

OJP Quick Guide: The Part 200 Uniform Requirements

Indirect Cost Rates under the Part 200 Uniform Requirements

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In December 2014, the Department of Justice (DOJ) adopted a regulation that, for the most part, applies the administrative requirements, cost principles, and audit requirements set out at 2 C.F.R Part 200 to many OJP grants and cooperative agreements, **starting with awards (including supplements) made by OJP during calendar year 2015.**

Background information and numerous resources related to this new DOJ regulation, referred to as “the Part 200 Uniform Requirements,” are available on the OJP website at ojp.gov/funding/Part200UniformRequirements.htm.

This particular OJP resource supplements the information included in OJP’s Introduction to the Part 200 Uniform Requirements (available at the webpage above). OJP expects every OJP recipient who uses this OJP resource already to be fully familiar with the information in the Introduction to the Part 200 Uniform Requirements.

If and when the Part 200 Uniform Requirements apply to (or affect) a particular OJP award, the various provisions regarding indirect costs can become pertinent. This OJP “Quick Guide” summarizes some of the important rules in the Part 200 Uniform Requirements that relate to indirect costs.

OJP expects to update and expand this resource on an ongoing basis during the coming months. If you did not recently download this document, please check the OJP Part 200 Uniform Requirements webpage to verify that this is the most recent version of the Quick Guide.

Two Important Things that Did Not Change:

1. The Part 200 Uniform Requirements did **not** themselves alter or eliminate approved federally-negotiated indirect cost rates that were current (that is, unexpired) at the time the new DOJ regulation was adopted.
2. Nothing in the Part 200 Uniform Requirements alters or eliminates any provisions in OJP grant program statutes that may “cap” (or otherwise restrict) the indirect costs that may be charged to grants under the OJP program.

Some Basic Rules – Indirect Costs under the Part 200 Uniform Requirements

Honoring Current Federally-Negotiated Indirect Cost Rates

In most cases, OJP – like other federal grant-making agencies – must honor (“accept”) a recipient’s current (that is, unexpired) federally-negotiated (and federally-approved) indirect cost rate. There can be exceptions based on specific federal statutes or regulations. Also, the Part 200 Uniform Requirements themselves authorize exceptions in certain situations.

If an OJP award recipient makes a subaward (“subgrant”) to a subrecipient, and the subrecipient has an current approved federally-negotiated indirect cost rate that the subrecipient received from its cognizant federal agency for indirect costs, the OJP recipient typically must allow the subrecipient to charge indirect costs to the subaward at that approved federally-negotiated indirect cost rate.

Absent a detailed justification submitted by the recipient (e.g., based on federal statutes) and specific advance written authorization from OJP, the decision to charge indirect costs to a subaward (“subgrant”) using a current approved federally-negotiated indirect cost rate is an option for the subrecipient, and not a decision for the recipient.

In some instances, federal statutes or federal regulations may cap or otherwise limit the indirect costs that recipients and/or

subrecipients (“subgrantees”) may charge in connection with a particular OJP award. Typically, any such cap will be described in the OJP program solicitation and/or the terms and conditions of the OJP award. Recipient and subrecipients must comply with any such applicable federal-law restrictions on indirect costs.

Honoring Elections by Recipients or Subrecipients to Charge the *De Minimis* Indirect Cost Rate

(A) *De minimis* indirect cost rate available to certain OJP recipients and subrecipients

Under the Part 200 Uniform Requirements, certain recipients of OJP awards – as well as certain subrecipients (“subgrantees”) of subawards under OJP awards – may charge indirect costs using a “*de minimis*” rate.

This *de minimis* rate is available without the need to negotiate with the cognizant federal agency for indirect costs. However, the *de minimis* rate is an option **only** for recipients (and subrecipients) that have **never** received an approved federally-negotiated indirect cost rate. Any entity with a prior approved federally-negotiated indirect cost rate – even if it expired long ago – may **not** use the *de minimis* rate. Also, under the provision set out at 2 C.F.R. 200.414(f), State and local government departments or agency units that receive more than \$35 million in direct federal funding (as described in paragraph D.1.b of Appendix VII to 2 C.F.R. Part 200) are ineligible to use the *de minimis* rate.

An entity that seeks to make use of the *de minimis* rate must comply with the requirements of OJP award conditions related to the *de minimis* rate.

(B) General Requirement to Honor the *De Minimis* Indirect Cost Rate

The *de minimis* rate available to certain recipients (and certain subrecipients) is 10% of “modified total direct costs.” “Modified total direct cost (MTDC)” is specifically defined at 2 C.F.R. 200.68. This definition must be followed.

Although certain recipients and certain subrecipients now have the option of using the *de minimis* rate – and although (in most cases) both OJP and recipients that make subawards must honor the *de minimis* rate – an entity entitled to charge indirect costs using the *de minimis* rate is not required to do so.

An entity entitled to use the *de minimis* rate – for its own reasons – may decide not to charge indirect costs to an award (or to a subaward) at the full *de minimis* rate to which it is entitled, or may decide not to charge indirect costs to an award at all.

The *de minimis* rate may be used indefinitely, but may no longer be used once an approved federally-negotiated indirect cost rate is in place.

In some cases, applicable federal law (such as a restriction in a specific OJP grant program statute) may cap or otherwise limit the amount that may be charged to an award (or subaward) as indirect costs, including through the *de minimis* rate.

(C) *De Minimis* Rate as an Option for Those Eligible to Use It

Absent unusual circumstances (such as an applicable restriction set by federal statute), the decision to charge indirect costs to an OJP award using the *de minimis* indirect cost rate is an option for the recipient, not a decision for OJP. The recipient must, however, satisfy the requirements related to use of the *de minimis* rate (as set out in 2 C.F.R. Part 200) and comply with the requirements of OJP award conditions related to the *de minimis* rate.

Similarly, absent a detailed justification submitted by the recipient (e.g., one based on federal statutes) and specific advance written authorization from OJP, the decision to charge indirect costs to a subaward (“subgrant”) using the *de minimis* indirect cost rate is an option for the subrecipient, **not** a decision for the recipient. The subrecipient must, however, satisfy the requirements related to use of the *de minimis* rate (as set out in 2 C.F.R. Part 200).

(D) Consistent Approach Required

Absent specific advance written authorization from OJP, any recipient of an OJP award (or subrecipient of a subaward under an OJP award) that elects to use the *de minimis* indirect cost rate may **not** assign to the OJP award as a direct cost any cost of a type which ordinarily would be included in (or allocated to) an indirect cost pool in an indirect cost rate proposal to a federal cognizant agency for indirect costs, if such a proposal were submitted.

Indirect Cost Rates and Federal “Match” Requirements

If, due to federal law, a particular OJP award requires a recipient to contribute “match,” and the recipient chooses to charge indirect costs to the award at a rate less than its current (unexpired) approved federally-negotiated indirect cost rate, the general OJP rule is that – unless the OJP program solicitation and/or the terms and conditions of the OJP award provide otherwise – the recipient may count as “match” the portion of its approved federally-negotiated indirect cost rate that it chooses **not** to charge to the OJP award.

Similarly, if, due to federal law, subrecipients (“subgrantees”) under an OJP grant program are required to contribute match under a subaward, and a subrecipient chooses to charge indirect costs to the award at a rate less than its current (unexpired) approved federally-negotiated indirect cost rate, the general OJP rule is that the subrecipient may count as “match” the portion of its approved federally-negotiated indirect cost rate that it chooses **not** to charge to the subaward, unless the OJP program solicitation or the terms and conditions of the OJP award to the recipient provide otherwise.

Requests for Extensions of Current (Unexpired) Federally-Negotiated Indirect Cost Rates

A recipient or subrecipient (“subgrantee”) that has a current federally-negotiated indirect cost rate may apply to its federal cognizant agency for a **one-time** extension of the federally-negotiated rate for a period of up to four years.

The federal cognizant agency for indirect costs will review and, if appropriate, approve the request for a one-time extension.

If the requested extension is granted, the recipient or subrecipient may **not** later request a rate review for the time period encompassed by the (approved) extension.

Provisions of the Part 200 Uniform Requirements pertinent to Indirect Costs

Subpart A of 2 C.F.R Part 200, including—

- 200.19 “Cognizant agency for indirect costs”
- 200.27 “Cost allocation plan”
- 200.56 “Indirect (facilities & administrative) costs”
- 200.57 “Indirect cost rate proposal”
- 200.68 “Modified total direct cost (MTDC)”
- 200.74 “Pass-through entity”
- 200.86 “Recipient”
- 200.92 “Subaward”
- 200.93 “Subrecipient”

Subpart D of 2 C.F.R Part 200, including—

- 220.331 “Requirements for pass-through entities”

Subpart E of 2 C.F.R Part 200, including—

- 200.414 “Indirect (F&A) Costs”

Appendices to 2 C.F.R Part 200, including—

- Appendix III —Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

- Appendix IV—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
- Appendix V—State/Local Governmentwide Central Service Cost Allocation Plans
- Appendix VII—States and Local Government and Indian Tribe Indirect Cost Proposals