

## Indirect Cost Rates Webinar, December 6, 2023

### Frequently Asked Questions (FAQ)

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- Q1: What about the vacation and sick pay of a person who works on the grant, are these considered direct or indirect costs?
- A1: Those costs are generally in the “Fringe” cost category for grant employees listed in the “Personnel” cost category, which is a direct cost.
- Q2: If the National Fish and Wildlife Foundation (NFWF) awards us the most federal dollars (from the EPA), is the EPA our cognizant agency?
- A2: No, the NFWF is not part of the EPA.
- Q3: When you said, “federal awards,” does that mean only grants, or does it include other forms of financial assistance?
- A3: For the purposes of this webinar, we are referring to grants and cooperative agreements.
- Q4: I heard that the Office of Management and Budget (OMB) is proposing to raise the de minimus rate for indirect costs from 10% to 15%. Has this been approved yet?
- A4: OMB is working on updating 2 CFR Part 200, but we will not know for sure if the 10% de minimis rate will be raised to 15% until the new regulations are published.
- Q5: Can you go from Fixed to Final or Final to Fixed?
- A5: If you want to change the type of rate approved, you will need work with your cognizant Federal agency; however, typically the same type of rate is approved each year.
- Q6: Can an organization have more than one federal cognizant agency? My department may receive money from the EPA; however, other departments may receive money from Housing and Urban Development (HUD), the Department of Justice (DOJ), etc. Would the EPA be the cognizant agency for my department?
- A6: The cognizant agency is based on the total federal funding for your organization. The Schedule of Expenditures of Federal Awards included in your organization’s audit can be used to determine which Federal agency provided the most direct federal funding. An organization may negotiate more than one indirect cost rate when its major departments benefit from indirect costs in varying degrees.
- Q7: Where in the regulation is the \$35 million limit?
- A7: It's found in Appendix VII Section D: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/appendix-Appendix%20VII%20to%20Part%20200>.
- Q8: What about contracts over \$25K, will they be excluded from the Modified Total Direct Cost (MTDC)?
- A8: The definition of the MTDC base does not specifically identify if contracts are excluded or included. The definition includes “services” as part of the base, but it excludes capital expenditures and construction. Therefore, it depends on the type of contract. In addition, the MTDC definition states “Other items may only be excluded when necessary

to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.” Therefore, your cognizant agency may determine that it’s necessary to exclude or limit the dollar amount of each contract included your MTDC base.

Q9: For the MTDC, do “services” include contracts such as for environmental contracting? Can MTDC include contractual construction costs?

A9: The MTDC may include an environmental contract if the contract is for services. However, if the environmental contract is part of construction costs, then it would not be included because construction costs are not included in the MTDC. In addition, capital expenditures are not included in the MTDC base. Therefore, contracts to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life are also excluded from the MTDC base.

Q10: Can you confirm that it is the first \$25k of each subaward vs. contracts?

A10: The MTDC definition included below specifically states there is a \$25,000 limitation on each subaward but the definition does not specifically state each contract is limited to \$25,000.

*Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, **services**, travel, and up to the first **\$25,000 of each subaward** (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. **Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.***

Q11: Are you limited to 10% of \$25,000? What if your award is closer to \$350K?

A11: The MTDC definition states the portion of each subaward in excess of \$25,000 must be excluded.

Q12: Has there been any discussion about how the \$25k limit on each subaward may incentivize some fund recipients to award smaller subawards? For example, if the funding recipient has \$100k from the EPA to spend on subawards, has there been any discussion about the incentive in this cost structure to have the fund recipient award four \$25k subawards, as opposed to a single \$100k subaward since the former will raise the MTDC? We have heard this at the state level from our grantees and are curious if that has been a challenge.

A12: One of the proposed updates to 2 CFR Part 200 is to adjust the exclusion threshold of subawards from \$25,000 to \$50,000 in the MTDC base; however, we will not know if the increased threshold is approved until the new regulations are published. For more information, visit: <https://www.federalregister.gov/documents/2023/10/05/2023-21078/guidance-for-grants-and-agreements>.

Q13: When it says the first \$25K of each subaward, is that on a per year basis (i.e., if there is a single \$50K subaward every year, the first \$25K of that subaward for each year counts towards the indirect costs)?

A13: The first \$25,000 of a subaward is not on a per year basis. The allowance of \$25,000 is for one time during the period of performance of each individual subaward.

Q14: If you are a prime awardee and were awarded a federal grant with the de minimus indirect rate, but over the course of a multi-year award you negotiate and receive a provisional rate, will the EPA allow you to amend your agreement/budget to incorporate your new rate?

A14: Yes. Please notify your Grant Specialist and Project Officer if/when you receive a new approved rate. Also, keep in mind that although your indirect cost rate changed, the total amount of the grant award will not change.

Q15: Is it correct that if a local government receives one-time funding under the American Rescue Plan Act (ARPA), and those funds take that local government over the \$35 million threshold for a period of two years, does the local government have to apply for an indirect cost rate with their cognizant agency because ARPA funds are a one-time “exception”?

A15: The only exception OMB approved was to allow tribal, state, and local governments to exclude from the direct cost base any Coronavirus Aid, Relief, and Economic Security (CARES) Act funds that deny indirect cost recovery. This exception applies to CARES Act funding granted under the Treasury’s Coronavirus Relief Fund (CARES Act, P.L. No. 116-136, Division A, Title V (2020), codified at 42 U.S.C. § 801) that does not permit indirect cost recovery. Such CARES Act funding should not be included toward the threshold amount for indirect cost rate proposal submission requirements per 2 CFR Part 200, Appendix VII, paragraph D.1.b.

Q16: How does carryforward work for the fixed rate?

A16: The difference between the amount of indirect costs recovered during the fiscal year using the approved indirect cost rate for that year and the actual indirect costs incurred during that year is carryforward and included in a future fixed indirect cost rate. A fixed rate with carryforward is based on the actual indirect costs incurred during a previous fiscal year, for example, the actual Fiscal Year (FY) 2021 costs were used to negotiate indirect cost rates for FY 2023. Now that FY 2023 is over, we have to account for the difference between the indirect costs the recipient recovered using the FY 2023 approved rate and the actual indirect costs incurred during FY 2023. The difference between the indirect cost drawdowns during FY 2023 and the actual indirect costs incurred during FY 2023 will be carryforward and included in the FY 2025 indirect cost rate.

Q17: Can an awardee use less than their Negotiated Indirect Cost Rate Agreement (NICRA) if they choose? For example, if their NICRA is 18%, but they only wish to claim 13% to put more money into the programmatic costs.

A17: Awardees are allowed to use a lower rate than their approved rate; however, the EPA cannot make an applicant/grantee use a lower rate than their approved rate. This must be only the applicant’s/recipient’s decision.

Q18: So, if our fiscal year is July 1 – June 30 and the grant period is from August 1, 2023 – July 31, 2028, do I have more than two rates?

A18: Your indirect cost rate will likely change each fiscal year unless you opt for the 10% de minimis rate. If the grant is over two fiscal years and the indirect cost rate approved for the first fiscal year is less than the rate for the second fiscal year, you don't have to use the higher rate. You can continue to use the lower original rate because recipients are always allowed to use a lower rate than their approved rate.

Q19: We had an agency interpret the de minimis rate as we could only recoup \$2,500, or 10% of the \$25,000. Is this the EPA's interpretation?

A19: It depends on what costs are included in the \$25,000. The 10% rate can only be applied to costs included in the MTDC base. The de minimis rate of 10% can be applied to a recipient's MTDCs as defined in 2 CFR Part 200.1. If the \$25,000 only includes allowable MTDCs, then the allowable indirect costs would equal  $\$25,000 \times 10\% = \$2,500$ .

Q20: Has the federal government found that different agencies and departments have different capacities and willingness to serve as the cognizant agency for a funding recipient? At the state level, some agencies have more staff capacity to negotiate and review proposed NICRAs, but this can create a disparity across partners on the ground as they each differ in their level of funding from different state agencies and relationships with those agencies. Does this paradigm exist at the federal level? Do you have advice for addressing this? I'm wondering what is required for an agency to be able to assume cognizant agency duties - what staff skill sets and qualifications or statute or policy would enable a specific department or agency to start accepting NICRA applications and reviewing them.

A20: Federal agencies without the expertise or resources to negotiate indirect cost rates can set up an interagency agreement with other federal agencies to negotiate their rates on their behalf. Department of Defense agencies have agreements with the Defense Contract Management Agency and the Defense Contract Audit Agency, while other federal agencies setup interagency agreements with the Department of Interior, Interior Business Center (DOI, IBC) to negotiate indirect cost rates on their behalf. DOI, IBC has interagency agreements with many federal agencies, including EPA, to negotiate indirect cost rate agreements on their behalf. For more information, visit: <https://www.doi.gov/sites/doi.gov/files/indirect-cost-rate-negotiation-ibc-fact-sheets-2022.pdf>

Q21: Would a soil and water conservation district negotiate with the EPA or the Department of the Interior?

A21: The cognizant agency for negotiating indirect cost rates shall be the Federal agency that provides your District with the majority of its direct federal funding. Please note that 2 CFR Part 200, Appendix VII(D) does not require governmental agencies that receive less than \$35 million in direct federal awards to submit their indirect cost proposals to their cognizant agency for approval. They are only required to develop an indirect cost rate proposal and maintain the proposal and its documentation for audit.

Q22: If a direct cost is for financial assistance, is that classified as a contract or a capital expenditure? We know the Notice of Funding Opportunity (NOFO) specifically states it is not a subaward.

- A22: We might need more context to answer this question, but we recommend that if you have any questions about any language in a NOFO to contact the point of contact listed in Section VII of that particular NOFO and attend informational webinars that are offered under that NOFO. According to §180.970, loans and loan guarantees are NOT considered procurement transactions.
- Q23: Can you confirm that it is the first \$25k of each subaward vs. contracts?
- A23: The definition of the MTDCs does not specifically identify contracts, but it does include services. The MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, **services**, travel, and up to **the first \$25,000 of each subaward** (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.
- Contracts are, as defined by 2 CFR 200.1, a legal instrument by which a non-federal entity purchases property or services needed to carry out the project or program under a federal award. Services are included in the MTDC base, but property is not.
- Q24: If a nonprofit normally uses the de minimis rate, must you use the same rate as a subawardee?
- A24: The EPA's Indirect Cost policy only covers our grantees, not subawardee relationships. Recipients should have policies and procedures that cover indirect costs to subawardees. The pass-through entity and the subawardee are not required to use the same indirect cost rate. If a subawardee has a federally approved rate, the pass-through entity must honor that rate.
- Q25: Does MTDC include contracts (not subawards)?
- A25: The definition of MTDCs does not specifically include contracts but it does include services. A contract means, for the purpose of federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a federal award. In addition, construction costs are excluded. Therefore, it depends on the type of contract.
- Q26: Regarding slide 23, when you're using the term "subaward" are you including "contractual"?
- A26: No, subawards are different than contracts. For additional information on subrecipient and contractor determinations, see [2 CFR 200.331](#).
- Q27: Can you please clarify where the contractual cost falls for the MTDC base? Is it included in the base or excluded?
- A27: Contracts are, as defined by 2 CFR 200.1, a legal instrument by which a non-federal entity purchases goods or services needed to carry out the project or program under a federal award. The definition of the MTDC base does not include the word "contract" but it does include "services" as an allowable cost. Therefore, it depends on the type of contract. Contracts for construction, capital expenditures, and equipment would be excluded from MTDC.

Q28: What is the reason for excluding participant support costs from the MTDC? Does this disincentivize grant recipients from using funds to support things like event participation? Am I misunderstanding what participant support costs are?

A28: This requirement is in the regulations that OMB published, and federal agencies are required to comply with them. These regulations have been in place since 2016; however, OMB is currently updating them.

Q29: Does the \$35,000,000 limit include temporary ARPA funds?

A29: The only exception OMB approved to 2 CFR 200.405(b), Allocable Costs, was to allow tribal, state, and local governments to exclude from the direct cost base any CARES Act funds that deny indirect cost recovery. This exception applies to CARES Act funding granted under the Treasury's Coronavirus Relief Fund (CARES Act, P.L. No. 116-136, Division A, Title V (2020), codified at 42 U.S.C. § 801) that does not permit indirect cost recovery. In addition, such CARES Act funding should not be included toward the threshold amount for indirect cost rate proposal submission requirements per 2 CFR Part 200, Appendix VII, paragraph D.1.b. All other direct federal funding should be included in the threshold amount.

Q30: If we are a subawardee (to NFWF), can we still negotiate an indirect cost, or can we only do so if we receive direct funds from the EPA?

A30: The EPA's Indirect Cost Policy only covers our direct financial assistance to recipients. It does not cover subawardees. However, grantees should have policies and procedures in place to cover indirect costs and subawardees. Please note NFWF is not part of EPA.

Q31: Are securing audited financials an eligible expense in a multiyear award, if a new rate must be negotiated?

A31: 2 CFR 200.425(a) states a reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this part, are allowable.

Q32: Our agency has an indirect cost rate for fringe and a different rate for contracts. Can you discuss why this is?

A32: The fringe benefit rate and the indirect cost rate are used to allocate different costs. The fringe benefit rate is used to allocate allowable fringe benefit costs such as social security; employee life, health, unemployment, and worker's compensation insurance; and pension plan costs. The fringe benefit rate is applied to direct salaries to determine the amount of allowable direct fringe benefits. The indirect cost rate for grants and contracts is used to allocate administrative costs to all the projects and programs that benefitted from those costs. Indirect costs typically include human resources, payroll, accounting, rent, utilities, etc. The indirect cost rate is applied to the approved basis of application to determine the amount of allowable indirect costs for an award.

Q33: Is there a list available of approved indirect costs?

A33: There is no universal rule for classifying certain costs as either direct or indirect (Facilities and Administrative (F&A)) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the

federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double charging of federal awards. Guidelines for determining direct and indirect (F&A) costs charged to federal awards are provided in [2 CFR 200 Subpart E—Cost Principles](#).

Q34: Can you apply the 10% de minimis rate to some federal awards but not others? Here is the situation: As a local government, we receive some annual federal awards where the funds are exhausted with direct costs, so those awards have no capacity to cover indirect costs without programmatic cuts. For new grants we are pursuing, we would incorporate indirect costs into planning for those grants. Are we allowed to charge the 10% de minimis rate to some grants and not others?

A34: Per 2 CFR 200.414(f), the de minimis rate of 10% of MTDCs may be used indefinitely. As described in 2 CFR 200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If chosen, this methodology **once elected must be used consistently for all federal awards** until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

Q35: What do you mean by institution of higher education?

A35: This generally means a college, university, etc., as opposed to a tribe, state government, local government, or non-profit.

Q36: If a grant budget was prepared with one approved rate, say 20%, but the approved rate goes up in the next fiscal year to 22%, can we charge the grant the current approved rate of 22% or are we capped at charging at the budgeted rate of 20%?

A36: You can charge the current approved indirect cost rate during its effective period; however, the total award amount will not change when the indirect cost rate changes.

Q37: The OMB definition of MTDC does not define if the contractual cost should be excluded or included. Can you please clarify?

A37: The type of contract will determine if it is allowed or not. Contracts are defined by 2 CFR 200.1 as a legal instrument by which a non-federal entity purchases goods or services needed to carry out the project or program under a federal award. The definition of the MTDC base does not include the word “contract” but it does include “services” as an allowable cost. Therefore, it depends on the type of contract. In addition, MTDC states “Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.” Therefore, contracts for services can also be excluded by your cognizant agency if they determine that including them would cause a serious inequity in the distribution of indirect costs.

Q38: Can you define participant support costs?

A38: Per 2 CFR Part 200.1, participant support costs mean direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with

conferences or training projects. Participant support costs also includes payments to individuals who participate in grant activities but are not employees of the grant recipient.

Q39: Just for clarification, in computing for the MTDC, does it apply to employees who will be working on the grant?

A39: The MTDC definition includes direct salaries and their applicable fringe benefits.

Q40: We were told by the EPA in preparing our budget that subcontractors were excluded from the MTDCs. I think you are contradicting that here?

A40: It depends on if your organization has an approved indirect cost rate agreement. If so, then the approved basis of application would be used. If the approved basis limits subcontracts to \$25,000, then only the first \$25,000 of each subcontract would be included in the MTDC base. The MTDC definition states "Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs." Therefore, contracts for services can be limited by your cognizant agency if they determine that including them would cause a serious inequity in the distribution of indirect costs.

2 CFR 200.1 defines contracts as a legal instrument by which a non-federal entity purchases goods or services needed to carry out the project or program under a federal award. The definition of the MTDC base does not include the word "contract" but it does include "services" as an allowable cost, and equipment, construction, and capital expenditures as unallowable costs. Therefore, if you don't have an approved indirect cost rate and you are applying the 10% de minimis rate, then it will depend on the type of contract.

Q41: What if the actual indirect rate is lower than the negotiated indirect rate? At the drawdown timing, should the indirect cost rate be at the actual/lower rate or the negotiated indirect/higher rate?

A41: Recipients can always draw down less indirect costs than allowed by their approved indirect cost rate. If you have a provisional rate approved that is significantly higher than the final rate for the same fiscal year, then you will probably want to apply the lower final rate. Final rates supersede provisional rates, so indirect cost drawdowns have to be adjusted once the final rate is approved and any over recoveries have to be paid back to the federal funding agencies. Therefore, in order to prevent over recoveries, it's better to adjust the rate. However, if the approved rate is a fixed rate with carryforward, the recipient can continue to use the approved rate because the difference between the approved rate and the actual rate will be carryforward and included in a future fixed rate as a carryforward adjustment.



Q42: Our agency has a cooperative agreement with the EPA. We do not have an indirect cost agreement. However, we plan to award a subaward to a higher education institution for a specific task. The university has an indirect cost agreement through the department of Health & Human Services. Does this impact how we write a subaward agreement and how we pay them?

A42: If indirect costs are allowed on the subaward, the university should use its federally approved indirect cost rate to calculate their allowable indirect costs for the subaward. The university's allowable indirect costs are included in their total subaward amount.

Q43: Is contractual an indirect cost?

A43: It depends on the contract. Your cognizant Federal agency can help you determine if a contract is an allowable indirect cost. However, if a contract will only benefit one project or program, it should be charged directly to that program.

Q44: Are those proposed changes to the MTDC and de minimis rate subject to a public comment period and, if so, where can we find those details?

A44: Yes, however, the public comment already ended. For more information, visit: <https://www.federalregister.gov/documents/2023/10/05/2023-21078/guidance-for-grants-and-agreements>