

NI 120-356 – Application of Indirect Costs to NRCS Grant, Cooperative, and Contribution Agreements

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356.0 Purpose

To provide guidance on the application of indirect costs to NRCS grant agreements, cooperative agreements, and contribution agreements.

356.1 Background

Since fiscal year 1981, USDA appropriations acts have included a limitation on indirect costs that may be charged against certain types of agreements with specific types of recipients. In addition, 2 CFR Part 200 regulates the application of indirect costs for grant agreements and cooperative agreements for all agencies, which USDA implemented with Departmental Regulation (DR) 2255-001. This national instruction explains how these rules work together to provide a framework for NRCS's application of indirect costs and establishes policy to ensure proper implementation.

356.2 References

- A. Section 704 of the Consolidated Appropriations Act of 2016 (Public Law 114-113)
- B. 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
- C. 31 U.S.C. Chapter 63, "Using Procurement Contracts and Grant and Cooperative Agreements"
- D. 7 U.S.C. Section 6962(a)
- E. DR 2255-001, "Indirect Cost Rates Applicable to USDA Awards"
- F. Title 120, General Manual (GM), Part 401, Subpart H, Section 401.71, "Policy"

356.3 Definitions

- A. "Grant agreement" means a legal instrument of financial assistance between a Federal agency and a non-Federal entity that, consistent with 31 U.S.C. Sections 6302 and 6304, is used to enter into a relationship with the principal purpose of transferring anything of value from the Federal awarding agency to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. Section 6101(3)) and is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency and the non-Federal entity in carrying out the activity contemplated by the award. It may not be used to procure products or services for the primary benefit of the Government.
- B. "Cooperative agreement" means a financial assistance instrument between a Federal agency and a non-Federal entity that, consistent with 31 U.S.C. Sections 6302-6305, is used to enter into a relationship with the principal purpose of transferring anything of value from the Federal agency to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. Section 6101(3)) and is distinguished from a grant agreement in that it provides for substantial involvement between the Federal awarding agency and the non-Federal entity in carrying out the activity contemplated by the award. It may not be used to procure products or services for the primary benefit of the Government.
- C. "Contribution agreement" means a unique nonassistance cooperative agreement type available only to NRCS established by 7 U.S.C. Section 6962(a). NRCS may enter contribution agreements, including for the acquisition of goods or services, when the objectives of the agreement will serve a mutual interest of the parties to the agreement in carrying out NRCS programs, and all parties will contribute resources to the accomplishment of these objectives. NRCS policy requires a 50-percent contribution by the recipient unless a waiver is authorized by the NRCS agreement signatory in accordance with 120-GM, Part 401, Subpart H, Section 401.71, in which event the minimum contribution must be 25 percent.
- D. "Cognizant agency for indirect costs" for Government agencies and nonprofit organizations means the Federal agency with the largest dollar value of Federal awards with an organization or unit of government. For institutes of higher education, the cognizant agency is either Department of Health and Human Services (HHS) or the Department of Defense's (DOD's) Office of Naval Research, normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent 3 years (2 CFR Section 200.19).
- E. "Direct costs application base" means the pool of direct costs against which an indirect costs rate must be applied to calculate the indirect costs paid under an agreement.

F. "Modified total indirect costs" (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and subawards and subcontracts up to the first \$25,000 of each subaward or subcontract (regardless of the period of performance of the subawards and subcontracts 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 and subcontract in excess of \$25,000. (2 CFR Section 200.68)

G. "Negotiated indirect cost rate agreement" (NICRA) means an agreement reached between a recipient and its cognizant agency for indirect costs that establishes both the indirect costs rate for that recipient for a specified period of time and the direct cost application base against which the rate will be applied. (2 CFR Section 200.414)

H. "Total direct costs" (TDC) means all allowable direct costs included in an agreement budget.

356.4 Policy

A. USDA appropriations acts, including the current act, limit indirect costs to 10 percent for certain agreements with nonprofit entities. This is consistent with 2 CFR Section 200.408, which states: "The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award."

B. To determine whether the limitation applies to a particular agreement, consider both the agreement type and the recipient entity type.

(1) Agreement Type.—The limitation applies to cooperative agreements and contribution agreements. It does not apply to grant agreements, procurement contracts, or fee-for-service agreements under the Agriculture Conservation Experienced Services (ACES) program where the purpose is not to provide financial assistance, but rather to acquire a service.

(2) Entity Type.—NRCS relies on a recipient's self-certification of entity type in the System for Award Management (SAM) to determine nonprofit status. For the purposes of the limitation, "nonprofit entities" includes institutions of higher education; therefore, the limitation would apply to applicable agreement types with universities and colleges. The limitation does not apply to State governments, local governments, or federally recognized Tribal governments. As subsets of State governments, soil and water conservation districts would not be subject to this limitation. However, organizations like State associations of conservation districts, the National Association of Conservation Districts, and Tribal institutions would be subject to the limitation.

(3) For agreements subject to this limitation, first apply the 10-percent indirect costs rate to the agreement's TDC. Then calculate indirect costs using the rate and the direct cost application base specified in the recipient's NICRA. Use whichever rate results in the lower amount.

(4) Agreements not funded by a USDA appropriations act containing the limitation are not subject to this 10-percent limitation on indirect costs regardless of agreement or entity type.

(5) NRCS program authorizing legislation may include additional limitations on indirect costs for specific programs. Customers must identify any such limitations to the Grants and Agreement Services Branch when requesting agreements funded by such programs.

C. If an agreement is not subject to the 10-percent limitation imposed by USDA appropriations acts or another limitation included in program authorizing legislation, 2 CFR Part 200 governs the application of indirect costs.

(1) For entities with NICRAs, use the indirect costs rate and direct costs application base specified in the agreement (2 CFR Section 200.414(c)).

An entity must provide a copy of its current NICRA to NRCS in order to charge indirect costs at the rate specified in the NICRA (DR 2255-001). The assigned grants management specialist (GMS) must retain the NICRA in the official NRCS agreement file.

(2) Entities that have never established a NICRA may request, and NRCS may allow, application of a de minimis rate of 10 percent applied to MTDC. The de minimis rate is not available to governmental units (including Indian Tribal governments) that receive more than \$35 million in direct Federal funding (2 CFR Section 200.414(c)).

(i) The entity requesting to charge a de minimis rate of 10 percent of MTDC must submit a request by its authorized representative to NRCS (DR 2255-01).

(ii) NRCS must then complete a 10-percent de minimis indirect cost rate agreement. This agreement must be signed by the authorized representative of the entity and the NRCS signatory for the underlying agreement. DR 2255-01 provides a template for the agreement in appendix C. The assigned GMS must retain this 10-percent de minimis indirect cost rate agreement in the NRCS file for the associated agreement.

(3) An entity with no NICRA that is not eligible to receive the 10-percent de minimis rate may request to negotiate a NICRA with its cognizant agency for indirect costs.

(4) If an entity has no NICRA, elects not to negotiate a NICRA with its cognizant agency, and is not eligible for the de minimis rate, NRCS may not pay indirect costs on agreements with that entity (DR 2255-001).

D. In the absence of a statutory or regulatory limitation, NRCS must accept a recipient's current NICRA or comply with the justification and reporting requirements for deviations set out in DR 2255-001 and 2 CFR Section 200.414. Any decision to seek a deviation must be approved by and coordinated through the Grants and Agreements Services Branch chief, who will then seek approval from the Contracts, Grants, and Agreements Division director.

E. NRCS must include in the notice of funding opportunity for grant, cooperative, and contribution agreements the policies relating to indirect cost rate reimbursement, limitations, matching, or cost share applicable to the opportunity (e.g., whether the statutory limitation applies and whether unrecovered indirect costs may be counted toward matching requirements) (2 CFR Sections 200.414 (c) and 200.203).

F. NRCS allows unrecovered indirect costs to be included as part of cost sharing or matching obligations. "Unrecovered indirect cost" means the difference between the amount charged to the Federal award and the amount that could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate (2 CFR Section 200.306(c)). Note: this allowance does not permit recipients to be reimbursed for unrecovered indirect costs; they may only use them to help meet a match or cost share requirement.

G. Where NRCS is the cognizant agency for indirect costs for a recipient, and the recipient requests to negotiate an indirect costs rate agreement, NRCS must enter an interagency agreement with one of the agencies identified in DR 2255-001 to negotiate the agreement on its behalf. Those agencies include USDA Forest Service, Department of Health and Human Services, or the Department of Interior. See DR 2255-001 for additional information on working with other agencies to negotiate NICRAs.

H. In accordance with DR 2255-001, NRCS appoints the Contracts, Grants, and Agreement Division director as its indirect cost coordinator (ICC). Certain ICC duties are enumerated below. See DR 2255-001 for a full listing of duties.

- (1) Coordinates with or ensures that the assigned GMS coordinates with award recipients at the beginning of award negotiations to determine cognizance and indirect cost rate determination requirements
- (2) Ensures that the assigned GMS makes award recipients aware of their obligation to prepare and submit annual indirect cost rate proposals in accordance with applicable cost principles
- (3) Ensures that the assigned GMS maintains procedures for compliance with indirect cost rate considerations and applicable cost principles in the award and administration of the Federal award
- (4) Ensures that the assigned GMS requires recipients to provide a copy of the NICRA if they are requesting indirect costs with their application