



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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Memorandum

To: Heads of Bureaus and Offices

From: Debra E. Sonderman *Debra E. Sonderman*
Director, Office of Acquisition and Property Management

Subject: Department of the Interior Policy, Procedures, and General Decision-Making Criteria for Deviations from Negotiated Indirect Cost Rates under Federal Financial Assistance Programs and Agreements

Purpose and Scope: This memorandum establishes Department of the Interior (DOI) policy, procedures and general decision-making criteria for deviations from negotiated indirect cost rates; and implements the Office of Management and Budget (OMB) *Final Rule for the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 CFR Part 200). This memorandum sets forth policies and procedures that are applicable to all Federal financial assistance programs awarded and administered within DOI.

This policy memorandum cancels and supersedes all previous policy and guidance issued by the Department, including any previous policies, procedures, and/or guidance issued by any bureaus, offices, or programs related to deviations for Federal negotiated indirect cost rates.

Effective Date: In accordance with 2 CFR 200.110, these requirements are effective December 26, 2014.

Expiration Date: The policies and procedures outlined in this memorandum will remain in effect until superseded.

Background and Objectives: On December 26, 2013, OMB published its *Final Rule for the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, or "Omni-Circular," with guidance for agency implementation (see 2 CFR Part 200 and Federal Register Volume 78, No. 248). The Omni-Circular streamlines the Federal Government's administrative requirements, cost principles, and audit requirements for Federal awards including grants and cooperative agreements.¹ The Omni-Circular provides a government-wide framework for Federal awards management, and is a key component of a larger Federal effort to more effectively focus Federal resources on improving Federal awards performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders. This OMB guidance reform will reduce the

¹ The Omni-circular supersedes OMB Circulars A-21, A-87, A-110, and A-122; Circulars A-89, A-102, and A-133; and the guidance in Circular A-50, *Audit Followup*.

administrative burden for non-Federal financial assistance recipients while reducing the risk of waste, fraud and mismanagement.

The provisions of 2 CFR 200.414(c) require Federal agencies to accept federally negotiated indirect cost rates. Federal agencies may use a rate different from the negotiated rate for a class of awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based upon documented justification described within 2 CFR 200.414(c)(3). Within the Department, there are a few major programs that use reduced indirect cost rates (e.g., the Cooperative Fish and Wildlife Research Unit Program, Cooperative Ecosystem Studies Units, and the Land Buy-Back Program). In addition, on an award-specific basis, the Department does accept indirect cost rates that have been reduced or removed voluntarily by the proposed recipient of the award.

Action Required by This Policy: Bureaus and offices shall apply the following policies, procedures and general decision-making criteria for deviations from negotiated Indirect Cost Rates for financial assistance programs and agreements.

Distribution Basis: For all deviations to the Federal negotiated indirect cost rate, including statutory, regulatory, programmatic, and voluntary, the basis of direct costs against which the indirect cost rate is applied must be:

- A. The same base identified in the recipient's negotiated indirect cost rate agreement, if the recipient has a federally negotiated indirect cost rate agreement; or
- B. The Modified Total Direct Cost (MTDC) base in cases where the recipient does not have a federally negotiated indirect cost rate agreement or, with prior approval of the Awarding Agency, when the recipient's federally negotiated indirect cost rate agreement base is only a subset of the MTDC (such as salaries and wages) and the use of the MTDC still results in an overall reduction in the total indirect cost recovered. MTDC is the base defined by 2 CFR 200.68, "Modified Total Direct Cost (MTDC)."

In cases where the recipient does not have a federally negotiated indirect cost rate agreement, under no circumstances will the Department use a modified rate based upon Total Direct Cost or other base not identified in the federally negotiated indirect cost rate agreement or defined within 2 CFR 200.68. The purpose of this restriction is to ensure that the reduced rate is applied against a base that does not include any potentially distorting items (such as pass-through funds, subcontracts in excess of \$25,000, and participant support costs) and is based on the requirements outlined in 2 CFR 200.68; 2 CFR 200.414(f); 2 CFR 200 Appendix III, Section C.2.; 2 CFR 200 Appendix IV, Section B.3.f.; and Appendix VII, Section C.2.c.

Indirect Cost Rate Deviation Required by Statute or Regulation: In accordance with 2 CFR 200.414(c)(1), a Federal agency must use a rate other than the Federal negotiated rate where required by Federal statute or regulation. For such instances within the Department, the official award file must document the specific statute or regulation that required the deviation.

Indirect Cost Rate Reductions Used as Cost-Share: Instances where the recipient elects to use a rate lower than the federally negotiated indirect cost rate, and uses the balance of the unrecovered indirect costs to meet a cost-share or matching requirement required by the program and/or statute, are not considered a deviation from 2 CFR 200.414(c) as the federally negotiated indirect cost rate is being applied under the agreement in order to meet the terms and conditions of the award.

Programmatic Indirect Cost Rate Deviation Approval Process: In accordance with 2 CFR 414(c)(3), the following requirements apply within the Department of the Interior for review, approval, and posting of programmatic indirect cost rate waivers:

1. *Program Qualifications.* Programs that have instituted a program-wide requirement and governance process for deviations from federally negotiated indirect cost rates may qualify for a programmatic deviation approval.
2. *Deviation Requests.* Deviation requests must be submitted by the responsible senior program manager to the Office of Acquisition and Property Management (PAM). The request for deviation approval must include a description of the program, and the governance process for negotiating and/or communicating to recipients the indirect cost rate requirements under the program. The program must make its governance documentation, rate deviations, and other program information publically available.
3. *Approvals.* Programmatic deviations must be approved, in writing, by the Director, PAM. Approved deviations will be made publically available along with the governance documentation for the program.
4. *Initial Programs Approved for Deviation.* With the initial release of this policy, the following programs are approved to use a rate that deviates from the federally negotiated indirect cost rate agreements:
 - Cooperative Fish and Wildlife Research Unit (CRU) Program
 - Cooperative Ecosystem Studies Unit (CESU) Program
 - Land Buy-Back Program for Tribal Nations

Details on each of these programs, including governance documentation and rates utilized, are attached. Program information is also publically available on the program websites. The rates in effect at time of this policy issuance are subject to change based upon the governance process established for each program.

Voluntary Indirect Cost Rate Reduction: On an award-specific basis, an applicant and/or proposed recipient may elect to reduce or eliminate the indirect cost rate applied to costs under that award. The election must be voluntary and cannot be required by the awarding official, Funding Opportunity Announcement, program, or other non-statutory or non-regulatory requirements. For these award-specific and voluntary reductions, the Department can accept the lower rate as long as the official file clearly documents the recipient's voluntary election.

Unrecovered Indirect Costs: In accordance with 2 CFR 200.405, indirect costs not recovered due to deviations to the federally negotiated rate in accordance with this policy are not allowable for recovery via any other means.

Additional Information: Please disseminate this policy throughout your organizations. Questions about this policy memorandum may be directed to Anita Hairston, Financial Assistance Program Manager, Office of Acquisition and Property Management, at (202) 513-0871 or by e-mail at Anita_Hairston@ios.doi.gov.

Attachment

Department of the Interior Programs Approved to Use Rates that Deviate from Federally Negotiated Indirect Cost Rate Agreements

The Cooperative Fish and Wildlife Research Unit Program (CRU). The CRU program was established in 1935 and subsequently authorized under the Cooperative Research Units Act of 1960 and the Fish and Wildlife Improvement Act of 1978. The CRU program has a three-fold mission as specified in the Cooperative Units Act of 1960: (1) provide resource managers with cost-effective, timely research to address their information needs; (2) provide technical assistance to interpret and implement research findings; and (3) through graduate education programs, train the next generation of natural resource professionals. Cooperative agreements are used to establish and operate each individual CRU. The USGS is the official Federal Cooperator, with the Fish and Wildlife Service participating as an additional Federal Cooperator. Natural resource agencies in 38 States, 40 universities, and the Wildlife Management Institute are also program Cooperators. Direct involvement and participation by the States is required under the authorizing legislation. Any Federal or State agency, non-profit organization, Tribal Nation, or others may be a partner contributing funds for research and technical assistance through the program. The Units also provide partners with access to additional university expertise and facilities in a cost-effective, collaborative manner. For the CRU program, indirect costs are capped at 15% and this reduction is outlined within each CRU Cooperative Agreement.

The Cooperative Ecosystem Studies Unit (CESU). The CESU program was authorized by the 105th Congress under the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391) [13 November 1998]. Through execution of this directive, a 17-unit national system of competitively established bioregional Cooperative Ecosystem Studies Units, or CESUs, was formed encompassing all 50 States and U.S. Territories. The CESU Network now functions as a national consortium of partners, currently including 14 Federal agencies/bureaus and more than 360 non-Federal partner institutions (i.e., institutions of higher education; tribal, State, and local government agencies; and nonprofit organizations). The interagency CESU Network National Council, comprised of administrators and senior scientists from each of the participating Federal agencies, was established through a Memorandum of Understanding (1999, 2005, 2011) to provide program governance and oversight, including establishment and implementation of program policy, guidance, and operations. The CESU Network provides a platform for coordinated collaborative scholarly activities (i.e., research, technical assistance, and education) that inform stewardship of public trust heritage resources in alignment with agency and partner mission goals and programmatic objectives. Each CESU is maintained through a five-year, renewable, multi-partner cooperative agreement, which details the roles and responsibilities of its Federal and non-Federal partners and the provisions for collaborative activities supported through discrete Federal financial assistance awards under the program (i.e., in accordance with agency authorities and OMB Circulars). The program affords substantial collaborative engagement by Federal scientists, field staff, and decision-makers with non-Federal technical and subject matter experts (e.g., university faculty, conservation professionals, students) that purposefully enhances public trust heritage resource stewardship, science, and knowledge development activities, with roughly 1,000 projects implemented nationally each year.

Beginning with the initial program competition and continuing each year since the establishment of the CESU Network in 1999, the program has implemented, as a provision of each CESU cooperative agreement, a system-wide reduced indirect cost rate that each non-Federal partner has voluntarily accepted for all financial assistance awards administered through the program. Participation in the program does not preclude for any non-Federal partner the continuation or establishment of other Federal financial assistance support or procurement actions. The CESU Network National Council and national office staff monitor negotiated rate trends on an ongoing basis to inform adjustment of programmatic indirect cost rates. More information on the program can be found at www.cesu.org.

The Land Buy-Back Program for Tribal Nations. The Land Buy-Back Program for Tribal Nations (Buy-Back Program) was established as a result of the Settlement Agreement in *Cobell v. Salazar*, as confirmed by the Claims Resolution Act of 2010, Public Law 111-291 which established a \$1.9 billion Trust Land Consolidation Fund to purchase fractional interests in trust or restricted land over a 10-year period ending in November 2022. The Secretary of the Interior established the Buy-Back Program on December 17, 2012, to manage the Trust Land Consolidation Fund and implement the land consolidation program called for by the Settlement Agreement. The principal goal of the Buy-Back Program is to reduce the number of fractional land interests through voluntary land sales that immediately place purchased interests into trust for tribes. The Buy-Back Program utilizes cooperative agreements whenever feasible and practical to collaborate on land consolidation activities with Tribal Governments. For the Buy-Back Program, indirect costs are capped which is outlined within the Buy-Back Program's November 23, 2013, Updated Implementation Plan and The Settlement Agreement. More information on the program can be found at <http://www.doi.gov/buybackprogram>.