

CITY OF LOS ANGELES
CALIFORNIA

**ECONOMIC AND WORKFORCE
DEVELOPMENT DEPARTMENT**

CAROLYN M. HULL
GENERAL MANAGER



1200 W. SEVENTH STREET
LOS ANGELES, CA 90017

ERIC GARCETTI
MAYOR

DATE: June 11, 2021

TO: All Economic and Workforce Development Department (EWDD)
Subrecipients

FROM: Catherine Bondoc, Director *Catherine Bondoc*
Financial Management Division

**SUBJECT: FMD DIRECTIVE NO. 21-001
INDIRECT COST RATE - POLICY AND PROCEDURES**

EFFECTIVE DATE

This directive is effective upon date of issue.

PURPOSE

The purpose of this directive is to provide guidelines and establish the procedures for requesting approval for an indirect cost rate from the subrecipient's Federal cognizant agency for indirect cost or from EWDD.

SCOPE

This directive applies to all federal and non-federal programs directly from or passing-thru the City of Los Angeles, EWDD.

DEFINITIONS

Federal Cognizant Agency for Indirect Costs: The federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed on behalf of all Federal agencies. (2 CFR 200.19)

Indirect (Facilities & Administrative (F&A) Costs: Those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the program, function, activity, award, organizational division, contract, or work unit served (2 CFR 200.28, Cost objective), it may be necessary to establish a number of pools of indirect (F&A) costs.

Indirect (F&A) cost pools must be distributed to benefitted cost objectives on basis that will produce an equitable result in consideration of relative benefits derived. (2 CFR 200.56)

Indirect Cost Rate: The ratio between the total indirect expenses and some direct cost base. The indirect cost allocation methods used by each organization depend on its own structure, program functions, and accounting system. The use of an indirect cost rate enables the organization to determine the proportion of indirect cost each program should bear.

Indirect Cost Proposal: The documentation to substantiate the request for the establishment of an indirect cost rate (2 CFR 200.57)

PROCEDURES

SUB-RECIPIENTS WITH FEDERAL COGNIZANT AGENCY FOR INDIRECT COST

- Develop and submit an Indirect Cost Rate Proposal to your Federal cognizant agency for indirect cost. The requirements for negotiation and approval of indirect cost rates are in the following:
 - 2 CFR 200 - Appendix III for Institutions of Higher Education (IHE),
 - 2 CFR 200 - Appendix IV for Non-Profits,
 - 2 CFR 200 - Appendix VII for State and Local Government (2 CFR 200.414(e), 2 CFR 200.57), and
 - Federal Acquisition Regulations (FAR), Part 31.2, Contracts with Commercial Organizations, and FAR Part 42.7, Indirect Cost rates, for commercial entities (<https://www.acquisition.gov/Far/>).

The U.S. Department of Labor, Office of Cost Determination, has also issued a Guide for Indirect Cost Determination (<https://www.dol.gov/oasam/boc/dcd-2-cfr-guid.pdf>) that may be used as a guide.

Subrecipients must follow these requirements and regulations.

- Upon negotiation and approval of an Indirect Cost Rate, submit copies of the following to EWDD Financial Management Division:
 - Indirect Cost Rate Agreement from the Federal cognizant agency for indirect costs and
 - Indirect Cost Rate proposal submitted.
- This Indirect Cost Rate Agreement will be the basis for EWDD's approval of the sub-recipient's indirect cost rate, subject to funding availability and grant restrictions.
- For WIOA and other workforce-related City contracts subject to an administrative cost cap/limit (generally at 4% of total City contract or actual expenditures, if lower), the subrecipient must submit a detailed breakdown of its indirect cost components into

administrative and program costs and the calculation of the proportion (percentage) of each category to the total indirect costs. If this breakdown and calculation is not submitted, indirect costs will be considered 100% administrative costs. In addition, indirect costs classified as program costs must be fully documented.

As a practice, EWDD uses the WIOA definition of administrative costs found in 20 CFR 683.215.

- The procedures or methodology for calculating indirect administrative and program costs are as follows:
 - Review all the costs included in the indirect pool and label them as program or administrative costs based on the WIOA definition (20 CFR 683.215, What WIOA functions and activities are subject to cost limitations);
 - Calculate the proportion (percentage) of total costs for each of the two categories;
 - Calculate the total dollar amount of indirect costs attributable to the particular WIOA program (i.e., apply the negotiated indirect cost rate to the specified base); and
 - Apply the percentages of administrative and program as calculated to the total dollar amount of indirect costs to establish the dollar amount that is to be recorded/reported as administrative costs and the amount that is program costs for that particular program.

(Please see the U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance (TAG) Guide Part II) for additional guidance.)

SUBRECIPIENTS WITHOUT A FEDERAL COGNIZANT AGENCY

The subrecipient may do one of the following:

- (1) Request to use an approved indirect cost rate negotiated with another pass-through entity;
- (2) Select to use a direct allocation method for its indirect costs;
- (3) Select to use a 10% de minimis rate (discussed below); or
- (4) Submit an indirect cost rate proposal package to EWDD FMD. The package must include the following:
 - Worksheet(s) showing the computation of the indirect cost rate – (including notes for adjustments);

- Audited financial statements – The direct and indirect costs in the worksheet should be traceable and reconcilable with the costs in the audited financial statements;
- A breakdown of its indirect cost components into administrative and program and the percentage of each to the total indirect costs in accordance with 20 CFR 683.215 and One-Stop Comprehensive Financial Management Technical Assistance Guide Part II (TAG);
- Certificate of Indirect Costs signed by a staff at a level no lower than Executive Director or Chief Financial Officer;
- A cost policy statement that identifies what the agency consider as direct and indirect costs and the rationale to support those costs;
- Latest Organization Chart;
- A cover letter forwarding these documents to the Director, Financial Management Division; and
- All other documents that EWDD may require.

If the proposal is complete and approved, EWDD FMD will issue a formal letter stating the following:

- Approved final or tentative indirect cost rate and period covered; and
- Direct cost base (example direct salary, or total direct cost).

The tentative rate will be revised, and a final rate approved for the same period when a new indirect cost rate proposal is submitted the following year.

DUE DATES TO SUBMIT AN INDIRECT COST PROPOSAL

For Direct Federal Award Recipients:

A subrecipient which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award, except when the organization has elected to use the 10% de minimis rate. (2 CFR 200, Appendix IV C (2) (b))

A subrecipient with previously submitted or established rates must submit a new indirect cost proposal to the Federal cognizant agency for indirect costs within six months after the close of each fiscal year, unless an extension has been approved in accordance with the procedures stated below. (2 CFR 200, Appendix IV C (2) (c))

For Subrecipients Requesting Approval from EWDD

EWDD follows the same deadlines as described above for direct Federal award recipients.

EXTENSIONS

A subrecipient that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the Federal cognizant agency for indirect costs.

If an extension is granted, the subrecipient may not request a rate review until the extension period ends.

At the end of the 4-year extension, a subrecipient must re-apply to negotiate a rate.

Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request (2 CFR 200.414(g)).

These rules on submission and extensions shall apply to indirect cost rates negotiated with the City.

10% DE MINIMIS RATE

2 CFR 200.414(f) allows any non-Federal entity (NFE) that does not have a current negotiated indirect cost rate to charge a *de minimis* rate of 10% of **modified total direct costs (MTDC)**. The City follows this same rule for all City contracts.

In accordance with the provisions of the Uniform Guidance 2 CFR §200.414 (f), Indirect (F&A) Costs, the use of the 10% de minimis rate shall be based on meeting the following eligibility criteria and requirements:

- The subrecipient does not have a current negotiated indirect cost rate from any Federal agency or from EWDD;
- The 10% rate will be applied to Modified Total Direct Costs (MTDC), as defined in 2 CFR §200.68;
- MTDC shall include:
 - All direct salaries and wages, applicable fringe benefits;
 - Materials and supplies;
 - Services;
 - Travel; and
 - Up to the first \$25,000 of each sub award (regardless of the period of performance of the sub awards).

- MTDC shall exclude:
 - Equipment, capital expenditures;
 - Charges for patient care;
 - Rental costs;
 - Tuition remission, scholarships and fellowships;
 - Participant support costs; and
 - The portion of each sub award in excess of \$25,000.
 - Other items when necessary to avoid a serious inequity in the distribution of indirect costs.
- Participant related costs such as Individual Training Accounts (ITAs) and On-the-Job Training (OJTs) are considered flow-thru or pass-thru funds, and these costs shall be excluded from MTDC when they cause distortion in the distribution of indirect costs;
- Costs must be consistently charged as either indirect or direct and not double charged or inconsistently charged as both (2 CFR §200.403, Factors affecting allow ability of costs);
- The subrecipient is responsible for the proper use and application of the de minimis rate;
- The subrecipient must disclose its election to use the 10% de minimis rate in its budget proposals or modifications with EWDD;
- The subrecipient must track all administrative costs as defined in 20 CFR §683.215 separately from program costs, including the administrative cost portion of the indirect cost pool. The total administrative costs may not exceed the established administrative cost limit (generally set at 4% of your award or actual expenditures, if lower).

The subrecipient must also provide a breakdown of the indirect costs between administrative and program indicating the percentage of each to the total indirect cost. The same breakdown must be used in reporting its monthly expenditures. The EWDD will not reimburse administrative costs in excess of the administrative cost limit and/or costs that are inherently administrative but are classified and reported as program without adequate supporting documentation.

Upon review of the request to use 10% de minimis rate, EWDD-FMD will issue a formal letter approving/disapproving the request based on the above criteria and requirements.

EWDD FMD will verify the organization's compliance with 2 CFR §200.414(f), 2 CFR §200.68, 2 CFR §200.403, 20 CFR §683.215, and City requirements.

The 10% de minimis indirect cost rate may be used indefinitely until the subrecipient elects to negotiate an indirect cost rate.

CHARGING INDIRECT COSTS TO CORONAVIRUS RELIEF FUNDS

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) established the Coronavirus Relief Fund (CRF). Based on the latest update (as of January 15, 2021) to Federal Register 86 FR 4182 issued by the Department of the Treasury, indirect cost rates may not be applied to CARES Act funds. However, a recipient/subrecipient may use these funds to cover employee salaries and benefits for time spent on **necessary** administrative work --- which may include disbursing payments, managing the program, and other related administrative work as long as the program qualifies as responding to a COVID-19 public health emergency and second-order effects of the emergency.

The Guidance, therefore, allows charging of indirect costs as **eligible direct costs** if:

- (a) Proper timekeeping records were maintained to **track actual time spent on the program** and
- (b) If these costs are **not** recovered either as direct or indirect costs from another Federal program.

REFERENCES

- Title 2 Code of Federal Regulations (CFR) Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements
- Title 2 Code of Federal Regulations (CFR) Part 2900 Uniform Administrative Requirements, Cost Principles, and Audit Requirements – Department of Labor.
- 2 CFR 200.414 – Indirect (F&A) costs
- 20 CFR 683.215, What WIOA administrative functions and activities constitute the costs of administration subject to administrative cost limitation?
- 86 FR 4182, Document No. 2021-00827 – Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments – Department of the Treasury
- U.S. Department of Labor One-Stop Comprehensive Financial Management Technical Assistance Guide Part II, Chapter 11-5, Cost Classification, Indirect Costs pages 11-5-6 to 11-5-7. https://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf
- Federal Acquisition Regulations (FAR), Part 31.2, Contracts with Commercial Organizations, and FAR Part 42.7, Indirect Cost rates. (<https://www.acquisition.gov/Far/>)
- State of California Employment Development Department Directive WSD 18-15
- City Contract, Section 301 (F) Indirect Cost