed *in the manner prescribed in the parameters and guidelines* [emphasis added]. . . ." The parameters and guidelines state that claimants may claim indirect costs in the manner described in the SCO's claiming instructions.

Excessive or Unreasonable

Government Code section 17558.5 requires the district to file a reimbursement claim for actual mandate-related costs. Government Code section 17561, subdivision (d)(2), allows the SCO to audit the district's records to verify actual mandate-related costs *and* reduce any claim that the SCO determines is excessive or unreasonable. In addition, Government Code section 12410 states, "The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

The SCO did conclude that the district's claim was excessive. Excessive is defined as "Exceeding what is usual, *proper, necessary*, [emphasis added] or normal."³ The district's indirect cost rates exceeded the proper amount based on the audited indirect cost rates that the SCO calculated according to the claiming instructions.

Further, pursuant to Government Code section 12410, we concluded that the district's claim was neither correct nor legal. Correct is defined as "Conforming to an approved or conventional standard."⁴ Legal is defined as "Conforming to or permitted by law or established rules."⁵ The district claimed indirect cost rates that did not conform to the SCO's claiming instructions.

The district states, "Neither State law nor the parameters and guidelines make compliance with the Controller's claiming instructions a condition of reimbursement. The District has followed the parameters and guidelines." However, the district did *not* follow the parameters and guidelines. The parameters and guidelines state, "Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The district did not comply with the claiming instructions applicable to each fiscal year during the audit period.

District's Response – IRC 10-4206-I-34

. . . The indirect cost rates calculated by the District are more consistent from year-to-year and recognize capital costs in the fiscal years incurred. The District rates are reasonable and not excessive. . . .

Because the Controller's method of utilizing depreciation expenses in lieu of CCFS-311 capital costs is also a reasonable method, the District does not dispute that choice of methods for FY 2004-05 and FY 2005-06 and will utilize that method in future annual claims to insure consistency. The District still disputes the audit findings for FY 2002-03 and FY 2003-04 because neither capital costs nor depreciation expenses are allowed.

³ Merriam-Webster's Collegiate Dictionary, Tenth Edition © 2001.

⁴ Ibid.

⁵ Ibid.

SCO's Comment

The district's opinion of "consistency" is irrelevant to the audit issue. In addition, the district did not cite any authoritative criteria for its allegation that the "district rates are reasonable and not excessive." The district did not obtain the required federal approval for its FY 2002-03 and FY 2003-04 indirect cost rates. For FY 2004-05 and FY 2005-06, the district did not allocate direct and indirect costs as specified in the SCO's claiming instructions.

Although the district states that it "does not dispute [the] choice of methods for FY 2004-05 and FY 2005-06," the district has not withdrawn or modified its comments from IRC 09-4206-I-24 regarding "parameters and guidelines" and "excessive or unreasonable." Therefore, our previous comments regarding those issues are unchanged.

III. DISTRICT UNDERSTATED AUTHORIZED HEALTH SERVICE FEES

Issue

For the audit period, the district understated authorized health service fees by \$716,795. The district believes that it is required to report only actual health service fees received.

SCO Analysis:

The parameters and guidelines require districts to deduct authorized health fees from costs claimed. For the period of July 1, 2002, through December 31, 2005, Education Code section 76355, subdivision (c), authorizes health fees for all students except those who: (1) depend exclusively on prayer for healing; (2) attend a community college under an approved apprenticeship training program; or (3) demonstrate financial need. Effective January 1, 2006, only Education Code section 76355, subdivisions (c)(1) and (2) are applicable. The following table summarizes the authorized fee per student for quarter and summer sessions:

<u>Fiscal Year</u>	<u>Authorized Health Fee Rate</u>
2002-03	\$9
2003-04	\$9
2004-05	\$10
2005-06	\$11

Government Code section 17514 defines "costs mandated by the state" as any increased costs that a school district is required to incur. To the extent community college districts can charge a fee, they are not required to incur a cost. In addition, Government Code section 17556 states that the Commission shall not find costs mandated by the State if the school district has the authority to levy fees to pay for the mandated program or increased level of service.

District's Response – IRC 09-4206-I-24

The final audit report asserts that the District understated offsetting health service fees by \$716,795 for the audit period because the District claimed health service fees actually collected, rather than the amounts authorized by Education Code Section 76355. . . .

Both the draft and final audit reports state that the auditors used *the same data source* from the California Community College Chancellor's Office to calculate health service fees authorized for each of the fiscal years, *with different quantitative results*. There was no explanation as to how this data, which is "extracted" from data reported by the District to the Chancellor's Office, is more reliable or relevant than the District's own records. It is even more troubling that the auditors increased this finding by \$228,113 from the draft to the final audit report based on "updated" data from the Chancellor's Office without explanation of what prompted this change in the enrollment numbers used. It would appear that the Chancellor's data is subject to subsequent unilateral modification. . . .

Parameters and Guidelines

The parameters and guidelines, which control reimbursement under the Health Fee Elimination mandate, state:

Any offsetting savings that the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of [student fees] as authorized by Education Code Section 72246(a)⁶.

In order for the District to “experience” these “offsetting savings” the District must actually have collected these fees. Note that the student health fees are named as a potential source of the reimbursement *received* in the preceding sentence. The use of the term “any offsetting savings” further illustrates the permissive nature of the fees. Student fees actually collected must be used to offset costs, but not student fees that could have been collected and were not. . . .

The audit report claims that the Commission’s intent was for claimed costs to be reduced by fees authorized, rather than fees received as stated in the parameters and guidelines. It is true that the Department of Finance proposed, as part of the amendments that were adopted on May 25, 1989, that a sentence be added to the offsetting savings section expressly stating that if no health service fee was charged, the claimant would be required to deduct the amount authorized. However, the Commission declined to add this requirement and adopted the parameters and guidelines without this language.

The fact that the Commission staff and the Chancellor’s Office agreed with the Department of Finance’s interpretation does not negate the fact that the Commission adopted parameters and guidelines that *did not* include the additional language. It would be nonsensical if the Commission held that every proposal that is discussed was somehow implied into the adopted document, because the proposals of the various parties are often contradictory. Therefore, it is evident that the Commission intends the language of the parameters and guidelines to be construed as written, and only those savings that are *experienced* are to be deducted.

Education Code Section 17556 [sic]

The Controller continues to rely on Education Code Section 17556(d) [sic], while neglecting its context and omitting a crucial clause. Section 17556(d) does specify that the Commission on State Mandates shall not find costs mandated by the state if the local agency has the authority to levy fees, but only if those fees are “*sufficient to pay for the mandated program*” (emphasis added). Section 17556 pertains specifically to the Commission’s determination on a test claim, and does not concern the development of parameters and guidelines or the claiming process. The Commission has already found state-mandated costs for this program, and the Controller cannot substitute its judgment for that of the Commission through the audit process.

The two court cases the audit report relies upon (*County of Fresno v. California* (1991) 53 Cal.3d 482 and *Connell v. Santa Margarita* (1997) 59 Cal.App.4th 382) are similarly misplaced. Both cases concern the approval of a test claim by the Commission. They do not address the issue of offsetting revenue in the reimbursement stages, only whether there is fee authority *sufficient to fully fund* the mandate that would prevent the Commission from finding costs mandated by the state.

In *County of Fresno*, the Commission had specifically found that the fee authority was sufficient to fully fund the test claim activities and denied the test claim. The court simply agreed to uphold this determination because Government Code Section 17556(d) was consistent with the California Constitution. The Health Fee Elimination mandate, decided by the Commission, found that the fee authority is not sufficient to fully fund the mandate. Thus, *County of Fresno* is not applicable because it concerns the process of deciding a test claim and has no bearing on the annual claim reimbursement process.

Similarly, although a test claim had been approved and parameters and guidelines were adopted, the court in *Connell* focused its determination on whether the initial approval of the test claim had been proper. It did not evaluate the parameters and guidelines or the reimbursement process because it found that the initial approval of the test claim had been in violation of Section 17556(d).

⁶ Former Education Code Section 72246 was repealed by Chapter 8, Statutes of 1993, and was replaced by Education Code Section 76355.

Government Code Section 17514

The district's response fails to address the unambiguous language of Government Code section 17514, which defines "costs mandated by the state" as *any increased costs that a school district is required to incur*. To the extent that community college districts can charge a fee, they are not *required* to incur a cost.

In our comments, we separately address the district's comments regarding the parameters and guidelines and Government Code section 17556. However, Government Code section 17514 renders the district's comments irrelevant.

CCCCO Data

Regarding CCCCCO enrollment, Board of Governors Grant recipient, and apprenticeship program enrollee data, the district states:

There was no explanation as to how this data, which is "extracted" from data reported by the District to the Chancellor's Office, is more reliable or relevant than the District's own records.

The district's comment is without merit. The district distinguishes between data received from the CCCCCO versus "the district's own records." It is the same data. The SCO receives the data from CCCCCO; this data is extracted directly from data that the district submitted to the CCCCCO. Our audit report identifies the parameters for the data extracted. The district also states:

It is even more troubling that the auditors increased this finding by \$228,113 from the draft to the final audit report based on "updated" data from the Chancellor's Office without explanation of what prompted this change in the enrollment numbers used. It would appear that the Chancellor's data is subject to subsequent unilateral modification. . . .

The district is incorrect; the CCCCCO data is not "subject to unilateral modification." The draft audit report used CCCCCO data extracted incorrectly by using MIS data element STD7, codes A, B, C, and F. As noted in the final report, the correct CCCCCO data is based on MIS data element STD7, codes A through G.

Parameters and Guidelines

We disagree with the district's interpretation of the parameters and guidelines' requirement regarding authorized health service fees. The Commission clearly recognized the *availability* of another funding source by including the fees as offsetting savings in the parameters and guidelines. The Commission's staff analysis of May 25, 1989 (Tab 7), states the following regarding the proposed parameters and guidelines amendments that the Commission adopted that day:

Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of [the] fee authority.

In response to that amendment, the [Department of Finance (DOF)] has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:

"If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied."

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII [emphasis added].

Thus, it is clear that the Commission intended that claimants deduct authorized health service fees from mandate-reimbursable costs claimed. Furthermore, the staff analysis included an attached letter from the CCCCCO dated April 3, 1989. In that letter, the CCCCCO concurred with the DOF and the Commission regarding authorized health service fees.

The district concludes that the Commission "declined" to add the sentence proposed by the DOF. We disagree. The Commission did not revise the proposed parameters and guidelines amendments further, as the Commission's staff concluded that DOF's proposed language did not substantively change the scope of staff's proposed language. The Commission, DOF, and CCCCCO all agreed with the intent to offset authorized health service fees. As noted above, the Commission staff analysis *agreed* with the DOF's proposed language. Commission staff concluded that it was unnecessary to revise the proposed parameters and guidelines, as the proposed language did "not substantively change the scope of Item VIII." The Commission's meeting minutes of May 25, 1989 (Tab 8), show that the Commission adopted the proposed parameters and guidelines on consent (i.e., the Commission concurred with its staff's analysis). The Health Fee Elimination Program amended parameters and guidelines were Item 6 on the meeting agenda. The meeting minutes state, "There being no discussion or appearances on Items 2, 3, 4, 5, 6, 7, 10, and 12, Member Buenrostro *moved adoption of the staff recommendation on these items* [emphasis added] on the consent calendar . . . The motion carried." Therefore, no community college districts objected and there was no change to the Commission's interpretation regarding authorized health service fees.

Government Code Section 17556

The district's response erroneously refers to "Education Code Section 17556," rather than Government Code section 17556. The district believes that Government Code section 17556, subdivision (d), applies only when the fee authority is sufficient to offset the "entire" mandated costs. We disagree. The Commission recognized that the Health Fee Elimination Program's costs are not uniform among districts. Districts provided different levels of service in FY 1986-87 (the "base year"). Furthermore, districts provided these services at varying costs. As a result, the fee authority may be sufficient to pay for some districts' mandated program costs, while it is insufficient to pay the "entire" costs of other districts. Education Code section 76355 (formerly section 72246) established a uniform health service fee assessment for students statewide. Therefore, the Commission adopted parameters and guidelines that clearly recognize an available funding source by identifying the health service fees as offsetting reimbursements. The SCO did not "substitute its judgment for that of the Commission through the audit process." To the extent that districts have authority to charge a fee, they are not required to incur a mandated cost, as defined by Government Code section 17514. We agree that the Commission found state-mandated costs for this program through the test claim process; however, the state-mandated costs found are those that are not otherwise reimbursable by authorized fees or other offsetting savings and reimbursements.

The district believes that the audit report's reliance on two court cases is "misplaced." We disagree. *County of Fresno v. State of California* (1991) 53 Cal. 3d 482 (which is also referenced by *Connell v. Santa Margarita Water District* (1997) 59 Cal. App. 4th 382) states, in part:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments... Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to Reimburse . . . local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

In view of the foregoing analysis, the question of the facial constitutionality of section 17556(d) under article XIII B, section 6, can be readily resolved. As noted, the statute provides that "The commission shall not find costs mandated by the state ... if, after a hearing, the commission finds that" the local government "has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service." *Considered within its context, the section effectively construes the term "costs" in the constitutional provision as excluding expenses that are recoverable from sources other than taxes* [emphasis added]. Such a construction is altogether sound. As the discussion makes clear, *the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes* [emphasis added]. . . .

Thus, mandated costs exclude expenses that are recoverable from sources other than taxes—in this case, the authority to assess health service fees.

District's Response – IRC 10-4206-I-34

The district had no additional comments regarding this audit adjustment.

IV. LIMIT ON AUDITED COSTS

Issue

The SCO's audit report identifies five audit adjustments applicable to FY 2005-06. The audit adjustments result in total allowable costs that exceed claimed costs. As a result, the SCO limited allowable costs to claimed costs.

Analysis:

Government Code section 17560 requires the claimant to submit an annual reimbursement claim for costs actually incurred. Government Code section 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in Government Code section 17560.

District's Response – IRC 10-4206-I-34

. . . the revised audit report increases the indirect cost rate amount for FY 2005-06 to \$102,915 from the previous amount of (\$32,050), an increase of \$134,965. As a result, the total "allowable costs" exceeds the total claimed cost by \$114,614. The audit report deducts from its findings of total reimbursable "program costs" the \$114,614 as "less allowable costs that exceed cost claimed." The stated basis for this limitation on allowable costs is Government Code Section 17568. . . .

Section 17561 (and Section 17568 for late claims) pertains to the timely filing of an annual claim in order to be eligible for payment, not to the contents of the claim itself. There is no Government Code Section cited that prohibits the Controller from reimbursement of *audited* costs in excess of claimed costs. Government Code Section 17561(d)(2) . . . states:

"[T]he Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs . . . and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years."

The use of the word "shall" makes the adjustment of *both* underpayments and overpayments mandatory. Thus, the Controller does not have the discretion to unilaterally determine that it will require reimbursement for audit adjustments in favor of the State and simply ignore audit adjustments in favor of the claimants. . . .

SCO's Comment – IRC 10-4206-I-34

Government Code section 17560, subdivision (a), states:

A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

Government Code section 17568 states:

... In no case shall a reimbursement claim be paid that is submitted more than one year after the deadline specified in Section 17560.

Thus, it is irrelevant whether the claimant or an SCO audit identifies additional allowable costs. The district may not now file an amended claim for additional allowable costs, because the statutory time allowed to file an amended claim has passed.

The district quotes Government Code section 17561, subdivision (d)(2) out of context by omitting language and thereby changing the structure of the statutory language. The statutory language does not identify a direct correlation between an SCO audit and previous fiscal year underpayments and overpayments. The section actually states:

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefore except as follows:

(A) The Controller may audit any of the following:

- (i) Records of any local agency or school district to verify the actual amount of the mandated costs.
- (ii) The application of a reasonable reimbursement methodology.
- (iii) The application of a legislatively enacted reimbursement methodology under Section 17573.

(B) The Controller may reduce any claim that the Controller determines is excessive or unreasonable.

(C) The Controller shall adjust the payment to correct for any underpayments or overpayments that occurred in previous fiscal years.

The district is responsible for filing its mandated cost claim. The SCO conducted an audit of the district's FY 2005-06 mandated cost claim and concluded that the claimed costs are allowable. Although we identified additional costs that would be allowable under the mandated program, we have no authority to file an amended claim on the district's behalf.

V. STATUTE OF LIMITATIONS

The audit scope included FY 2002-03 through FY 2005-06. The district believes that FY 2002-03 and FY 2003-04 were not subject to audit at the time that the SCO initiated its audit.

District's Response – IRC 09-4206-I-24

Statute of Limitations

January 12, 2005	FY 2002-03 and FY 2003-04 claimed filed by the District
January 12, 2008	FY 2002-03 and FY 2003-04 statute of limitations for audit expires
September 11, 2008	Audit entrance conference for all fiscal years

This is not an audit finding. The District alleges that the audit of the FY 2002-03 and FY 2003-04 annual reimbursement claims commenced after the time limitation for audit had passed. The final audit report asserts that initiation of the audit was proper because the initial payment for the FY 2002-03 claim did not occur until October 25, 2006, and there has been no payment for the FY 2003-04 claim. However, the clause in Government Code Section 17558.5 that delays the commencement of the time for the Controller to audit to the date of initial payment is void because it is impermissibly vague.

Prior to January 1, 1994, no statute specifically governed the statute of limitations for audits of mandate reimbursement claims. Statutes of 1993, Chapter 906, Section 2, operative January 1, 1994, added Government Code Section 17558.5 to establish for the first time a specific statute of limitations for audit of mandate reimbursement claims:

- (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than four years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

Thus, there are two standards. A funded claim is "subject to audit" for four years after the end of the calendar year in which the claim was filed. An unfunded claim must have its audit initiated within four years of first payment.

Statutes of 1995, Chapter 945, Section 13, operative July 1, 1996, repealed and replaced Section 17558.5, changing only the length of the period of limitations:

- (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003 amended Section 17558.5 to state:

- (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the ~~end of the calendar year in which the date that the actual~~ reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is made filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

The amendment is pertinent because this is the first time that the factual issue of the date the audit is "initiated" is introduced for mandate programs for which funds are appropriated. This amendment also means that it is impossible for the claimant to know when the statute of limitations will expire at the time the claim is filed, which is contrary to the purpose of a statute of limitations. It allows the Controller's own unilateral delay, or failure to make payments from funds appropriated for the purpose of paying the claims, to control the tolling of the statute of limitations, which is also contrary to the purpose of a statute of limitations.

Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5 to state:

- (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

The annual reimbursement claims for FY 2002-03 and FY 2003-04 are subject to this version of Section 17558.5, which retains the same limitations period as the prior version, but also adds the requirement that an audit must be completed within two years of its commencement.

Section 17558.5 provides that the time limitation for audit “shall commence to run from the date of initial payment” if no payment is made. However, this provision is void because it is impermissibly vague. At the time a claim is filed, the claimant has no way of knowing when payment will be made or how long the records applicable to that claim must be maintained. The current billion-dollar backlog in mandate payments, which continues to grow every year, could potentially require claimants to maintain detailed supporting documentation for decades. Additionally, it is possible for the Controller to unilaterally extend the audit period by withholding payment or directing appropriated funds only to those claims that have already been audited.

Therefore, the only specific and enforceable time limitation to commence an audit is three years from the date the claim was filed, and the annual reimbursement claims for FY 2002-03 and FY 2003-04 were past this time period when the audit was commenced on September 11, 2008. . . .

SCO’s Comment – IRC 09-4206-I-24

The district discusses statutory language effective prior to January 1, 2003; however, that language is irrelevant to the claims that are the subject of this Incorrect Reduction Claim.

Regarding relevant statutory language, the district states, “...the clause in Government Code Section 17558.5 that delays the commencement of the time for the Controller to audit to the date of initial payment is void because it is impermissibly vague.” We disagree. The district has no authority to adjudicate statutory language. Title 2, CCR, section 1185, subdivision (e)(3) states, “If the narrative describing the alleged incorrect reduction(s) involves more than discussion of statutes or regulations or legal argument and utilizes assertions or representations of fact, such assertions or representations shall be supported by testimonial or documentary evidence and shall be submitted with the claim.” The district presented no evidence to support its assertion that existing statutory language is “void.”

The district also states, “...it is possible for the Controller to unilaterally extend the audit period by withholding payment or directing appropriated funds only to those claims that have already been audited.” The district’s allegation contradicts statutory language. Government Code section 17567 prohibits the SCO from directing funds to selected claims. It states:

In the event that the amount appropriated for reimbursement purposes pursuant to Section 17561 is not sufficient to pay all of the claims approved by the Controller, *the Controller shall prorate claims in proportion to the dollar amount of approved claims timely filed and on hand at the time of proration* [emphasis added]. . . .

In addition, Government Code section 17561, subdivision (d) prohibits the SCO from withholding payment. It states:

The Controller shall pay any eligible claim pursuant to this section by October 15 or 60 days after the date the appropriation for the claim is effective, whichever is later. . . .

The SCO initiated its audit within the period allowed by Government Code section 17558.5, subdivision (a), which states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim [emphasis added].

For its FY 2002-03 claim, the district first received payment on October 25, 2006. The district did not receive a payment for its FY 2003-04 claim prior to our audit. The SCO initiated its audit on September 11, 2008. Therefore, the SCO met the requirements of Government Code section 17558.5, subdivision (a).

District's Response – IRC 10-4206-I-34

... The District now additionally asserts that the revised audit for all four fiscal years was beyond the statute of limitations when the revised audit was commenced and the revised audit report was issued on August 18, 2010.

The new findings ... appear to have initiated as a result of the original incorrect reduction claim. ... However, the revised audit was not noticed to the District until the revised audit report was published. ... Clearly, the Controller did not initiate these new findings during the statutory period allowed to initiate an audit for all four fiscal years that are the subject of this audit. ...

SCO's Comment – IRC 10-4206-I-34

The district infers that the revised audit report introduced “new” findings and that these “new” findings resulted from the original incorrect reduction claim. We disagree. The revised report clearly states that it corrects the calculation of allowable indirect cost rates, which resulted in a *reduction* to the total audit adjustment. The revisions were unrelated to the district's original incorrect reduction claim. The audit issue is unaffected by the corrected calculations. Therefore, we conclude that the district's comments related to the statutory audit period, as they relate to the revised audit report, are without merit. However, for the purpose of adjudicating this incorrect reduction claim only, the SCO does not object if the Commission wishes to invalidate the SCO's revised audit report. In that case, the total audit adjustment would increase to \$440,752, as shown in the original audit report dated May 20, 2009 (IRC 09-4206-I-24, Exhibit D).

VI. ERRATA

District's Response – IRC 10-4206-I-34

On page 5 of the revised audit report, the audit adjustment amount for “indirect costs” for FY 2004-05 is stated as (\$63,941). The correct amount is \$63,941.

SCO's Comment – IRC 10-4206-I-34

The district identified a non-substantive typographical error in the audit report. The typographical error does not affect the total audit adjustment for the audit period. The SCO posted a corrected revised audit report to its web site on April 15, 2011.

VII. CONCLUSION

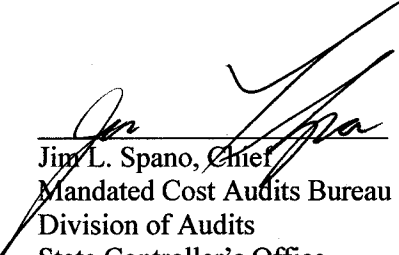
The State Controller's Office audited Foothill-De Anza Community College District's claims for costs of the legislatively mandated Health Fee Elimination Program (Chapter 1, Statutes of 1984, 2nd Extraordinary Session; and Chapter 1118, Statutes of 1987) for the period of July 1, 2002, through June 30, 2006. The district claimed unallowable costs totaling \$284,615. The costs are unallowable because the district understated reimbursable counseling and insurance costs, understated authorized health service fees and other health services revenue, and overstated its indirect cost rates.

In conclusion, the Commission should find that: (1) the SCO initiated its audit of FY 2002-03 and FY 2003-04 within the timeframe provided by Government Code section 17558.5, subdivision (a); (2) the revised audit report issued August 18, 2010 is not subject to the statute of limitations because it merely corrected existing calculations rather than introducing "new" findings, which resulted in a reduction to the total audit adjustment; (3) the SCO correctly reduced the district's FY 2002-03 claim by \$13,783; (4) the SCO correctly reduced the district's FY 2003-04 claim by \$12,652; (5) the SCO correctly reduced the district's FY 2004-05 claim by \$258,180; and (6) the SCO correctly limited FY 2005-06 allowable costs to \$214,410, the total costs claimed by the district.

VIII. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on December 1, 2010 at Sacramento, California, by:



Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

number of private auto mileage traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits derived by the mandate.

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

Table 4 Indirect Cost Rate for Community Colleges

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C
(01) Claimant				(02) Period of Claim		
(03) Expenditures by Activity				(04) Allowable Costs		
Activity	EDP	Total	Adjustments	Total	Indirect	Direct
Subtotal Instruction	599	\$19,590,357	\$1,339,059	\$18,251,298	\$0	\$18,251,298
Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		\$24,201,764	\$1,576,523	\$22,625,241	\$0	\$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
Extended Opportunity Programs & Services	6430						
Health Services	6440	0	0	0	0	0	
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973	
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735	
Job Placement Services	6470	83,663	0	83,663	0	83,663	
Veterans Services	6480	25,427	0	25,427	0	25,427	
Miscellaneous Student Services	6490	0	0	0	0	0	
Operation & Maintenance of Plant	6500						
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	0	1,035,221	
Custodial Services	6530	1,227,668	33,677	1,193,991	0	1,193,991	
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	0	525,450	
Utilities	6570	1,236,305	0	1,236,305	0	1,236,305	
Other	6590	3,454	3,454	0	0	0	
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0	
General Inst. Support Services	6700						
Community Relations	6710	0	0	0	0	0	
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151	
Human Resources Management	6730						
Noninstructional Staff Benefits & Incentives	6740						
Staff Development	6750						
Staff Diversity	6760						
Logistical Services	6770						
Management Information Systems	6780						
Subtotal		\$30,357,605	\$1,801,898	\$28,555,707	\$1,118,550	\$27,437,157	

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
General Inst. Sup. Serv. (cont.)	6700						
Other General Institutional Support Services	6790						
Community Services	6800						
Community Recreation	6810	703,858	20,509	683,349	0	683,349	
Community Service Classes	6820	423,188	24,826	398,362	0	398,362	
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781	
Economic Development	6840						
Other Community Svcs. & Economic Development	6890						
Ancillary Services	6900						
Bookstores	6910	0	0	0	0	0	
Child Development Center	6920	89,051	1,206	87,845	0	87,845	
Farm Operations	6930	0	0	0	0	0	
Food Services	6940	0	0	0	0	0	
Parking	6950	420,274	6,857	413,417	0	413,417	
Student Activities	6960	0	0	0	0	0	
Student Housing	6970	0	0	0	0	0	
Other	6990	0	0	0	0	0	
Auxiliary Operations	7000						
Auxiliary Classes	7010	1,124,557	12,401	1,112,156	0	1,112,156	
Other Auxiliary Operations	7090	0	0	0	0	0	
Physical Property Acquisitions	7100	814,318	814,318	0	0	0	
(05) Total		\$34,022,728	\$2,692,111	\$31,330,617	\$1,118,550	\$30,212,067	
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				3,70233%			
(07) Notes							
(a) Mandated Cost activities designated as direct costs per claim instructions.							

Tab 4

perform the mandated activity. The claimant must give the name of the contractor, explain the reason for having to hire a contractor, describe the mandated activities performed, give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the Parameters and Guidelines for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the Parameters and Guidelines for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the Parameters and Guidelines specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the Parameters and Guidelines may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation, number of private auto miles traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits

derived by the mandate.

A community college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

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Instructional Administration and Instructional Governance	6000					
Academic Administration	6010	2,941,386	105,348	2,836,038	0	2,836,038
Course and Curriculum Develop.	6020	21,595	0	21,595	0	21,595
Academic/Faculty Senate	6030					
Other Instructional Administration & Instructional Governance	6090					
Instructional Support Services	6100					
Learning Center	6110	22,737	863	21,874	0	21,874
Library	6120	518,220	2,591	515,629	0	515,629
Media	6130	522,530	115,710	406,820	0	406,820
Museums and Galleries	6140	0	0	0	0	0
Academic Information Systems and Tech.	6150					
Other Instructional Support Services	6190					
Admissions and Records	6200	584,939	12,952	571,987	0	571,987
Counseling and Guidance	6300					
Student Counseling and Guidance	6310					
Matriculation and Student Assessment	6320					
Transfer Programs	6330					
Career Guidance	6340					
Other Student Counseling and Guidance	6390					
Other Student Services	6400					
Disabled Students Programs & Services	6420					
Subtotal		\$24,201,764	\$1,576,523	\$22,625,241	\$0	\$22,625,241

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
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Health Services	6440	0	0	0	0	0	
Student Personnel Admin.	6450	289,926	12,953	276,973	0	276,973	
Financial Aid Administration	6460	391,459	20,724	370,735	0	370,735	
Job Placement Services	6470	83,663	0	83,663	0	83,663	
Veterans Services	6480	25,427	0	25,427	0	25,427	
Miscellaneous Student Services	6490	0	0	0	0	0	
Operation & Maintenance of Plant	6500						
Building Maintenance and Repairs	6510	1,079,260	44,039	1,035,221	72,465	962,756	
Custodial Services	6530	1,227,668	33,677	1,193,991	83,579	1,110,412	
Grounds Maintenance and Repairs	6550	596,257	70,807	525,450	36,782	488,668	
Utilities	6570	1,236,305	0	1,236,305	86,541	1,149,764	
Other	6590	3,454	3,454	0	0	0	
Planning, Policy Making, and Coordination	6600	587,817	22,451	565,366	565,366	0	
General Inst. Support Services	6700						
Community Relations	6710	0	0	0	0	0	
Fiscal Operations	6720	634,605	17,270	617,335	553,184	(a) 64,151	
Human Resources Management	6730						
Noninstructional Staff Benefits & Incentives	6740						
Staff Development	6750						
Staff Diversity	6760						
Logistical Services	6770						
Management Information Systems	6780						
Subtotal		\$30,357,605	\$1,801,898	\$28,555,707	\$1,397,917	\$27,437,157	

Table 4 Indirect Cost Rate for Community Colleges (continued)

MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGES						FORM FAM-29C	
(01) Claimant				(02) Period of Claim			
(03) Expenditures by Activity				(04) Allowable Costs			
Activity	EDP	Total	Adjustments	Total	Indirect	Direct	
General Inst. Sup. Serv. (cont.)	6700						
Other General Institutional Support Services	6790						
Community Services and Economic Development	6800						
Community Recreation	6810	703,858	20,509	683,349	0	683,349	
Community Service Classes	6820	423,188	24,826	398,362	0	398,362	
Community Use of Facilities	6830	89,877	10,096	79,781	0	79,781	
Economic Development	6840						
Other Community Svcs. & Economic Development	6890						
Ancillary Services	6900						
Bookstores	6910	0	0	0	0	0	
Child Development Center	6920	89,051	1,206	87,845	0	87,845	
Farm Operations	6930	0	0	0	0	0	
Food Services	6940	0	0	0	0	0	
Parking	6950	420,274	6,857	413,417	0	413,417	
Student and Co-curricular Activities	6960	0	0	0	0	0	
Student Housing	6970	0	0	0	0	0	
Other	6990	0	0	0	0	0	
Auxiliary Operations	7000						
Contract Education	7010	1,124,557	12,401	1,112,156	0	1,112,156	
Other Auxiliary Operations	7090	0	0	0	0	0	
Physical Property Acquisitions	7100	814,318	814,318	0	0	0	
(05) Total		\$34,022,728	\$2,692,111	\$31,330,617	\$1,397,917	\$30,212,067	
(06) Indirect Cost Rate: (Total Indirect Cost/Total Direct Cost)				4.63%			
(07) Notes							
(a) Mandated Cost activities designated as direct costs per claim instructions.							
(b) 7% of Operation and Maintenance of Plant costs are shown as indirect in accordance with claiming instructions.							

Tab 5

invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the P's & G's for the particular mandate. Equipment rentals used solely for the mandate is reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the pro rata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the P's & G's specify them as allowable. If they are allowable, the parameters and guidelines for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the pro rata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the P's & G's may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation, number of private auto miles traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

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It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

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Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. To be allowable, a cost must be allocable to a particular cost objective. Indirect costs must be distributed to benefiting cost objectives on bases which produce an equitable result related to the benefits derived by the mandate.

A CCD may claim indirect costs using the Controller's methodology (FAM-29C) outlined in the following paragraphs. If specifically allowed by a mandated program's P's & G's, a district may alternately choose to claim indirect costs using either (1) a federally approved rate prepared in

accordance with Office of Management and Budget (OMB) Circular A-21, *Cost Principles for Educational Institutions*; or (2) a flat 7% rate.

The SCO developed FAM-29C to be consistent with OMB Circular A-21, cost accounting principles as they apply to mandated cost programs. The objective is to determine an equitable rate to allocate administrative support to personnel who performed the mandated cost activities. The FAM-29C methodology uses a direct cost base comprised of salary and benefit costs and operating expenses. Form FAM-29C provides a consistent indirect cost rate methodology for all CCD's mandated cost programs.

FAM-29C uses total expenditures that districts report in their *California Community Colleges Annual Financial and Budget Report* (CCFS-311), Expenditures by Activity for the General Fund – Combined. The computation excludes Capital Outlay and Other Outgo in accordance with OMB Circular A-21. The indirect cost rate computation includes any depreciation or use allowance applicable to district buildings and equipment. Districts calculate depreciation or use allowance costs separately from the CCFS-311 report and should calculate them in accordance with OMB Circular A-21.

OMB Circular A-21, Section C.4, states that cost is allocable to a particular cost objective in accordance with the relative benefits received. Also, Section E.2.b. states that the overall objective of the cost allocation process is to distribute indirect costs to the institution's major functions in proportions reasonably consistent with their use of the institution's resources. In addition, Section E.2.c. notes that where certain items or categories of expense relate to less than all functions, such expenses should be set aside for selective allocation.

OMB Circular A-21, Section H, describes a simplified method for indirect cost rate calculations. However, Section H.1.b. states that the simplified method should not be used where it produces results that appear inequitable. As previously noted, FAM-29C strives to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by CCD. For example, library costs and department administration expenses, normally classified fully or partly as indirect costs in OMB Circular A-21, are instead classified as direct costs for FAM-29C. These costs do not benefit mandated cost activities. In summary, FAM-29C indirect costs include Operation and Maintenance of Plant; Planning, Policy Making, and Coordination; General Institutional Support Services (excluding Community Relations); and depreciation or use allowance. Community Relations includes fundraising costs, which are unallowable under OMB Circular A-21. If the district claims any costs from these indirect accounts as a direct mandate-related costs, the same costs should be reclassified as direct on FAM-29C.

Table 4 presents an example of the FAM-29C methodology.

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MANDATED COST INDIRECT COST RATE FOR COMMUNITY COLLEGE DISTRICTS					FORM FAM 29-C	
(1) Claimant			(02) Period of Claim			
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Instructional Activities	599	\$ 51,792,408	\$ (230,904)	\$ 51,561,504		\$ 51,561,504
Instruct. Admin. & Instruct. Governance	6000	6,882,034	(216,518)	6,665,516		6,665,516
Instructional Support Services	6100	4,155,095	(9,348)	4,145,747		4,145,747
Admissions and Records	6200	2,104,543	(3,824)	2,100,719		2,100,719
Student Counseling and Guidance	6300	4,570,658	(1,605)	4,569,053		4,569,053
Other Student Services	6400	5,426,510	(41,046)	5,385,464		5,385,464
Operation and Maintenance of Plant	6500	8,528,585	(111,743)	8,416,842	8,416,842	
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Non-instructional Staff Retirees' Benefits and Retirement Incentives	6740	1,011,060		1,011,060	1,011,060	
Staff Development	6750	108,655	(8,782)	99,873	99,873	
Staff Diversity	6760	30,125		30,125	30,125	
Logistical Services	6770	2,790,091	(244,746)	2,545,345	2,545,345	
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Other General Institutional Support Services	6790	33,155	(4,435)	28,720	28,720	
Community Services and Economic Development	6800	340,014		340,014		340,014
Ancillary Services	6900	1,148,730	(296)	1,148,434		1,148,434
Auxiliary Operations	7000			-		-
Depreciation or Use Allowance - Building				-	2,620,741	
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Totals		<u>\$100,687,011</u>	<u>\$ (1,466,612)</u>	<u>\$ 99,220,399</u>	<u>\$26,752,087</u>	<u>\$ 76,795,449</u>
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Tab 6

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Totals		<u>\$100,687,011</u>	<u>\$ (1,466,612)</u>	<u>\$ 99,220,399</u>	<u>\$26,752,087</u>	<u>\$ 76,795,449</u>
					(A)	(B)
Indirect Cost Rate (A)/(B)					<u>34.84%</u>	

Tab 7

Hearing: 5/25/89
File Number: CSM-4206
Staff: Deborah Fraga-Decker
WP 0366d

PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS
Chapter 1, Statutes of 1984, 2nd E.S.
Chapter 1118, Statutes of 1987
Health Fee Elimination ✓

Executive Summary

At its hearing of November 20, 1986, the Commission on State Mandates found that Chapter 1, Statutes of 1984, 2nd E.S., imposed state mandated costs upon local community college districts by (1) requiring those community college districts which provided health services for which it was authorized to and did charge a fee to maintain such health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter and (2) repealing the district's authority to charge a health fee. The requirements of this statute would repeal on December 31, 1987, unless subsequent legislation was enacted.

Chapter 1118, Statutes of 1987, was enacted September 24, 1987, and became effective January 1, 1988. Chapter 1118/87 modified the requirements contained in Chapter 1/84, 2nd E.S., to require those community college districts which provided health services in fiscal year 1986-87 to maintain such health services in the 1987-88 fiscal year and each fiscal year thereafter. Additionally, the language contained in Chapter 1/84, 2nd E.S., which repealed the districts' authority to charge a health fee to cover the costs of the health services program was allowed to sunset, thereby reinstating the districts' authority to charge a fee as specified. Parameters and guidelines amendments are appropriate to address the changes contained in Chapter 1118/87 because this statute amended the same Education Code sections previously enacted by Chapter 1/84, 2nd E.S., and found to contain a mandate.

Commission staff included the Department of Finance suggested non-substantive amendment to the staff's proposed parameters and guidelines amendments. The Chancellor's Office, the State Controller's Office, and the claimant are in agreement with these amendments. Therefore, staff recommends that the Commission adopt the parameters and guidelines amendments as requested by the Chancellor's Office and as developed by staff.

Claimant

Rio Hondo Community College District

Requesting Party

California Community Colleges Chancellor's Office

Chronology

12/2/85 Test Claim filed with Commission on State Mandates.
7/24/86 Test Claim continued at claimant's request.
11/20/86 Commission approved mandate.
1/22/87 Commission adopted Statement of Decision.
4/9/87 Claimant submitted proposed parameters and guidelines.
8/27/87 Commission adopted parameters and guidelines
10/22/87 Commission adopted cost estimate
9/28/88 Mandate funded in Commission's Claims Bill, Chapter 1425/88

Summary of Mandate

Chapter 1/84, 2nd E.S., effective July 1, 1984, repealed Education Code (EC) Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. The statute also required that any community college district which provided health services for which it was authorized to charge a fee shall maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter.

Prior to the passage of Chapter 1/84, 2nd E.S., the implementation of a health services program was at the local community college district's option. If implemented, the respective community college district had the authority to charge a health fee up to \$7.50 per semester for day and evening students, and \$5 per summer session.

Proposed Amendments

The Community Colleges Chancellor's Office (Chancellor's Office) has requested parameters and guidelines amendments be made to address the changes in mandated activities effectuated by Chapter 1118/87. (Attachment G) In order to expedite the process, staff has developed language to accomplish the following: (1) change the eligible claimants to those community college districts which provided a health services program in fiscal year 1986-87; and (2) change the offsetting savings and other reimbursements to include the reinstated authority to charge a health fee. (Attachment B)

Recommendations

The Department of Finance (DOF) proposed one non-substantive amendment to clarify the effect of the fee authority language on the scope of the reimbursable costs. With this amendment, the DOF believes the amendments to the parameters and guidelines are appropriate for this mandate and recommends the Commission adopt them. (Attachment C)

The Chancellor's Office recommends that the Commission approve the amended parameters and guidelines developed by staff with the additional language suggested by the DOF. (Attachment D)

The State Controller's Office (SCO), upon review of the proposed amendments, finds the proposals proper and acceptable. (Attachment E)

The claimant, in its recommendation, states its belief that the revisions are appropriate and concurs with the proposed changes. (Attachment F)

Staff Analysis

Issue 1: Eligible Claimants

The mandate found in Chapter 1/84, 2nd E.S., was for a new program with a required maintenance of effort at the fiscal year 1983-84 level. Chapter 1118/87 superseded that level of service by requiring that community college districts which provided a health services program in fiscal year 1986-87 maintain that level of effort in fiscal year 1987-88 and each subsequent year thereafter. Additionally, this expanded the group of eligible claimants because the requirement is no longer imposed on only those community college districts which had charged a health fee for the program. At the time of enactment of Chapter 1118/87, there were 11 community college districts which provided the health services program but had never charged a health fee for the service.

Therefore, staff has amended the language in Item III. "Eligible Claimants" to reflect this change in the scope of the mandate.

Issue 2: Reimbursement Alternatives

In response to Chapter 1/84, 2nd E.S., Item VI.B. contained two alternatives for claiming reimbursement costs. This gave claimants a choice between claiming actual costs for providing the health services program, or funding the program as was done prior to the mandate when a health fee could be charged.

The first alternative was in Item VI.B.1. and provided for the use of the formula which the eligible claimants were authorized to utilize prior to the implementation of Chapter 1/84, 2nd E.S.--total eligible enrollment multiplied by the health fee charged per student in fiscal year 1983-84. With the sunset of the repeal of the health fee authority as contained in Chapter 1/84, 2nd E.S., claimants can now charge the health fee as was allowed prior to fiscal year 1983-84, thereby funding the program as was done prior to the mandate. Therefore, this alternative is no longer applicable to this mandate and has been deleted by staff.

The second alternative was in Item VI.B.2. and provided for the claiming of actual costs involved in maintaining a health services program at the fiscal year 1983-84 level. This alternative is now the sole method of reimbursement for this mandate. However, it has been amended to reflect that Chapter 1118/87 requires a maintenance of effort at the fiscal year 1986-87 level.

Issue 3: Offsetting Savings and Other Reimbursements

With the sunset of the repeal of the fee authority contained in Chapter 1/84, 2nd E.S., Education Code (EC) section 72246(a) again provides community college districts with the authority to charge a health fee as follows:

"72246.(a) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than seven dollars and fifty cents (\$7.50) for each semester, and five dollars (\$5) for summer school, or five dollars (\$5) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, authorized by Section 72244, or both."

Staff amended Item "VIII. Offsetting Savings and Other Reimbursements" to reflect the reinstatement of this fee authority.

In response to that amendment, the DOF has proposed the addition of the following language to Item VIII. to clarify the impact of the fee authority on claimants' reimbursable costs:

"If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied."

Staff concurs with the DOF proposed language which does not substantively change the scope of Item VIII.

Issue 4: Editorial Changes

In preparing the proposed parameters and guidelines amendments, it was not necessary for staff to make any of the normal editorial changes as the original parameters and guidelines contained the language usually adopted by the commission.

Staff, the DOF, the Chancellor's Office, the SCO, and the claimant are in agreement with the recommended amendments which are shown in Attachment A with additions indicated by underlining and deletions by strikeout.

Staff Recommendation

Staff recommends the adoption of the staff's proposed parameters and guidelines amendments, which are based on the original parameters and guidelines adopted in response to Chapter 1/84, 2nd E.S., and amended in response to Chapter 1118/87, as well as incorporating the amendment recommended by the DOF. All parties concur with these amendments.

Adopted: 8/27/87

PARAMETERS AND GUIDELINES
Chapter 1118, Statutes of 1987, 2nd E.S./
Health Fee Elimination

I. SUMMARY OF MANDATE

Chapter 1, Statutes of 1984, 2nd E.S. repealed Education Code Section 72246 which had authorized community college districts to charge a health fee for the purpose of providing health supervision and services, direct and indirect medical and hospitalization services, and operation of student health centers. This statute also required that health services for which a community college district charged a fee during the 1983-84 fiscal year had to be maintained at that level in the 1984-85 fiscal year and every year thereafter. The provisions of this statute would automatically repeal on December 31, 1987, which would reinstate the community colleges districts' authority to charge a health fee as specified.

Chapter 1118, Statutes of 1987, amended Education Code section 72246 to require any community college district that provided health services in 1986-87 to maintain health services at the level provided during the 1986-87 fiscal year in 1987-88 and each fiscal year thereafter.

II. COMMISSION ON STATE MANDATES' DECISION

At its hearing on November 20, 1986, the Commission on State Mandates determined that Chapter 1, Statutes of 1984, 2nd E.S. imposed a "new program" upon community college districts by requiring any community college district which provided health services for which it was authorized to charge a fee pursuant to former Section 72246 in the 1983-84 fiscal year to maintain health services at the level provided during the 1983-84 fiscal year in the 1984-85 fiscal year and each fiscal year thereafter. This maintenance of effort requirement applies to all community college districts which levied a health services fee in the 1983-84 fiscal year, regardless of the extent to which the health services fees collected offset the actual costs of providing health services at the 1983-84 fiscal year level.

At its hearing of April 27, 1989, the Commission determined that Chapter 1118, Statutes of 1987, amended this maintenance of effort requirement to apply to all community college districts which provided health services in fiscal year 1986-87 and required them to maintain that level in fiscal year 1987-88 and each fiscal year thereafter.

III. ELIGIBLE CLAIMANTS

Community college districts which provided health services for the 1986-87 fiscal year and continue to provide the same services as a result of this mandate are eligible to claim reimbursement of those costs.

IV. PERIOD OF REIMBURSEMENT

Chapter 1, Statutes of 1984, 2nd E.S., became effective July 1, 1984. Section 17557 of the Government Code states that a test claim must be submitted on or before November 30th following a given fiscal year to establish for that fiscal year. The test claim for this mandate was filed on November 27, 1985; therefore, costs incurred on or after July 1, 1984, are reimbursable. Chapter 1118, Statutes of 1987, became effective January 1, 1988. Title 2, California Code of Regulations, section 1185.3(a) states that a parameters and guidelines amendment filed before the deadline for initial claims as specified in the Claiming Instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines; therefore, costs incurred on or after January 1, 1988, for Chapter 1118, Statutes of 1987, are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code Section 17564.

V. REIMBURSABLE COSTS

A. Scope of Mandate

Eligible community college districts shall be reimbursed for the costs of providing a health services program ~~without the authority to levy a fee~~. Only services provided ~~for fee~~ in 1986-87 fiscal year may be claimed.

B. Reimbursable Activities

For each eligible claimant, the following cost items are reimbursable to the extent they were provided by the community college district in fiscal year ~~1987-88~~ 1986-87:

ACCIDENT REPORTS

APPOINTMENTS

College Physician - Surgeon
Dermatology, Family Practice, Internal Medicine
Outside Physician
Dental Services
Outside Labs (X-ray, etc.)
Psychologist, full services
Cancel/Change Appointments
R.N.
Check Appointments

ASSESSMENT, INTERVENTION & COUNSELING

- Birth Control
- Lab Reports
- Nutrition
- Test Results (office)
- VD
- Other Medical Problems
- CD
- URI
- ENT
- Eye/Vision
- Derm./Allergy
- Gyn/Pregnancy Services
- Neuro
- Ortho
- GU
- Dental
- GI
- Stress Counseling
- Crisis Intervention
- Child Abuse Reporting and Counseling
- Substance Abuse Identification and Counseling
- Aids
- Eating Disorders
- Weight Control
- Personal Hygiene
- Burnout

EXAMINATIONS (Minor Illnesses)

- Recheck Minor Injury

HEALTH TALKS OR FAIRS - INFORMATION

- Sexually Transmitted Disease
- Drugs
- Aids
- Child Abuse
- Birth Control/Family Planning
- Stop Smoking
- Etc.
- Library - videos and cassettes

FIRST AID (Major Emergencies)

FIRST AID (Minor Emergencies)

FIRST AID KITS (Filled)

IMMUNIZATIONS

- Diphtheria/Tetanus
- Measles/Rubella
- Influenza
- Information

INSURANCE

- On Campus Accident
- Voluntary
- Insurance Inquiry/Claim Administration

LABORATORY TESTS DONE
Inquiry/Interpretation
Pap Smears

PHYSICALS
Employees
Students
Athletes

MEDICATIONS (dispensed OTC for misc. illnesses)
Antacids
Antidiarrhial
Antihistamines
Aspirin, Tylenol, etc.
Skin rash preparations
Misc.
Eye drops
Ear drops
Toothache - Oil cloves
Stingkill
Midol - Menstrual Cramps

PARKING CARDS/ELEVATOR KEYS
Tokens
Return card/key
Parking inquiry
Elevator passes
Temporary handicapped parking permits

REFERRALS TO OUTSIDE AGENCIES
Private Medical Doctor
Health Department
Clinic
Dental
Counseling Centers
Crisis Centers
Transitional Living Facilities (Battered/Homeless Women)
Family Planning Facilities
Other Health Agencies

TESTS
Blood Pressure
Hearing
Tuberculosis
 Reading
 Information
Vision
Glucometer
Urinalysis
Hemoglobin
E.K.G.
Strep A testing
P.G. testing
Monospot
Hemacult
Misc.

MISCELLANEOUS

Absence Excuses/PE Waiver
Allergy Injections
Band-aids
Booklets/Pamphlets
Dressing Change
Rest
Suture Removal
Temperature
Weigh
Misc.
Information
Report/Form
Wart Removal

COMMITTEES

Safety
Environmental
Disaster Planning

SAFETY DATA SHEETS

Central file

X-RAY SERVICES

COMMUNICABLE DISEASE CONTROL

BODY FAT MEASUREMENTS

MINOR SURGERIES

SELF-ESTEEM GROUPS

MENTAL HEALTH CRISIS

AA GROUP

ADULT CHILDREN OF ALCOHOLICS GROUP

WORKSHOPS

Test Anxiety
Stress Management
Communication Skills
Weight Loss
Assertiveness Skills

VI. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a list of each item for which reimbursement is claimed under this mandate. //EYIqBTe/dYAdnNz/ndy/dYAdn/c0SzS/Under one/of/two/dYterNAtIvesI//RyI/vee/amount/previously/collected/per student/and/employment/counsl/or/YZ/dctAdY/c0SzS/of/program/

A. Description of Activity

1. Show the total number of full-time students enrolled per semester/quarter.
2. Show the total number of full-time students enrolled in the summer program.
3. Show the total number of part-time students enrolled per semester/quarter.
4. Show the total number of part-time students enrolled in the summer program.

B. *Claiming/Alternatives*

Claimed costs should be supported by the following information:

Alternative/1//Fees/Previously/Collected/in/1983-84/Fiscal/Year/

1/ Fees/collected/in/the/1983-84/fiscal/year/to/support the/health/services/program/

2/ Total/number/of/students/under/item/VI/A//through/4/ above///Using/this/alternative//the/total/amount claimed/would/be/item/VI/B//multiplied/by/item VI/B/2///with/the/total/amount/reimbursed/increased/by the/applicable/implicit/price/deflator/

Alternative/2//Actual Costs of Claim Year for Providing 1983-84 Fiscal Year Program Level of Service.

1. Employee Salaries and Benefits

Identify the employee(s), show the classification of the employee(s) involved, describe the mandated functions performed and specify the actual number of hours devoted to each function, the productive hourly rate, and the related benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Services and Supplies

Only expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials which have been consumed or expended specifically for the purpose of this mandate.

3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

VII. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. This would include documentation for the fiscal year ~~1986-87~~ 1986-87 program to substantiate a maintenance of effort. These documents must be kept on file by the agency submitting the claim for a period of no less than three years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller or his agent.

VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences as a direct result of this statute must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim. This shall include the amount of \$7.50 per full-time student per semester, \$5.00 per full-time student for summer school, or \$5.00 per full-time student per quarter, as authorized by Education Code section 72246(a). This shall also include payments (fees) ~~now~~ received from individuals other than students who ~~were~~ are not covered by ~~former~~ Education Code Section 72246 for health services.

IX. REQUIRED CERTIFICATION

The following certification must accompany the claim:

I DO HEREBY CERTIFY under penalty of perjury:

THAT the foregoing is true and correct:

THAT Section 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with;

and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

Signature of Authorized Representative

Date

Title

Telephone No.

0350d

CALIFORNIA COMMUNITY COLLEGES

1107 NINTH STREET

SACRAMENTO, CALIFORNIA 95814

(916) 445-8732 445-1163



February 22, 1989



Mr. Robert W. Eich
Executive Director
Commission on State Mandates
1130 "K" Street, Suite LL50
Sacramento, CA 95814-3927

Dear Mr. Eich:

As you know, the Commission on August 27, 1987 adopted Parameters and Guidelines for claiming reimbursements of mandated costs related to community college health services. Fees formerly collected by community colleges had been eliminated by Chapter 1, Statutes of 1984, Second Extraordinary Session. Last year's mandate claims bill (AB 2763) included funding to pay all these claims through 1988-89.

The Governor's partial approval of AB 2763 last September included a stipulation that claims for the current year would be paid this fiscal year, but prior-year claims will be paid in equal installments from the next three budget acts. The Governor did not address the fact that the ongoing costs of providing the mandated level of service will continue to exceed the maximum permissible fee of \$7.50 per student per semester.

On behalf of all eligible community college districts, the Chancellor's Office proposes the following changes in the Parameters and Guidelines:

- o Payment of 1988-89 mandated costs in excess of maximum permissible fees. (This amount is payable from AB 2763.)
- o Payment of all prior-year claims in installments over the next three years. (Funds for these payments will be included in the next 3 budget acts.)
- o Payment of future-years mandated costs in excess of the maximum permissible fees. (No funding has yet been provided for these costs.)

Mr. Eich

2

February 22, 1989

If you have any questions regarding this proposal, please contact Patrick Ryan at (916) 445-1163.

Sincerely,

David Mertes

DAVID MERTE
Chancellor

DM:PR:mh

cc: *L* Deborah Fraga-Decker, CSM
Douglas Burris
Joseph Newmyer
Gary Cook

State of California

Memorandum

March 22, 1989

Deborah Fraga-Decker
 Program Analyst
 Commission on State Mandates

From : Department of Finance


Proposed Amendments to Parameters and Guidelines for Claim No. CSM-4206 -- Chapter 1, Statutes of 1984, 2nd E.S. and Chapter 1118, Statutes of 1987 -- Health Fee Elimination

Pursuant to your request, the Department of Finance has reviewed the proposed amendments to the parameters and guidelines related to community college health services. These amendments, which are requested by the Chancellor's Office, reflect the impact that Chapter 1118/87 has on the original parameters adopted by the Commission for Chapter 1/84 on August 27, 1987. Specifically, Chapter 1118/87:

- (1) requires districts which were providing health services in 1986-87, rather than 1983-84, to continue to provide such services, irrespective of whether or not a fee was charged for the services; and
- (2) allows all districts to again charge a fee of up to \$7.50 per student for the services. In this regard, we would point out that the proposed amendment to "VIII. Offsetting Savings, and Other Reimbursements" could be interpreted to require that, if a district elected not to charge fees it would not have to deduct anything from its claim. We believe that, pursuant to Section 17556 (d) of the Government Code, an amount equal to \$7.50 per student must be deducted whether or not it is actually charged since the district has the authority to levy the fee. We suggest that the following language be added as a second paragraph under "VIII": "If a claimant does not levy the fee authorized by Education Code Section 72246 (a), it shall deduct an amount equal to what it would have received had the fee been levied."

With the amendment described above, we believe the amendments to the parameters and guidelines are appropriate for this mandate and recommend the Commission adopt them at its April 27, 1989, meeting.

Any questions regarding this recommendation should be directed to James M. Apps or Kim Clement of my staff at 324-0043.



Fred Klass
 Assistant Program Budget Manager

cc: see second page

cc: Glen Beatie, State Controller's Office
Pat Ryan, Chancellor's Office, Community College
Juliet Musso, Legislative Analyst's Office
Richard Frank, Attorney General

LR:1988-2

CHANCELLOR'S OFFICE

GEORGE DEUKMEJIAN, Governor

CALIFORNIA COMMUNITY COLLEGES

1000 NINTH STREET
 SACRAMENTO, CALIFORNIA 95814
 (916) 875-2445 445-1163

April 3, 1989

Mr. Robert W. Eich
 Executive Director
 Commission on State Mandates
 1000 K Street, Suite LL50
 Sacramento, CA 95814



Attention: Ms. Deborah Fraga-Decker

Subject: CSM 4206
 Amendments to Parameters and Guidelines
 Chapter 1, Statutes of 1984, 2nd E.S.
 Chapter 118, Statutes of 1987
Health Fee Elimination

Dear Mr. Eich:

In response to your request of March 8, we have reviewed the proposed language changes necessary to amend the existing parameters and guidelines to meet the requirements of Chapter 118, Statutes of 1987.

The Department of Finance has also provided us a copy of their suggestion to add the following language in part VIII: "If a claimant does not levy the fee authorized by Education Code Section 72246(a), it shall deduct an amount equal to what it would have received had the fee been levied." This office concurs with their suggestion which is consistent with the law and with our request of February 22.

With the additional language suggested by the Department of Finance, the Chancellor's Office recommends approval of the amended parameters and guidelines as drafted for presentation to the Commission on April 27, 1989.

Sincerely,

DAVID MERTES
 Chancellor

DM:PR:mh

cc: Jim Apps, Department of Finance
 Glen Beatie, State Controller's Office
 Richard Frank, Attorney General's Office
 Juliet Muso, Legislative Analyst's Office
 Douglas Burris
 Joseph Newmyer
 Gary Cook



GRAY DAVIS
Controller of the State of California
 P.O. BOX 942850
 SACRAMENTO, CA 94250-0001

April 3, 1989



Ms. Deborah Fraga-Decker
 Program Analyst
 Commission on State Mandates
 1130 K Street, Suite LL50
 Sacramento, CA 95814

Dear Ms. Fraga-Decker:

RE: Proposed Amendments to Parameters and Guidelines: Chapter 1/84, 2nd
 E.S., and Chapter 1118/87 - Health Fee Elimination

We have reviewed the amendments proposed on the above subject and find the proposals proper and acceptable.

However, the Commission may wish to clarify section "VIII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS" that the required offset is the amount received or would have received per student in the claim year.

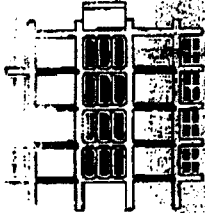
If you have any questions, please call Glen Beatie at 3-8137.

Sincerely,

Glenn Haas, Assistant Chief
 Division of Accounting

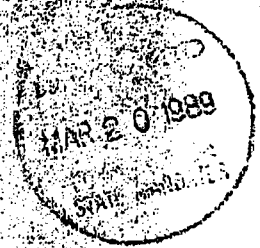
GH/GB:dvl

SC81822



HRH/60

RIO HONDO COMMUNITY COLLEGE DISTRICT
 3600 Workman Mill Road • Whittier, CA 90606 • Phone (213) 692-0921



March 16, 1989

Ms. Deborah Fraga-Decker
 Program Analyst
 Commission on State Mandates
 1130 K Street, Suite LL50
 Sacramento, CA 95814

REFERENCE: CSM-4206
 AMENDMENTS TO PARAMETERS AND GUIDELINES
 CHAPTER 1, STATUTES OF 1984, 2ND E.S.
 CHAPTER 1118, STATUTES OF 1987
 HEALTH FEE ELIMINATION

Dear Deborah:

We have reviewed your letter of March 7 to Chancellor David Mertes and the attached amendments to the health fee parameters and guidelines. We believe these revisions to be most appropriate and concur totally with the changes you have proposed.

I would like to thank you again for your expertise and helpfulness throughout this entire process.

Yours very truly,

Timothy M. Wood
 Vice President
 Administrative Affairs

TMW:hh

Tab 8

MINUTES

COMMISSION ON STATE MANDATES

May 25, 1989

10:00 a.m.

State Capitol, Room 437
Sacramento, California

Present were: Chairperson Russell Gould, Chief Deputy Director, Department of Finance; Fred R. Buenrostro, Representative of the State Treasurer; D. Robert Shuman, Representative of the State Controller; Robert Martinez, Director, Office of Planning and Research; and Robert C. Creighton, Public Member.

There being a quorum present, Chairperson Gould called the meeting to order at 10:02 a.m.

Item 1 Minutes

Chairperson Gould asked if there were any corrections or additions to the minutes of the Commission's hearing of April 27, 1989. There were no corrections or additions.

The minutes were adopted without objection.

Consent Calendar

The following items were on the Commission's consent agenda:

- Item 2 Proposed Statement of Decision
Chapter 406, Statutes of 1988
Special Election - Bridges
- Item 3 Proposed Statement of Decision
Chapter 583, Statutes of 1985
Infectious Waste Enforcement
- Item 4 Proposed Statement of Decision
Chapter 980, Statutes of 1984
Court Audits
- Item 5 Proposed Statement of Decision
Chapter 1286, Statutes of 1985
Homeless Mentally Ill

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Hearing of May 25, 1989
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- Item 6 Proposed Parameters and Guidelines Amendment
Chapter 1, Statutes of 1984, 2nd E.S.
Chapter 1118, Statutes of 1987
Health Fee Elimination
- Item 7 Proposed Parameters and Guidelines Amendment
Chapter 8, Statutes of 1988
Democratic Presidential Delegates
- Item 10 Proposed Statewide Cost Estimate
Chapter 498, Statutes of 1983
Education Code Section 48260.5
Notification of Truancy
- Item 12 Proposed Statewide Cost Estimate
Chapter 1226, Statutes of 1984
Chapter 1526, Statutes of 1985
Investment Reports

There being no discussion or appearances on Items 2, 3, 4, 5, 6, 7, 10, and 12, Member Buenrostro moved adoption of the staff recommendation on these items on the consent calendar. Member Martinez seconded the motion. The vote on the motion was unanimous. The motion carried.

The following items were continued:

- Item 13 Proposed Statewide Cost Estimate
Chapter 1335, Statutes of 1986
Trial Court Delay Reduction Act
- Item 16 Test Claim
Chapter 841, Statutes of 1982
Patients' Rights Advocates
- Item 17 Test Claim
Chapter 921, Statutes of 1987
Countywide Tax Rates

The next item to be heard by the Commission was:

- Item 8 Proposed Parameters and Guidelines Amendment
Chapter 961, Statutes of 1975
Collective Bargaining

The party requesting the proposed amendment, Fountain Valley School District, did not appear at the hearing. Carol Miller, appearing on behalf of the Education Mandated Cost Network, stated that the Network was interested in the issue of reimbursing a school district for the time the district Superintendent spent in, or preparing for, collective bargaining issues.

The Commission then discussed the issue of reimbursing the Superintendent's time as a direct cost to the mandated program or as an indirect cost as required by the federal publications OASC-10, and Federal Management Circular 74-4. Upon conclusion of this discussion, the Commission, staff, and Ms. Miller, agreed that the Commission could deny this proposed amendment by the Fountain Valley School District, and Ms. Miller could assist another district in an attempt to amend the parameters and guidelines to allow reimbursement of the Superintendent's cost relative to collective bargaining matters.

Member Creighton then inquired on the issue of holding collective bargaining sessions outside of normal working hours and the number of teachers the parameters and guidelines reimburse for participating in collective bargaining sessions. Ms. Miller stated that because of the classroom disruption that can result from the use of a substitute teacher, bargaining sessions are sometimes held outside of normal work hours for practical reasons. Ms. Miller also stated that the parameters and guidelines permit reimbursement for five substitute teachers.

Member Martinez moved and Member Buenrostro seconded a motion to adopt the staff recommendation to deny the proposed amendments to the parameters and guidelines. The roll call vote on the motion was unanimous. The motion carried.

Item 9 Proposed Statewide Cost Estimate
Chapter 498, Statutes of 1983
Education Code Section 51225.3
Graduation Requirements

Carol Miller appeared on behalf of the claimant, Santa Barbara Unified School District, Jim Apps and Don Enderton appeared on behalf of the Department of Finance, and Rick Knott appeared on behalf of the San Diego Unified School District.

Carol Miller began the discussion on this matter by stating her objection to the Department of Finance raising issues that were already argued in the parameters and guidelines hearings for this mandate. Based on this objection, Ms. Miller requested that the Commission adopt staff's recommendation and allow the Controller's Office to handle any audit exceptions.

Jim Apps stated that because school districts did not report funds that have been received by them, then the data reported in the survey is suspect. Therefore, the Department of Finance is not convinced that the cost estimate based on the data received by the schools is legitimate.

Discussion continued on the validity of the cost estimate and on the figures presented to the Commission for its consideration.

Member Creighton then made a motion to adopt staff's recommendation. Member Shuman seconded the motion. The vote on the motion was: Member Buenrostro, no; Member Creighton, aye; Member Martinez, no; Member Shuman, aye; and Chairperson Gould, no. The motion failed.

Chairperson Gould made an alternative motion that staff, the Department of Finance, and the school districts, conduct a pre-hearing conference and agree on an estimate to be presented to the Commission at a future hearing. Member Buenrostro seconded the motion. The roll call vote on the motion was unanimous. The motion carried.

Item 11 Statewide Cost Estimate
 Chapter 815, Statutes of 1979
 Chapter 1327, Statutes of 1984
 Chapter 757, Statutes of 1985
Short-Doyle Case Management

Pamela Stone, representing the County of Fresno, stated that the county was in agreement with the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years, and was opposed to the reduction of the costs estimate being proposed by the Department of Mental Health's late filing.

Lynn Whetstone, representing the Department of Mental Health, stated that the Department agrees with the methodology used by Commission staff to develop the cost estimate, however, the Department questioned the manner in which Commission staff extrapolated its survey figures into a statewide estimate. Ms. Whetstone stated that due to the reasons stated in its late filing, the Department believes that the cost estimate be reduced to \$17,280,000.

Member Shuman moved, and Member Martinez seconded a motion to adopt the staff proposed statewide cost estimate of \$20,000,000 for the 1985-86 through 1989-90 fiscal years. The roll call vote on the motion was unanimous. The motion carried.

Item 14 State Mandates Apportionment System
 Request for Review of Base Year Entitlement
 Chapter 1242, Statutes of 1977
Senior Citizens' Property Tax Postponement

Leslie Hobson appeared on behalf of the claimant, County of Placer, and stated agreement with the staff analysis.

There were no other appearances and no further discussion.

Member Creighton moved approval of the staff recommendation. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 15 Test Claim
 Chapter 670, Statutes of 1987
Assigned Judges

Vicki Wajdak and Pamela Stone appeared on behalf of the claimant, County of Fresno. Beth Mullen appeared on behalf of the Administrative Office of

the Courts. Jim Apps appeared on behalf of the Department of Finance. Allan Burdick appeared on behalf of the County Supervisors Association of California. Pamela Stone restated the claimant's position that the revenue losses due to this statute were actually increased costs because Fresno is now required to compensate its part-time justice court judges for work performed for another county while on assignment. Beth Mullen stated her opposition to this interpretation because Fresno's part-time justice court judge cannot be assigned elsewhere until all work required to be performed for Fresno has been completed; therefore, Fresno is only required to compensate the judge for its own work.

There followed discussion by the parties and the Commission regarding the applicability of the Supreme Court's decisions in County of Los Angeles and Lucia Mar. Chairperson Gould asked Commission Counsel Gary Hori whether this statute imposed a new program and higher level of service as contemplated by these two decisions. Mr. Hori stated that it did meet the definition of new program and higher level of service as contemplated by the Supreme Court.

Member Creighton moved to adopt the staff recommendation to find a mandate on counties whose part-time justice court judge is assigned within the home county. Member Shuman seconded the motion. The roll call vote was unanimous. The motion carried.

Item 18 Test Claim
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1980
Chapter 1373, Statutes of 1980
Public Law 99-372
Attorney's Fees - Special Education

Chairperson Gould recused himself from the hearing on this item.

Clayton Parker, representing the Newport-Mesa Unified School District, submitted a late filing on the test claim rebutting the staff analysis. Member Creighton stated that he had not had an opportunity to review the late filing and inquired on whether the claim should be heard at this hearing. Staff informed Member Creighton and Member Buenrostro that in reviewing the filing before this item was called, the filing appeared to be summary of the claimant's position on the staff analysis, and that there appeared to be no reason to continue the item.

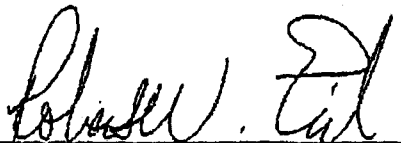
Mr. Parker stated that Commission staff had misstated the events that resulted in the claimant having to pay attorneys' fees to a pupil's guardians, and because of case law, courts do not have any discretion in awarding attorney's fees. Mr. Parker stated that because state legislation has codified the federal Education of the Handicapped Act, school districts are subject to the provisions of Public Law 94-142 and Public Law 99-372. Member Buenrostro then inquired whether staff was comfortable with discussing the issue of a state executive order incorporating federal law.

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Staff informed the Commission that it was not comfortable discussing this issue, and further noted that it appeared that Mr. Parker was basing his reasoning for finding P.L. 99-372 to be a state mandated program, on the Board of Control's finding that Chapter 1247, Statutes of 1977, and Chapter 797, Statutes of 1980, were a state mandated program. Staff noted that Board of Control's finding is currently the subject of the litigation in Huff v. Commission on State Mandates (Sacramento County Superior Court Case No. 352295).

Member Creighton moved and Member Martinez seconded a motion to continue this item and have legal counsel and staff review the arguments presented by Mr. Parker. The vote on the motion was unanimous. The motion carried.

With no further items on the agenda, Chairperson Gould adjourned the hearing at 11:45 a.m.



ROBERT W. EICH
Executive Director

RWE:GLH:cm:0224g

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 3, 2014, I served the:

State Controller's Office Comments on IRC

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Education Code Section 76355

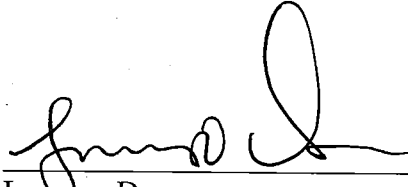
Statutes 1984, 2nd E.S.; Chapter 1; Statutes 1987, Chapter 1118;

Fiscal Years: 2002-2003, 2003-2004, 2004-2005 and 2005-2006

Foothill-De Anza Community College District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 3, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/3/14

Claim Number: 09-4206-I-24 and 10-4206-I-34

Matter: Health Fee Elimination

Claimant: Foothill-De Anza Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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12345 El Monte Road, Los Altos Hills, CA 94022
Phone: (650) 949-6202
mcelroykevin@fhda.edu

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Yazmin Meza, *Department of Finance*
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Robert Miyashiro, *Education Mandated Cost Network*
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robertm@sscal.com

Jameel Naqvi, Analyst, *Legislative Analysts' Office*
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Jameel.naqvi@lao.ca.gov

Andy Nichols, *Nichols Consulting*
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andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
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christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
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Phone: (619) 232-3122
apalkowitz@sashlaw.com

Keith Petersen, *SixTen & Associates*
Claimant Representative

P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kpbsixten@aol.com

Sandra Reynolds, *Reynolds Consulting Group, Inc.*
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Phone: (951) 303-3034
sandrareynolds_30@msn.com

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Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
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Nicolas Schweizer, *Department of Finance*
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David Scribner, *Max8550*
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Phone: (916) 852-8970
dscribner@max8550.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
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Phone: (916) 323-5849
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Dennis Speciale, *State Controller's Office*
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Phone: (916) 324-0254
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COMMISSION ON STATE MANDATES

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**Exhibit D**

February 10, 2016

Mr. Keith B. Petersen
SixTen and Associates
P.O. Box 340430
Sacramento, CA 95834

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34
Former Education Code Section 72246 (Renumbered as 76355)
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);
Statutes 1987, Chapter 1118 (AB 2336)
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, and 2005-2006
Foothill-DeAnza Community College District, Claimant

Dear Mr. Petersen and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **March 2, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 27, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about May 13, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Former Education Code Section 72246 (Renumbered as 76355)¹
Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1) and
Statutes 1987, Chapter 1118 (AB 2336)

Health Fee Elimination

Fiscal Years 2002-2003, 2003-2004, 2004-2005, and 2005-2006

09-4206-I-24 and 10-4206-I-34

Foothill-DeAnza Community College District, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses the consolidated incorrect reduction claims (IRC) filed by Foothill-DeAnza Community College District (claimant) regarding net reductions of \$284,615 made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2005-2006 under the *Health Fee Elimination* program.²

The following issues are in dispute:

- The period of limitation applicable to audits by the Controller;
- The reduction of costs based on asserted faults in the development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer

¹ Statutes 1993, chapter 8.

² The total net reduction over four years is \$284,615, based the Controller offsetting the understated health fee revenues against other unclaimed costs, which were not disputed by the claimant, and adjustments made to some of the reductions in the revised audit report.

session, to fund these services.³ In 1984, the Legislature repealed the community colleges' fee authority for health services.⁴ However, the Legislature also reenacted section 72246, operative on January 1, 1988, to reauthorize the fee, at \$7.50 for each semester (or \$5 per quarter or summer session).⁵

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁶ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁷ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer session.⁸ As a result, beginning January 1, 1988 all community college districts were required to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁹

³ Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.].

⁴ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

⁵ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

⁶ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

⁷ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

⁸ Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

⁹ Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355 (Stats. 1993, ch. 8).

Procedural History

On January 12, 2005, claimant's fiscal year 2002-2003 and 2003-2004 claims were filed.¹⁰ On December 13, 2005, claimant's fiscal year 2004-2005 claim was filed.¹¹ On July 2, 2007, claimant's fiscal year 2005-2006 claim was filed.¹²

On October 25, 2006, the fiscal year 2002-2003 claim was first paid by the Controller. The fiscal year 2003-2004, 2004-2005, and 2005-2006 claims have not been paid.¹³

On September 11, 2008, the audit entrance conference was held.¹⁴ On May 20, 2009, the Controller issued its audit report.¹⁵ On October 5, 2009, the claimant filed IRC 09-4206-I-24.¹⁶ On August 18, 2010, the Controller issued a revised final audit report.¹⁷ On November 22, 2010, the claimant filed IRC 10-4206-I-34.¹⁸ On December 2, 2010, Commission staff issued the notice of complete filing and request for comments for 10-4206-I-34 and notice of consolidation of 09-4206-I-24 and 10-4206-I-34. On December 2, 2014, the Controller submitted late comments on the consolidated IRCs.¹⁹

Commission staff issued the draft proposed decision on February 10, 2016.

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes

¹⁰ Exhibit A, IRC 09-4206-I-24, page 18.

¹¹ Exhibit A, IRC 09-4206-I-24, page 136.

¹² Exhibit A, IRC 09-4206-I-24, page 145.

¹³ Exhibit A, IRC 09-4206-I-24, page 72; Exhibit C, Controller's Late Comments on IRC, page 22; Exhibit B, IRC 10-4206-I-34, pages 27-28.

¹⁴ Exhibit A, IRC 09-4206-I-24, page 18.

¹⁵ Exhibit A, IRC 09-4206-I-24, page 9.

¹⁶ Exhibit A, IRC 09-4206-I-24, page 1.

¹⁷ Exhibit B, IRC 10-4206-I-34, page 6.

¹⁸ Exhibit B, IRC 10-4206-I-34, page 1.

¹⁹ Exhibit C, Controller's Late Comments on IRC.

over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²¹

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.²²

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.²³ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.²⁴

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
The limitation period applicable to the Controller’s audits of mandate reimbursement claims.	The claimant asserts that the fiscal year 2002-2003 and 2003-2004 claims, were filed and filed-as-amended, respectively, on January 12, 2005, and that therefore an audit entrance conference occurring on September 11, 2008 would not constitute timely initiation of the audit. The Controller argues that because the claims were not paid until October 25, 2006, the	<i>The audit was timely initiated and timely completed –</i> Section 17558.5 provides that if no payment is made on a reimbursement claim, the time to initiate an audit begins to run when initial payment is made: here, October 25, 2006. Thus the

²⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²² *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

²³ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁴ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

	three year period did not begin to run until that time, pursuant to Government Code section 17558.5.	audit entrance conference prior to October 25, 2009 was timely. In addition, section 17558.5 requires an audit to be completed within two years. Here, both the first final audit report and the revised final audit report were completed in less than two years from the entrance conference held September 11, 2008.
Reductions of indirect cost rates for fiscal years 2002-2003 and 2003-2004 based on asserted flaws in the development of indirect cost rates.	The claimant asserts that the Controller incorrectly reduced indirect costs claimed on grounds that the claimant did not claim indirect costs in accordance with the claiming instructions. Claimant argues that the claiming instructions are not enforceable, and the recalculation of indirect costs by the Controller was arbitrary and capricious.	<i>Correct</i> – This reduction based on claimant’s failure to obtain federal approval for its claimed rates developed by the OMB circular A-21 methodology is correct as a matter of law, because the methodology itself requires federal approval. Recalculation of indirect costs for fiscal years 2002-2003 and 2003-2004 pursuant to the state FAM-29C method is not arbitrary, capricious, or entirely lacking in evidentiary support. With respect to fiscal years 2004-2005 and 2005-2006, the revised audit report found an increase in reimbursement, not a reduction, and the Commission therefore does not have jurisdiction to evaluate the propriety of that adjustment.
Reductions based on understated offsetting revenues from student health fees.	Claimant asserts that the Controller incorrectly reduced costs claimed based on the Controller’s application of health service fees that the claimant was authorized to collect, but did not, as offsetting revenue.	<i>Correct</i> – In <i>Clovis Unified School District v. Chiang</i> (2010) 188 Cal.App.4th 794, the court held that to the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service,

		that charge cannot be recovered as a state-mandated cost. The claimant is required to report fee amounts that it is authorized to collect, not just the fee amounts it actually received.
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Staff Analysis

A. The Audit Was Timely Initiated and Timely Completed Pursuant to Government Code Section 17558.5.

The claimant argues that the Controller did not timely conduct the audit pursuant to Government Code section 17558.5. Section 17558.5, as applicable to the claim years here at issue, requires a valid audit to be initiated no later than three years after the date that the reimbursement claim is filed or last amended. However, the section also provides that *if no funds are appropriated or no payment is made* “to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”²⁵ “In any case,” section 17558.5 requires the audit to be completed no later than two years after it is commenced.²⁶

1. The Audit Was Timely Initiated Pursuant to Government Code Section 17558.5.

Government Code section 17558.5 states that if funds are not appropriated or no payment is made to the claimant for a given year, section 17558.5 states the “time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”²⁷

Here, the fiscal year 2002-2003 reimbursement claim was amended on or about January 12, 2005,²⁸ but was not paid, based on the evidence in the record, until October 25, 2006.²⁹ Therefore, the time to initiate an audit, in this case, commenced to run from October 25, 2006, and an audit initiated before October 25, 2009 would be timely.

Based on the evidence in the record, staff finds that the audit in issue was initiated no later than September 11, 2008, the date of the entrance conference, and the audit was therefore timely initiated.

²⁵ Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

²⁶ Government Code section 17558.5 (as amended, Stats. 2004, ch. 890 (AB 2856)).

²⁷ Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

²⁸ The Controller’s final audit report states that the amended claim was received on January 13, 2004, but the claimant states that it was mailed on January 12, 2004. Whether the filing date for purposes of annual reimbursement claims is measured upon receipt or upon dispatch is not necessary to resolve the period of limitation issue in this claim. (Exhibit A, IRC 09-4206-I-24, page 72.)

²⁹ Exhibit A, IRC 09-4206-I-24, pages 19; 72.

2. The Audit Was Timely Completed.

Government Code section 17558.5 also prescribes the time in which an audit must be completed: “In any case, an audit shall be completed not later than two years after the date that the audit is commenced.”³⁰ Based on the evidence in the record, the first audit report was issued May 20, 2009, well within two years of the entrance conference;³¹ the second was issued August 18, 2010, also prior to the expiration of the two year period beginning September 11, 2008.

Based on the foregoing, staff finds that both the first final audit report and the revised final audit report were timely completed in accordance with Government Code section 17558.5.

B. The Controller’s Reduction of Indirect Costs Claimed for Fiscal Years 2002-2003 and 2003-2004 Is Correct as a Matter of Law, and the Commission Does Not Have Jurisdiction Over the Adjustment of Indirect Costs in Favor of the Claimant for Fiscal Years 2004-2005 and 2005-2006.

The Controller’s audit found both an overstatement and an understatement of indirect costs during the audit period. For fiscal years 2002-2003 and 2003-2004, the claimant claimed indirect costs based on a rate calculated pursuant to the OMB Circular A-21 method, which was authorized under the claiming instructions at that time. However, the Controller found that the claimant did not obtain federal approval for its claimed rate, which is required by the OMB Circular. The Controller therefore reduced the indirect costs and recalculated based on the state FAM-29C method, using data available from the claimant’s annual financial and budget reporting to the Chancellor’s Office on the CCFS-311. For fiscal years 2004-2005 and 2005-2006, the Controller found an understatement of indirect costs, based on the claimant’s allocation of direct and indirect costs using the state FAM-29C method.

Based on the analysis herein, staff finds that the Controller’s reduction of indirect costs for fiscal years 2002-2003 and 2003-2004 on the basis of the claimant’s failure to obtain federal approval for indirect cost rates developed in accordance with the OMB Circular A-21 method is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. If a claimant chooses to use the OMB Circular A-21 methodology, claimant must obtain federal approval for the rate calculated through formal negotiation, an informal correspondence process or a simplified method which sets the indirect cost rate using a salaries and wage base.³² The end result of the negotiation process is a sponsored agreement in which final approval lies with the federal government negotiating the rate and must be supported by “adequate documentation to support costs charged to sponsored agreements.”³³ Moreover, there is no evidence that the Controller’s recalculation in accordance with the FAM-29C methodology described in the claiming instructions was arbitrary, capricious, or entirely lacking in evidentiary support. Additionally, staff finds that for fiscal years 2004-2005 and 2005-2006 the Controller did not

³⁰ Government Code section 17558.5 (Stats. 2004, ch. 890).

³¹ Exhibit A, IRC 09-4206-I-24, page 52.

³² Exhibit X, OMB Circular A-21, pages 37-39.

³³ Exhibit X, OMB Circular A-21, page 6.

reduce, but rather increased, indirect costs claimed, and the Commission therefore does not have jurisdiction over this audit adjustment.

C. The Controller’s Reduction for Understated Offsetting Revenues Is Correct as a Matter of Law.

The Controller determined that the claimant understated its authorized offsetting health fee revenues by \$716,795 over the four fiscal years at issue.³⁴ These reductions were made on the basis of the fee authority available to claimant, multiplied by the number of students subject to the fee, less the amount of offsetting revenue claimed.

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require, a community college district to levy a health services fee, and that the parameters and guidelines require a community college district to deduct from its reimbursement claims “[a]ny offsetting savings that the claimant *experiences* as a direct result of this statute...”³⁵

Staff finds that the correct calculation and application of offsetting revenue from student health fees has been resolved by the *Clovis Unified* decision,³⁶ and that a reduction to the extent of fee revenue *authorized*, rather than fee revenue collectible as a practical matter, is correct as a matter of law. Therefore, the Controller’s reduction of reimbursement to the extent of the fee authority found in Education Code section 76355, and as applied to all students, not just those from whom the claimant is able to collect, is correct as a matter of law.

Conclusion

Staff concludes that reductions of indirect costs, based on the claimant’s failure to obtain federal approval for the development of its indirect cost rate, and the Controller’s recalculation of indirect costs using the method described in the claiming instructions, were correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission further finds that the reduction of costs over the audit period based on understated offsetting health fee revenues was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRC, and authorize staff to make any technical, non-substantive changes following the hearing.

³⁴ Exhibit A, IRC 09-4206-I-24, page 66.

³⁵ Exhibit A, IRC 09-4206-I-24, pages 67-68.

³⁶ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
 ON:**

Former Education Code Section 72246
 (Renumbered as 76355)³⁷

Statutes 1984, Chapter 1 (1983-1984 2nd Ex.
 Sess.) (AB2X 1) and Statutes 1987, Chapter
 1118 (AB 2336)

Fiscal Years 2002-2003, 2003-2004,
 2004-2005, and 2005-2006

Foothill-DeAnza Community College District,
 Claimant

Case No.: 09-4206-I-24 and 10-4206-I-34

Health Fee Elimination

DECISION PURSUANT TO
 GOVERNMENT CODE SECTION 17500
 ET SEQ.; CALIFORNIA CODE OF
 REGULATIONS, TITLE 2, DIVISION 2,
 CHAPTER 2.5. ARTICLE 7

(Adopted May 27, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this consolidated incorrect reduction claim (IRC) during a regularly scheduled hearing on May 27, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC by a vote of [vote count will be included in the adopted decision] as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

³⁷ Statutes 1993, chapter 8.

Summary of the Findings

This analysis addresses the consolidated IRCs filed by Foothill-DeAnza Community College District (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2005-2006 under the *Health Fee Elimination* program. Over the four fiscal years in question, reductions totaling \$284,615 were made based on understated offsetting health fees authorized to be collected and disallowed indirect costs.

The Commission finds that the audit was both timely initiated and timely completed in accordance with Government Code section 17558.5. Additionally, the Commission concludes that reductions of indirect costs claimed, based on the claimant's failure to obtain federal approval for its indirect cost rate calculated pursuant to the federal OMB Circular A-21 method, and the Controller's recalculation of indirect costs using another method authorized by the parameters and guidelines and claiming instructions, was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission further finds that the reduction of costs based on understated offsetting health fee revenues was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.³⁸

COMMISSION FINDINGS

I. Chronology

09/11/2008	The entrance conference for the audit of fiscal years 2002-2003 through 2005-2006 was held.
02/06/2009	Controller issued the draft audit report. ³⁹
02/23/2009	Claimant responded by letter to the draft audit report. ⁴⁰
05/20/2009	Controller issued the final audit report. ⁴¹
10/05/2009	Claimant filed IRC 09-4206-I-24. ⁴²
08/18/2010	Controller issued the revised final audit report. ⁴³
11/22/2010	Claimant filed IRC 10-4206-I-34. ⁴⁴

³⁸ The total net reduction for the audit period is only \$284,615, because understated indirect costs for fiscal years 2004-2005 and 2005-2006, as well as understated student insurance costs and understated salaries and benefits, were offset against the overstated indirect costs for fiscal years 2002-2003 and 2003-2004 and understated health fees for all four years.

³⁹ Exhibit A, IRC 09-4206-I-24, page 75.

⁴⁰ Exhibit A, IRC 09-4206-I-24, page 75.

⁴¹ Exhibit A, IRC 09-4206-I-24, page 52.

⁴² Exhibit A, IRC 09-4206-I-24, page 1.

⁴³ Exhibit B, IRC 10-4206-I-34, page 21.

⁴⁴ Exhibit B, IRC 10-4206-I-34, page 1.

- 12/02/2010 Commission staff issued a notice of complete filing, consolidation of 09-4206-I-24 and 10-4206-I-34, and request for comments.
- 12/02/2014 Controller submitted late comments on the consolidated IRCs.⁴⁵
- 02/10/2016 Commission staff issued the draft proposed decision.⁴⁶

II. Background

Health Fee Elimination Program

Prior to 1984, former Education Code section 72246 authorized community college districts that voluntarily provided health supervision and services, direct and indirect medical and hospitalization services, or operation of student health centers to charge almost all students a health service fee not to exceed \$7.50 for each semester or \$5 for each quarter or summer session, to fund these services.⁴⁷ In 1984, the Legislature repealed the community colleges' fee authority for health services.⁴⁸ However, the Legislature also reenacted section 72246, to become operative on January 1, 1988, in order to reauthorize the fee, at \$7.50 for each semester (or \$5 per quarter or summer session).⁴⁹

In addition to temporarily repealing community college districts' authority to levy a health services fee, the 1984 enactment required any district that provided health services during the 1983-1984 fiscal year, for which districts were previously authorized to charge a fee, to maintain health services at the level provided during the 1983-1984 fiscal year for every subsequent fiscal year until January 1, 1988.⁵⁰ As a result, community college districts were required to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose until January 1, 1988.

In 1987, the Legislature amended former Education Code section 72246, operative January 1, 1988, to incorporate and extend the maintenance of effort provisions of former Education Code section 72246.5, which became inoperative by its own terms as of January 1, 1988.⁵¹ In addition, Statutes 1987, chapter 1118 restated that the fee would be reestablished at not more than \$7.50 for each semester, or \$5 for each quarter or summer session.⁵² As a result, beginning January 1, 1988 all community college districts were required

⁴⁵ Exhibit C, Controller's Late Comments on IRC.

⁴⁶ Exhibit D, Draft Proposed Decision.

⁴⁷ Former Education Code section 72246 (Stats. 1981, ch. 763) [Low-income students, students that depend upon prayer for healing, and students attending a college under an approved apprenticeship training program, were exempt from the fee.].

⁴⁸ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4 [repealing Education Code section 72246].

⁴⁹ Statutes 1984, 2nd Extraordinary Session, chapter 1, section 4.5.

⁵⁰ Education Code section 72246.5 (Stats. 1984, 2d. Ex. Sess., ch. 1, § 4.7).

⁵¹ Education Code section 72246 (as amended, Stats. 1987, ch. 1118). See also former Education Code section 72246.5 (Stats. 1984, 2d Ex. Sess., ch. 1, § 4.7).

⁵² Education Code section 72246 (as amended, Stats. 1987, ch. 1118).

to maintain the same level of health services they provided in the 1986-1987 fiscal year each year thereafter, with limited fee authority to offset the costs of those services. In 1992, section 72246 was amended to provide that the health fee could be increased by the same percentage as the Implicit Price Deflator whenever that calculation would produce an increase of one dollar.⁵³

On November 20, 1986, the Commission determined that Statutes 1984, chapter 1 imposed a reimbursable state-mandated new program upon community college districts. On August 27, 1987, the Commission adopted parameters and guidelines for the *Health Fee Elimination* program. On May 25, 1989, the Commission amended the parameters and guidelines to reflect amendments made by Statutes 1987, chapter 1118.

The parameters and guidelines generally provide that eligible community college districts shall be reimbursed for the costs of providing a health services program, and that only services specified in the parameters and guidelines and provided by the community college in the 1986-1987 fiscal year may be claimed.

Controller's Audit and Summary of the Issues

The Controller reduced the costs claimed for fiscal years 2002-2003 through 2005-2006 under the *Health Fee Elimination* program, totaling \$284,615, based on the net of overstatements and understatements. The following issues are in dispute:

- The period of limitation applicable to audits by the Controller.
- Reduction of indirect costs based on asserted faults in the development and application of indirect cost rates; and
- The amount of offsetting revenue to be applied from health service fee authority.

III. Positions of the Parties

Foothill-DeAnza Community College District

In IRC 09-4206-I-24, the claimant asserts that the Controller incorrectly reduced costs claimed for fiscal years 2002-2003 through 2005-2006, totaling \$440,752.⁵⁴ The claimant did not dispute the Controller's findings that the claimant understated counseling-related salaries and benefits, and student insurance costs for the audit period, resulting in a net increase in reimbursement of \$688,882 plus \$215,540 in related indirect costs.⁵⁵ However, the claimant disputes the Controller's reduction of \$511,782 in indirect costs, on the ground that indirect costs were not correctly calculated consistently with the claiming instructions; and the Controller's finding that the claimant understated authorized offsetting health fee authority, required to be deducted, by \$716,795 for the audit period.⁵⁶

Subsequent to the final audit report and the filing of IRC 09-4206-I-24, the Controller revised some of its findings and issued a revised audit report. The revised audit report adjusted the

⁵³ Education Code section 72246 (as amended, Stats. 1992, ch. 753). In 1993, former Education Code section 72246, was renumbered as Education Code section 76355. (Stats. 1993, ch. 8.)

⁵⁴ Exhibit A, IRC 09-4206-I-24, page 2.

⁵⁵ Exhibit A, IRC 09-4206-I-24, pages 10; 60-61.

⁵⁶ Exhibit A, IRC 09-4206-I-24, pages 10-18; 63-70.

reduction for indirect costs claimed from \$511,782 to \$241,031. In response to the revised audit report, the claimant filed the second of two consolidated IRCs, which continues to dispute the net reduction over the audit period for indirect costs claimed and understated health fee revenues. Specifically, claimant disputes the finding that it overstated indirect costs for fiscal years 2002-2003 and 2003-2004 because it did not obtain federal approval for its indirect cost rate. However, the revised audit report finds that the claimant understated indirect costs for fiscal years 2004-2005 and 2005-2006, and the claimant responds: “Because the Controller’s method of utilizing depreciation expenses in lieu of CCFS-311 capital costs is also a reasonable method, the district does not dispute that choice of methods for [fiscal years] 2004-05 and 2005-06.”⁵⁷ With respect to the net reduction, the claimant argues that the claiming instructions are not enforceable, and notes that the recalculation for fiscal years 2002-2003 and 2003-2004 excluded both capital costs and depreciation expenses.⁵⁸ Moreover, the claimant argues that the Controller did not make findings that the claimant’s rate was excessive or unreasonable.⁵⁹

And, claimant argues that the reduction of \$716,795 based on understated authorized health service fees, is incorrect, because the parameters and guidelines require claimants to state offsetting savings “experienced,” and claimant did not experience offsetting savings for fees that it did not actually receive.⁶⁰

Because these adjustments were offset against other underclaimed amounts, the total net reduction is actually less than the adjustment made for offsetting revenues, as shown above; the total net reduction for the audit period pursuant to the revised audit report, is \$284,615.

Finally, the claimant argues that the Controller’s audit of reimbursement claims for fiscal years 2002-2003 and 2003-2004 was not timely; that the period of limitation for these claims expired on January 12, 2008, based on the filing date of January 12, 2005,⁶¹ but the audit entrance conference did not occur until September 11, 2008.⁶² Although the audit report states that the audit was timely because initial payment on the claims did not occur until October 25, 2006, the claimant argues that this alternative time period, as authorized in Government Code section 17558.5, is impermissibly vague, and is contrary to the purpose of a statute of limitations.⁶³

State Controller’s Office

The Controller determined that the claimant understated counseling-related salaries and benefits for the audit period, plus related indirect costs, resulting in a net increase of \$717,126.⁶⁴ In

⁵⁷ Exhibit B, IRC 10-4206-I-34, pages 8-9.

⁵⁸ Exhibit A, IRC 09-4206-I-24, pages 10-14; Exhibit B, IRC 10-4206-I-34, page 8.

⁵⁹ Exhibit A, IRC 09-4206-I-24, pages 10-14.

⁶⁰ Exhibit A, IRC 09-4206-I-24, pages 14-15.

⁶¹ Exhibit A, IRC 09-4206-I-24, pages 18-19 (Note that the 2002-2003 and 2003-2004 claims were filed at the same time).

⁶² Exhibit A, IRC 09-4206-I-24, page 18.

⁶³ Exhibit A, IRC 09-4206-I-24, pages 18-21.

⁶⁴ Exhibit A, IRC 09-4206-I-24, page 61.

addition, the Controller determined that the claimant understated allowable student insurance costs, plus related indirect costs, totaling \$187,296 for the audit period.⁶⁵

The Controller further asserted that the claimant overstated its indirect costs for fiscal years 2002-2003 and 2003-2004, finding that the claimant did not obtain federal approval for its indirect cost rate developed pursuant to OMB Circular A-21 guidelines, totaling \$436,827. And, the Controller found that the claimant understated its indirect costs for fiscal years 2004-2005 and 2005-2006, based on recalculation pursuant to the Controller's FAM-29C method, including allowable depreciation expenses that were excluded in the prior years. This resulted in an increase of \$195,796.⁶⁶

The Controller also found that the claimant understated its authorized health service fees for the audit period by \$716,795. Using enrollment and exemption data obtained from the California Community Colleges Chancellor's Office, the Controller recalculated the health fees that the claimant was authorized to collect, and reduced the claim by the amount not stated as offsetting revenues.⁶⁷ The Controller states: "We agree that community college districts may choose not to levy a health service fee or to levy a fee less than the authorized amount...[but] Education Code section 76355, subdivision (a) provides districts the *authority* to levy the fee."⁶⁸ The Controller concludes that: "To the extent that districts have authority to charge a fee, they are not required to incur a cost."⁶⁹ This finding is unchanged in the revised audit report.⁷⁰

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs that were incorrectly reduced be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁷¹ The Commission must also interpret the Government Code and implementing regulations in

⁶⁵ Exhibit A, IRC 09-4206-I-24, page 62.

⁶⁶ Exhibit B, IRC 10-4206-I-34, page 32.

⁶⁷ Exhibit A, IRC 09-4206-I-24, page 66.

⁶⁸ Exhibit A, IRC 09-4206-I-24, page 69.

⁶⁹ Exhibit A, IRC 09-4206-I-24, page 70.

⁷⁰ Exhibit B, IRC 10-4206-I-34, pages 35-39.

⁷¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”⁷⁷ “In any case,” section 17558.5 requires the audit to be completed no later than two years after it is commenced.⁷⁸

1. The Audit Was Timely Initiated Pursuant to Government Code Section 17558.5.

The claimant asserts that the audit of the 2002-2003 and 2003-2004 claim years was not timely initiated, based on the date that the claims were “filed or last amended” (January 12, 2005), and the date that the audit entrance conference took place (September 11, 2008). However, the Controller points out that the fiscal year 2002-2003 claim was not paid until October 25, 2006, and that therefore section 17558.5 provides for a timely audit to be initiated as late as October 25, 2009.⁷⁹

Government Code section 17558.5 states that “[a] reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended” However, if funds are not appropriated or no payment is made to the claimant for a given year, section 17558.5 states the “time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”⁸⁰

The claimant argues that this provision “is void because it is impermissibly vague,”⁸¹ and that “the only specific and enforceable time limitation to commence an audit is three years from the date the claim was filed.” The claimant argues that “the annual reimbursement claims for FY 2002-03 and FY 2003-04 were past this time period when the audit was commenced on September 11, 2008.”⁸²

⁷⁷ Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

⁷⁸ Government Code section 17558.5 (as amended, Stats. 2004, ch. 890 (AB 2856)).

⁷⁹ Government Code section 17558.5 (as amended, Statutes 2004, ch. 890 (AB 2856)). Neither the filing date of the subject reimbursement claims, nor the date the audit was commenced, controls whether the later-amended version(s) of section 17558.5 are applicable. See *Scheas v. Robertson* (1951) 38 Cal.2d 119, 126 [“It is settled that the Legislature may enact a statute of limitations ‘applicable to existing causes of action or shorten a former limitation period...’”]; *California Employment Stabilization Commission v. Payne* (1947) 31 Cal.2d 210, 215 [“...the power of the Legislature to lessen a statute of limitations is subject to the restriction that an existing right cannot be cut off summarily without giving a reasonable time after the act becomes effective to exercise such right. [citation] This principle, however, does not apply where the state gives up a right previously possessed by it or by one of its agencies. Except where such an agency is given powers by the Constitution, it derives its authority from the Legislature, which may add to or take away from those powers and therefore a statute which adversely affects only the right of the state is not invalid merely because it operates to cut off an existing remedy of an agency of the state.”].

⁸⁰ Government Code section 17558.5 (as amended, Stats. 2002, ch. 1128 (AB 2834)).

⁸¹ Exhibit A, IRC 09-4206-I-24, page 21.

⁸² Exhibit A, IRC 09-4206-I-24, page 21.

But article III, section 3.5 of the California Constitution states that an administrative agency has no power “[t]o declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional...”⁸³ Here, the fiscal year 2002-2003 reimbursement claim was amended on or about January 12, 2004,⁸⁴ but was not paid, based on the evidence in the record, until October 25, 2006.⁸⁵ Therefore, the time to initiate an audit, in this case, commenced to run from October 25, 2006, and an audit initiated before October 25, 2009 would be timely.

Based on the evidence in the record, the Commission finds that the audit in issue was initiated no later than September 11, 2008, the date of the entrance conference, and the audit was therefore timely initiated.

2. The Audit Was Timely Completed.

Government Code section 17558.5 also prescribes the time in which an audit must be completed: “In any case, an audit shall be completed not later than two years after the date that the audit is commenced.”⁸⁶ Based on the evidence in the record, the audit in issue was initiated no later than September 11, 2008, the date of the entrance conference.⁸⁷ And here, there are two final audit reports in the record that identify and explain the adjustments in accordance with Government Code section 17558.5(c).⁸⁸ The first audit report was issued May 20, 2009, well within two years of the entrance conference;⁸⁹ the second was issued August 18, 2010, also prior to the expiration of the two year period beginning September 11, 2008.

Based on the foregoing, the Commission finds that both the first final audit report and the revised final audit report were timely completed in accordance with Government Code section 17558.5.

⁸³ California Constitution, article III, section 3.5 (added June 6, 1978, by Proposition 5).

⁸⁴ The Controller’s final audit report states that the amended claim was received on January 13, 2004, but the claimant states that it was mailed on January 12, 2004. Whether the filing date for purposes of annual reimbursement claims is measured upon receipt or upon dispatch is not necessary to resolve the period of limitation issue in this claim. (Exhibit A, IRC 09-4206-I-24, page 72.)

⁸⁵ Exhibit A, IRC 09-4206-I-24, pages 19; 72.

⁸⁶ Government Code section 17558.5 (Stats. 2004, ch. 890).

⁸⁷ Exhibit A, IRC 09-4206-I-24, pages 18; 72.

⁸⁸ Government Code section 17558.5(c) states the following:

The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment actions shall not constitute notice of adjustment from an audit or review.

⁸⁹ Exhibit A, IRC 09-4206-I-24, page 52.

B. The Controller’s Reduction of Indirect Costs Claimed for Fiscal Years 2002-2003 and 2003-2004 Is Correct as a Matter of Law, and the Commission Does Not Have Jurisdiction Over the Adjustment of Indirect Costs in Favor of the Claimant for Fiscal Years 2004-2005 and 2005-2006.

The Controller’s audit found both an overstatement and an understatement of indirect costs during the audit period. For fiscal years 2002-2003 and 2003-2004, the claimant claimed indirect costs based on a rate calculated pursuant to the OMB Circular A-21 method, which was authorized under the claiming instructions at that time. However, the Controller found that the claimant did not obtain federal approval for its claimed rate, which is required by the OMB Circular. The Controller therefore reduced the indirect costs and recalculated based on the state FAM-29C method, using data available from the claimant’s annual financial and budget reporting to the Chancellor’s Office on the CCFS-311. For fiscal years 2004-2005 and 2005-2006, the Controller found an understatement of indirect costs, based on the claimant’s allocation of direct and indirect costs using the state FAM-29C method.

The claimant disputes the enforceability of the claiming instructions as a whole, arguing that “[n]either state law nor the parameters and guidelines make compliance with the Controller’s claiming instructions a condition of reimbursement.”⁹⁰ And, the claimant asserts that the Controller has not made a determination that the claimed indirect cost rates were either excessive or unreasonable, and that the only available audit standard requires such a determination.⁹¹ With respect to the understatement found for fiscal years 2004-2005 and 2005-2006, the claimant states that because the Controller’s recalculation “is also a reasonable method, the District does not dispute that choice...and will utilize that method in future annual claims...”⁹²

Based on the analysis herein, the Commission finds that the Controller’s reduction of indirect costs for fiscal years 2002-2003 and 2003-2004 on the basis of the claimant’s failure to obtain federal approval for indirect cost rates developed in accordance with the OMB Circular A-21 method is correct as a matter of law, and recalculation in accordance with the FAM-29C methodology described in the claiming instructions was not arbitrary, capricious, or entirely lacking in evidentiary support. Additionally, the Commission finds that for fiscal years 2004-2005 and 2005-2006 the Controller did not reduce, but rather increased, indirect costs claimed, and the Commission therefore does not have jurisdiction over this audit adjustment.

1. If a Claimant Chooses to Claim Indirect Costs Using the Federal OMB Circular A-21 Method, the Claimant Must Obtain Federal Approval for the Claimed Indirect Cost Rates.

The parameters and guidelines adopted for this program, in addition to identifying the reimbursable activities, provide instructions for eligible claimants to prepare reimbursement claims for the direct and indirect costs of the program.⁹³ The Commission’s adoption of parameters and guidelines is quasi-judicial and, therefore, the parameters and guidelines are final and binding on the parties unless set aside by a court pursuant to Government Code section

⁹⁰ Exhibit A, IRC 09-4206-I-24, page 14.

⁹¹ *Ibid.*

⁹² Exhibit B, IRC 10-4206-I-34, page 9.

⁹³ Government Code section 17557; California Code of Regulations, title 2, section 1183.7.

17559 or amended by the filing of a request pursuant to Government Code section 17557.⁹⁴ In this case, the parameters and guidelines for the *Health Fee Elimination* program have not been challenged, and no party has requested they be amended. The parameters and guidelines are therefore binding and must be applied to the reimbursement claims here.

Section VI. of the parameters and guidelines provide that “*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.*”⁹⁵ Claimant argues that the word “may” in the indirect cost language of the parameters and guidelines is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.⁹⁶

Claimant’s argument is unsound: the parameters and guidelines plainly state that “indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.” The interpretation that is consistent with the plain language of the parameters and guidelines is that “indirect costs may be claimed,” or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the parameters and guidelines and claim indirect costs in the manner described in the Controller’s claiming instructions.

The claiming instructions specific to the *Health Fee Elimination* mandate, are found in the School Mandated Cost Manual which is revised each year and contains claiming instructions applicable to all school and community college mandated programs. The cost manual issued by the Controller’s Office in September 2003 governs the reimbursement claim filed for fiscal year 2002-2003.⁹⁷ This cost manual provides two options for claiming indirect costs:

A college has the option of using a federally approved rate, utilizing the cost accounting principles from *Office of Management and Budget Circular A-21* “Cost Principles for Educational Institutions,” or the Controller’s methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. *Form FAM-29C* has been developed to assist the community college in computing an indirect cost rate for state mandates. . . .

⁹⁴ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: “[U]nless a party to a quasi-judicial proceeding challenges the agency’s adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions.” [Citation omitted.] See also, Government Code section 17557.

⁹⁵ Exhibit A, IRC 09-4206-I-24, page 35.

⁹⁶ Exhibit A, IRC 09-4206-I-24, page 11.

⁹⁷ Exhibit X, School Mandated Cost Manual excerpt.

[¶]

The [FAM-29C] computation is based on total expenditures as reported in “California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311).” Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those indirect costs that do not provide administrative support to personnel who perform mandated costs activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified as indirect costs are: Planning and Policy Making, Fiscal Operations, General Administrative Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employee performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Services, Non-instructional Staff-Retirees’ Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher expense percentage is allowable if the college can support its allocation basis.

The rate, derived by determining the ratio of total indirect expenses and total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college’s mandate related indirect costs. . . .⁹⁸

The claiming instructions for fiscal year 2003-2004 were substantially similar.⁹⁹

If a claimant chooses to use the OMB Circular A-21 methodology, claimant must obtain federal approval for the rate calculated through formal negotiation, an informal correspondence process or a simplified method which sets the indirect cost rate using a salaries and wage base.¹⁰⁰ The end result of the negotiation process is a sponsored agreement in which final approval lies with

⁹⁸ Exhibit X, School Mandated Cost Manual, issued September 2003, pages 16-17.

⁹⁹ Exhibit X, School Mandated Cost Manual, issued September 2004.

¹⁰⁰ Exhibit X, OMB Circular A-21, pages 37-39.

the federal government negotiating the rate and must be supported by “adequate documentation to support costs charged to sponsored agreements.”¹⁰¹ The OMB Circular A-21 establishes principles for determining costs applicable to grants, contracts, and other agreements between the federal government and educational institutions. Section G(11) of the OMB Circular A-21 governs the determination of indirect cost rates and requires the federal approval of a proposed rate by the “cognizant federal agency,” which is normally either the federal Department of Health and Human Services or the Department of Defense’s Office of Naval Research.¹⁰² Thus, a claimant that has received federal approval for their indirect cost rate has negotiated specific direct costs with the relevant federal approving agency.

Here, claimant did not negotiate a particular rate but applied the general principles of the OMB Circular A-21 to direct costs it determined to be applicable. Claimant used the methodology in the OMB Circular A-21 for fiscal years 2002-2003 and 2003-2004, and asserts that its indirect cost rates are more consistent from year to year, and that the Controller has the burden to show that the rates were excessive or unreasonable, “not to recalculate the rate according to its unenforceable ministerial preferences.”¹⁰³ That assertion is in essence a challenge to the Controller’s entire claiming instructions as an underground regulation adopted without complying with the APA.

However, the Commission does not need to reach the alleged underground regulation issue for the use of the FAM-29C because the claimant failed to obtain federal approval for its use of the OMB Circular A-21 methodology as required by the OMB Circular A-21 itself.

As claimant did not negotiate with a federal agency to determine appropriate direct costs used to calculate the indirect costs rate, it cannot be determined whether the claimed rates would have received federal approval. Moreover, federal approval is clearly required by both the claiming instructions and the OMB methodology itself, but the Controller has no power to grant federal approval for an OMB-calculated rate.

Thus, the reduction of costs for failure to obtain federal approval is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller’s Recalculation of Indirect Costs Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

Here, instead of reducing indirect costs to \$0, the Controller recalculated claimant’s indirect cost rate by using its own Form FAM-29C, a method of calculating indirect costs that the Controller has included in its claiming instructions for many years, and which has been incorporated into parameters and guidelines for several state-mandated programs. The claiming instructions provide:

Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

¹⁰¹ Exhibit X, OMB Circular A-21, page 6.

¹⁰² Exhibit X, OMB Circular A-21.

¹⁰³ Exhibit A, IRC 10-4206-I-34, page 8; Exhibit A, IRC 09-4206-I-24, page 12.

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college.¹⁰⁴

Thus, the calculation of indirect costs under Form FAM-29C are similar to the calculation under OMB Circular A-21, but not identical. However, because the OMB method is intended to be negotiated with and approved by either the federal Department of Health and Human Services or the Department of Defense's Office of Naval Research,¹⁰⁵ the Controller is not in a position to unilaterally recalculate and approve indirect costs under the OMB Circular A-21 method.

As previously stated, the standard of review which the Commission employs to review the Controller's audit provides that the Commission may "not reweigh the evidence or substitute its judgment for that of the agency."¹⁰⁶ Thus, the Commission cannot compel the Controller to use other auditing procedures in place of the Form FAM-29C and there is no evidence that the Controller's recalculation of indirect costs was arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission finds the reduction of indirect costs for fiscal years 2002-2003 and 2003-2004, and recalculation by the FAM-29C method, is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

¹⁰⁴ Exhibit X, Excerpt Community Colleges Mandated Cost Manual 09/03, page 16.

¹⁰⁵ Exhibit X, OMB Circular A-21.

¹⁰⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547-548.

3. The Commission Does Not Have Jurisdiction over the Adjustment of Indirect Costs Claimed for Fiscal Years 2004-2005 and 2005-2006, Because There Has Been No Reduction.

The claimant challenges the enforceability of the Controller's claiming instructions with respect to indirect cost claiming in both its response to the draft audit report and its IRC narrative. Specifically, the claimant argues that "[s]ince the Controller's claiming instructions were never adopted as law, or regulations pursuant to the Administrative Procedure Act, the claiming instructions are a statement of the Controller's interpretation and not law." However, as noted above, for fiscal years 2004-2005 and 2005-2006, the revised audit found a net increase, rather than a reduction, over which the Commission has no jurisdiction in the context of an IRC.

Government Code section 17551 provides that the Commission "shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, *that the Controller has incorrectly reduced payments* to the local agency or school district..." pursuant to an audit.¹⁰⁷ The plain language of section 17551, which directs the Commission to hear IRCs in the first instance, applies only to claims that are reduced. Here, the revised audit report finds an adjustment in favor of the claimant for fiscal years 2004-2005 and 2005-2006. Without a reduction alleged, the Commission does not have jurisdiction to determine whether the adjustment is correct.

C. The Controller's Reduction for Understated Offsetting Revenues Is Correct as a Matter of Law.

The Controller determined that the claimant understated its authorized health fee revenues by \$716,795 over the four fiscal years at issue.¹⁰⁸ These reductions were made on the basis of the fee authority available to claimant, multiplied by the number of students subject to the fee, less the amount of offsetting revenue claimed. The plain language of Education Code section 76355 provides authority to collect health fees for all students except those who depend exclusively on prayer for healing, those attending a community college under an approved apprenticeship training program, or those who demonstrate financial need.¹⁰⁹ For the audit period, the authorized fee amounts identified by the Chancellor ranged from \$9 per student to \$11 per student. The Controller states that it "obtained student enrollment and Board of Governors Grant (BOGG) recipient data from the CCCCCO" and identified exempt students based on the information available, and multiplied those enrollment data by the authorized fee amounts for each semester during the audit period.¹¹⁰

Claimant disputes the reduction, arguing that the relevant Education Code provisions permit, but do not require, a community college district to levy a health services fee, and that the parameters and guidelines require a community college district to deduct from its reimbursement claims "[a]ny offsetting savings that the claimant *experiences* as a direct result of this statute..."

¹⁰⁷ Government Code section 17551 (Stats. 2007, ch. 329 (AB 2224)) [emphasis added].

¹⁰⁸ Exhibit A, IRC 09-4206-I-24, page 66.

¹⁰⁹ Education Code section 76355.

¹¹⁰ Exhibit A, IRC 09-4206-I-24, page 66.

Claimant argues that “[s]tudent fees *actually collected* must be used to offset costs, but not student fees that could have been collected and were not...”¹¹¹

The Commission finds that the correct calculation and application of offsetting revenue from student health fees has been resolved by the *Clovis Unified* decision,¹¹² and that a reduction to the extent of fee revenue *authorized*, rather than fee revenue collectible as a practical matter, is correct as a matter of law.

After the claimant filed IRC 09-4206-I-24, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller’s practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355.¹¹³ (Underline in original.)

The Health Fee Rule relies on Education Code section 76355(a), which provides in relevant part:

(a)(1) The governing board of a district maintaining a community college may require community college students to pay a fee in the total amount of not more than ten dollars (\$10) for each semester, seven dollars (\$7) for summer school, seven dollars (\$7) for each intersession of at least four weeks, or seven dollars (\$7) for each quarter for health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both.

(a)(2) The governing board of each community college district may increase [the health service fee] by the same percentage increase as the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar (\$1) above the existing fee, the fee may be increased by one dollar (\$1).¹¹⁴

Pursuant to the plain language of Education Code section 76355(a)(2), the fee authority given to districts automatically increases at the same rate as the Implicit Price Deflator; when that calculation produces an increase of one dollar above the existing fee, the fee may be increased by one dollar.¹¹⁵ The Chancellor of the California Community Colleges issues a notice to the

¹¹¹ Exhibit A, IRC 09-4206-I-24, pages 67-68.

¹¹² *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

¹¹³ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 811.

¹¹⁴ Education Code section 76355(d)(2) (Stats. 1993, ch. 8 (AB 46); Stats. 1993, ch. 1132 (AB 39); Stats. 1994, ch. 422 (AB 2589); Stats. 1995, ch. 758 (AB 446); Stats. 2005, ch. 320 (AB 982)) [Formerly Education Code section 72246(e) (Stats. 1987, ch. 118)].

¹¹⁵ See Education Code section 76355 (Stats. 1995, ch. 758 (AB 446)). The Implicit Price Deflator for State and Local Purchase of Goods and Services is a number computed annually (and quarterly) by the United States Department of Commerce as part of its statistical series on

governing boards of all community colleges when a fee increase is triggered.¹¹⁶ Therefore the *authority* to impose the health service fees increases automatically with the Implicit Price Deflator, as noticed by the Chancellor. Accordingly, the court in *Clovis Unified* upheld the Controller’s use of the Health Fee Rule to reduce reimbursement claims based on the fees districts are *authorized* to charge. In making its decision the court noted that the concept underlying the state mandates process that Government Code sections 17514 and 17556(d) embody is:

To the extent a local agency or school district “has the authority” to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.¹¹⁷

The court also noted that, “this basic principle flows from common sense as well. As the Controller succinctly puts it, ‘Claimants can choose not to require these fees, but not at the state’s expense.’”¹¹⁸ Additionally, in responding to claimant’s argument that, “since the Health Fee Rule is a claiming instruction, its validity must be determined *solely* through the Commission’s P&G’s,”¹¹⁹ the court held:

To accept this argument, though, we would have to ignore, and so would the Controller, the fundamental legal principles underlying state-mandated costs. We conclude *the Health Fee Rule is valid*.¹²⁰ (Italics added.)

Thus, pursuant to the court’s decision in *Clovis Unified*, the Health Fee Rule used by the Controller to adjust reimbursement claims filed by claimant for the *Health Fee Elimination* program is valid. Since the *Clovis* case is a final decision of the court addressing the merits of the issue presented here, the Commission, under principles of stare decisis, is required to apply the rule set forth by the court.¹²¹ In addition, the *Clovis* decision is binding on the claimant under principles of collateral estoppel.¹²² Collateral estoppel applies when (1) the issue necessarily decided in the previous proceeding is identical to the one that is currently being decided; (2) the previous proceeding terminated with a final judgment on the merits; (3) the party against whom collateral estoppel is asserted is a party to or in privity with a party in the previous

measuring national income and product, and is used to adjust government expenditure data for the effect of inflation.

¹¹⁶ See, e.g., Exhibit X, Memorandum from Chancellor.

¹¹⁷ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 812.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.* (Original italics.)

¹²⁰ *Clovis Unified School Dist.*, *supra*, 188 Cal.App.4th 794, 812.

¹²¹ *Fenske v. Board of Administration* (1980) 103 Cal.App.3d 590, 596.

¹²² The petitioners in the *Clovis* case included Clovis Unified School District, El Camino Community College District, Fremont Unified School District, Newport-Mesa Unified School District, Norwalk-La Mirada Unified School District, Riverside Unified School District, San Mateo Community College District, Santa Monica Community College District, State Center Community College District, and Sweetwater Union High School District.

proceeding; and (4) the party against whom the earlier decision is asserted had a full and fair opportunity to litigate the issue.¹²³ Although the claimant in this IRC was not a party to the *Clovis* action, the claimant is in privity with the petitioners in *Clovis*. “A party is adequately represented for purposes of the privity rule if his or her interests are so similar to a party’s interest that the latter was the former’s virtual representative in the earlier action.”¹²⁴

With respect to the Chancellor’s opinion of the scope of districts’ fee authority, the Commission finds that as the agency responsible for overseeing the community college system, the interpretation of the Chancellor of the California Community Colleges office is entitled to great weight; the courts have long held that “[a]n agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts.”¹²⁵ While the Commission has exclusive jurisdiction to determine the existence of a state mandate, and by extension to consider whether fee authority is sufficient under Government Code section 17556 to reduce or eliminate reimbursement of a mandate, the Commission is, like a court, expected to give deference to an agency with expertise in a particular matter.

Based on the foregoing the Commission finds that the Controller’s reduction of reimbursement to the extent of the fee authority found in Education Code section 76355, and as applied to all students, not just those from whom the claimant collects, is correct as a matter of law.

V. Conclusion

The Commission concludes that reductions of indirect costs, based on the claimant’s failure to obtain federal approval for the development of its indirect cost rate, and the Controller’s recalculation of indirect costs using the method described in the claiming instructions, were correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. The Commission further finds that the reduction of costs over the audit period based on understated offsetting health fee authority was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Based on the foregoing, the Commission denies this IRC.

¹²³ *Roos v. Red* (2006) 130 Cal.App.4th 870, 879-880.

¹²⁴ *Rodgers v. Sargent Controls & Aerospace* (2006) 136 Cal.App.4th 82, 91.

¹²⁵ *Yamaha Corp. of America v. State Bd. of Equalization*, (1998) 19 Cal.4th 1.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 10, 2016, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

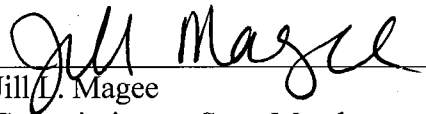
Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Foothill-DeAnza Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 10, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/14/16

Claim Number: 09-4206-I-24 and 10-4206-I-34

Matter: Health Fee Elimination

Claimant: Foothill-De Anza Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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RECEIVED
February 12, 2016
Commission on
State Mandates

BETTY T. YEE
California State Controller

February 12, 2016

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Draft Proposed Decision

Incorrect Reduction Claim

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years 2002-03, 2003-2004, 2004-05, and 2005-06

Foothill De-Anza Community College District, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) has reviewed the Commission on State Mandates' (Commission) Draft Staff Analysis (DSA) dated February 10, 2016, for the above incorrect reduction claim (IRC) filed by Foothill De-Anza Community College District. This letter constitutes the Controller's response to the DSA.

We support the Commission staff decision related to the following:

- The audit of the district's fiscal year (FY) 2002-03 and FY 2003-04 claims was timely initiated and timely completed.
- Reductions of indirect costs claimed for FY 2002-03 and FY 2003-04 that were based on indirect cost rates that the district developed using the OMB Circular A-21 methodology, but were not federally approved, are correct as a matter of law.
- The SCO recalculations of the district's indirect cost rates for all years of the audit period using the Form FAM-29C were not arbitrary, capricious, or entirely lacking in evidentiary support.

Heather Halsey, Executive Director

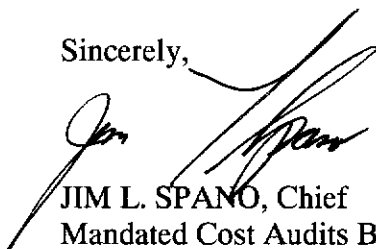
February 12, 2016

Page 2

- Reductions based on understated offsetting health service fee revenues, totaling \$716,795, are correct as a matter of law. The SCO calculations of authorized health service fees are not arbitrary, capricious, or entirely lacking in evidentiary support.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,



JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/as

16872

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On February 16, 2016, I served the:

SCO Comments on Draft Proposed Decision

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Former Education Code Section 72246 (Renumbered as 76355)

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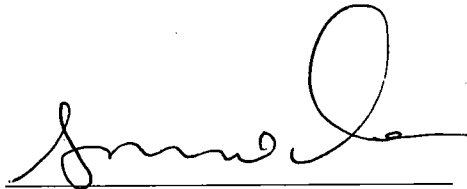
Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Foothill-DeAnza Community College District, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 16, 2016 at Sacramento, California.



Lorenzo Duran
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/14/16

Claim Number: 09-4206-I-24 and 10-4206-I-34

Matter: Health Fee Elimination

Claimant: Foothill-De Anza Community College District

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SixTen and Associates Mandate Reimbursement Services

Exhibit F

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March 1, 2016

RECEIVED
March 01, 2016
*Commission on
State Mandates*

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: CSM 09-4206-I-24 and 10-4206-I-34
Foothill-De Anza Community College District
Fiscal Years: 2002-03, 2003-04, 2004-05 and 2005-06
Original and Revised Incorrect Reduction Claims
Health Fee Elimination Audit #2

I have received the Commission Draft Proposed Decision (DPD) dated February 10, 2016, for the above-referenced incorrect reduction claims, to which I respond on behalf of the District.

**PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OF ANNUAL
REIMBURSEMENT CLAIMS FY 2002-03 and FY 2003-04**

The District alleges that the audit of the FY 2002-03 and FY 2003-04 annual reimbursement claims commenced after the time limitation for audit had passed. The Controller (Analysis and Response to the Incorrect Reduction Claims, December 1, 2014. P. 17) states that initiation of the audit was timely because the initial payment for the FY 2002-03 claim did not occur until October 25, 2006. The Commission (DPD, p.17) concludes that the audit was timely commenced.

Claim Action Dates

January 12, 2005	FY 2002-03 and FY 2003-04 claims filed by the District
January 12, 2008	FY 2002-03 and FY 2003-04 statute of limitations to initiate the audit expires based on the date the claims were filed
October 25, 2006	First payment on FY 2002-03

August 25, 2008	Entrance conference letter date (new evidence)
September 11, 2008	Audit entrance conference for all fiscal years
October 25, 2009	FY 2002-03 statute of limitations to initiate the audit expires based on the date of first payment
May 20, 2009	Original final audit report issued
August 18, 2010	Revised audit report issued
August 25, 2010	Two-year statute of limitations to complete the audit expires based on the entrance conference letter date.

1. Relevant Statute of Limitations

Government Code section 17558.5, as amended by Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005:

(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced.

2. Audit Initiation Date

The parties in their written submissions have been using the entrance conference date of September 11, 2008, as the date the audit commenced. However, the Commission determined on March 27, 2015, (CSM 09-4425-I-17 and CSM 10-4425-I-18, Sierra Joint Community College District, Collective Bargaining) that for purposes of measuring the statute of limitations, the audit commences no later than the date the entrance conference *letter* was sent. The entrance conference letter was not previously on the record here and is now attached. The entrance conference letter date is August 25, 2008, and therefore that is the audit initiation date for the original and revised audit reports.

3. Lapse of the Statute of Limitations to Initiate the Audit

The District asserts that the *enforceable* three-year statute of limitations to commence an audit for the FY 2002-03 and FY 2003-04 annual claims expired on January 12, 2008, three years from the date the claims were filed, which is before the audit commenced on August 25, 2008. The clause in Government Code Section 17558.5 that delays the commencement of the three-year time period for the Controller to start an audit to the date of initial payment is void because it is impermissibly vague. At the

time a claim is filed, the claimant has no way of knowing when payment will be made or how long the records applicable to that claim must be maintained. The billions of dollars backlog in mandate payments requires claimants to maintain detailed supporting documentation for an unpredictable number of years. For example, college district annual claims have been filed retroactive to FY 2000-01 for the Minimum Conditions for State Aid mandate program and none have been paid so the three-year from payment period has not begun to toll. For school districts, annual claims have been filed retroactive to FY 1993-94 for the Behavioral Intervention Plans mandate program without payment, a span of more than two decades. While there are various state laws regarding the retention of relevant business records (e.g., payroll history), none of which reach back decades, the Controller has no enforceable record retention law. The parameters and guidelines requirement for relevant documents to be available when audited is similarly open-ended.

The Commission (DPD, p.17) states that it has no jurisdiction to address the vagueness issue because it cannot declare a statute unenforceable or refuse to enforce a statute. The District is not seeking any such declaration. The District requests the Commission to enforce the only specific and enforceable time limitation in the statute, that is, to commence an audit within three years from the date the claim was filed.

4. Timely Completion of the Audits

It is uncontested here that an audit is complete only when the final audit report is issued. The District agrees that the original and revised audits were timely completed based on the dates of the audit reports, and that the revised audit report supersedes the original audit report.

PART B. APPLICATION OF AN INDIRECT COST RATE Audit Finding 3
 FY 2002-03 and FY 2003-04

The District asserts that since the claimed indirect cost rates were not determined to be unreasonable that the audited changes are therefore without legal basis. The Commission determined (DPD, p. 18) that the reductions of the indirect costs claimed are correct as a matter of law for FY 2002-03 and FY 2003-04, but disclaims jurisdiction for the adjustments to FY 2004-05 and FY 2005-06.

Indirect Cost Rates Claimed and Audited

<u>Fiscal Year</u>	<u>As Claimed</u>	<u>Difference</u>	<u>As Audited</u>	<u>Difference</u>	<u>Revised Audit</u>	<u>Net Difference</u>
2002-03	32.50%	<15.86%>	16.64%	0	16.64%	<15.86%>
2003-04	31.46%	< 12.72%>	18.74%	<0.65%>	18.09%	<13.37%>
2004-05	29.66%	< 3.51%>	26.15%	9.71%	35.86%	6.20%
2005-06	28.90%	< 2.37%>	26.53%	9.98%	36.51%	7.61%

1. Commission Findings Adjudicate the Wrong Facts

The Commission has made an error of law because its decision is based on the indirect costs and not the indirect cost *rates*. Audit Finding 3 adjusts the indirect cost *rates*, not the indirect costs. Indirect costs are derivative, they are a function of the rate applied to total direct costs. For FY 2004-05, one of the years for which the Commission denies jurisdiction because the audited indirect cost rate increased 6.20%, the audited indirect costs decreased by \$63,941 because the audited direct costs were reduced by \$97,571. Therefore, not all audited increases to the rate result in increases to the claimed indirect costs. As a matter of law, the Commission should be adjudicating the audited rates, not the resulting calculation of the indirect costs.

2. Methods Used to Calculate the Rates

The Controller's claiming instructions provide three options for calculating indirect costs: the OMB Circular A-21; the Controller's FAM-29C method; or, a default rate of 7%. For FY 2002-03 and FY 2003-04, the District claimed indirect cost rates using the OMB A-21 method, but did not obtain federal approval. The Controller recalculated indirect rates using the FAM 29-C method. The audited indirect cost rates for FY 2002-03 and FY 2003-04, where the Controller, as a matter of statewide policy and not law, recognizes neither CCFS-311 capital costs nor CPA audited depreciation expenses, are significantly different (about half) than the claimed rate. The indirect cost rates calculated by the District are more consistent from year-to-year and recognize capital costs in the fiscal years incurred. The District rates are reasonable and not excessive. The District still disputes the audit findings for FY 2002-03 and FY 2003-04 because neither capital costs nor depreciation expenses are allowed.

For FY 2004-05 and FY 2005-06, the District claimed indirect cost rates using the FAM-29C method. The revised audited indirect cost rates for FY 2004-05 and FY 2005-06, where the Controller recognizes depreciation expenses, vary less than the two prior years (6% to 7%). In this case, the revised rates are higher which may indicate the accounting timing differences between the CCFS-311 capital costs used by the District and the financial statement depreciation expenses used by the Controller. Because the Controller's method of utilizing depreciation expenses in lieu of CCFS-311 capital costs is also a reasonable method, the District does not dispute the audited rates for FY 2004-05 and FY 2005-06.

3. Compliance with the Parameters and Guidelines Requirements

The District has followed the parameters and guidelines. The burden of proof is on the Controller to prove that the product of the District's calculation is unreasonable.

The Commission (DPD, p. 18-19) states:

The Commission's adoption of parameters and guidelines is quasi-judicial and, therefore, the parameters and guidelines are final and binding on the parties unless set aside by a court pursuant to Government Code section 17559 or amended by the filing of a request pursuant to Government Code section 17557. In this case, the parameters and guidelines for the *Health Fee Elimination* program have not been challenged, and no party has requested they be amended. The parameters and guidelines are therefore binding and must be applied to the reimbursement claims here.

The District agrees that the parameters and guidelines, to the extent they don't conflict with state law, must be used for the preparation of the annual reimbursement claims, even if, at the time the relevant language for the calculation of the indirect cost rate was adopted, the parameter and guidelines adoption process was quasi-legislative and not quasi-judicial. However, the fact that the parameters and guidelines have not been challenged is not a substantive determination of any of the issues raised by the incorrect reduction claims.

Note that the Health Fee Elimination parameters and guidelines were amended on January 29, 2010. However, the indirect cost rate language remained the same:

3. Allowable Overhead Cost

Indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.

The Commission has had numerous opportunities to clarify its intent and language regarding the indirect cost rate calculation methods and resolve or avoid the delegation and derivation issue. For example, and by contrast, the parameters and guidelines language for the new college mandate Cal Grants, adopted on the same date as the January 29, 2010, amendment for Health Fee Elimination, has the needed specific and comprehensive language:

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or

agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

This language in the parameters and guidelines for Cal Grants makes the Controller's guidance on the suggested three choices of indirect cost calculation methods legally enforceable. The Commission properly adopted this language within the scope of their regulatory discretion and has utilized it in new program college mandate parameters and guidelines since at least 2002. However, this language has never been adopted by the Commission for Health Fee Elimination.

4. Compliance with the Claiming Instructions

The District asserts that the Health Fee Elimination mandate parameters and guidelines do not require the claimants to use the Controller's claiming instructions and forms for the calculation of the indirect cost rate. The Controller's claiming instructions are not alone enforceable as a matter of law as they are not regulations nor were they adopted pursuant to the administrative rulemaking process required to enforce agency manuals and instructions, as did the *Clovis* Court.¹ Therefore, any documentation standards or

¹ From the Clovis Appellate Court Decision (4):

"Once the Commission determines that a state mandate exists, it adopts regulatory "[P]arameters and [G]uidelines" (P&G's) to govern the state-mandated reimbursement. (§ 17557.) The Controller, in turn, then issues nonregulatory "[C]laiming [I]nstructions" for each Commission-determined mandate; these instructions must derive from the Commission's test claim decision and its adopted P&G's. (§ 17558.) Claiming Instructions may be specific to a particular mandated program, or general to all such programs." Emphasis added.

From the Clovis Appellate Court Decision (15):

"Given these substantive differences between the Commission's pre-May 27, 2004 SDC P&G's and the Controller's CSDR, we conclude that the CSDR implemented, interpreted or made specific the following laws enforced or administered by the Controller: the Commission's pre-May 27, 2004 P&G's for the SDC Program (§ 17558 [the Commission submits regulatory P&G's to the Controller, who in turn issues nonregulatory Claiming Instructions based

cost accounting formulas published in the claiming instructions, to be enforceable, must derive from another source. However, there are no cost accounting standards for calculating the indirect cost rate for the Health Fee Elimination mandate published anywhere except the Controller's claiming instructions and Mandated Cost Manual.

The Commission (DPD, p. 19) states:

Section VI. of the parameters and guidelines provide that "*indirect costs may be claimed in the manner described by the State Controller in his claiming instructions.*" 95 Claimant argues that the word "may" in the indirect cost language of the parameters and guidelines is permissive, and that therefore the parameters and guidelines do not require that indirect costs be claimed in the manner described by the Controller.

Claimant's argument is unsound: the parameters and guidelines plainly state that "indirect costs may be claimed in the manner described by the State Controller in his claiming instructions." The interpretation that is consistent with the plain language of the parameters and guidelines is that "indirect costs may be claimed," or may not, but if a claimant chooses to claim indirect costs, the claimant must adhere to the parameters and guidelines and claim indirect costs in the manner described in the Controller's claiming instructions.

The Commission now has concluded that the contents of the claiming instructions are as a matter of law derivative of the authority of the parameters and guidelines. To the contrary, for legislative construction and judicial interpretation, the "plain meaning" of the word "may" is not "shall." The District agrees that the parameters and guidelines have the force of law, but that it does not extend by mere reference to the general or specific claiming instructions for Health Fee Elimination. Neither the Commission nor the Controller has ever adopted the Controller's claiming instructions pursuant the process required by the regulations relevant to the Commission or the Administrative Procedure Act relevant to the Controller, nor has the Commission ever before stated that parameters and guidelines are subordinate to the Controller's claiming instructions.

5. Underground Rulemaking

The District asserts that the Controller's use of the FAM-29C method for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces,

thereon]; and the Controller's statutory authority to audit state-mandated reimbursement claims (§ 17561, subd. (d)(2))." Emphasis added.

or attempts to enforce a rule without following the Administrative Procedure Act, when it is required, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50). However, the Commission (DPD, p. 21) does not address this legal issue in preference for the threshold factual matter that the District did not obtain federal approval.

6. Federal Approval

The ultimate Commission holding (DPD, p. 21) is:

Thus, the reduction of costs for failure to obtain federal approval is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission reasoning is circular and outcome driven. The Commission (DPD, p.21) concludes specifically that:

As claimant did not negotiate with a federal agency to determine appropriate direct costs used to calculate the indirect costs rate, it cannot be determined whether the claimed rates would have received federal approval. Moreover, federal approval is clearly required by both the claiming instructions and the OMB methodology itself, but the Controller has no power to grant federal approval for an OMB-calculated rate.

The Commission concludes if the indirect costs are to be claimed, the Controller's instructions must be followed. If a federal method is used, federal approval must be obtained. However, there is no reason to obtain federal approval if the claiming instructions are not enforceable. The Commission has not answered the question of how the Controller's instructions and forms that "may" be used are legally enforceable.

7. The Statutory Standard of Reasonableness

In the absence of legally enforceable claiming instructions, rules or methods, or standards or specific language in the parameters and guidelines for the indirect cost rate calculation, the remaining standard is Government Code section 17561. No particular indirect cost rate calculation method is required by law. Government Code section 17561(d)(2) requires the Controller to pay claims, provided that the Controller may audit the records of any school district to verify the actual amount of the mandated costs, and may reduce any claim that the Controller determines is excessive or unreasonable. The Controller is authorized to reduce a claim if the Controller determines the claim to be excessive or unreasonable. Here, the District computed indirect cost rates utilizing cost accounting principles from the Office of Management

and Budget Circular A-21, and the Controller has disallowed the rates without a determination of whether the District's calculation is excessive, unreasonable, or inconsistent with cost accounting principles.

There is no rebuttable presumption for this mandate that the Controller's methods are per se the only reasonable method. The Controller made no determination as to whether the method used by the District was reasonable or not, but only that no federal approval was obtained. The substitution of the Controller's method is an arbitrary choice of the auditor, not a "finding" enforceable either by fact or law. The federally "approved" rates which the Controller will accept without further action are "negotiated" rates calculated by the districts and submitted for approval, indicating that the process is not an exact science, but a determination of the relevance and reasonableness of the cost allocation assumptions made for the method used. Further, the approved rates are used for several fiscal years. Neither the Commission nor the Controller can assume that the Controller's calculation methods are intrinsically more accurate and the Commission cannot shift that burden or create the presumption to the contrary where none is present in law.

PART C. UNDERSTATED OFFSETTING REVENUES

Audit Finding 4

The amount of student health services fees collectible reduces the total reimbursable costs. The Controller increased the collectible amount by \$716,795 for the four fiscal years which reduces the reimbursable cost by the same amount. This finding is the result of the Controller's recalculation of the student health services fees which may have been "collectible" which was then compared to the District's student health fee revenues actually received. The Controller computed the total student health fees collectible based on maximum student fee amounts published by the Chancellor's Office while the District reported actual fees collected.

The Commission (DPD, 24) finds that the correct calculation and application of offsetting revenue from student health fees have been resolved by the *Clovis Unified* decision, and that the reduction is correct as a matter of law:

After the claimant filed IRC 09-4206-I-24, the Third District Court of Appeal issued its opinion in *Clovis Unified*, which specifically addressed the Controller's practice of reducing claims of community college districts by the maximum fee amount that districts are statutorily authorized to charge students, whether or not a district chooses to charge its students those fees. As cited by the court, the Health Fee Rule states in pertinent part:

Eligible claimants will be reimbursed for health service costs at the level of service provided in the 1986/87 fiscal year. The reimbursement will be reduced by the amount of student health fees authorized per the Education Code [section] 76355. 113 (Underline in original.)

The District agrees that claimants and state agencies are bound to apply the Health Fee Rule as decided law and that this extends to retroactive fiscal years still within the Commission's or Controller's jurisdiction. The District no longer disputes this audit finding.

PART D. LIMITATION OF ALLOWED AUDITED COSTS FY 2005-06

The District asserts that the Controller's incorrectly reduced allowable costs by \$114,614 for FY 2005-06 by reducing the "total program costs" by this amount because it is in "excess" of the total amount claimed. This reduction was not an audit "finding" by the Controller, it is just a mathematical computation that is a result of other audit findings. The Commission (DPD, p.23, Item 3 caption) has concluded that "The Commission Does Not Have Jurisdiction over the Adjustment of Indirect Costs Claimed for Fiscal Years 2004-2005 and 2005-2006, Because There Has Been No Reduction."

The audit report states that the reason for this limitation on allowable costs is Government Code Section 17568, cited in footnote 2 on page 6 of the audit report, that states "the State will not reimburse any claim more than one year after the filing deadline specified in Government Code section 17560." The State did not pay these claims in full or part within one year of the filing deadline, and rarely does so, so that citation does not appear relevant. Section 17568 pertains to the timely filing of an annual claim in order to be eligible for payment, not to the amount of ultimate payment or the contents of the claim itself.

The Commission (DPD, p.23) states that the "plain language" of section 17551, which directs the Commission to hear incorrect reduction claims, applies only to "claims that are reduced":

The plain language of section 17551, which directs the Commission to hear IRCs in the first instance, applies only to claims that are reduced. Here, the revised audit report finds an adjustment in favor of the claimant for fiscal years 2004-2005 and 2005-2006. Without a reduction alleged, the Commission does not have jurisdiction to determine whether the adjustment is correct.

The issue to be adjudicated is that the FY 2005-06 claim has been reduced by \$114,614 without a legal basis, not that an increase in the indirect cost rate was in favor of the District. This is different from audit finding 3, as discussed in Part B above, where the Commission has incorrectly concluded that the increase in the indirect cost rate is the single source of the FY 2005-06 excess of \$114,614. The derivative source was the audited increase in the direct costs to which the indirect cost rate was then applied.

Regarding the mathematical excess, the Commission (DPD, p.23) states:

However, as noted above, for fiscal years 2004-2005 and 2005-2006, the revised audit found a net increase, rather than a reduction, over which the Commission has no jurisdiction in the context of an IRC.

A comparison of allowed direct costs, indirect costs, or allowable costs from the original audit report to the revised audit report is meaningless here since the revised audit report was timely completed and it supersedes the original audit report. The District did not appeal the mathematical total amount claimed or allowed, it appealed specific audit findings. The total amount allowed is a function of direct costs, the indirect cost rate applied to direct costs, and offsetting revenues (here it's the student health fees) and other income. A change to any of those components changes the total. The Commission has no need for jurisdiction of the "net" total amount claimed or allowed, only the specific findings appealed.

Regarding underpayments, the Commission (DPD, p.23) states:

Government Code section 17551 provides that the Commission "shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, *that the Controller has incorrectly reduced payments* to the local agency or school district..." pursuant to an audit:

The Controller has incorrectly reduced and will thus underpay the FY 2005-06 claim through a combination of audit findings, some of which were appealed by the District (for which the Commission has jurisdiction) and findings not appealed (for which the Commission has no jurisdiction.) All of the findings affect the total program costs. The \$114,614 disallowed as excess is the mathematical result of those actions, not the cause. To not reimburse the excess is to not reimburse the sum total of the audit and Commission findings.

There is no Government Code Section cited that prohibits the Controller from reimbursement of *audited* costs in excess of claimed costs. Government Code Section 17561(d)(2), as amended by Statutes of 2002, Chapter 1124², effective September 30, 2002, states:

"[T]he Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs . . . and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years."

² There have been subsequent technical amendments to this code section. However, this is the version that was in effect at the time the annual reimbursement claims that are the subject of these incorrect reduction claims were filed.

The use of the word "shall" makes the adjustment of *both* underpayments and overpayments mandatory. Thus, the Controller does not have the discretion to unilaterally determine that it will require reimbursement for audit adjustments in favor of the State and simply ignore audit adjustments in favor of the claimants. The Controller has no legal basis to exclude any unclaimed allowable mandated cost discovered as the result of an audit. The removal of the \$114,614 will result in an arbitrary underpayment.

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on March 1, 2016, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Service by Commission Electronic Drop Box

Attachment:

Controller's Entrance Conference Letter dated August 25, 2008



JOHN CHIANG
California State Controller

August 25, 2008

W. Andy Dunn, Vice Chancellor of Business Services
Foothill-De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94022

Re: Audit of Mandated Cost Claims for Health Fee Elimination Program
For the Period of July 1, 2002, through June 30, 2006

Dear Mr. Dunn:

This letter confirms that Ted Zimmerman has scheduled an audit of Foothill-De Anza Community College District's legislatively mandated Health Fee Elimination Program cost claims filed for fiscal year (FY) 2002-03, FY 2003-04, FY 2004-05, and FY 2005-06. Government Code sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Thursday, September 11, 2008, at 2:00 p.m. We will begin audit fieldwork after the entrance conference.

Please furnish working accommodations for and provide the necessary records (listed on the Attachment) to the audit staff. If you have any questions, please call me at (916) 324-6788.

Sincerely,

A handwritten signature in black ink, appearing to read "JHCobbinah", written over a horizontal line.

JOHN H. COBBINAH, Audit Manager
Mandated Cost Audits Bureau
Division of Audits

JHC/sk

Attachment

6978

W. Andy Dunn
August 25, 2008
Page 2

cc: Bernata Slater, Director Budget Operations
 Foothill-De Anza Community College District
Jim L. Spano, Chief
 Mandated Cost Audits Bureau
 Division of Audits, State Controller's Office
Ginny Brummels, Manager
 Division of Accounting and Reporting
 State Controller's Office
Ted Zimmerman, Auditor-in-Charge
 Division of Audits, State Controller's Office

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 1, 2016, I served the:

Claimant Comments on Draft Proposed Decision

Health Fee Elimination, 09-4206-I-24 and 10-4206-I-34

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);

Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, and 2005-2006

Foothill-DeAnza Community College District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 1, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/14/16

Claim Number: 09-4206-I-24 and 10-4206-I-34

Matter: Health Fee Elimination

Claimant: Foothill-De Anza Community College District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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, § 1181.3.)

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CIRCULAR A-21 (Revised 05/10/04)

CIRCULAR NO. A-21

Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS
SUBJECT: Cost Principles for Educational Institutions

1. Purpose. This Circular establishes principles for determining costs applicable to grants, contracts, and other agreements with educational institutions. The principles deal with the subject of cost determination, and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to provide that the Federal Government bear its fair share of total costs, determined in accordance with generally accepted accounting principles, except where restricted or prohibited by law. Agencies are not expected to place additional restrictions on individual items of cost. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Supersession. The Circular supersedes Federal Management Circular 73-8, dated December 19, 1973. FMC 73-8 is revised and reissued under its original designation of OMB Circular No. A-21.

3. Applicability.

a. All Federal agencies that sponsor research and development, training, and other work at educational institutions shall apply the provisions of this Circular in determining the costs incurred for such work. The principles shall also be used as a guide in the pricing of fixed price or lump sum agreements.

b. In addition, Federally Funded Research and Development Centers associated with educational institutions shall be required to comply with the Cost Accounting Standards, rules and regulations issued by the Cost Accounting Standards Board, and set forth in 48 CFR part 99; provided that they are subject thereto under defense related contracts.

4. Responsibilities. The successful application of cost accounting principles requires development of mutual understanding between representatives of educational

institutions and of the Federal Government as to their scope, implementation, and interpretation.

5. Attachment. The principles and related policy guides are set forth in the Attachment, "Principles for determining costs applicable to grants, contracts, and other agreements with educational institutions."

6. Effective date. The provisions of this Circular shall be effective October 1, 1979, except for subsequent amendments incorporated herein for which the effective dates were specified in these revisions (47 FR 33658, 51 FR 20908, 51 FR 43487, 56 FR 50224, 58 FR 39996, 61 FR 20880, 63 FR 29786, 63 FR 57332, 65 FR 48566 and 69 FR 25970). Institutions as of the start of their first fiscal year beginning after that date shall implement the provisions. Earlier implementation, or a delay in implementation of individual provisions, is permitted by mutual agreement between an institution and the cognizant Federal agency.

7. Inquiries. Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395-3993.

Attachment

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS, CONTRACTS, AND OTHER AGREEMENTS WITH EDUCATIONAL INSTITUTIONS

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 19. Fines and penalties
 20. Fund raising and investment costs
 21. Gains and losses on depreciable assets
 22. Goods or services for personal use
 23. Housing and personal living expenses
 24. Idle facilities and idle capacity
 25. Insurance and indemnification
 26. Interest
 27. Labor relations costs
 28. Lobbying
 29. Losses on other sponsored agreements or contracts

30. Maintenance and repair costs
31. Material and supplies costs
32. Meetings and conferences
33. Memberships, subscriptions and professional activity costs
34. Patent costs
35. Plant and homeland security costs
36. Pre-agreement costs
37. Professional service costs
38. Proposal costs
39. Publication and printing costs
40. Rearrangement and alteration costs
41. Reconversion costs
42. Recruiting costs
43. Rental costs of buildings and equipment
44. Royalties and other costs for use of patents
45. Scholarships and student aid costs
46. Selling and marketing
47. Specialized service facilities
48. Student activity costs
49. Taxes
50. Termination costs applicable to sponsored agreements
51. Training costs
52. Transportation costs
53. Travel costs
54. Trustees

K. Certification of charges

Exhibit A - List of Colleges and Universities Subject to Section J.12.h of Circular A-21

Exhibit B - Listing of Institutions that are eligible for the utility cost adjustment

Exhibit C - Examples of "major project" where direct charging of administrative or clerical staff salaries may be appropriate

Appendix A - CASB's Cost Accounting Standards (CAS)

Appendix B - CASB's Disclosure Statement (DS-2)

Appendix C - Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals

PRINCIPLES FOR DETERMINING COSTS APPLICABLE TO GRANTS,
CONTRACTS, AND OTHER AGREEMENTS WITH
EDUCATIONAL INSTITUTIONS

A. Purpose and scope.

1. Objectives. This Attachment provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

2. Policy guides. The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that --

a. The arrangements for Federal agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such governmentwide criteria or legal requirements as may be applicable.

b. Each institution, possessing its own unique combination of staff, facilities, and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

c. The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

d. Each institution, in the fulfillment of its obligations, should employ sound management practices.

e. The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of individual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

f. Cognizant Federal agencies involved in negotiating facilities and administrative (F&A) cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiations and audit.

3. Application. These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

a. Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of an institution.

b. Capitation awards.

c. Other awards under which the institution is not required to account to the Federal Government for actual costs incurred.

d. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles

for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

4. Inquiries.

All inquiries from Federal agencies concerning the cost principles contained in this Circular, including the administration and implementation of the Cost Accounting Standards (CAS) (described in Sections C.10 through C.13) and disclosure statement (DS-2) requirements, shall be addressed by the Office of Management and Budget (OMB), Office of Federal Financial Management, in coordination with the Cost Accounting Standard Board (CASB) with respect to inquiries concerning CAS. Educational institutions' inquiries should be addressed to the cognizant agency.

B. Definition of terms.

1. Major functions of an institution refers to instruction, organized research, other sponsored activities and other institutional activities as defined below:

a. Instruction means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension

division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) Sponsored instruction and training means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) Departmental research means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. Organized research means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) Sponsored research means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) University research means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, shall be combined with sponsored research under the function of organized research.

c. Other sponsored activities means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. Other institutional activities means all activities of an institution except:

(1) instruction, departmental research, organized research, and other sponsored activities, as defined above;

(2) F&A cost activities identified in Section F; and

(3) specialized service facilities described in Section J.47. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

2. Sponsored agreement, for purposes of this Circular, means any grant, contract, or other agreement between the institution and the Federal Government.

3. Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or a F&A cost activity, as described in Section F. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

4. Facilities and administrative (F&A) costs, for the purpose of this Circular, means costs that are incurred for common or joint objectives and, therefore, cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. F&A costs are synonymous with "indirect" costs, as previously used in this Circular and as currently used in Appendices A and B. The F&A cost categories are described in Section F.1.

C. Basic considerations.

1. Composition of total costs. The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable F&A costs of the institution, less applicable credits as described in subsection 5.

2. Factors affecting allowability of costs. The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to sponsored agreements under the principles and methods provided herein; (c) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items.

3. Reasonable costs. A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefore, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the sponsored agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Federal Government, and the public at large; and, (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

4. Allocable costs.

a. A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (1) it is incurred solely to advance the work under the sponsored agreement; (2) it benefits both the sponsored agreement and other work of the institution, in proportions that can be approximated through use of reasonable methods, or (3) it is necessary to the overall operation of the institution and, in light of the principles provided in this Circular, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular sponsored agreement under the standards provided in this Circular may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid

restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

c. Any costs allocable to activities sponsored by industry, foreign governments or other sponsors may not be shifted to federally-sponsored agreements.

d. Allocation and documentation standard.

(1) Cost principles. The recipient institution is responsible for ensuring that costs charged to a sponsored agreement are allowable, allocable, and reasonable under these cost principles.

(2) Internal controls. The institution's financial management system shall ensure that no one person has complete control over all aspects of a financial transaction.

(3) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost should be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding subsection b, the costs may be allocated or transferred to benefited projects on any reasonable basis, consistent with subsections d. (1) and (2).

(4) Documentation. Federal requirements for documentation are specified in this Circular, Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and specific agency policies on cost transfers. If the institution authorizes the principal investigator or other individual to have primary responsibility, given the requirements of subsection d. (2), for the management of sponsored agreement funds, then the institution's documentation requirements for the actions of those individuals (e.g., signature or initials of the principal investigator or designee or use of a password) will normally be considered sufficient.

5. Applicable credits.

a. The term "applicable credits" refers to those receipts or negative expenditures that operate to offset or reduce direct or F&A cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; and adjustments of overpayments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to

educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See Sections F.10, J.14, and J.47 for areas of potential application in the matter of direct Federal financing.)

6. Costs incurred by State and local governments. Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

a. The costs meet the requirements of subsections 1 through 5.

b. The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

c. The costs are not otherwise borne directly or indirectly by the Federal Government.

7. Limitations on allowance of costs. Sponsored agreements may be subject to statutory requirements that limit the allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Circular, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

8. Collection of unallowable costs, excess costs due to noncompliance with cost policies, increased costs due to failure to follow a disclosed accounting practice and increased costs resulting from a change in cost accounting practice. The following costs shall be refunded (including interest) in accordance with applicable Federal agency regulations:

a. Costs specifically identified as unallowable in Section J, either directly or indirectly, and charged to the Federal Government.

b. Excess costs due to failure by the educational institution to comply with the cost policies in this Circular.

c. Increased costs due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs.

d. Increased costs resulting from a change in accounting practice.

9. Adjustment of previously negotiated F&A cost rates containing unallowable costs. Negotiated F&A cost rates based on a proposal later found to have included costs that (a) are unallowable as specified by (i) law or regulation, (ii) Section J of this Circular, (iii) terms and conditions of sponsored agreements, or (b) are unallowable because they are clearly not allocable to sponsored agreements, shall be adjusted, or a refund shall be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

a. For rates covering a future fiscal year of the institution, the unallowable costs will be removed from the F&A cost pools and the rates appropriately adjusted.

b. For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

c. For rates covering the current period, either a rate adjustment or a refund, as described in subsections a and b, shall be required by the cognizant agency. The choice of method shall be at the discretion of the cognizant agency, based on its judgment as to which method would be most practical.

d. The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

10. Consistency in estimating, accumulating and reporting costs.

a. An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

b. An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in pricing the related proposal or application.

c. The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices under subsection a when such costs are accumulated and reported in greater detail on an actual cost basis during performance of the sponsored agreement.

d. Appendix A also reflects this requirement, along with the purpose, definitions, and techniques for application, all of which are authoritative.

11. Consistency in allocating costs incurred for the same purpose.

a. All costs incurred for the same purpose, in like circumstances, are either direct costs only or F&A costs only with respect to final cost objectives. No final cost objective shall have allocated to it as a cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any F&A cost pool to be allocated to that or any other final cost objective.

b. Appendix A reflects this requirement along with its purpose, definitions, and techniques for application, illustrations and interpretations, all of which are authoritative.

12. Accounting for unallowable costs.

a. Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a sponsored agreement.

b. Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this subsection or subsection a.

c. Costs which, in a Federal official's written decision furnished pursuant to sponsored agreement disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either subsection a or b shall be accorded the identification required by subsection b.

d. The costs of any work project not contractually authorized by a sponsored agreement, whether or not related to performance of a proposed or existing sponsored agreement, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

e. All unallowable costs covered by subsections a through d shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular F&A cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included in a F&A cost pool that shall be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the F&A cost pool and be allocated through the regular allocation process.

f. Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and F&A cost allocation shall be made to the sponsored agreement cost objective, in accordance with established cost accounting practices and standards which regularly govern a given entity's allocations to sponsored agreement cost objectives. In any determination of a cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

g. Appendix A reflects this requirement, along with its purpose, definitions, techniques for application, and illustrations of this standard, all of which are authoritative.

13. Cost accounting period.

a. Educational institutions shall use their fiscal year as their cost accounting period, except that:

(1) Costs of a F&A function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period on the basis of data for that part of the cost accounting period if the cost is: (i) material in amount, (ii) accumulated in a separate F&A cost pool or expense pool, and (iii) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(2) An annual period other than the fiscal year may, upon mutual agreement with the Federal Government, be used as the cost accounting period if the use of such period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(3) A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

b. An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

c. The same cost accounting period shall be used for accumulating costs in a F&A cost pool as for establishing its allocation base, except that the Federal Government and educational institution may agree to use a different period for establishing an allocation base, provided:

(1) The practice is necessary to obtain significant administrative convenience,

(2) The practice is consistently followed by the educational institution,

(3) The annual period used is representative of the activity of the cost accounting period for which the F&A costs to be allocated are accumulated, and

(4) The practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

d. Appendix A reflects this requirement, along with its purpose, definitions, techniques for application and illustrations, all of which are authoritative.

14. Disclosure Statement.

a. Educational institutions that received aggregate sponsored agreements totaling \$25 million or more subject to this Circular during their most recently completed fiscal year shall disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix B. With the approval of the cognizant agency, an educational institution may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$25 million or more in sponsored agreements.

b. The DS-2 shall be submitted to the cognizant agency with a copy to the educational institution's audit cognizant office.

c. Educational institutions receiving \$25 million or more in sponsored agreements that are not required to file a DS-2 pursuant to 48 CFR 9903.202-1 shall file a DS-2 covering the first fiscal year beginning after the publication date of this revision, within six months after the end of that fiscal year. Extensions beyond the above due date may be granted by the cognizant agency on a case-by-case basis.

d. Educational institutions are responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. Educational institutions must file amendments to the DS-2 when disclosed practices are changed to comply with a new or modified standard, or when practices are changed for other reasons. Amendments of a DS-2 may be submitted at any time. If the change is expected to have a material impact on the educational institution's negotiated F&A cost rates, the revision shall be approved by the cognizant agency before it is implemented. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

e. Cost and funding adjustments. Cost adjustments shall be made by the cognizant agency if an educational institution fails to comply with the cost policies in this Circular or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of sponsored agreements, if aggregate cost impact on sponsored agreements is material. The cost adjustment shall normally be made on an aggregate basis for all affected sponsored agreements through an adjustment of the educational institution's future F&A costs rates or other means considered appropriate by the cognizant agency. Under the terms of CAS-covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

f. Overpayments. Excess amounts paid in the aggregate by the Federal Government under sponsored agreements due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs shall be credited or refunded, as deemed appropriate by the cognizant agency. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance shall also be determined and collected in accordance with applicable Federal agency regulations.

g. Compliant cost accounting practice changes. Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency may require cost adjustments if the change has a material effect on sponsored agreements and the changes are deemed appropriate by the cognizant agency.

h. Responsibilities. The cognizant agency shall:

(1) Determine cost adjustments for all sponsored agreements in the aggregate on behalf of the Federal Government. Actions of the cognizant agency official in making cost adjustment determinations shall be coordinated with all affected Federal agencies to the extent necessary.

(2) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the educational institution's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this Circular.

(3) Distribute to all affected agencies any DS-2 determination of adequacy and/or noncompliance.

D. Direct costs.

1. General. Direct costs are those costs that can be identified specifically with a particular sponsored project, an instructional activity, or any other institutional activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or F&A costs. Where an institution treats a particular type of cost as a direct cost of sponsored agreements, all costs incurred for the same purpose in like circumstances shall be treated as direct costs of all activities of the institution.

2. Application to sponsored agreements. Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from F&A costs of sponsored agreements. Typical costs

charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than F&A costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements, provided such items are consistently treated, in like circumstances, by the institution as direct rather than F&A costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

E. F&A costs.

1. General. F&A costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See Section F.1 for a discussion of the components of F&A costs.

2. Criteria for distribution.

a. Base period. A base period for distribution of F&A costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. Need for cost groupings. The overall objective of the F&A cost allocation process is to distribute the F&A costs described in Section F to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the F&A cost categories referred to in subsection 1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c. Each such pool or cost grouping should then be

distributed individually to the related cost objectives, using the distribution base or method most appropriate in the light of the guides set forth in subsection d.

c. General considerations on cost groupings. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an F&A cost category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) Where any types of expense ordinarily treated as general administration or departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the F&A costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central F&A costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat fringe benefits as F&A charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where a cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution shall be made in accordance with the appropriate base cited in Section F, unless one of the following conditions is met: (a) it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements, or (b) the institution qualifies for, and elects to use, the simplified method for computing F&A cost rates described in Section H.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section F shall

not be used to distribute utility or student services costs. Instead, subsections F.4.c and F.4.d may be used in the recovery of utility costs.

e. Order of distribution.

(1) F&A costs are the broad categories of costs discussed in Section F.1.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining F&A cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an F&A cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more F&A cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the F&A cost categories described in Section F is required.

F. Identification and assignment of F&A costs.

1. Definition of Facilities and Administration. F&A costs are broad categories of costs. "Facilities" is defined as depreciation and use allowances, interest on debt associated with certain buildings, equipment and capital improvements, operation and maintenance expenses, and library expenses. "Administration" is defined as general administration and general expenses, departmental administration, sponsored projects administration, student administration and services, and all other types of expenditures not listed specifically under one of the subcategories of Facilities (including cross allocations from other pools).

2. Depreciation and use allowances.

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with Section J.14.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated in the following manner:

(1) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(2) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation or use allowances on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to benefiting functions on the basis of:

(a) the employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefiting from the use of that space; or

(b) institution-wide employee FTEs or salaries and wages applicable to the benefiting major functions (see Section B.1) of the institution.

(4) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

c. Large research facilities. The following provisions apply to large research facilities that are included in F&A rate proposals negotiated after January 1, 2000, and on which the design and construction begin after July 1, 1998. Large facilities, for this provision, are defined as buildings with construction costs of more than \$10 million. The determination of the Federal participation (use) percentage in a building is based on institution's estimates of building use over its life, and is made during the planning phase for the building.

(1) When an institution has large research facilities, of which 40 percent or more of total assignable space is expected for Federal use, the institution must maintain an adequate review and approval process to ensure that construction costs

are reasonable. The review process shall address and document relevant factors affecting construction costs, such as:

- Life cycle costs
- Unique research needs
- Special building needs
- Building site preparation
- Environmental consideration
- Federal construction code requirements
- Competitive procurement practices

The approval process shall include review and approval of the projects by the institution's Board of Trustees (which can also be called Board of Directors, Governors or Regents) or other independent entities.

(2) For research facilities costing more than \$25 million, of which 50 percent or more of total assignable space is expected for Federal use, the institution must document the review steps performed to assure that construction costs are reasonable. The review should include an analysis of construction costs and a comparison of these costs with relevant construction data, including the National Science Foundation data for research facilities based on its biennial survey, "Science and Engineering Facilities at Colleges and Universities." The documentation must be made available for review by Federal negotiators, when requested.

3. Interest. Interest on debt associated with certain buildings, equipment and capital improvements, as defined in Sections J.25, shall be classified as an expenditure under the category Facilities. These costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and maintenance expenses.

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expense category should also include its allocable

share of fringe benefit costs, depreciation and use allowances, and interest costs.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated in the same manner as described in subsection 2.b for depreciation and use allowances.

c. For F&A rates negotiated on or after July 1, 1998, an institution that previously employed a utility special cost study in its most recently negotiated F&A rate proposal in accordance with Section E.2.d, may add a utility cost adjustment (UCA) of 1.3 percentage points to its negotiated overall F&A rate for organized research. Exhibit B displays the list of eligible institutions. The allocation of utility costs to the benefiting functions shall otherwise be made in the same manner as described in subsection F.4.b. Beginning on July 1, 2002, Federal agencies shall reassess periodically the eligibility of institutions to receive the UCA.

d. Beginning on July 1, 2002, Federal agencies may receive applications for utilization of the UCA from institutions not subject to the provisions of subsection F.4.c.

5. General administration and general expenses.

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expense of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and, the operations of the central administrative management information systems. General administration and general expenses shall not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6, Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section G.2. When an activity included in this F&A cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental administration expenses.

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads), and other professional personnel conducting research and/or instruction, shall be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance shall be added to the computation of the F&A cost rate for major functions in Section G; the expenses covered by the allowance shall be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and

general expenses, operation and maintenance expenses, and depreciation and/or use allowances.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or F&A costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or F&A costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs shall be treated as direct cost wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefiting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances.

(2) The salaries of administrative and clerical staff should normally be treated as F&A costs. Direct charging of these costs may be appropriate where a major project or activity explicitly budgets for administrative or clerical services and individuals involved can be specifically identified with the project or activity. "Major project" is defined as a project that requires an extensive amount of administrative or clerical support, which is significantly greater than the routine level of such services provided by academic departments. Some examples of major projects are described in Exhibit C.

(3) Items such as office supplies, postage, local telephone costs, and memberships shall normally be treated as F&A costs.

c. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) shall be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored projects administration.

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, stenographic pools and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, depreciation/use allowances. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other F&A cost items, such as accounting, procurement, or personnel administration.

8. Library expenses.

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under Section C.5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

c. Amount allocated in subsection b shall be assigned further as follows:

(1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

9. Student administration and services.

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Section J.10. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

b. In the absence of the alternatives provided for in Section E.2.d, the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

10. Offset for F&A expenses otherwise provided for by the Federal Government.

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government that are made to the institution to support solely, specifically, and directly, in whole or in part, any of the

administrative or service activities described in subsections 2 through 9.

b. The items in this group shall be treated as a credit to the affected individual F&A cost category before that category is allocated to benefiting functions.

G. Determination and application of F&A cost rate or rates.

1. F&A cost pools.

a. (1) Subject to subsection b, the separate categories of F&A costs allocated to each major function of the institution as prescribed in Section F shall be aggregated and treated as a common pool for that function. The amount in each pool shall be divided by the distribution base described in subsection 2 to arrive at a single F&A cost rate for each function.

(2) The rate for each function is used to distribute F&A costs to individual sponsored agreements of that function. Since a common pool is established for each major function of the institution, a separate F&A cost rate would be established for each of the major functions described in Section B.1 under which sponsored agreements are carried out.

(3) Each institution's F&A cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the F&A costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the F&A cost pools, as described in Sections E.2 and F.2 through F.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section B.1) shall contain all the programs or activities that utilize the F&A costs allocated to that major function. At the time a F&A cost proposal is submitted to a cognizant Federal agency, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the F&A costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist

of research under a group of sponsored agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of F&A costs, provisions should be made for a separate F&A cost pool applicable to such work. The separate F&A cost pool should be developed during the regular course of the rate determination process and the separate F&A cost rate resulting therefrom should be utilized; provided it is determined that (1) such F&A cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

2. The distribution basis. F&A costs shall be distributed to applicable sponsored agreements and other benefiting activities within each major function (see Section B.1) on the basis of modified total direct costs, consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care and tuition remission, rental costs, scholarships, and fellowships as well as the portion of each subgrant and subcontract in excess of \$25,000 shall be excluded from modified total direct costs. Other items may only be excluded where necessary to avoid a serious inequity in the distribution of F&A costs. For this purpose, a F&A cost rate should be determined for each of the separate F&A cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage that the amount of the particular F&A cost pool is of the modified total direct costs identified with such pool.

3. Negotiated lump sum for F&A costs. A negotiated fixed amount in lieu of F&A costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's F&A services cannot be readily determined. Such negotiated F&A costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and

other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined rates for F&A costs. Public Law 87-638 (76 Stat. 437) authorizes the use of predetermined rates in determining the "indirect costs" (F&A costs in this Circular) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for F&A costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of F&A costs during the ensuing accounting periods.

5. Negotiated fixed rates and carry-forward provisions. When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the F&A cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected F&A costs allocable to sponsored agreements for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent postdetermined rates. Where multiple

rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and final rates for F&A costs. Where the cognizant agency determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate shall be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed rates for the life of the sponsored agreement.

a. Federal agencies shall use the negotiated rates for F&A costs in effect at the time of the initial award throughout the life of the sponsored agreement. "Life" for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal funding agency at the time of the award. If negotiated rate agreements do not extend through the life of the sponsored agreement at the time of the initial award, then the negotiated rate for the last year of the sponsored agreement shall be extended through the end of the life of the sponsored agreement. Award levels for sponsored agreements may not be adjusted in future years as a result of changes in negotiated rates.

b. When an educational institution does not have a negotiated rate with the Federal Government at the time of the award (because the educational institution is a new grantee or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award shall be adjusted once a rate is negotiated and approved by the cognizant agency.

8. Limitation on reimbursement of administrative costs.

a. Notwithstanding the provisions of subsection 1.a, the administrative costs charged to sponsored agreements awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, shall be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental

Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation and/or use allowances, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Sections F.5, F.6, F.7 and F.9) and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section F.

b. Existing F&A cost rates that affect institutions' fiscal years which begin on or after October 1, 1991, shall be unilaterally amended by the cognizant Federal agency to reflect the cost limitation in subsection a.

c. Permanent rates established prior to this revision that have been amended in accordance with subsection b may be renegotiated. However, no such renegotiated rate may exceed the rate which would have been in effect if the agreement had remained in effect; nor may the administrative portion of any renegotiated rate exceed the limitation in subsection a.

d. Institutions should not change their accounting or cost allocation methods which were in effect on May 1, 1991, if the effect is to: (i) change the charging of a particular type of cost from F&A to direct, or (ii) reclassify costs, or increase allocations, from the administrative pools identified in subsection to the other F&A cost pools or fringe benefits. Cognizant Federal agencies are authorized to permit changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative method for administrative costs.

a. Notwithstanding the provisions of subsection 1.a, an institution may elect to claim fixed allowance for the "Administration" portion of F&A costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under "Administration" as defined in Section F.1, whichever is less, provided that no accounting or cost allocation changes with the effects described in subsection 8.d have occurred. Under this alternative, no cost proposal need be prepared for the "Administration" portion of the F&A cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated F&A cost agreement includes this alternative, an institution shall make no further charges for the expenditure categories described in Sections F.5, F.6, F.7 and F.9.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may

continue to exercise it at the same rate without further identification or documentation of costs, provided that no accounting or cost allocation changes with the effects described in subsection 8.d have occurred.

c. If an institution elects to accept a threshold rate, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its F&A cost rate, the institution must reconcile its F&A cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section B.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling F&A cost proposals to financial statements and allocating facilities costs.

10. Individual rate components.

In order to satisfy the requirements of Section J.14 and to provide mutually agreed upon information for management purposes, each F&A cost rate negotiation or determination shall include development of a rate for each F&A cost pool as well as the overall F&A cost rate.

11. Negotiation and approval of F&A rate.

a. Cognizant agency assignments. "A cognizant agency" means the Federal agency responsible for negotiating and approving F&A rates for an educational institution on behalf of all Federal agencies.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding shall be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency assignment shall default to HHS. Notwithstanding the method for cognizance determination described above, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and shall be decided based on mutual agreement between HHS and DOD.

(2) Cognizant assignments as of December 31, 1995, shall continue in effect through educational institutions' fiscal

years ending during 1997, or the period covered by negotiated agreements in effect on December 31, 1995, whichever is later, except for those educational institutions with cognizant agencies other than HHS or DOD. Cognizance for these educational institutions shall transfer to HHS or DOD at the end of the period covered by the current negotiated rate agreement. After cognizance is established, it shall continue for a five-year period.

b. Acceptance of rates. The negotiated rates shall be accepted by all Federal agencies. Only under special circumstances, when required by law or regulation, may an agency use a rate different from the negotiated rate for a class of sponsored agreements or a single sponsored agreement.

c. Correcting deficiencies. The cognizant agency shall negotiate changes needed to correct systems deficiencies relating to accountability for sponsored agreements. Cognizant agencies shall address the concerns of other affected agencies, as appropriate.

d. Resolving questioned costs. The cognizant agency shall conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for work performed under Circular A-21 may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates. The cognizant agency shall arrange with the educational institution to provide copies of rate proposals to all interested agencies. Agencies wanting such copies should notify the cognizant agency. Rates shall be established by one of the following methods:

(1) Formal negotiation. The cognizant agency is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Non-cognizant Federal agencies, which award sponsored agreements to an educational institution, shall notify the cognizant agency of specific concerns (i.e., a need to establish special cost rates) that could affect the negotiation process. The cognizant agency shall address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency shall then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this Circular.

g. Formalizing determinations and agreements. The cognizant agency shall formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest.

h. Disputes and disagreements. Where the cognizant agency is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency shall be followed for resolution of the disagreement.

12. Standard Format for Submission. For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating F&A rates, as described in Section H.

H. Simplified method for small institutions.

1. General.

a. Where the total direct cost of work covered by Circular A-21 at an institution does not exceed \$10 million in a fiscal year, the use of the simplified procedure described in subsections 2 or 3, may be used in determining allowable F&A costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information shall be utilized as basis for determining the F&A cost rate applicable to all sponsored agreements. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as distribution basis.

b. The simplified procedure should not be used where it produces results that appear inequitable to the Federal Government or the institution. In any such case, F&A costs should be determined through use of the regular procedure.

2. Simplified procedure - Salaries and wages base.

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The total amount of salaries and wages included in the F&A cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a the amount of salaries and wages included under subsection b.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to direct salaries and wages for individual agreements to determine the amount of F&A costs allocable to such agreements.

3. Simplified procedure - Modified total direct cost base.

a. Establish the total costs incurred by the institution for the base period.

b. Establish a F&A cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) that customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the F&A cost pool. The modified total direct costs amount included in the F&A cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section G.2, that consists of all institution's direct functions.

d. Establish the F&A cost rate, determined by dividing the amount in the F&A cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the F&A cost rate to the modified total direct costs for individual agreements to determine the amount of F&A costs allocable to such agreements.

J. General provisions for selected items of cost.

Sections 1 through 54 provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply irrespective of whether a particular item of cost is properly treated as direct cost or F&A cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

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 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 J.42, 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 subsections 1.c, 1.d and 1.e.

(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.

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 sponsored agreements.

3. Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

4. Alumni/ae activities.

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

5. 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 USC 7505(b) and section ____.230 ("Audit Costs") of Circular A-133.

b. Other audit costs are allowable if included in an indirect cost rate 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).

6. 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.

7. 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 institution. They arise also in instances where the institution 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 institution 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.

8. Commencement and convocation costs.

Costs incurred for commencements and convocations are unallowable, except as provided for in Section F.9.

9. 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.

10. Compensation for personal services.

a. General. Compensation for personal services covers all amounts paid currently or accrued by the institution for services of employees rendered during the period of performance under sponsored agreements. Such amounts include salaries, wages, and fringe benefits (see subsection f). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policies of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as F&A costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

b. Payroll distribution.

(1) General Principles.

(a) The distribution of salaries and wages, whether treated as direct or F&A costs, will be based on payrolls documented in accordance with the generally accepted practices of colleges and universities. Institutions may include in a residual category all activities that are not directly charged to sponsored agreements, and that need not be distributed to more than one activity for purposes of identifying F&A costs and the functions to which they are allocable. The components of

the residual category are not required to be separately documented.

(b) The apportionment of employees' salaries and wages which are chargeable to more than one sponsored agreement or other cost objective will be accomplished by methods which will-

(1) be in accordance with Sections A.2 and C;

(2) produce an equitable distribution of charges for employee's activities; and

(3) distinguish the employees' direct activities from their F&A activities.

(c) In the use of any methods for apportioning salaries, it is recognized that, in an academic setting, teaching, research, service, and administration are often inextricably intermingled. A precise assessment of factors that contribute to costs is not always feasible, nor is it expected. Reliance, therefore, is placed on estimates in which a degree of tolerance is appropriate.

(d) There is no single best method for documenting the distribution of charges for personal services. Methods for apportioning salaries and wages, however, must meet the criteria specified in subsection b.(2). Examples of acceptable methods are contained in subsection c. Other methods that meet the criteria specified in subsection b.(2) also shall be deemed acceptable, if a mutually satisfactory alternative agreement is reached.

(2) Criteria for Acceptable Methods.

(a) The payroll distribution system will

(i) be incorporated into the official records of the institution;

(ii) reasonably reflect the activity for which the employee is compensated by the institution; and

(iii) encompass both sponsored and all other activities on an integrated basis, but may include the use of subsidiary records. (Compensation for incidental work described in subsection a need not be included.)

(b) The method must recognize the principle of after-the-fact confirmation or determination so that costs distributed represent actual costs, unless a mutually satisfactory alternative agreement is reached. Direct cost activities and F&A cost activities may be confirmed by responsible persons with suitable means of verification that the work was performed. Confirmation by the employee is not a requirement for either direct or F&A cost activities if other responsible persons make appropriate confirmations.

(c) The payroll distribution system will allow confirmation of activity allocable to each sponsored agreement and each of the categories of activity needed to identify F&A costs and the functions to which they are allocable. The activities chargeable to F&A cost categories or the major functions of the institution for employees whose salaries must be apportioned (see subsection b.(1)b)), if not initially identified as separate categories, may be subsequently distributed by any reasonable method mutually agreed to, including, but not limited to, suitably conducted surveys, statistical sampling procedures, or the application of negotiated fixed rates.

(d) Practices vary among institutions and within institutions as to the activity constituting a full workload. Therefore, the payroll distribution system may reflect categories of activities expressed as a percentage distribution of total activities.

(e) Direct and F&A charges may be made initially to sponsored agreements on the basis of estimates made before services are performed. When such estimates are used, significant changes in the corresponding work activity must be identified and entered into the payroll distribution system. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period.

(f) The system will provide for independent internal evaluations to ensure the system's effectiveness and compliance with the above standards.

(g) For systems which meet these standards, the institution will not be required to provide additional support or documentation for the effort actually performed.

c. Examples of Acceptable Methods for Payroll Distribution:

(1) Plan-Confirmation: Under this method, the distribution of salaries and wages of professorial and professional staff applicable to sponsored agreements is based on budgeted, planned, or assigned work activity, updated to reflect any significant changes in work distribution. A plan-confirmation system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(a) A system of budgeted, planned, or assigned work activity will be incorporated into the official records of the institution and encompass both sponsored and all other

activities on an integrated basis. The system may include the use of subsidiary records.

(b) The system will reasonably reflect only the activity for which the employee is compensated by the institution (compensation for incidental work described in subsection a need not be included). Practices vary among institutions and within institutions as to the activity constituting a full workload. Hence, the system will reflect categories of activities expressed as a percentage distribution of total activities. (See Section H for treatment of F&A costs under the simplified method for small institutions.)

(c) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection b.(2)(c).

(d) The system will provide for modification of an individual's salary or salary distribution commensurate with a significant change in the employee's work activity. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term, such as an academic period. Whenever it is apparent that a significant change in work activity that is directly or indirectly charged to sponsored agreements will occur or has occurred, the change will be documented over the signature of a responsible official and entered into the system.

(e) At least annually a statement will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed, stating that salaries and wages charged to sponsored agreements as direct charges, and to residual, F&A cost or other categories are reasonable in relation to work performed.

(f) The system will provide for independent internal evaluation to ensure the system's integrity and compliance with the above standards.

(g) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed.

(2) After-the-fact Activity Records: Under this system the distribution of salaries and wages by the institution will be supported by activity reports as prescribed below.

(a) Activity reports will reflect the distribution of activity expended by employees covered by the system

(compensation for incidental work as described in subsection a need not be included).

(b) These reports will reflect an after-the-fact reporting of the percentage distribution of activity of employees. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity records.

(c) Reports will reasonably reflect the activities for which employees are compensated by the institution. To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the reports will be signed by the employee, principal investigator, or responsible official(s) using suitable means of verification that the work was performed.

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable. The system may treat F&A cost activities initially within a residual category and subsequently determine them by alternate methods as discussed in subsection b.(2)(c).

(e) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other employees, unless alternate arrangements are agreed to, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(f) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purpose, provided that they meet the requirements in subsections (a) through (e).

(3) Multiple Confirmation Records: Under this system, the distribution of salaries and wages of professorial and professional staff will be supported by records which certify separately for direct and F&A cost activities as prescribed below.

(a) For employees covered by the system, there will be direct cost records to reflect the distribution of that activity expended which is to be allocable as direct cost to each sponsored agreement. There will also be F&A cost records to reflect the distribution of that activity to F&A costs. These records may be kept jointly or separately (but are to be certified separately, see below).

(b) Salary and wage charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences occur.

(c) Institutional records will reasonably reflect only the activity for which employees are compensated by the institution (compensation for incidental work as described in subsection a need not be included).

(d) The system will reflect activity applicable to each sponsored agreement and to each category needed to identify F&A costs and the functions to which they are allocable.

(e) To confirm that distribution of activity represents a reasonable estimate of the work performed by the employee during the period, the record for each employee will include:

(1) the signature of the employee or of a person having direct knowledge of the work, confirming that the record of activities allocable as direct costs of each sponsored agreement is appropriate; and,

(2) the record of F&A costs will include the signature of responsible person(s) who use suitable means of verification that the work was performed and is consistent with the overall distribution of the employee's compensated activities. These signatures may all be on the same document.

(f) The reports will be prepared each academic term, but no less frequently than every six months.

(g) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as records for this purposes, provided they meet the requirements in subsections (a) through (f).

d. Salary rates for faculty members.

(1) Salary rates for academic year. Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies

to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsoring agency.

(2) Periods outside the academic year.

(a) Except as otherwise specified for teaching activity in subsection (b), charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

(b) Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) Part-time faculty. Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments. For example, an institution pays \$5000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of \$5000, or \$2500.

e. Noninstitutional professional activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional

activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on sponsored agreements be allocated between (1) institutional activities, and (2) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

f. Fringe benefits.

(1) 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, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. See subsection 11.f.(4) for treatment of sabbatical leave.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established educational institutional policies, and are distributed to all institutional activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable for fiscal years beginning after September 30, 1998. See Section J.45.b, Scholarships and student aid costs, for treatment of tuition remission provided to students.

(3) 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: (i) such policies meet the test of reasonableness, (ii) the methods of cost allocation are equitable for all activities, (iii) the amount of pension cost assigned to each fiscal year is determined in accordance with subsection (b), and (iv) 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.

(4) Rules for sabbatical leave are as follows:

(a) Costs of leave of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution.

(b) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

(5) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of institution-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the institution demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees. Fringe benefits shall be treated in the same manner as the salaries and wages of the employees receiving the benefits. The benefits related to salaries and wages treated as direct costs shall also be treated as direct costs; the benefits related to salaries and wages treated as F&A costs shall be treated as F&A costs.

g. 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.

h. Severance pay.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

11. 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, except as noted in the cost principles in this circular regarding self-insurance, pensions, severance and post-retirement health costs.

12. Deans of faculty and graduate schools.

The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

13. 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 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

(a) 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

(b) results in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

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

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

(iv) 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.

(v) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in subsections (i) through (iv).

(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.

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.

14. Depreciation and use allowances.

a. Institutions may be compensated for the use of their buildings, capital improvements, and equipment, provided that they are used, needed in the institutions' activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with Section F.2. Depreciation and use allowances are computed applying the following rules:

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the institution by a third party shall be its fair market value at the time of the donation.

c. For this purpose, the acquisition cost will exclude:

- (1) the cost of land;
- (2) any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located; and
- (3) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibits recovery.

d. In the use of the depreciation method, the following shall be observed:

- (1) The period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular

area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method.

Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. The depreciation methods used to calculate the depreciation amounts for F&A rate purposes shall be the same methods used by the institution for its financial statements. This requirement does not apply to those institutions (e.g., public institutions of higher education) which are not required to record depreciation by applicable generally accepted accounting principles (GAAP).

(3) Where the depreciation method is introduced to replace the use allowance method, depreciation shall be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The aggregate amount of use allowances and depreciation attributable to an asset (including imputed depreciation applicable to periods prior to the conversion to the use allowance method as well as depreciation after the conversion) may be less than, and in no case, greater than the total acquisition cost of the asset.

(4) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components shall be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a Federal cognizant agency may authorize a institution to use more than these three groupings. When a institution elects to depreciate its buildings by its components, the same depreciation methods must be used for F&A purposes and financial statement purposes, as described in subsection d.2.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (See also subsection e.(3))

e. Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) shall be computed at an annual rate not exceeding two percent of acquisition cost.

The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. Use allowance recovery is limited to the acquisition cost of the assets. For donated assets, use allowance recovery is limited to the fair market value of the assets at the time of donation.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building.

The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets that meet these criteria will be subject to the 6 2/3 percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

(4) Notwithstanding subsection e.(3), once a institution converts from one cost recovery methodology to another,

acquisition costs not recovered may not be used in the calculation of the use allowance in subsection e.(3).

f. Except as otherwise provided in subsections b. through e., a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

g. Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

h. This section applies to the largest college and university recipients of Federal research and development funds as displayed in Exhibit A, List of Colleges and Universities Subject to Section J.14.h of Circular A-21.

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

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

15. 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.

16. Employee morale, health, and welfare costs and costs.

a. The costs of employee information publications, health or first-aid clinics and/or infirmaries, recreational activities, employee counseling services, and any other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.

b. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

c. Losses resulting from operating food services are allowable only if the institution's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only (a) where the institution can demonstrate unusual circumstances, and (b) with the approval of the cognizant Federal agency.

17. 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.

18. Equipment and other capital expenditures.

a. For purposes of this subsection, the following definitions apply:

(1) "Capital Expenditures" means expenditures for the acquisition cost of capital assets (equipment, buildings, and land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the institution's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the institution for financial statement purposes, or \$5000.

(3) "Special purpose equipment" means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) "General purpose equipment" means equipment, which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles.

b. The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of the awarding agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or

useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

(4) When approved as a direct charge pursuant to subsections J.18.b(1) through (3) above, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate by and negotiated with the awarding agency.

(5) Equipment and other capital expenditures are unallowable as indirect costs. However, see section J.14, Depreciation and use allowances, for rules on the allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see section J.43, Rental costs of buildings and equipment, for rules on the allowability of rental costs for land, buildings, and equipment.

(6) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

19. 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.

20. Fund raising and investment costs.

a. 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.

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

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

21. Gain and losses on depreciable assets.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under Section J.14.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in Section J.25.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a shall be excluded in computing sponsored agreement costs.

c. When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

22. 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.

23. 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.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) "Idle facilities" means completely unused facilities that are excess to the institution's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between:

(a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and

(b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other sponsored agreements, subletting, renting, or sale, in accordance with

sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. 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:

(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 subsection 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.

26. Interest.

a. Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the institution's own funds, however represented, are unallowable. 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.

b. 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:

(1) For facilities costing over \$500,000, the institution shall prepare, prior to acquisition or replacement of the facility, a lease-purchase analysis in accordance with the provisions of Sec____.30 through____.37 of OMB Circular A-110, which shows that a financed purchase, including a capital lease is less costly to the institution than other operating lease alternatives, on a net present value basis. Discount rates used shall be equal to the institution's anticipated interest rates and shall be no higher than the fair market rate available to the institution from an unrelated ("arm's length") third-party. The lease-purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the institution. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the defined period. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the defined period. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or

reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the institution directly or as part of the lease arrangement.

(2) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the institution from an unrelated (arm's length) third party.

(3) Investment earnings, including interest income on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(4) Reimbursements are limited to the least costly alternative based on the total cost analysis required under subsection (1). For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease-purchase analysis is required to be performed, Federal reimbursement shall be based upon the least expensive alternative.

(5) For debt arrangements over \$1 million, unless the institution makes an initial equity contribution to the asset purchase of 25 percent or more, the institution shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-Federal entities shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest cost. For cash flow calculations, the annual inflow figures shall be divided by the number of months in the year (i.e., usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest cost. The rate of interest to be used to compute earnings on excess cash flows shall be the three-month Treasury bill closing rate as of the last business day of that month.

(6) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of

which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(7) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the institution from an unrelated (arm's length) third party.

c. Institutions are also subject to the following conditions:

(1) Interest on debt incurred to finance or refinance assets re-acquired after the applicable effective dates stipulated above is unallowable.

(2) Interest attributable to fully depreciated assets is unallowable.

d. The following definitions are to be used for purposes of this section:

(1) "Re-acquired" assets means assets held by the institution prior to the applicable effective dates stipulated above that have again come to be held by the institution, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(2) "Initial equity contribution" means the amount or value of contributions made by non-Federal entities for the acquisition of the asset prior to occupancy of facilities.

(3) "Asset costs" means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with Generally Accepted Accounting Principles (GAAP).

27. Labor relations costs.

Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

28. Lobbying.

Reference is made to the common rule published at 55 FR 6736 (2/26/90), and OMB's governmentwide guidance, amendments to OMB's governmentwide 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.

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

(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 activity costs in accordance with the procedures of Section B.1.d.

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 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.

29. Losses on other sponsored agreements or contracts.

Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for F&A costs.

30. Maintenance and repair costs.

Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see section 18.a(1)).

31. Material and supplies costs.

a. Costs incurred for materials, supplies, and fabricated parts necessary to carry out a sponsored agreement are allowable.

b. Purchased materials and supplies shall be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms should be charged at their actual net cost under any recognized method of pricing inventory

withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

c. Only materials and supplies actually used for the performance of a sponsored agreement may be charged as direct costs.

d. Where federally-donated or furnished materials are used in performing the sponsored agreement, such materials will be used without charge.

32. Meetings and Conferences.

Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. But see section J.17, Entertainment costs.

33. 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.

34. Patent costs.

a. The following costs relating to patent and copyright matters are allowable:

(1) cost of preparing disclosures, reports, and other documents required by the sponsored agreement and of searching the art to the extent necessary to make such disclosures;

(2) cost of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(3) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements (but see sections J.37, Professional service costs, and J.44, Royalties and other costs for use of patents).

b. The following costs related to patent and copyright matter are unallowable:

(i) Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures not required by the award

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the sponsored agreement award does not require conveying title or a royalty-free license to the Federal Government, (but see section J.44, Royalties and other costs for use of patents).

35. Plant and homeland security costs.

Necessary and reasonable expenses incurred for routine and homeland security to protect facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; contractual security services; consultants; etc. Capital expenditures for homeland and plant security purposes are subject to section J.18, Equipment and other capital expenditures, of this Circular.

36. 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.

37. Professional service costs.

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the institution, are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under section J.13.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the institution's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to sponsored agreements.

(4) The impact on the institution's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-sponsored agreements.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in subparagraph b, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

38. Proposal costs.

Proposal costs are the costs of preparing bids or proposals on potential federally and non-federally-funded sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as F&A costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

39. Publication and printing costs.

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling. Publication costs also include page charges in professional publications.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the institution.

c. Page charges for professional journal publications are allowable as a necessary part of research costs where:

(1) The research papers report work supported by the Federal Government: and

(2) The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

40. Rearrangement and alteration costs.

Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the sponsoring agency.

41. Reconversion costs.

Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of a sponsored agreement, fair wear and tear excepted, are allowable.

42. 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.

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.

43. Rental costs of buildings and equipment.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

b. Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the institution continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance.

c. Rental costs under "less-than-arms-length" leases are allowable only up to the amount (as explained in subsection b) that would be allowed had title to the property vested in the institution. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between --

(1) divisions of a institution;

(2) non-Federal entities under common control through common officers, directors, or members; and

(3) a institution and a director, trustee, officer, or key employee of the institution or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, a institution may establish a separate corporation for the sole purpose of owning property and leasing it back to the institution.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in subsection b) that would be allowed had the institution purchased the property on the date the lease agreement was executed. The provisions of Financial Accounting

Standards Board Statement 13, *Accounting for Leases*, shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section J.26. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the institution purchased the facility.

44. Royalties and other costs for use of patents.

a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:

(1) The Federal Government has a license or the right to free use of the patent or copyright.

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(3) The patent or copyright is considered to be unenforceable.

(4) The patent or copyright is expired.

b. Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution.

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a sponsored agreement award would be made.

(3) Royalties paid under an agreement entered into after an award is made to a institution.

c. In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

45. Scholarships and student aid costs.

a. Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that --

(1) The individual is conducting activities necessary to the sponsored agreement;

(2) Tuition remission and other support are provided in accordance with established educational institutional policy and consistently provided in a like manner to students in return for similar activities conducted in nonsponsored as well as sponsored activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at the institution or affiliated institution and the activities of the student in relation to the Federally-sponsored research project are related to the degree program;

(4) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

b. Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in Section J.10, and shall be treated as direct or F&A cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis.

46. 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).

47. Specialized service facilities.

a. The costs of services provided by highly complex or specialized facilities operated by the institution, such as computers, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either subsection 47.b. or 47.c. and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under subsection C.5. of this Circular.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that

(1) does not discriminate against federally-supported activities of the institution, including usage by the institution for internal purposes, and

(2) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all F&A costs. Rates shall be adjusted at least biennially, and shall take into consideration over/under applied costs of the previous period(s).

c. Where the costs incurred for a service are not material, they may be allocated as F&A costs.

d. Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

48. 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.

49. Taxes.

a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable. Payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for--

(1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Federal Government, and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Federal Government in the manner directed by the Federal Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the institution has been reimbursed by the Federal Government for the taxes, interest, and penalties.

50. Termination costs applicable to sponsored agreements.

Termination of awards generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the sponsored agreement not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled activity.

Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the sponsored agreement shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be unallowable.

c. Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the institution,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency, and

(3) The loss of useful value for any one terminated sponsored agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the sponsored agreement bears to the entire terminated sponsored agreement award and other sponsored agreements for which the special tooling, machinery, or equipment was acquired.

d. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated sponsored agreement less the residual value of such leases, if:

(1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the sponsored agreement and such further period as may be reasonable, and

(2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the sponsored agreement, and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to the awarding agency of settlement claims and supporting data with respect to the terminated portion of the sponsored agreement, unless the termination is for default (see Subpart. __.61 of Circular A-110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the sponsored agreement, except when institutions are reimbursed for disposals at a predetermined amount in accordance with Subparts __.32 through __.37 of Circular A-110.

(3) F&A costs related to salaries and wages incurred as settlement expenses in subsections b.(1) and (2). Normally, such F&A costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. Claims under subawards, including the allocable portion of claims which are common to the sponsored agreement and to other work of the institution, are generally allowable.

An appropriate share of the institution's F&A costs may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in section E, F&A costs. The F&A costs so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

51. Training costs.

The cost of training provided for employee development is allowable.

52. Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate F&A cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement, should be treated as a direct cost.

53. 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.

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:

- (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, as provided for in subsection 53.c., is unallowable.

54. Trustees.

Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in Section 53.

K. Certification of charges.

1. To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that

all expenditures reported (or payment requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

2. Certification of F&A costs.

a. Policy.

(1) No proposal to establish F&A cost rates shall be acceptable unless such costs have been certified by the educational institution using the Certificate of F&A Costs set forth in subsection b. The certificate must be signed on behalf of the institution by an individual at a level no lower than vice president or chief financial officer of the institution that submits the proposal.

(2) No F&A cost rate shall be binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish F&A cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When F&A cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

b. Certificate. The certificate required by this section shall be in the following form:

Certificate of F&A Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the F&A cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final F&A costs rate for [identify period

covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

For educational institutions that are required to file a DS-2 in accordance with Section C.14, the following statement shall be added to the "Certificate of F&A Costs":

(5) The rate proposal is prepared using the same cost accounting practices that are disclosed in the DS-2, including its amendments and revisions, filed with and approved by the cognizant agency.

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

Institution: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

Exhibit A -- List of Colleges and Universities Subject to
Section J.12.h of Circular A-21.

1. Johns Hopkins University
2. Stanford University
3. Massachusetts Institute of Technology
4. University of Washington
5. University of California-Los Angeles
6. University of Michigan
7. University of California-San Diego
8. University of California-San Francisco
9. University of Wisconsin-Madison
10. Columbia University
11. Yale University
12. Harvard University
13. Cornell University
14. University of Pennsylvania
15. University of California-Berkeley
16. University of Minnesota
17. Pennsylvania State University
18. University of Southern California
19. Duke University
20. Washington University
21. University of Colorado
22. University of Illinois-Urbana
23. University of Rochester
24. University of North Carolina-Chapel Hill
25. University of Pittsburgh
26. University of Chicago
27. University of Texas-Austin
28. University of Arizona
29. New York University
30. University of Iowa
31. Ohio State University
32. University of Alabama-Birmingham
33. Case Western Reserve
34. Baylor College of Medicine
35. California Institute of Technology
36. Yeshiva University
37. University of Massachusetts
38. Vanderbilt University
39. Purdue University
40. University of Utah
41. Georgia Institute of Technology
42. University of Maryland-College Park

43. University of Miami
44. University of California-Davis
45. Boston University
46. University of Florida
47. Carnegie-Mellon University
48. Northwestern University
49. Indiana University
50. Michigan State University
51. University of Virginia
52. University of Texas-SW Medical Center
53. University of California-Irvine
54. Princeton University
55. Tulane University of Louisiana
56. Emory University
57. University of Georgia
58. Texas A&M University-all campuses
59. New Mexico State University
60. North Carolina State University-Raleigh
61. University of Illinois-Chicago
62. Utah State University
63. Virginia Commonwealth University
64. Oregon State University
65. SUNY-Stony Brook
66. University of Cincinnati
67. CUNY-Mount Sinai School of Medicine
68. University of Connecticut
69. Louisiana State University
70. Tufts University
71. University of California-Santa Barbara
72. University of Hawaii-Manoa
73. Rutgers State University of New Jersey
74. Colorado State University
75. Rockefeller University
76. University of Maryland-Baltimore
77. Virginia Polytechnic Institute & State University
78. SUNY-Buffalo
79. Brown University
80. University of Medicine & Dentistry of New Jersey
81. University of Texas-Health Science Center San Antonio
82. University of Vermont
83. University of Texas-Health Science Center Houston
84. Florida State University
85. University of Texas-MD Anderson Cancer Center
86. University of Kentucky
87. Wake Forest University

88. Wayne State University
89. Iowa State University of Science & Technology
90. University of New Mexico
91. Georgetown University
92. Dartmouth College
93. University of Kansas
94. Oregon Health Sciences University
95. University of Texas-Medical Branch-Galveston
96. University of Missouri-Columbia
97. Temple University
98. George Washington University
99. University of Dayton

Exhibit B -- Listing of institutions that are eligible for the utility cost adjustment.

1. Baylor University
2. Boston College
3. Boston University
4. California Institute of Technology
5. Carnegie-Mellon University
6. Case Western University
7. Columbia University
8. Cornell University (Endowed)
9. Cornell University (Statutory)
10. Cornell University (Medical)
11. Dayton University
12. Emory University
13. George Washington University (Medical)
14. Georgetown University
15. Harvard Medical School
16. Harvard University (Main Campus)
17. Harvard University (School of Public Health)
18. Johns Hopkins University
19. Massachusetts Institute of Technology
20. Medical University of South Carolina
21. Mount Sinai School of Medicine
22. New York University (except New York University Medical Center)
23. New York University Medical Center
24. North Carolina State University
25. Northeastern University
26. Northwestern University
27. Oregon Health Sciences University
28. Oregon State University
29. Rice University
30. Rockefeller University
31. Stanford University
32. Tufts University
33. Tulane University
34. Vanderbilt University
35. Virginia Commonwealth University
36. Virginia Polytechnic Institute and State University
37. University of Arizona
38. University of CA, Berkeley
39. University of CA, Irvine
40. University of CA, Los Angeles
41. University of CA, San Diego

42. University of CA, San Francisco
43. University of Chicago
44. University of Cincinnati
45. University of Colorado, Health Sciences Center
46. University of Connecticut, Health Sciences Center
47. University of Health Science and The Chicago Medical School
48. University of Illinois, Urbana
49. University of Massachusetts, Medical Center
50. University of Medicine & Dentistry of New Jersey
51. University of Michigan
52. University of Pennsylvania
53. University of Pittsburgh
54. University of Rochester
55. University of Southern California
56. University of Tennessee, Knoxville
57. University of Texas, Galveston
58. University of Texas, Austin
60. University of Texas Southwestern Medical Center
61. University of Virginia
62. University of Vermont & State Agriculture College
63. University of Washington
64. Washington University
65. Yale University
66. Yeshiva University

Exhibit C -- Examples of "major project" where direct charging of administrative or clerical staff salaries may be appropriate.

- * Large, complex programs such as General Clinical Research Centers, Primate Centers, Program Projects, environmental research centers, engineering research centers, and other grants and contracts that entail assembling and managing teams of investigators from a number of institutions.

- * Projects which involve extensive data accumulation, analysis and entry, surveying, tabulation, cataloging, searching literature, and reporting (such as epidemiological studies, clinical trials, and retrospective clinical records studies).

- * Projects that require making travel and meeting arrangements for large numbers of participants, such as conferences and seminars.

- * Projects whose principal focus is the preparation and production of manuals and large reports, books and monographs (excluding routine progress and technical reports).

- * Projects that are geographically inaccessible to normal departmental administrative services, such as research vessels, radio astronomy projects, and other research fields sites that are remote from campus.

- * Individual projects requiring project-specific database management; individualized graphics or manuscript preparation; human or animal protocols; and multiple project-related investigator coordination and communications.

These examples are not exhaustive nor are they intended to imply that direct charging of administrative or clerical salaries would always be appropriate for the situations illustrated in the examples. For instance, the examples would be appropriate when the costs of such activities are incurred in unlike circumstances, i.e., the actual activities charged direct are not the same as the actual activities normally included in the institution's facilities and administrative (F&A) cost pools or, if the same, the indirect activity costs are immaterial in amount. It would be inappropriate to charge the cost of such activities directly to specific sponsored agreements if, in similar circumstances, the costs of performing the same type of

activity for other sponsored agreements were included as allocable costs in the institution's F&A cost pools. Application of negotiated predetermined F&A cost rates may also be inappropriate if such activity costs charged directly were not provided for in the allocation base that was used to determine the predetermined F&A cost rates.

Appendix A Part 99005 -- Cost Accounting Standards for Educational Institutions.

CAS 9905.501 -- Consistency in estimating, accumulating and reporting costs by educational institutions.

Purpose

The purpose of this standard is to ensure that each educational institution's practices used in estimating costs for a proposal are consistent with cost accounting practices used by the educational institution in accumulating and reporting costs. Consistency in the application of cost accounting practices is necessary to enhance the likelihood that comparable transactions are treated alike. With respect to individual sponsored agreements, the consistent application of cost accounting practices will facilitate the preparation of reliable cost estimates used in pricing a proposal and their comparison with the costs of performance of the resulting sponsored agreement. Such comparisons provide one important basis for financial control over costs during sponsored agreement performance and aid in establishing accountability for costs in the manner agreed to by both parties at the time of agreement. The comparisons also provide an improved basis for evaluating estimating capabilities.

Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Accumulating costs means the collecting of cost data in an organized manner, such as through a system of accounts.

(2) Actual cost means an amount determined on the basis of cost incurred (as distinguished from forecasted cost), including standard cost properly adjusted for applicable variance.

(3) Estimating costs means the process of forecasting a future result in terms of cost, based upon information available at the time.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more objectives but not identified specifically with any final cost objective.

(5) Pricing means the process of establishing the amount or amounts to be paid in return for goods or services.

(6) Proposal means any offer or other submission used as a basis for pricing a sponsored agreement, sponsored agreement modification or termination settlement or for securing payments thereunder.

(7) Reporting costs means the providing of cost information to others.

Fundamental Requirement

An educational institution's practices used in estimating costs in pricing a proposal shall be consistent with the educational institution's cost accounting practices used in accumulating and reporting costs.

An educational institution's cost accounting practices used in accumulating and reporting actual costs for a sponsored agreement shall be consistent with the educational institution's practices used in estimating costs in the related proposal or application.

The grouping of homogeneous costs in estimates prepared for proposal purposes shall not per se be deemed an inconsistent application of cost accounting practices of this paragraph when such costs are accumulated in reported in greater detail on an actual costs basis during performance of the sponsored agreement.

Techniques for application

(a) The standard allows grouping of homogeneous costs in order to cover those cases where it is not practicable to estimate sponsored agreement costs by individual cost element. However, costs estimated for proposal purposes shall be presented in such a manner and in such detail that any significant cost can be compared with the actual cost accumulated and reported therefor. In any event, the cost accounting practices used in estimating costs in pricing a proposal and in accumulating and reporting costs on the resulting sponsored agreement shall be consistent with respect to:

(1) The classification of elements of cost as direct or indirect; (2) the indirect cost pools to which each element of cost is charged or proposed to be charged; and (3) the methods of allocating indirect costs to the sponsored agreement.

(b) Adherence to the requirement of this standard shall be determined as of the date of award of the sponsored agreement, unless the sponsored agreement has submitted cost or pricing data pursuant to 10 U.S.C. 2306(a) or 41 U.S.C. 254(d) (Pub. L. 87-653), in which case adherence to the requirement of this standard shall be determined as of the date of final agreement on price, as shown on the signed certificate of current cost or pricing data. Notwithstanding 9905.501-40(b), changes in established cost accounting practices during sponsored agreement performance may be made in accordance with Part 9903 (48 CFR 9903).

(c) The standard does not prescribe the amount of detail required in accumulating and reporting costs. The basic requirement which must be met, however, is that for any significant amount of estimated cost, the sponsored agreement must be able to accumulate and report actual cost at a level which permits sufficient and meaningful comparison with its estimates. The amount of detail required may vary considerably depending on how the proposed costs were estimated, the data presented in justification or lack thereof, and the significance of each situation. Accordingly, it is neither appropriate nor practical to prescribe a single set of accounting practices which would be consistent in all situations with the practices of estimating costs. Therefore, the amount of accounting and statistical detail to be required and maintained in accounting for estimated costs has been and continues to be a matter to be decided by Government procurement authorities on the basis of the individual facts and circumstances.

CAS 9905.502 -- Consistency in allocating costs incurred for the same purpose by educational institutions.

Purpose

The purpose of this standard is to require that each type of cost is allocated only once and on only one basis to any sponsored agreement or other cost objective. The criteria for determining the allocation of costs to a sponsored agreement or

other cost objective should be the same for all similar objectives. Adherence to these cost accounting concepts is necessary to guard against the overcharging of some cost objectives and to prevent double counting. Double counting occurs most commonly when cost items are allocated directly to a cost objective without eliminating like cost items from indirect cost pools which are allocated to that cost objective.

Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) Direct cost means any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a sponsored agreement are direct costs of that sponsored agreement. All costs identified specifically with other final cost objectives of the educational institution are direct costs of those cost objectives.

(4) Final cost objective means a cost objective which has allocated to it both direct and indirect costs, and in the educational institution's accumulation system, is one of the final accumulation points.

(5) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(6) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified with any final cost objective.

(7) Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools and/or final cost objectives.

Fundamental Requirement

All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective. Further, no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective.

Techniques for application

(a) The Fundamental Requirement is stated in terms of cost incurred and is equally applicable to estimates of costs to be incurred as used in sponsored agreement proposals.

(b) The Disclosure Statement to be submitted by the educational institution will require that the educational institution set forth its cost accounting practices with regard to the distinction between direct and indirect costs. In addition, for those types of cost which are sometimes accounted for as direct and sometimes accounted for as indirect, the educational institution will set forth in its Disclosure Statement the specific criteria and circumstances for making such distinctions. In essence, the Disclosure Statement submitted by the educational institution, by distinguishing between direct and indirect costs, and by describing the criteria and circumstances for allocating those items which are sometimes direct and sometimes indirect, will be determinative as to whether or not costs are incurred for the same purpose. Disclosure Statement as used herein refers to the statement

required to be submitted by educational institutions in Section C.14.

(c) In the event that an educational institution has not submitted a Disclosure Statement, the determination of whether specific costs are directly allocable to sponsored agreements shall be based upon the educational institution's cost accounting practices used at the time of sponsored agreement proposal.

(d) Whenever costs which serve the same purpose cannot equitably be indirectly allocated to one or more final cost objectives in accordance with the educational institution's disclosed accounting practices, the educational institution may either (1) use a method for reassigning all such costs which would provide an equitable distribution to all final cost objectives, or (2) directly assign all such costs to final cost objectives with which they are specifically identified. In the event the educational institution decides to make a change for either purpose, the Disclosure Statement shall be amended to reflect the revised accounting practices involved.

(e) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such cost had been treated as a direct cost.

Illustrations

(a) Illustrations of costs which are incurred for the same purpose:

(1) An educational institution normally allocates all travel as an indirect cost and previously disclosed this accounting practice to the Government. For purposes of a new proposal, the educational institution intends to allocate the travel costs of personnel whose time is accounted for as direct labor directly to the sponsored agreement. Since travel costs of personnel whose time is accounted for as direct labor working on other sponsored agreements are costs which are incurred for the same purpose, these costs may no longer be included within indirect cost pools for purposes of allocation to any covered Government sponsored agreement. The educational institution's

Disclosure Statement must be amended for the proposed changes in accounting practices.

(2) An educational institution normally allocates purchasing activity costs indirectly and allocates this cost to instruction and research on the basis of modified total costs. A proposal for a new sponsored agreement requires a disproportionate amount of subcontract administration to be performed by the purchasing activity. The educational institution prefers to continue to allocate purchasing activity costs indirectly. In order to equitably allocate the total purchasing activity costs, the educational institution may use a method for allocating all such costs which would provide an equitable distribution to all applicable indirect cost pools. For example, the educational institution may use the number of transactions processed rather than its former allocation base of modified total costs. The educational institution's Disclosure Statement must be amended for the proposed changes in accounting practices.

(b) Illustrations of costs which are not incurred for the same purpose:

(1) An educational institution normally allocates special test equipment costs directly to sponsored agreements. The costs of general purpose test equipment are normally included in the indirect cost pool which is allocated to sponsored agreements. Both of these accounting practices were previously disclosed to the Government. Since both types of costs involved were not incurred for the same purpose in accordance with the criteria set forth in the educational institution's Disclosure Statement, the allocation of general purpose test equipment costs from the indirect cost pool to the sponsored agreement, in addition to the directly allocated special test equipment costs, is not considered a violation of the standard.

(2) An educational institution proposes to perform a sponsored agreement which will require three firemen on 24-hour duty at a fixed-post to provide protection against damage to highly inflammable materials used on the sponsored agreement. The educational institution presently has a firefighting force of 10 employees for general protection of its facilities. The educational institution's costs for these latter firemen are treated as indirect costs and allocated to all sponsored agreements; however, it wants to allocate the three fixed-post

firemen directly to the particular sponsored agreement requiring them and also allocate a portion of the cost of the general firefighting force to the same sponsored agreement. The educational institution may do so but only on condition that its disclosed practices indicate that the costs of the separate classes of firemen serve different purposes and that it is the educational institution's practice to allocate the general firefighting force indirectly and to allocate fixed-post firemen directly.

Interpretation

(a) Consistency in Allocating Costs Incurred for the Same Purpose by Educational Institutions, provides, in this standard, that " * * * no final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective."

(b) This interpretation deals with the way this standard applies to the treatment of costs incurred in preparing, submitting, and supporting proposals. In essence, it is addressed to whether or not, under the standard, all such costs are incurred for the same purpose, in like circumstances.

(c) Under this standard, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing sponsored agreement are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing sponsored agreement relate only to that sponsored agreement while other proposal costs relate to all work of the educational institution.

(d) This interpretation does not preclude the allocation, as indirect costs, of costs incurred in preparing all proposals. The cost accounting practices used by the educational institution, however, must be followed consistently and the method used to reallocate such costs, of course, must provide an equitable distribution to all final cost objectives.

CAS 9905.505 -- Accounting for unallowable costs --
Educational institutions.

Purpose

(a) The purpose of this standard is to facilitate the negotiation, audit, administration and settlement of sponsored agreements by establishing guidelines covering (1) identification of costs specifically described as unallowable, at the time such costs first become defined or authoritatively designated as unallowable, and (2) the cost accounting treatment to be accorded such identified unallowable costs in order to promote the consistent application of sound cost accounting principles covering all incurred costs. The standard is predicated on the proposition that costs incurred in carrying on the activities of an educational institution -- regardless of the allowability of such costs under Government sponsored agreements -- are allocable to the cost objectives with which they are identified on the basis of their beneficial or causal relationships.

(b) This standard does not govern the allowability of costs. This is a function of the appropriate procurement or reviewing authority.

Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Directly associated cost means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

(2) Expressly unallowable cost means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or sponsored agreement, is specifically named and stated to be unallowable.

(3) Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(4) Unallowable cost means any cost which, under the provisions of any pertinent law, regulation, or sponsored agreement, cannot be included in prices, cost reimbursements, or settlements under a Government sponsored agreement to which it is allocable.

Fundamental requirement

(a) Costs expressly unallowable or mutually agreed to be unallowable, including costs mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, application, or proposal applicable to a Government sponsored agreement.

(b) Costs which specifically become designated as unallowable as a result of a written decision furnished by a Federal official pursuant to sponsored agreement disputes procedures shall be identified if included in or used in the computation of any billing, claim, or proposal applicable to a sponsored agreement. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) Costs which, in a Federal official's written decision furnished pursuant to disputes procedures, are designated as unallowable directly associated costs of unallowable costs covered by either paragraph (a) or (b) of this subsection shall be accorded the identification required by paragraph b. of this subsection.

(d) The costs of any work project not contractually authorized, whether or not related to performance of a proposed or existing contract, shall be accounted for, to the extent appropriate, in a manner which permits ready separation from the costs of authorized work projects.

(e) All unallowable costs covered by paragraphs (a) through (d) of this subsection shall be subject to the same cost accounting principles governing cost allocability as allowable costs. In circumstances where these unallowable costs normally would be part of a regular indirect-cost allocation base or bases, they shall remain in such base or bases. Where a directly associated cost is part of a category of costs normally included

in an indirect-cost pool that will be allocated over a base containing the unallowable cost with which it is associated, such a directly associated cost shall be retained in the indirect-cost pool and be allocated through the regular allocation process.

(f) Where the total of the allocable and otherwise allowable costs exceeds a limitation-of-cost or ceiling-price provision in a sponsored agreement, full direct and indirect cost allocation shall be made to the cost objective, in accordance with established cost accounting practices and Standards which regularly govern a given entity's allocations to Government sponsored agreement cost objectives. In any determination of unallowable cost overrun, the amount thereof shall be identified in terms of the excess of allowable costs over the ceiling amount, rather than through specific identification of particular cost items or cost elements.

Techniques for application

(a) The detail and depth of records required as backup support for proposals, billings, or claims shall be that which is adequate to establish and maintain visibility of identified unallowable costs (including directly associated costs), their accounting status in terms of their allocability to sponsored agreement cost objectives, and the cost accounting treatment which has been accorded such costs. Adherence to this cost accounting principle does not require that allocation of unallowable costs to final cost objectives be made in the detailed cost accounting records. It does require that unallowable costs be given appropriate consideration in any cost accounting determinations governing the content of allocation bases used for distributing indirect costs to cost objectives. Unallowable costs involved in the determination of rates used for standard costs, or for indirect-cost bidding or billing, need be identified only at the time rates are proposed, established, revised or adjusted.

(b) The visibility requirement of paragraph (a) of this subsection, may be satisfied by any form of cost identification which is adequate for purposes of sponsored agreement cost determination and verification. The standard does not require such cost identification for purposes which are not relevant to the determination of Government sponsored agreement cost. Thus, to provide visibility for incurred costs, acceptable alternative

practices would include (1) the segregation of unallowable costs in separate accounts maintained for this purpose in the regular books of account, (2) the development and maintenance of separate accounting records or workpapers, or (3) the use of any less formal cost accounting techniques which establishes and maintains adequate cost identification to permit audit verification of the accounting recognition given unallowable costs. Educational institutions may satisfy the visibility requirements for estimated costs either (1) by designation and description (in backup data, workpapers, etc.) of the amounts and types of any unallowable costs which have specifically been identified and recognized in making the estimates, or (2) by description of any other estimating technique employed to provide appropriate recognition of any unallowable costs pertinent to the estimates.

(c) Specific identification of unallowable costs is not required in circumstances where, based upon considerations of materiality, the Government and the educational institution reach agreement on an alternate method that satisfies the purpose of the standard.

Illustrations

(a) An auditor recommends disallowance of certain direct labor and direct material costs, for which a billing has been submitted under a sponsored agreement, on the basis that these particular costs were not required for performance and were not authorized by the sponsored agreement. The Federal officer issues a written decision which supports the auditor's position that the questioned costs are unallowable. Following receipt of the Federal officer's decision, the educational institution must clearly identify the disallowed direct labor and direct material costs in the educational institution's accounting records and reports covering any subsequent submission which includes such costs. Also, if the educational institution's base for allocation of any indirect cost pool relevant to the subject sponsored agreement consists of direct labor, direct material, total prime cost, total cost input, etc., the educational institution must include the disallowed direct labor and material costs in its allocation base for such pool. Had the Federal officer's decision been against the auditor, the educational institution would not, of course, have been required to account separately for the costs questioned by the auditor.

(b) An educational institution incurs, and separately identifies, as a part of a service center or expense pool, certain costs which are expressly unallowable under the existing and currently effective regulations. If the costs of the service center or indirect expense pool are regularly a part of the educational institution's base for allocation of general administration and general expenses (GA&GE) or other indirect expenses, the educational institution must allocate the GA&GE or other indirect expenses to sponsored agreements and other final cost objectives by means of a base which includes the identified unallowable indirect costs.

(c) An auditor recommends disallowance of certain indirect costs. The educational institution claims that the costs in question are allowable under the provisions of Office Of Management and Budget Circular A-21, Cost Principles For Educational Institutions; the auditor disagrees. The issue is referred to the Federal officer for resolution pursuant to the sponsored agreement disputes clause. The Federal officer issues a written decision supporting the auditor's position that the total costs questioned are unallowable under the Circular. Following receipt of the Federal officer's decision, the educational institution must identify the disallowed costs and specific other costs incurred for the same purpose in like circumstances in any subsequent estimating, cost accumulation or reporting for Government sponsored agreements, in which such costs are included. If the Federal officer's decision had supported the educational institution's contention, the costs questioned by the auditor would have been allowable and the educational institution would not have been required to provide special identification.

(d) An educational institution incurred certain unallowable costs that were charged indirectly as general administration and general expenses (GA&GE). In the educational institution's proposals for final indirect cost rates to be applied in determining allowable sponsored agreement costs, the educational institution identified and excluded the expressly unallowable costs. In addition, during the course of negotiation of indirect cost rates to be used for bidding and billing purposes, the educational institution agreed to classify as unallowable cost, various directly associated costs of the identifiable unallowable costs. On the basis of negotiations and agreements between the educational institution and the Federal officer's authorized representatives, indirect cost rates were

established, based on the net balance of allowable GA&GE. Application of the rates negotiated to proposals, and to billings, for covered sponsored agreements constitutes compliance with the standard.

(e) An employee, whose salary, travel, and subsistence expenses are charged regularly to the general administration and general expenses (GA&GE) pool, takes several business associates on what is clearly a business entertainment trip. The entertainment costs of such trips is expressly unallowable because it constitutes entertainment expense prohibited by OMB Circular A-21, and is separately identified by the educational institution. The educational institution does not regularly include its GA&GE in any indirect-expense allocation base. In these circumstances, the employee's travel and subsistence expenses would be directly associated costs for identification with the unallowable entertainment expense. However, unless this type of activity constituted a significant part of the employee's regular duties and responsibilities on which his salary was based, no part of the employee's salary would be required to be identified as a directly associated cost of the unallowable entertainment expense.

CAS 9905.506 -- Cost accounting period -- Educational institutions.

Purpose

The purpose of this standard is to provide criteria for the selection of the time periods to be used as cost accounting periods for sponsored agreement cost estimating, accumulating, and reporting. This standard will reduce the effects of variations in the flow of costs within each cost accounting period. It will also enhance objectivity, consistency, and verifiability, and promote uniformity and comparability in sponsored agreement cost measurements.

Definitions

(a) The following are definitions of terms which are prominent in this standard.

(1) Allocate means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term

includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(2) Cost Objective means a function, organizational subdivision, sponsored agreement, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(3) Fiscal year means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

(4) Indirect cost pool means a grouping of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

Fundamental requirement

Educational institutions shall use their fiscal year as their cost accounting period, except that:

Costs of an indirect function which exists for only a part of a cost accounting period may be allocated to cost objectives of that same part of the period.

An annual period other than the fiscal year may be used as the cost accounting period if its use is an established practice of the educational institution.

A transitional cost accounting period other than a year shall be used whenever a change of fiscal year occurs.

An educational institution shall follow consistent practices in the selection of the cost accounting period or periods in which any types of expense and any types of adjustment to expense (including prior-period adjustments) are accumulated and allocated.

The same cost accounting period shall be used for accumulating costs in an indirect cost pool as for establishing its allocation base, except that the contracting parties may agree to use a different period for establishing an allocation base.

Techniques for application

(a) The cost of an indirect function which exists for only a part of a cost accounting period may be allocated on the basis of data for that part of the cost accounting period if the cost is (1) material in amount, (2) accumulated in a separate indirect cost pool or expense pool, and (3) allocated on the basis of an appropriate direct measure of the activity or output of the function during that part of the period.

(b) The practices required by this standard shall include appropriate practices for deferrals, accruals, and other adjustments to be used in identifying the cost accounting periods among which any types of expense and any types of adjustment to expense are distributed. If an expense, such as insurance or employee leave, is identified with a fixed, recurring, annual period which is different from the educational institution's cost accounting period, the standard permits continued use of that different period. Such expenses shall be distributed to cost accounting periods in accordance with the educational institution's established practices for accruals, deferrals, and other adjustments.

(c) Indirect cost allocation rates, based on estimates, which are used for the purpose of expediting the closing of sponsored agreements which are terminated or completed prior to the end of a cost accounting period need not be those finally determined or negotiated for that cost accounting period. They shall, however, be developed to represent a full cost accounting period, except as provided in paragraph (a) of this subsection.

(d) An educational institution may, upon mutual agreement with the Government, use as its cost accounting period a fixed annual period other than its fiscal year, if the use of such a period is an established practice of the educational institution and is consistently used for managing and controlling revenues and disbursements, and appropriate accruals, deferrals or other adjustments are made with respect to such annual periods.

(e) The parties may agree to use an annual period which does not coincide precisely with the cost accounting period for developing the data used in establishing an allocation base: Provided,

(1) The practice is necessary to obtain significant administrative convenience, (2) the practice is consistently followed by the educational institution, (3) the annual period

used is representative of the activity of the cost accounting period for which the indirect costs to be allocated are accumulated, and (4) the practice can reasonably be estimated to provide a distribution to cost objectives of the cost accounting period not materially different from that which otherwise would be obtained.

(f) When a transitional cost accounting period is required, educational institution may select any one of the following: (1) the period, less than a year in length, extending from the end of its previous cost accounting period to the beginning of its next regular cost accounting period, (2) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the previous cost accounting period, or (3) a period in excess of a year, but not longer than 15 months, obtained by combining the period described in subparagraph (f)(1) of this subsection with the next regular cost accounting period. A change in the educational institution's cost accounting period is a change in accounting practices for which an adjustment in the sponsored agreement price may be required.

Illustrations

(a) An educational institution allocates indirect expenses for Organized Research on the basis of a modified total direct cost base. In a proposal for a sponsored agreement, it estimates the allocable expenses based solely on the estimated amount of indirect costs allocated to Organized Research and the amount of the modified total direct cost base estimated to be incurred during the 8 months in which performance is scheduled to be commenced and completed. Such a proposal would be in violation of the requirements of this standard that the calculation of the amounts of both the indirect cost pools and the allocation bases be based on the educational institution's cost accounting period.

(b) An educational institution whose cost accounting period is the calendar year, installs a computer service center to begin operations on May 1. The operating expense related to the new service center is expected to be material in amount, will be accumulated in an intermediate cost objective, and will be allocated to the benefitting cost objectives on the basis of measured usage. The total operating expenses of the computer service center for the 8-month part of the cost accounting

period may be allocated to the benefitting cost objectives of that same 8-month period.

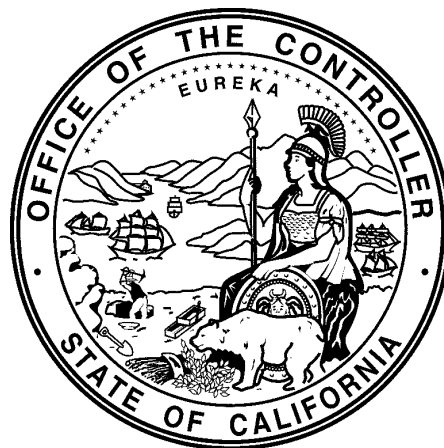
(c) An educational institution changes its fiscal year from a calendar year to the 12-month period ending May 31. For financial reporting purposes, it has a 5-month transitional "fiscal year." The same 5-month period must be used as the transitional cost accounting period; it may not be combined, because the transitional period would be longer than 15 months. The new fiscal year must be adopted thereafter as its regular cost accounting period. The change in its cost accounting period is a change in accounting practices; adjustments of the sponsored agreement prices may thereafter be required.

(d) Financial reports are prepared on a calendar year basis on a university-wide basis. However, the contracting segment does all internal financial planning, budgeting, and internal reporting on the basis of a twelve month period ended June 30. The contracting parties agree to use the period ended June 30 and they agree to overhead rates on the June 30 basis. They also agree on a technique for prorating fiscal year assignment of the university's central system office expenses between such June 30 periods. This practice is permitted by the standard.

(e) Most financial accounts and sponsored agreement cost records are maintained on the basis of a fiscal year which ends November 30 each year. However, employee vacation allowances are regularly managed on the basis of a "vacation year" which ends September 30 each year. Vacation expenses are estimated uniformly during each "vacation year." Adjustments are made each October to adjust the accrued liability to actual, and the estimating rates are modified to the extent deemed appropriate. This use of a separate annual period for determining the amounts of vacation expense is permitted.

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

These claiming instructions are issued to help claimants prepare claims for submission to the State Controller's Office (SCO). These instructions are based upon SCO's interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates (COSM).

Following are important provisions of statutory changes resulting from AB 2856, effective January 1, 2005, and information on SCO adopted Time Study Guidelines.

AB 2856 (Chapter 890, Statutes of 2004)

1. Government Code (GC) Section 17517.5 defines "cost savings authorized by the state" as any decreased costs that a local agency or school district realizes as a result of any statute enacted or any executive order adopted that permits or requires the discontinuance of, or a reduction in, the level of service of an existing program that was mandated before January 1, 1975.
2. GC Sections 17557(b), (d), and (f) allow the COSM, when adopting parameters and guidelines, to adopt a reasonable reimbursement methodology that balances accuracy and simplicity. GC Section 17518.5 further defines and provides specific conditions for reasonable reimbursement methodologies.
3. GC Section 17551(c) specifies that test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.
4. GC Section 17557(d) specifies the effective date for an amendment to parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year.
5. GC Section 17558.5(a) requires the SCO to complete a reimbursement claim audit no later than two years after the date that SCO starts the audit.

Previously, the GC only stated: (1) the SCO may initiate an audit no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later; and (2) if no payment is made to the claimant, the time period to initiate an audit commences from the date of initial payment of the claim. These provisions remain in effect.

6. GC Section 17558.5(b) allows the SCO to conduct a field review of any claim after the claim has been submitted, before the claim is reimbursed.

Time Study Guidelines

1. The SCO has approved Time Study Guidelines. A time study is one method of determining a reasonable reimbursement methodology discussed in AB 2856. The guidelines specify that a time study is appropriate when an activity is a task repetitive in nature. Time studies

perform the mandated activity. The claimant must give the name of the contractor, explain the reason for having to hire a contractor, describe the mandated activities performed, give the dates when the activities were performed, the number of hours spent performing the mandate, the hourly billing rate, and the total cost. The hourly billing rate shall not exceed the rate specified in the Parameters and Guidelines for the mandated program. The contractor's invoice, or statement, which includes an itemized list of costs for activities performed, must accompany the claim.

(h) Equipment Rental Costs

Equipment purchases and leases (with an option to purchase) are not reimbursable as a direct cost unless specifically allowed by the Parameters and Guidelines for the particular mandate. Equipment rentals used solely for the mandate are reimbursable to the extent such costs do not exceed the retail purchase price of the equipment plus a finance charge. The claimant must explain the purpose and use for the equipment, the time period for which the equipment was rented and the total cost of the rental. If the equipment is used for purposes other than reimbursable activities, only the prorata portion of the rental costs can be claimed.

(i) Capital Outlay

Capital outlays for land, buildings, equipment, furniture and fixtures may be claimed if the Parameters and Guidelines specify them as allowable. If they are allowable, the claiming instructions for the program will specify a basis for the reimbursement. If the fixed asset or equipment is also used for purposes other than reimbursable activities for a specific mandate, only the prorata portion of the purchase price used to implement the reimbursable activities can be claimed.

(j) Travel Expenses

Travel expenses are normally reimbursable in accordance with travel rules and regulations of the local jurisdiction. For some programs, however, the Parameters and Guidelines may specify certain limitations on expenses, or that expenses can only be reimbursed in accordance with the State Board of Control travel standards. When claiming travel expenses, the claimant must explain the purpose of the trip, identify the name and address of the persons incurring the expense, the date and time of departure and return for the trip, description of each expense claimed, the cost of transportation, number of private auto miles traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits

derived by the mandate.

A community college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

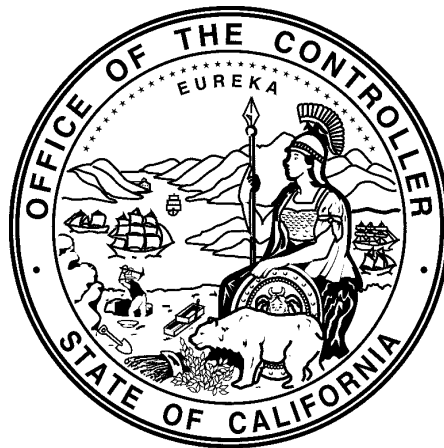
Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the community college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

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Commission on
State Mandates

MANDATED COST MANUAL FOR COMMUNITY COLLEGES

STATE OF CALIFORNIA



STEVE WESTLY
STATE CONTROLLER

FOREWORD

The claiming instructions contained in this manual are issued for the sole purpose of assisting claimants with the preparation of claims for submission to the State Controller's Office. These instructions have been prepared based upon interpretation of the State of California statutes, regulations, and parameters and guidelines adopted by the Commission on State Mandates. Therefore, unless otherwise specified, these instructions should not be construed in any manner to be statutes, regulations, or standards.

If you have any questions concerning the enclosed material, write to the address below or call the Local Reimbursements Section at (916) 324-5729, or email to lrsdar@sco.ca.gov.

State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Prepared by the State Controller's Office
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number of private auto mileage traveled, and the cost of tolls and parking with receipts required for charges over \$10.00.

(k) Documentation

It is the responsibility of the claimant to make available to the SCO, upon request, documentation in the form of general and subsidiary ledgers, purchase orders, invoices, contracts, canceled warrants, equipment usage records, land deeds, receipts, employee time sheets, agency travel guidelines, inventory records, and other relevant documents to support claimed costs. The type of documentation necessary for each claim may differ with the type of mandate.

8. Indirect Costs

Indirect costs are: (a) Incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. Indirect costs can originate in the department performing the mandate or in departments that supply the department performing the mandate with goods, services and facilities. As noted previously, in order for a cost to be allowable, it must be allocable to a particular cost objective. With respect to indirect costs, this requires that the cost be distributed to benefiting cost objectives on bases, which produce an equitable result in relation to the benefits derived by the mandate.

A college has the option of using a federally approved rate, utilizing the cost accounting principles from Office of Management and Budget Circular A-21 "Cost Principles for Educational Institutions," or the Controller's methodology outlined in the following paragraphs. If the federal rate is used, it must be from the same fiscal year in which the costs were incurred.

The Controller allows the following methodology for use by community colleges in computing an indirect cost rate for state mandates. The objective of this computation is to determine an equitable rate for use in allocating administrative support to personnel that performed the mandated cost activities claimed by the community college. This methodology assumes that administrative services are provided to all activities of the institution in relation to the direct costs incurred in the performance of those activities. Form FAM-29C has been developed to assist the community college in computing an indirect cost rate for state mandates. Completion of this form consists of three main steps:

1. The elimination of unallowable costs from the expenses reported on the financial statements.
2. The segregation of the adjusted expenses between those incurred for direct and indirect activities.
3. The development of a ratio between the total indirect expenses and the total direct expenses incurred by the community college.

The computation is based on total expenditures as reported in "California Community Colleges Annual Financial and Budget Report, Expenditures by Activity (CCFS-311)." Expenditures classified by activity are segregated by the function they serve. Each function may include expenses for salaries, fringe benefits, supplies, and capital outlay. OMB Circular A-21 requires expenditures for capital outlays to be excluded from the indirect cost rate computation.

Generally, a direct cost is one incurred specifically for one activity, while indirect costs are of a more general nature and are incurred for the benefit of several activities. As previously noted, the objective of this computation is to equitably allocate administrative support costs to personnel that perform mandated cost activities claimed by the college. For the purpose of this computation we have defined indirect costs to be those costs which provide administrative support to personnel who perform mandated cost activities. We have defined direct costs to be those costs that do not provide administrative support to personnel who perform mandated cost activities and those costs that are directly related to instructional activities of the college. Accounts that should be classified

as indirect costs are: Planning, Policy Making and Coordination, Fiscal Operations, Human Resources Management, Management Information Systems, Other General Institutional Support Services, and Logistical Services. If any costs included in these accounts are claimed as a mandated cost, i.e., salaries of employees performing mandated cost activities, the cost should be reclassified as a direct cost. Accounts in the following groups of accounts should be classified as direct costs: Instruction, Instructional Administration, Instructional Support Services, Admissions and Records, Counseling and Guidance, Other Student Services, Operation and Maintenance of Plant, Community Relations, Staff Development, Staff Diversity, Non-instructional Staff-Retirees' Benefits and Retirement Incentives, Community Services, Ancillary Services and Auxiliary Operations. A college may classify a portion of the expenses reported in the account Operation and Maintenance of Plant as indirect. The claimant has the option of using a 7% or a higher indirect cost percentage if the college can support its allocation basis.

The indirect cost rate, derived by determining the ratio of total indirect expenses to total direct expenses when applied to the direct costs claimed, will result in an equitable distribution of the college's mandate related indirect costs. An example of the methodology used to compute an indirect cost rate is presented in Table 4.

**CALIFORNIA COMMUNITY COLLEGES
CHANCELLOR'S OFFICE**

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Memorandum

April 3, 2012

**Fiscal Services Memo 12-01
Via E-mail Only**

To: Chief Business Officers
Chief Student Services Officers
Health Services Program Directors
Financial Aid Officers
Admissions and Records Officers

From: Frederick E. Harris, Assistant Vice Chancellor
College Finance and Facilities Planning

Subject: Student Health Fee

Education Code Section 76355 provides the governing board of a community college district the option of increasing the student health services fee by the same percentage as the increase in the Implicit Price Deflator for State and Local Government Purchase of Goods and Services. Whenever that calculation produces an increase of one dollar above the existing fee, the fee may be increased by \$1.00.

Based on calculations by the Financial, Economic, and Demographic Unit in the Department of Finance, the Implicit Price Deflator Index has now increased enough since the last fee increase of 2011 to support a one dollar increase in the student health fees. Effective with the Summer Session of 2012, districts may begin charging a maximum fee of \$19.00 per semester, \$16.00 for summer session, \$16.00 for each intersession of at least four weeks, or \$16.00 for each quarter.

For part-time students, the governing board shall decide the amount of the fee, if any, that the student is required to pay. The governing board may decide whether the fee shall be mandatory or optional.

The governing board operating a health services program must have rules that exempt the following students from any health services fee:

- Students who depend exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization.
- Students who are attending a community college under an approved apprenticeship training program.

All fees collected pursuant to this section shall be deposited in the Student Health Fee Account in the Restricted General Fund of the district. These fees shall be expended only to provide health services as specified in regulations adopted by the board of governors. Allowable expenditures include health supervision and services, including direct or indirect medical and hospitalization services, or the operation of a student health center or centers, or both. Allowable expenditures exclude athletic-related salaries, services, insurance, insurance deductibles, or any other expense that is not available to all students. No student shall be denied a service supported by student health fee on account of participation in athletic programs.

If you have any questions about the fee increase, please contact Michael Yarber at 916.327.6818 or myarber@cccco.edu.