

*\*This decision has been reformatted for publishing.*

**Department of Health and Human Services  
DEPARTMENTAL APPEALS BOARD  
Appellate Division**

Betty Jean Kerr People's Health Center  
Docket No. A-14-13  
Decision No. 2581  
June 30, 2014

**DECISION**

Betty Jean Kerr People's Health Centers (PHC), a Missouri non-profit community health center, was the recipient of a Capital Improvement Program (CIP) grant issued by the Health Resources and Services Administration (HRSA). After an independent audit questioned the timing of some of PHC's grant-funded expenditures, HRSA determined that \$165,301 of those expenditures were unallowable. In support of that determination, HRSA made various findings suggesting that the expenditures were not properly allocable to the grant under federal cost principles promulgated by the Office of Management and Budget.

During this proceeding, HRSA reduced the amount of the disallowance to \$161,426 and elaborated on the legal bases for its determination. Applying the cost principle of allocability and a regulation embodying one aspect of that principle (45 C.F.R. § 74.28), we sustain the disallowance of \$161,426 because PHC has failed to demonstrate, with adequate documentation, that the expenditures in question: (1) resulted from obligations incurred during the grant's funding period or (2) benefited the projects for which the CIP grant was approved.

Background

The CIP is a grant program authorized by the American Recovery and Reinvestment Act of 2009 (ARRA). That legislation authorized HRSA to make one-time grants to qualified health centers "for construction, renovation and equipment, and for the acquisition of health information technology systems." Pub. L. 111-5, 123 Stat. 175.

To implement that grant-making authority, HRSA issued a funding announcement that outlined the CIP's purpose, eligibility rules, application requirements, and other program information. *See Capital Improvement Program*, HRSA Announcement No. HRSA-09-

244 (May 1, 2009).<sup>1</sup> Grant applicants were instructed to include in their funding applications a detailed description of each project for which they sought funding, budgets for each proposed project, a written budget justification, and an equipment list (if an applicant sought funds for capital equipment). *Id.*

PHC applied for a CIP grant in early June 2009. HRSA Ex. 7.<sup>2</sup> PHC stated in its grant application that it intended to use CIP funds for three projects: (1) expanding a parking lot for patients at its 5701 Delmar Boulevard facility in St. Louis (sometimes referred to as the Central Facility); (2) increasing the number of pediatric exam rooms at its “North County” facility located at 1143 West Florissant Boulevard in Florissant, Missouri; and (3) purchasing “needed capital equipment” for all of its facilities. *Id.* at 5. For simplicity, we refer to the three projects as the Parking Lot Improvement, the North County Expansion, and the Capital Equipment Project. PHC’s grant application included a budget for each project. *Id.* at 15, 27, 40. In support of the Capital Equipment Project, the application also included an equipment list specifying the information technology (IT), medical, and other equipment that PHC proposed to purchase with CIP funds. *Id.* at 38-39.

HRSA approved PHC’s grant application and communicated that approval in a June 25, 2009 Notice of Award (NoA). HRSA Ex. 1. Among other things, the NoA specified the amount of federal funds available under the grant (\$1.543 million), the “approved budget” covering all three projects, and the grant’s “terms and conditions.” *Id.* at 1 (Boxes 11, 12, and 16). The cover page stated that the grant’s terms and conditions included applicable requirements and limitations found in the ARRA, the regulations in 45 C.F.R. Part 74, and the pages attached to the cover page. *Id.* (Box 16). The NoA’s cover page also stated that both the “project period” and the “budget period” of the grant were June 29, 2009 through June 28, 2011. *Id.* (Boxes 6 and 7).

On June 28, 2011, the last day of the grant’s budget and project periods, PHC certified to HRSA in writing that each of its CIP-approved projects was complete and that the “final project costs [were] consistent with the SF424C budget as approved by HRSA.” HRSA Ex. 5. One of PHC’s certifications of completion also indicated that work on the “lobby” of its Central Facility was complete, although, as we discuss later, there is no evidence that CIP funds were sought or approved for that purpose. *Id.* at 1.

---

<sup>1</sup> The funding announcement is cited in HRSA’s response brief (at page 12 n.3) and is available on HRSA’s website at <http://bphc.hrsa.gov/recovery/pdfs/cip/capitalimprovementguidance.pdf>.

<sup>2</sup> Neither party’s appeal file included a copy of PHC’s grant application. On June 5, 2014, the Board asked HRSA to produce certain portions of that application. On June 10, 2014, HRSA submitted (via email) the documentation sought by the Board. The Board has included that documentation in the record as HRSA Exhibit 7.

In February 2013, an independent auditor issued a report on PHC's financial condition. HRSA Ex. 2. In compliance with the Single Audit Act<sup>3</sup> and Office of Management and Budget (OMB) Circular A-133, the report addressed PHC's compliance with federal grant program requirements. *Id.* ("Report on Compliance . . . in Accordance with OMB Circular A-133"). Among the grant-related topics addressed by the auditor was the disposition of \$237,871 in CIP funds that PHC had drawn from the federal Payment Management System (PMS) during July 2011. *Id.*; People's Health Center's Appellant's Brief (PHC Br.) at i (indicating that the draw-down of funds occurred on July 4, 2011). The auditor found that only one-third of those funds had been spent within one day after being drawn from the PMS<sup>4</sup> and that the expenditures occurred "after the grant period expired" on June 28, 2011. HRSA Ex. 2.

After reviewing the audit findings and other information concerning the post-June 28, 2011 expenditures, HRSA determined that \$165,031 of those expenditures – all of them payments to vendors for various goods and services – were unallowable. HRSA Ex. 4. HRSA notified PHC of that determination in a disallowance notice dated September 27, 2013. HRSA Ex. 4. HRSA explained in the notice that it was disallowing the expenditures because the "payment dates" (that is, the dates that PHC disbursed the grant funds to vendors) occurred after the end of the grant's project and budget periods. *Id.* at 2 (stating that all of the disallowed expenditures were made between July 8, 2011 and May 9, 2012). HRSA also stated that some of the expenditures were "unallowable under CIP grant terms and conditions" or were for goods and services that were not within the "approved scope of the grant." *Id.*

PHC timely appealed HRSA's determination to the Board. Although PHC acknowledges in its appeal that the disallowed expenditures were made after the end of the grant's project and budget periods, it contends that the expenditures are allowable nonetheless because they were for equipment or services that its employees had requisitioned, or obtained authorization to purchase, on or before June 28, 2011. Notice of Appeal at 1-2; PHC Br. at i-ii, iv. Petitioner also maintains that the expenditures were consistent with

---

<sup>3</sup> The Single Audit Act requires a non-federal entity that spends more than \$300,000 (a threshold that was raised, by administrative rule, to \$500,000 for fiscal years ending after December 31, 2003) in federal grant funds during a fiscal year to conduct a single, comprehensive financial and compliance audit of its programs for that year. 31 U.S.C. § 7502(a)(1)(A); 68 Fed. Reg. 38,401 (June 27, 2003). Each federal agency that makes a grant to the entity must review the single audit findings and determine whether prompt and appropriate action has been taken to correct problems identified by the audit. 31 U.S.C. § 7502(f)(1)(B). At all times relevant to the disallowance, these statutory requirements were implemented in OMB Circular A-133. *See* 45 C.F.R. § 74.26.

<sup>4</sup> The auditor concluded that PHC's delayed disbursement of federal funds violated a condition of the grant which required PHC to disburse federal funds by the close of business on the next work day after it receives those funds. HRSA does not cite that audit finding as a ground for the disallowance, and we do not consider the finding in assessing the allowability of the disputed expenditures.

the grant's approved purposes and served the ARRA's overarching objectives, which included job creation and expanding the availability of primary health care to underserved and uninsured persons. PHC Br. at i, iii.

After PHC filed its appeal, HRSA reduced the amount disallowed from \$165,031 to \$161,426 in order to correct a computational error. *See* Response Br. at 3.

### Discussion

Non-profit organizations (like PHC) that receive federal grants (or other types of federal "awards") are subject to the uniform administrative requirements in 45 C.F.R. Part 74.<sup>5</sup> 45 C.F.R. § 74.1. As noted earlier, those regulations are among the terms and conditions of PHC's grant. HRSA Ex. 1 (box 16).

The Part 74 regulations provide that the "allowability" of "costs" (expenses for goods, services, and organizational functions) that a grantee finances with federal funds is determined in accordance with the applicable Office of Management and Budget (OMB) "cost principles." 45 C.F.R. § 74.27(a). For non-profit organizations, like PHC, the applicable cost principles were, at all times relevant here, found in OMB Circular A-122.<sup>6</sup> *Id.*

The circumstances of this case implicate two OMB cost principles. The first is that a grantee's costs must be "adequately documented." 2 C.F.R. Part 230, Appendix A, ¶ A.2.g.; *see also* 45 C.F.R. § 74.21(b)(2) (providing that a grantee's financial management system must generate "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities"). "Being able to account for the expenditure of federal funds is a central responsibility of any grantee." *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007).

The second relevant cost principle is that a cost must be "allocable" to the grant (or other authorized "cost objective"). 2 C.F.R. Part 230, Appendix A, ¶ A.2.a. A cost is allocable to a grant "if the goods or services involved are chargeable or assignable" to the grant "in accordance with relative benefits received." *Id.* ¶ C.3.b. In other words, a cost is

---

<sup>5</sup> The regulations define the term "award" to mean "financial assistance that provides support or stimulation to accomplish a public purpose" and further define the term to "include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient." 45 C.F.R. § 74.2.

<sup>6</sup> OMB Circular A-122 was codified in 2 C.F.R. Part 230 when the disallowance was issued. 2 C.F.R. Part 230, Appendix A (2013).

allocable to a grant to the extent that it confers benefits on the project, activities, or organizational functions sponsored by the grant. *See Northeast La. Delta Cmty. Dev. Corp.*, DAB No. 2165, at 7-8 (2008) (“Costs are allowable only if they are allocable, i.e., are of benefit to, the activities for which the grant was awarded (emphasis in original).)”)

The Board recently applied the allocability principle in *East Chicago Community Health Center*, DAB No. 2494 (2013) (*East Chicago*). In that case, HRSA approved a CIP grant application which sought funding to renovate the grantee’s OB/GYN suite and replace a telephone system. DAB No. 2496, at 2. The grantee used some of the CIP funds to cover “maintenance” of its information technology (IT) systems, even though maintenance costs were not specified in its grant application or in the grant’s NoA. *Id.* at 3, 4. HRSA disallowed the IT maintenance costs. *Id.* at 3. On appeal the grantee argued that the disputed costs were allowable because IT support is the type of activity that the ARRA and CIP were intended to support. *Id.* at 4. The Board rejected that argument, emphasizing that a cost is not allocable to a grant unless it benefits (directly or indirectly) an activity or project for which the grantor agency approved federal funding:

Even if HRSA could have awarded CIP funds for the IT costs East Chicago [the grantee] charged to its CIP grant, that does not mean those costs are allowable regardless of the terms of the actual grant award. . . . Under the cost principles, costs are allowable only if they are allocable, i.e., are of benefit to the *activities for which the grant was awarded*. Furthermore, these grants, like those in the cited case, do not extend to allowing the grantee to make any use of the funds it thought desirable to serve the general purposes of the relevant grant program, but rather specified the programs and activities for which the funds were to be expended.

HRSA awarded the grant to allow East Chicago to renovate its OB/GYN suite and, beginning in July 2010, replace its telephone system; the grant awards never indicated that East Chicago could use CIP funds for IT maintenance and related services. *East Chicago also did not establish that any of the IT costs it charged to the CIP grant were allocable to it, that is, that those costs somehow benefitted either the OB/GYN suite renovation or the telephone system replacement.* Costs that are not allocable are not allowable.

*Id.* at 4 (italics added).

Like the grant in *East Chicago*, PHC’s grant was issued in order to fund specific projects – the Parking Lot Improvement, the North County Expansion, and the Capital Equipment Project – that were specifically described in the grant application. This is evident from comparing the proposed consolidated budget for those projects, as it appears in PHC’s

grant application (HRSA Exhibit 7), with the “approved budget” on the cover page of the NoA (HRSA Ex. 1, Box 11). The proposed consolidated budget and the approved budget mirror each other precisely.<sup>7</sup> We see no language in the grant application, the approved budget, or the grant’s terms and conditions stating or even suggesting that PHC was authorized to expend CIP funds for projects or purposes other than the ones expressly described in its grant application.

In some circumstances, a grantee is permitted to change the scope or objective of the federally sponsored project, but such a change requires prior approval from the HHS awarding agency. *See* 45 C.F.R. § 74.25(c)(1), (f)(1). There is no evidence of a request by PHC to change the scope or objectives of the three projects described in its CIP grant application. For these reasons, the expenditures at issue in this appeal are allocable to PHC’s grant only to the extent that they benefited, directly or indirectly, those projects. *Cf.* 45 C.F.R. § 74.25(a) (stating that the grant-funded project’s “budget plan is the financial expression of the project or program *as approved during the award process* (italics added)). In addition, as we explain later, the expenditures are properly allocable to the CIP grant only to the extent they complied with 45 C.F.R. § 74.28, which states that a grant “recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period[.]” Grant-funded expenditures are subject to disallowance if they are unallowable under the cost principles or reflect activities or actions that “materially fail[ ] to comply with” terms and conditions of the grant. 45 C.F.R. § 74.62(a)(2); *Cnty. Action Partnership – Huntsville/Madison and Limestone Counties, Inc.*, DAB No. 2557, at 2, 8-9 (2014); *FFA Sciences, LLC*, DAB No. 2476, at 4, 22 (2012); *see also Partnership for Youth and Cnty. Empowerment*, DAB No. 2306, at 10 (2010) (noting that the OMB cost principles were terms and conditions of a grant, having been incorporated by reference in the Part 74 regulations).

Applying the relevant cost principles and regulatory requirements, we consider the evidence of record concerning the disallowed expenditures. HRSA divided those expenditures – which consist of 36 separate vendor payments – into four groups: a group consisting of a single payment of \$3,875; a second group of 14 payments totaling \$39,325 (reduced by HRSA from the initial figure of \$43,200 to account for the previously mentioned computational error); a third group consisting of 10 payments

---

<sup>7</sup> The total proposed budget for the Parking Lot Improvement was \$548,795; for the North County Expansion, \$633,050; and for the Capital Equipment Project, \$381,000. HRSA Ex. 7, at 15, 27, 40. The sum of these amounts equals \$1,562,845 – which is “total approved budget” as stated on the NoA’s cover page. HRSA Ex. 1 (box 11).

totaling \$65,264; and a fourth consisting of 11 payments totaling \$52,962. (The sum of these amounts is \$161,426, the total amount in controversy.) Our discussion tracks this grouping.<sup>8</sup>

1. *The vendor payment of \$3,875*

On July 20, 2011, PHC used grant funds to pay architectural fees totaling \$3,875. HRSA Ex. 3 (item 1). PHC produced invoices showing that those fees were for work relating to the renovation of the Central Facility’s lobby. PHC Ex. I at 12-13. PHC contends that the fees were “incurred prior to the project end date.” Notice of Appeal at 2. Even if that is true, the expenditure is unallowable because, as HRSA contends (Response Br. at 8), it has no apparent relationship to any of the three projects for which the CIP grant was approved. The only architectural fees specified in the grant’s HRSA-approved budget were for work on the Parking Lot Improvement and North County Expansion. *See* HRSA Ex. 7, at 15, 27. PHC does not allege that its July 20, 2011 expenditure of \$3,875 benefited those projects, directly or indirectly. For these reasons, we conclude that the expenditure is not allocable to the CIP grant and therefore unallowable under the cost principles and subject to disallowance.

2. *The vendor payments totaling \$39,325*

Information about this group of expenditures is shown in Table I:

**Table I**

	<b>Vendor</b>	<b>Check Date</b>	<b>Check Amount</b>	<b>Purpose</b>
<b>1</b>	TM Construction	07/08/2011	\$ 2,895	Dental tile/carpet
<b>2</b>	Graphics Factory	07/13/2011	\$ 230	North Site emergency exit signage
<b>3</b>	Lighting Associates	09/14/2011	\$ 1,604	Lobby LED light strips
<b>4</b>	St. Louis Lighting	09/28/2011	\$ 3,671	Lobby recessed lighting
<b>5</b>	Holt Electrical Supplies	09/28/2011	\$ 3,671	Lobby recessed lighting
<b>6</b>	Ambience Workroom	10/27/2011	\$ 1,155	Cost to cover seat bottoms

---

<sup>8</sup> HRSA Exhibit 3 contains a list of the disputed expenditures. For each expenditure, the exhibit specifies the name of the vendor paid, the amount paid, the date PHC paid the vendor (“check date”), and the “purpose” of the payment. We reproduce a substantial amount of that information (the accuracy of which is not in dispute) in the text below.

	Vendor	Check Date	Check Amount	Purpose
7	Design Tex	10/27/2011	\$ 2,785	Fabric to upholster old/new seating
8	Cintas	11/02/2011	\$ 4,854	Lobby exit signage
9	Color Art	12/01/2011	\$ 228	Maple laminate desk return
10	Andreas Kultermann	12/01/2011	\$ 6,950	Central site courtyard renovation
11	Design Tex	12/28/2011	\$ 123	Fabric to upholster old/new seating
12	Andreas Kultermann	02/15/2012	\$ 1,150	PHC Central Facility renovation grant proposal
13	Office Essentials	03/08/2012	\$ 5,651	Medical records/nurse appointments
14	Office Essentials	04/26/2012	\$ 3,958	Medical records/nurse appointments.

HRSA found that these expenditures were “not within the scope” of PHC’s grant. Response Br. at 9; HRSA Ex. 4, at 2; HRSA Ex. 3 (items 2-16). PHC responds that “100%” of the expenditures in Table I “was spent to renovate” its facilities “as was requested in the original tripartite funding that consisted of[:] (1) parking infrastructure, (2) renovation, and (3) equipment.” Notice of Appeal at 1; *see also* PHC Br. at ii-iii.

We discuss the expenditures in Table I out of numerical order, beginning with the vendor payments shown on lines 10 through 14. PHC did not produce *any* documentation concerning those five payments. The only information in the record about them is found in Table I’s far-right column (titled “Purpose”). On its face that information does not indicate that the payments benefited the Parking Lot Improvement or North County Expansion. Furthermore, the payments do not appear to have involved the purchase of capital equipment. In short, PHC has not substantiated its allegation that the expenditures on lines 10 through 14 are allocable (in whole or part) to any of its three grant-sponsored projects. It is PHC’s burden in this proceeding to demonstrate, with appropriate documentation, that the expenditures subject to HRSA’s disallowance are, in fact, allowable under the applicable cost principles and consistent with other federal requirements. *Northeast La. Delta Cmty. Dev. Corp.* at 3, 8; *Touch of Love Ministries, Inc.*, DAB No. 2393, at 3 (2011).



As for the other vendor payments in Table I, PHC produced invoices, “check authorizations,” and other documentary evidence. *See* PHC Ex. II. According to that evidence, the payments on lines 1, 3, 4, 5, 6, 7, and 8 relate to the renovation of the Central Facility’s lobby, which, as noted earlier, was not one of PHC’s grant-sponsored projects. PHC Ex. II at 33-34, 36-56. PHC has made no attempt to explain how these seven expenditures directly or indirectly benefited those projects. We therefore conclude that they are not allocable to its CIP grant.

Only two vendor payments in Table I warrant more extensive discussion, though in neither case has PHC met its burden of demonstrating that the expenditure is allocable to a grant-sponsored project. First, the payment on line 9 was apparently made to purchase a piece of office furniture destined for PHC’s North County facility. *See* PHC Ex. II at 28-29 (“Check Authorization” for invoice 157481). PHC does not explain how this expenditure benefited either the North County Expansion (a project to increase building space for delivering pediatric care) or the Capital Equipment Project (whose purpose, as described in the grant application, was to upgrade or replace worn or outdated equipment essential to performing its mission of delivering primary healthcare). Furthermore, the equipment list that PHC submitted with its grant application does not specify any office furniture. HRSA Ex. 7, at 38-39.

Second, the \$230 expenditure on line 2 constituted payment for an “emergency exit” sign for the North County facility as well as for signs and room decals for the Central Facility. *See* PHC Ex. II at 23-25. PHC fails to explain how the items for the Central Facility benefited either the Parking Lot Improvement or the Capital Equipment project (they obviously did not benefit the North County Expansion). As for the emergency exit sign, if it was installed in the new pediatric space created by the North County Expansion, an argument could be made that it is allocable to that project. But PHC’s documentation does not show where the sign was installed, and PHC has not otherwise explained how the sign benefited the North County Expansion or the Capital Equipment Project.

Because PHC has failed to demonstrate that the expenditures in Table I are allocable to its CIP grant, we conclude that they are unallowable under the cost principles and therefore subject to disallowance.

3. *The group of vendor payments totaling \$65,264*

Information about this group of expenditures is found in Table II.

**Table II**

	<b>Vendor</b>	<b>Check Date</b>	<b>Check Amount</b>	<b>Purpose</b>
<b>1</b>	Total Lock & Security	07/13/2011	\$888	Installation of hinges & combination lock
<b>2</b>	Trane	09/27/2011	\$2,700	Portable A/C units
<b>3</b>	Rockhill Mechanical Group	10/27/2011	\$1,684	Raypak hot water tank
<b>4</b>	Color Art	10/27/2011	\$17,435	Lobby furniture
<b>5</b>	Woodbyrne	10/27/2011	\$17,536	Lobby desk and panels
<b>6</b>	Golterman & Sabo	10/27/2011	\$2,738	Lobby panel re-upholstery
<b>7</b>	Golterman & Sabo	10/27/2011	\$10,544	Stretch for panels/OB/IM/Lobby
<b>8</b>	Office Essentials (OEI)	11/02/2011	\$6,000.00	Cafeteria 40 chairs
<b>9</b>	PSS	05/09/2012	\$3,590.00	Defibrillators
<b>10</b>	PSS	05/09/2012	\$2,149.00	Bariatric scale

In its July 2013 notice of disallowance, HRSA asserted that these expenditures were unallowable because they did not appear on the equipment list included with PHC's grant application. HRSA Ex. 4, at 2. HRSA relies on a different ground in this appeal: it contends that the expenditures are unallowable because PHC made them after June 28, 2011, the end of the grant's project and budget periods. Response Br. at 11-12.

The latter ground implicitly invokes section 74.28 of the uniform administrative requirements. Section 74.28 states that when an award specifies a "funding period" (a term synonymous with "budget period"), the recipient "may charge to the award only allowable costs resulting from *obligations* incurred during the funding period" (as well as some allowable pre-award costs). 45 C.F.R. § 74.28 (italics added); *see also id.* § 74.2 (defining "funding period" as "the period of time when Federal funding is available for obligation by the recipient"). The term "obligations" is defined elsewhere in Part 74 to mean "the amounts of orders placed, contracts and grants awarded, services received and

similar transactions during a given period that require payment by the [grantee] during the same or a future period.” *Id.* § 74.2. Applying that definition, the Board has held that “an obligation of grant funds does not occur until a grantee enters into contracts, receives services, or in some other way makes a definite commitment to pay grant funds.” *The Anishinaubag Intercultural Program*, DAB No. 1477, at 7 (1994). The Board has also held that obligations incurred outside the funding period necessarily violate the allocability cost principle. *See, e.g., S.A.G.E. Communications Svcs. Inc.*, DAB No. 2481, at 5 (2012) (noting that the principle of allocability, under which costs are assigned “in accordance with benefits received,” requires that costs relate not only to cost objectives but to funding periods as well, and that “expenditures for benefits that accrue beyond a grant period necessarily are not allocable to the grant”).

The timing of the disallowed expenditures, many of which occurred several weeks after the end of the grant’s funding period (and after PHC had certified to HRSA that its grant-sponsored projects had been completed), raises a valid concern about PHC’s compliance with section 74.28. PHC therefore needed to submit contracts, purchase orders, delivery receipts, or other evidence indicating that the expenditures were made to liquidate obligations incurred no later than the end of the CIP grant’s funding period on June 28, 2011.

PHC submitted no such documentation concerning the vendor payments on lines 2, 3, 9, and 10 of Table II. Consequently, we have no basis to find that those four expenditures resulted from obligations incurred during the grant’s funding period.

PHC submitted documentation relating to the vendor payments on lines 1, 4, 5, 6, 7, and 8 of Table II. We discuss these six expenditures briefly (in reverse numerical order) but find in each instance that the documentation is insufficient to establish that PHC incurred a payment obligation on or before June 28, 2011.

*Line 8, payment of \$6,000 to Office Essentials for 40 cafeteria chairs:* PHC’s documentation for this expenditure consists only of a vendor invoice dated August 26, 2011 and an undated purchase order issued by PHC to the vendor. PHC Ex. III at 76-77. That evidence plainly fails to establish that PHC made a “definite commitment” on or before June 28, 2011 to pay for 40 cafeteria chairs.

*Lines 6 & 7, payments of \$2,738 and \$10,544 to Golterman & Sabo:* For these expenditures, PHC submitted copies of relevant “Purchase Requisitions,” which are internal requests (by a PHC employee) for authorization to spend company funds. PHC Ex. III at 69, 72. The Purchase Requisitions indicate that they were submitted for approval on June 29, 2011, the day *after* the grant’s funding period ended. *Id.* The form identifies the named vendor as merely a “recommended” vendor. *Id.* For both expenditures, PHC also submitted copies of “Check Authorizations” signed by PHC’s chief executive officer (CEO) and a finance department employee. *Id.* at 70-71. In both

instances, however, the approval signatures are undated. *Id.* Missing from the record is any documentation of a *transaction with the vendor* – a contract signed, an order placed, goods or services tendered – that occurred on or before June 28, 2011 and triggered PHC’s payment obligation.

*Line 5, payment of \$17,536 to Woodbyrne for lobby desk and panels:* For this expenditure, PHC submitted a written “Price Confirmation” from the vendor. PHC Ex. II at 27. That document purports to have been faxed by the vendor to PHC on June 28, 2011. PHC also submitted employee email written on that date. PHC Ex. I at 10-11. There is some discussion in the email about issuing a “PO” (purchase order) for the proposed work (installation of “laminated panels” and other items), but there is nothing in the email, or in PHC’s other documentation, showing when that occurred. *Id.* Again, there is insufficient evidence that PHC made a definite commitment on or before June 28, 2011 to pay the vendor.

*Line 4, payment of \$17,435 to Color Art for lobby furniture:* For this expenditure, PHC produced a written price quotation from the vendor. PHC Ex. I at 17-19. The quotation is dated June 28, 2011. It is unclear when PHC received it. The quotation contains a signature line for PHC’s “acceptance” of the terms, but the line is blank. There is also no indication when PHC received the purchased items or services. There is, in short, inadequate evidence of a transaction during the funding period that triggered an obligation to pay the vendor.

*Line 1, payment of \$888 to Total Lock & Security for installation of hinges and combination lock:* This expenditure was for parts and labor to install “continuous hinges” on the inner and outer entrance doors of PHC’s Central Facility as well as an electronic combination lock on a kitchen door in that facility. PHC Ex. III at 64-67. The vendor issued a written quotation for these items and services on April 21, 2011. *Id.* at 67. However, it is unclear when PHC accepted the quoted terms or placed a firm order. The vendor’s quotation contains a signature line at the bottom for the customer to indicate its acceptance of the terms, but the line is blank. *Id.* at 66-67. A Check Authorization Form indicates that a PHC employee requested \$888 on May 20, 2011 to pay for the hinges and lock. *Id.* at 65. However, the form also indicates that the check was not “approved” by PHC’s finance department until June 30, 2011 or by the Chief Executive Officer until July 5, 2011. In addition, the form does not say when PHC received the purchased items and services. PHC submitted no evidence about its standard procurement and cash management practices, which might have permitted us to infer additional information from the face of the Check Authorization Form. Given the incomplete information provided, we cannot find that an obligation to pay the vendor arose during the funding period.

Because PHC failed to demonstrate that the expenditures in Table II resulted from obligations incurred on or before June 28, 2011, we conclude that PHC charged those expenditures to its CIP grant in violation of section 74.28. PHC’s use of grant funds to cover post-June 28, 2011 obligations also violated the cost principle of allocability. For these reasons, the expenditures in Table II are properly subject to disallowance.

PHC asserts that all of the expenditures in Table II are allowable as “post award programmatic and budget revisions within and between approved budget categories.” PHC Br. at 4. It points to a grant condition (attached to the June 2009 NoA) concerning “rebudgeting of project cost.” *Id.* (referencing HRSA Ex. 1, at 11 (¶ 4)). The grant condition required PHC to obtain “prior approval” of any “significant” re-budgeting of grant funds, and further stated that significant re-budgeting occurs if (among other irrelevant circumstances) “cumulative transfers *among direct cost budget categories* for the current budget period exceed 25 percent of the total approved budget . . . or \$250,000, whichever is less.” HRSA Ex. 1, at 11 (¶ 4) (italics added). PHC asserts that because the expenditures in Table II are (singly and collectively) less than \$250,000 and less than 25 percent of the total approved budget, the grant condition permitted it to make those expenditures without prior approval from HRSA.

PHC’s argument overlooks the fact that re-budgeting, as defined in the grant condition, involves a transfer “among” existing budget categories, which means that a transferred cost must fit within the budget category to which it has been transferred. Absent that fit, the transferred cost is nothing more than a de facto revision to the scope and objective of the grant – a revision that does require the awarding agency’s prior written approval. *See* 45 C.F.R. § 74.26(c)(1), (f)(1). PHC did not argue or show that the expenditures in question fit into *any* approved budget category. Indeed, most of the expenditures in Table II have no apparent relationship to the grant-sponsored projects – several having been made to renovate the Central Facility’s lobby. Even assuming that these expenditures were properly re-budgeted, they are still subject to disallowance based on PHC’s failure to establish that they resulted from obligations incurred during the funding period.

4. *The vendor payments totaling \$52,962*

Information about this group of expenditures is found in Table III.

**Table III**

	<b>Vendor</b>	<b>Check Date</b>	<b>Check Amount</b>	<b>Purpose</b>
<b>1</b>	Rockhill Mechanical Corp.	07/13/2011	\$469	Boiler #2 – Clean blower wheel

	<b>Vendor</b>	<b>Check Date</b>	<b>Check Amount</b>	<b>Purpose</b>
<b>2</b>	C & G Heating & Cooling	08/17/2011	\$830	Clean condenser coils
<b>3</b>	C & G Heating & Cooling	09/14/2011	\$4,375	Replace parts on HVAC
<b>4</b>	C & G Heating & Cooling	09/14/2011	\$4,375	Replace parts on HVAC
<b>5</b>	Rockhill Mechanical Corp.	10/27/2011	\$1,350	Hot water pump
<b>6</b>	Rockhill Mechanical Corp.	10/27/2011	\$843	Boiler 2 loop repair/replace
<b>7</b>	Rockhill Mechanical Corp.	10/27/2011	\$2,323	Repair storm drains
<b>8</b>	C & G Heating & Cooling	10/27/2011	\$16,900	HVAC repair – North County dental
<b>9</b>	C & G Heating & Cooling	10/27/2011	\$6,320	HVAC repair – North County cafeteria
<b>10</b>	C & G Heating & Cooling	10/27/2011	\$10,500	HVAC repair – Administration
<b>11</b>	Coast to Coast	10/27/2011	\$4,677	Copier-enabling services & North County

HRSA asserts that the 11 expenditures in table III are unallowable because they were for “routine maintenance.” HRSA Ex. 4, at 2; Response Br. at 12-14. It also contends that expenditures are unallowable because they were “incurred after the project end date.” Response Br. at 13-14.

We affirm the disallowance of these expenditures based on the latter ground – namely, that PHC charged to the grant costs resulting from obligations that were incurred after the end of the grant’s funding period. To reiterate, given the timing of the disallowed expenditures, which PHC made after it certified its completion of the grant-sponsored projects, it was incumbent on PHC to demonstrate, with appropriate documentation, that the expenditures resulted from obligations incurred prior to the end of the grant’s funding period, as section 74.28 required. PHC submitted *no documentation* regarding the vendor payments on lines 1 through 10 of Table III. We thus have no basis to find that those 10 expenditures complied with section 74.28.

As for the remaining vendor payment, on line 11, PHC submitted a copy of a “Lease/Purchase Agreement.” PHC Ex. I at 14. The agreement purports to have been signed by the vendor on June 28, 2011 (the last day of the funding period), but there is

nothing on the document indicating when PHC received the document. There is also no evidence of when PHC accepted the agreement's terms. The document has a line at the bottom for the customer's signature, but the line is blank. It is possible, of course, that the agreement was prepared on June 28, 2011 in response to a firm order placed by PHC on that date. But that information does not appear on the face of the agreement; the space set aside on the agreement for notating the date of the customer's "purchase order" is empty. Apart from the Lease/Purchase Agreement, there is no evidence in the record indicating when PHC communicated its acceptance of the vendor's terms or took delivery of the copier. We cannot conclude on the basis of this scant evidence that PHC incurred an obligation to pay the vendor on or before June 28, 2011.

### Conclusion

Because PHC failed to demonstrate that the disallowed expenditures (totaling \$161,426) were allocable to its CIP grant under OMB Circular A-122 and properly charged to the grant in compliance with 45 C.F.R. § 74.28, we affirm HRSA's determination to disallow them.

/s/

\_\_\_\_\_  
Leslie A. Sussan

/s/

\_\_\_\_\_  
Constance B. Tobias

/s/

\_\_\_\_\_  
Stephen M. Godek  
Presiding Board Member