

*Councils' response:* Do not concur. The Councils' rationale for keeping this phrase is to affirm the unallowability of profit distributions.

7. *Comment: Revise proposed FAR 31.205-6(b)(1) (labor-management agreements).* Reposition the word "negotiated" and add the word "set" to the first sentence.

*Councils' response:* Do not concur. The Councils do not believe it improves the readability of this paragraph.

8. *Comment: Express rationale for deletion of current FAR 31.205-6(c)(1) and (c)(2) (unusual conditions).* "To make clear the contractor still has the opportunity to justify cost and consideration of unusual conditions(.) include express reason for language deletion of original rule sections (c)(1) and (c)(2)."

*Councils' response:* These paragraphs (c)(1) and (c)(2) were deleted because such guidance is not necessary in the cost principle.

9. *Comment: Revise proposed FAR 31.205-6(b)(2) (total compensation).* Revise FAR 31.205-6(b)(2) to reflect the concept that reasonableness of compensation should be reviewed at the total compensation plan(s) level and not at an individual employee or job class level.

*Councils' response:* Do not concur. Contractors should be able to determine their own mix of wages, bonuses, and benefits to fit the needs of their business and workforce. The Councils believe that compensation should be reviewed for reasonableness in total by employee or job class of employee and that "offsets" are implied in this concept. It should be noted that the concept of "review of total compensation reasonableness" does not waive the Government's right to review individual compensation elements in order to determine total reasonableness. It is impossible to determine the reasonableness of total compensation without reviewing individual compensation elements because reliable surveys of "total compensation" do not exist.

10. *Comment: Revise proposed FAR 31.205-6(b)(2) (ACO consideration).* Eliminate ACO consideration of the listed reasonableness factors and rely only on FAR 31.201-3 for determining reasonableness since rule enforcement should not vary according to individual ACO determination of relevancy. This list could cause misapplication, e.g., have to consider all four factors in each instance. Restore original language related to proposed FAR 31.205-6(b)(2)(iv), if factors remain. New language is confusing, difficult to

understand, and may lead to negative impacts.

*Councils' response:* Do not concur. In determining the reasonableness of compensation costs, both the criteria in FAR 31.201-3 and the criteria in FAR 31.205-6(b) should be used. The concept of listing various factors to be considered by the ACO has been in the cost principle for many years. The relevancy determination is an important and proper ACO function. The cost principle should continue to include coverage on the factors to be used in determining reasonableness, as well as the authority of the contracting officer to determine how to weigh such factors. We believe the proposed language is very straightforward and easy to understand.

11. *Comment: Change language in proposed FAR 31.205-6(c)(2)(i) (valuation date).* Suggest adding the phrase "to the employee" at FAR 31.205-6(c)(2)(i) to make clear that the award date is the date that compensation (in the form of securities) is awarded to the employee.

*Councils' response:* Do not concur. The proposed rule is basically the same language as in the current FAR. We merely deleted the term "measurement date" since the definition already included in the cost principle, i.e., "first date the number of shares awarded is known," is more precise. The proper measurement date is upon the award of the stock; however, this award may be to an employee or to another entity, such as a trust. The respondent's recommended change would radically alter the current valuation methodology.

12. *Comment: Delete proposed FAR 31.205-6(d)(d) (Income tax differential pay).* Affirmative statements of allowability, such as that included in FAR 31.205-6(d)(1) for foreign differential pay, should not be included in the cost principles. In addition, the provision at FAR 31.205-6(d)(2) making domestic differential pay unallowable is not consistent with commercial practices or the allowability of foreign differential pay.

*Councils' response:* Do not concur. The Councils revised this paragraph to apply only to the allowability of differential pay to cover income tax increases due to foreign or domestic assignments. Normally, affirmative statements of allowability are not value-added in a cost principle. However, in this case, coverage making foreign income tax differentials explicitly allowable should remain. If there were no coverage on foreign differentials, reviewers might use FAR 31.204(c) to find the closest cost principle (domestic differentials) and improperly disallow

the costs of foreign differentials. The Councils continue to believe domestic income tax differentials should be unallowable and do not agree with the respondent's argument that the treatment of domestic differentials has to be consistent with the treatment of foreign differentials. We continue to believe that there should be an incentive for employees to accept foreign assignments.

13. *Comment: Delete proposed FAR 31.205-6(e) (Bonuses and incentive compensation).* Specific limitations on bonuses and incentives are not necessary because these situations are covered by the general reasonableness provisions of FAR 31.201-3(b)(2), generally accepted sound business practices, and the executive compensation cap at FAR 31.205-6(p). "Streamlining should have the goal of defining what is unallowable; illustration of what is allowable makes regulation excessively detailed and cannot be comprehensive." There is no need to state in the proposed FAR 31.205-6(e)(1)(ii) that the basis of the award must be supported, since adequate documentation is required for all costs. In addition, the proposed paragraph (e)(2) at FAR 31.205-6 regarding deferred bonus and incentive compensation payment is not needed.

*Councils' response:* Do not concur. We have deleted those parts (e.g., the listing of various types of incentive compensation) that the Councils view as unnecessary. It is important for the cost principle to continue to explicitly require that "the basis for the award is supported" in order for the cost to be allowable. This requirement for documenting the basis for the payment is separate and distinct from documenting that the payment was made. In addition, the proposed language at FAR 31.205-6(e)(2) is necessary to ensure deferred bonus payments are subject to both the incentive compensation and the deferred compensation allowability criteria.

However, this final rule is deleting the qualifying phrase "based on production, cost reduction, or efficient performance" which is current in the proposed rule at 31.205-6(e)(1). Although we generally agree that such criteria may be good standards for determining allowability, we do not believe that the current rule or proposed rule actually accomplishes this. The wording of the current cost principle or proposed rule may be read as not covering an incentive payment if it doesn't fall within one of these three criteria, although this is clearly not the intent.