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Office of Management and Budget

Circular A-110

Uniform requirements for grants, contracts and other agreements to universities, hospitals, and nonprofit organizations.

Agency: Office of Management and Budget

Summary: This notice offers interested parties an opportunity to comment on a proposed revision to Circular A-110, "Uniform requirements for grants to universities, hospitals, and nonprofit organizations." The proposed revision establishes a special certification and employee notice requirement for organizations having political advocacy as one of their principal organizational objectives and which receive monies from the Federal government under grants, contracts or other agreements. These new requirements apply only to those activities of the organization that are connected with administration of the grants, contracts or agreements.

The proposed revision would require Federal agencies to obtain a certification from applicants for grants, contracts or other agreements that they will not require employees to engage in political advocacy. This certification is intended to ensure that persons working under federally supported programs are not required to engage in political activities.

Moreover, recipients of grants, contracts or other agreements would be required to post notices to employees engaged in activities connected with such Federally supported programs to inform them of their free speech rights. Called the "Employees' Bill of Rights: Freedom of Speech," the notice would inform employees that they are free to engage or refrain from engaging in political expression on any side of any public issues, without fear of reprisal or hope of reward from the organization. This requirement is intended to ensure that Federal monies provided under grants, contracts or other agreements are not administered in a way that would infringe upon the first Amendment rights of individuals to speak, or refrain from speaking, on political issues. See Wooley v. Maynard, 430 U.S. 705, 714 (1977); Elrod v. Burns, 427 U.S. 353, 355-360 (1976).

Comments should be submitted in duplicate to the Financial Management Division, Office of Management and Budget, Washington, D. C. 20503. All comments should be received within 45 days of this notice.

For further information contact:

John J. Lordan  
Chief, Financial Management Branch  
Office of Management and Budget  
Washington, D.C. 20503  
(202) 395-6823



Office of Management and Budget

Circular A-110

"Uniform requirements for grants, contracts or other agreements to universities, hospitals, and nonprofit organizations."

Circular A-110 is revised by adding to Attachment M a new paragraph as follows:

"4. Certification and Notice with regard to Employee Freedom of Speech.

a. "Organizations that have political advocacy as a significant organizational objective must certify with respect to the grant, contract or other agreement that:

(1) They will not, as a condition of hiring, continued employment, or promotion in any activity connected with this grant, contract or other agreement:

(A) require, forbid, reward, penalize, actively encourage, or actively discourage employees to

engage in political advocacy as defined in subparagraph (b) below, except to the extent that such political advocacy is prohibited by law; or

(B) allow adherence to any beliefs with respect to public policy, or affiliation with said organization or any other organization, to be considered in connection with any decision regarding hiring, continued employment or promotion; provided that no church or religious-affiliated organization is barred from considering membership in its religious faith or adherence to its religious tenets in connection with such decisions.

(2) That they will post a notice, in a prominent place or places where such notice will be readily accessible to substantially all employees engaged in activities funded in whole or in part by the grant, contract or other agreement entitled "Employee Bill of Rights: Freedom of Speech." Such notice shall set forth the rights described in subparagraph 4a(1) hereof, and shall further set forth an office of the funding agency with which complaints may be filed

regarding alleged violations of said rights.

(3) That they will provide a copy of the notice "Employee Bill of Rights: Freedom of Speech" to applicants for employment in connection with activities funded in whole or in part by the grant, contract or other agreement.

b. For the purposes of this Circular, political advocacy is defined as:

(1) attempting to influence, either directly or indirectly, the outcome of any Federal, State or local election, or proposals by petition, initiative, or referendum, through contributions, endorsements, publicity, propaganda, or other similar activity;

(2) paying the expenses of a political action committee;  
or

(3) attempting to influence, either directly or indirectly:

(A) the introduction, amendment, passage, or defeat



of any legislation, resolution, appropriation, or constitutional amendment in the Congress of the United States, in any State legislature, any local council or similar governing body; or

(B) any action or decision by a Federal, State or local government agency unrelated to the administration of the specific award involved;

(4) participating, as a party, an amicus curiae or otherwise, in litigation concerning the conduct of public policy; or

(5) materially contributing to or effectively controlling or being controlled by any other organization that has political advocacy as a significant organizational objective.

c. For purposes of this Circular, political advocacy does not include:

(1) making available the results of technical, scientific, or scholarly analysis, studies, or research the distribution of which is not

specifically designed to influence the outcome of a particular legislative or administrative action or decision; or

(2) engaging in litigation:

(A) directly related to the organization's own existence, right to perform particular functions, or contractual or other common law rights or duties; or

(B) in which the organization is a party defendant;  
or

(3) offering technical advice or assistance through testimony before or in a written submission to any legislative or administrative body in response to formal written requests by such body, or in response to a published notice of opportunity to comment on a proposed action; or

(4) engaging in activities specifically authorized or required by law.



d. For purposes of this Circular, an organization has political advocacy as a significant organizational objective if:

- (1) the organization's charter, bylaws, or solicitations for membership or contributions acknowledge political advocacy as an organizational objective; or
- (2) five percent (5%) or more of the organization's resources or expenditures, other than those undertaken in connection with Federal or other governmental grants, contracts or other agreements, are incurred in connection with political advocacy; or
- (3) any activity as defined by Section b(1) or b(2) hereof.

e. For the purposes of this Circular, an organization materially contributes to, or effectively controls or is being controlled by another organization if:

- (1) The organization is associated with another organization through a formal relationship based upon

ownership or an agreement (including a charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

- (2) A majority of the members of the Board of Directors (or members of the family of members of the Board of Directors) of the organization are members of the Board of Directors of another organization;
- (3) Twenty-five percent (25%) of the employees fulltime or otherwise of the organization, in terms of either number or total amount of compensation, taken as a whole also constitute at least twenty-five percent (25%) of the employees of another organization during the budget cycle of the proposed award or the immediately preceding calendar year;
- (4) A majority of the funds of the organization, excluding funds derived from awards from the Federal Government, are derived from another organization;
- (5) A majority of the funds of the organization,



excluding funds derived from awards from the Federal Government, are paid to another organization.

(6) The organization is any of the following: a national membership organization or its State or local membership organization or unit; a national trade association or its State or local trade association; a national business league or its State or local business league; a national federation of labor organization or its State or local federation; or a national labor organization or its State or local labor organization.

f. The Hatch Act (5 U.S.C. 1502, and 1503) may be applicable to some organizations covered by this circular.

2. Renumber subsequent paragraphs.



Office of Management and Budget

Circular A-122

Cost Principles for Nonprofit Organizations

Agency: Office of Management and Budget

Summary: This notice offers interested parties an opportunity to comment on a proposed revision to Circular A-122, "Cost Principles for Nonprofit Organizations." The proposed revision establishes special provisions for certain costs of organizations having political advocacy as a significant organizational objective. Americans have the First Amendment right both to engage freely in speech and political expression, and to refrain from speaking, without interference or control on the part of the government or its agents. Wooley v. Maynard, 430 U.S. 705, 714 (1977). The proposed revision is intended to ensure that the use of Federal grants, contracts and other agreements by private organizations engaging in political advocacy does not erode or infringe these constitutional rights.

Political advocacy and participation by individuals and groups in the process of grassroots organization, legislation, administration, and litigation may not be penalized or discouraged

by the Government, no matter what the subject area or point of view. Groups which engage in political advocacy are therefore eligible, no less than other groups, to participate in federal grants, contracts and other agreements wherever they would be the best, most efficient, or most successful administrators of such Federal agreements. This proposed revision does not affect that eligibility — indeed, the establishment of reasonable cost principles for recipients of grants, contracts, and other agreements engaging in political advocacy expressly acknowledges and reaffirms this principle. At the same time, the revision seeks to prevent such Federal agreements system from distorting the political process or infringing upon constitutional rights. See Elrod v. Burns, 427 U.S., 347, 355-356 (1976).

This proposed revision, therefore, has three principal aims: (1) to ensure that no taxpayer is required, directly or indirectly, through the process of taxation and Federal grants, contracts and other agreements "to contribute to the support of an ideological cause he may oppose," Abood v. Detroit Board of Education, 431 U.S. 209, 235-236 (1977); (2) to ensure that such Federal agreements process cannot be used, directly or indirectly, to induce or reward, or to penalize or restrain, political advocacy by private



individuals or organizations, thereby "tip[ping] the electoral process," Elrod v. Burns, 427 U.S. 353, 356, (1976); and (3) to avoid the appearance that, by awarding Federal grants, contracts or other agreements to organizations engaged in political advocacy on particular sides of public issues, the Government has endorsed, fostered, or "prescribe[d] [as] orthodox," a particular view on such issues, West Virginia State Board of Education v. Barnette, 319 U.S. 624, 645 (1943).

The proposed revision would make unallowable the direct cost of political advocacy. For organizations having political advocacy as a significant organizational objective, the revision would also make unallowable any part of the salary cost of individuals whose duties include political advocacy, the cost of less-than-arms-length leases of political advocacy organizations, and any indirect cost that is allocable in part to the administration of grants, contracts or other agreements and in part to political advocacy. This would include the cost of rent for shared office space, the cost of common support staff, the cost of jointly used office machines, and the cost of any other activity that contributes in part to political advocacy. These provisions insure that no cost, direct or indirect, incurred for political advocacy is charged to the Government.



The standards employed are largely taken from regulations of the Internal Revenue Service dealing with the definition of lobbying for purposes of IRC p. 501.

Comments should be submitted in duplicate to the Financial Management Division, Office of Management and Budget, Washington, D. C. 20503. All comments should be received within 45 days of this notice.

For further information contact:

John J. Lordan

Chief, Financial Management Branch

Office of Management and Budget

Washington, D.C. 20503

(202) 395-6823.

Office of Management and Budget

Circular A-122

Cost Principles for Nonprofit Organizations

Circular A-122 is revised by modifying Attachment B as follows:

1. Insert a new paragraph "B 33 Political Advocacy."
  - a. The direct costs of activities related to political advocacy are unallowable.
  - b. For the purposes of this Circular, political advocacy is defined as:
    - (1) attempting to influence, either directly or indirectly, the outcome of any Federal, State or local election, or proposals by petition, or initiative, through contributions, endorsements, publicity, propaganda, or other similar activity;
    - (2) attempting to influence, either directly or indirectly, the outcome of any Federal, State or local proposals by referendum through contributions, endorsements, publicity, propaganda, or other similar activity;
    - (3) paying the expenses of a political action committee, or an organization which directly or indirectly establishes, administers or financially supports a political action committee; or
    - (4) attempting to influence, either directly or indirectly:



- (A) the introduction, amendment, passage, or defeat of any legislation, resolution, appropriation, or constitutional amendment in the Congress of the United States, in any State legislature, any local council or similar governing body; or
- (B) any action or decision by a Federal, State or local government agency unrelated to the administration of the specific award involved;
- (5) participating, as a party, an amicus curiae or otherwise, in litigation concerning the conduct of public policy; or
- (6) materially contributing to or effectively controlling or being controlled by any other organization that has political advocacy as a significant organizational objective.

c. For purposes of this Circular, political advocacy does not include:

- (1) making available the results of technical, scientific, or scholarly analysis, studies, or research the distribution of which is not specifically designed to influence the outcome of a particular legislative or administrative action or decision; or



(2) engaging in litigation:

(A) directly related to the organization's own existence, right to perform particular functions, or contractual or other common law rights or duties; or

(B) in which the organization is a party defendant;  
or

(3) offering technical advice or assistance through testimony before or in a written submission to any legislative or administrative body in response to formal written requests by such body, or in response to a published notice of opportunity to comment on a proposed action; or

(4) engaging in activities specifically authorized or required by law.

d. The following special provisions apply to organizations having political advocacy as a significant organizational objective:

(1) Any portion of an indirect cost allocable in part to activities described in subparagraph b. above and in part to the administration of grants, contracts or other agreements is unallowable.

(2) Notwithstanding the provisions of paragraph 6, "Compensation for personal services," or paragraph 34, "Professional service costs;" salary costs of individuals whose duties include political advocacy are unallowable.

(3) Notwithstanding the provisions of paragraph 42, "Rental costs," rental costs associated with less-than-arms-length leases are unallowable.

e. For purposes of this Circular, an organization has political advocacy as a significant organizational objective if:

(1) the organization's charter, bylaws, or solicitations for membership or contributions acknowledge political advocacy as an organizational objective; or



(2) five percent (5%) or more of the organization's resources or expenditures, other than those undertaken in connection with Federal or other governmental grants, are incurred in connection with political advocacy; or

(3) any activity as defined by Section b(1), b(2) or b(3) hereof.

f. For the purposes of this Circular, an organization which materially contributes to, or effectively controls or is being controlled by another organization includes, but is not limited to the following:

(1) An organization which is associated with another organization through a formal relationship based upon ownership or an agreement (including a charter, franchise agreement, or bylaws) under which one of the organizations maintains actual control or has the right of potential control of all or a part of the activities of the other organization;

(2) An organization in which a majority of the members of the Board of Directors (or members of the family of members of the Board of Directors) of the organization are members of the Board of Directors of another organization;

- (3) An organization in which twenty-five percent (25%) of the employees fulltime or otherwise of the organization, in terms of either number or total amount of compensation, taken as a whole also constitute at least twenty-five percent (25%) of the employees of another organization during the budget cycle of the proposed award or the immediately preceding calendar year;
- (4) An organization in which a majority of the funds of the organization, excluding funds derived from awards from the Federal Government, are derived from another organization;
- (5) An organization in which a majority of the funds of the organization, excluding funds derived from awards from the Federal Government, are paid to another organization; or
- (6) An organization which is any of the following: a national membership organization or its State or local membership organization or unit; a national trade association or its State or local trade association; a national business league or its State or local business league; a national federation of labor organization or its State or local federation; or a national labor organization or its State or local labor organization.



g. Violations of this paragraph by contractors subject to this Circular shall be a basis for debarment under section 7.2(c), or suspension under section 8.2(c), of the Office of Federal Procurement Policy, Policy Letter No. 82-1, dated June 24, 1982.

2. Renumber subsequent paragraphs.