

U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250

<b>DEPARTMENTAL REGULATION</b>		<b>Number:</b> 2255-001
<b>SUBJECT:</b>  Indirect Cost Rates Applicable to USDA Federal Awards	<b>DATE:</b> August 5, 2016	
	<b>OPI:</b> Office of the Chief Financial Officer	

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1. PURPOSE

This Departmental Regulation (DR) prescribes standards for assisting United States Department of Agriculture (USDA) agencies and staff offices with:

- a. Understanding the requirements for Federal agency acceptance of a negotiated indirect cost rate agreement (NICRA) and providing a de minimis rate of 10% of modified total direct costs (MTDC) set forth in Title 2 of the Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), adopted by USDA at 2 CFR Part 400.1, when awarding Federal awards to:
  - (1) non-Federal entities (NFEs);
  - (2) for-profit entities; and

- (3) foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of 2 CFR Part 200 would be inconsistent with the international obligations of the United States or the statute or regulations of a foreign government.
- b. Assisting agencies and staff offices with determining how to manage indirect cost rate negotiations when USDA is the cognizant Federal agency for indirect costs through:
  - (1) external NICRA issuance;
  - (2) agency self-issuance; or
  - (3) internal USDA issuance.

## 2. SPECIAL INSTRUCTIONS

The policies and procedures identified in this new DR are effective as of the publication date.

## 3. BACKGROUND

- a. The requirements established in 2 CFR Part 200 apply to Federal agencies that make Federal awards to NFEs.
- b. The Office of the Chief Financial Officer (OCFO) has delegated authority from the Secretary of Agriculture to implement the policies and requirements prescribed by the Director of the Office of Management and Budget (OMB), including those contained in 2 CFR Part 200, and to represent the Department in contacts with OMB. (7 CFR §2.28)
- c. Subparts A through E of 2 CFR Part 200 apply to Federal awards to for-profit entities. In cases of conflict, Federal Acquisition Regulations (FAR) Part 31, Contract Cost Principles and Procedures, Subpart 31.2, Contracts with Commercial Organizations (when applicable) and the award's specific terms and conditions take precedence.
- d. Subparts A through E of 2 CFR Part 200 can apply to foreign public entities, or foreign organizations, except where the USDA awarding agency determines that the application of these subparts would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government. (See 2 CFR §200.101(c).) This includes the application of indirect costs in accordance with 2 CFR §200.414.
- e. One of the requirements to understanding direct and indirect costs is a fundamental understanding of the Federal cost principles in 2 CFR Part 200, Subpart E – Cost Principles and the USDA regulations that implement them. Subpart E – Cost Principles of 2 CFR Part 200 provides guidance about what costs are considered allowable and what costs are unallowable under Federal awards. Federal cost principles are intended to establish a uniform approach for determining costs and promoting effective program

delivery, efficiency, and better relationships between financial assistance recipients, subrecipients and the Federal government. These principles are promulgated to determine allowable costs, enforce compliance with Federal grant requirements, and ensure that the Federal Government bears its fair share of costs, except where restricted or otherwise prohibited by law.

- f. When applicants are required to prepare a budget and budget justification as part of the application it should be consistent with instructions in the funding opportunity announcement and application instructions. The purpose of the budget and budget justification is to present and justify all expenses required to achieve project aims and objectives. Applicants need to understand the types of costs that are allowable under the award, the applicable cost principles, differences between direct and indirect costs, requirements for establishing an indirect cost rate, and any requirement for non-Federal participation, such as matching or cost sharing.
- g. Recipients of awards that receive funding from USDA agencies that finance specific physical assets rather than financing entire programs or operations will follow USDA agency specific requirements.

#### 4. POLICY

- a. USDA Federal awards provide for compensation of actual, allowable program/project costs incurred. If indirect costs are allowable under an award, it is within the applicant's discretion whether to request indirect costs in their application. USDA will not reimburse indirect costs unless the recipient has a NICRA or the recipient qualifies for the use of a de minimis rate of 10% of MTDC.
- b. When a recipient does not include indirect costs in their award, the USDA awarding office must be satisfied that the organization's accounting system can adequately identify and support all costs as direct costs to the project or program. This includes being able to identify and segregate costs on the basis of a process that assigns costs commensurate with the benefits provided to individual projects or programs.
- c. In accordance with 2 CFR §200.414, Indirect (F&A) costs, a USDA Federal awarding agency:
  - (1) Must accept a NICRA unless a limitation on the indirect cost rate is required by statute or regulation, or if a deviation is approved by a Federal awarding agency head or delegate based on publicly documented justification. (2 CFR §200.414(c)(1)).
  - (2) Must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates. (2 CFR §200.414(c)(3)).

- (3) Head or delegate must notify OMB of any approved deviation from the acceptance of the NICRA. (2 CFR §200.414(c)(2)). At USDA, the Federal awarding agency head or delegate must notify OMB when the USDA Federal agency uses a rate different from the negotiated rate for a class of Federal awards or a single Federal award unless required by Federal statute or regulation. Federal awarding agencies will provide this notification by preparing a written justification signed by their agency head or delegate to the appropriate OMB official. The USDA Federal awarding agency must provide a copy to OCFO. (Refer to Section 5.a.(1)(a)7.) Note: When a NFE voluntarily chooses to waive or reduce its indirect cost rate on a USDA Federal award, the USDA Federal awarding agency does not have to notify OMB. (Refer to Section 4. k.)
  - (4) Provide a de minimis indirect cost rate of 10% of MTDC, as defined in 2 CFR §200.68, to those NFEs who have never received a NICRA and request the de minimis rate of 10%. This rate can be used indefinitely. This methodology must be used consistently for all Federal awards until the entity chooses to negotiate for a rate. Costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. (Refer to Section 4. i.)
  - (5) Include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching or cost share. As appropriate, the USDA agencies and staff office should incorporate discussion into USDA awarding agency outreach activities with NFEs, for-profit entities, foreign public entities, or foreign organizations prior to the posting of a notice of funding opportunity. (Also refer to 2 CFR §200.203.)
  - (6) Allow for a one-time extension without further negotiation of a federally approved current NICRA for a period of up to 4 years subject to the approval of the negotiating Federal agency. If the extension is granted, the NFE, for-profit entity, foreign public entity, or foreign organization may not request a rate review until the extension period ends. (See 2 CFR § 200.414(g).)
- d. Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the USDA awarding agency/staff office. (See 2 CFR §200.306(c).)
  - e. A State, local, or tribal governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant Federal agency for negotiation. (See Appendix VII to 2 CFR Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D. 1. b.)
  - f. 2 CFR 200.331(a)(4) states that a pass-through entity must acknowledge and include in its subaward agreements an approved federally recognized NICRA between the subrecipient and the Federal government during the application process; and if no such

rate exists, either a rate negotiated between the pass-through entity and the subrecipient, or a de minimis indirect cost rate as prescribed in 2 CFR §200.414 shall be required.

- g. At USDA, the cognizant Federal agency for indirect costs is the USDA awarding agency that provides the largest dollar value of direct Federal awards to the organization. They are responsible for facilitating NICRA issuance. The cognizant USDA agency will be responsible for making the NICRA available to OCFO upon request.
- h. This section discusses USDA policy for NICRA development and servicing options when USDA is determined to be the cognizant agency for indirect costs. If USDA is not the cognizant agency for indirect costs, the entity will be referred to the cognizant Federal agency.

(1) NICRA Development

- (a) The USDA agency with the largest dollar value of direct Federal awards to the NFE, for-profit entity, foreign public entity, or foreign organization will be designated as the cognizant Federal agency for the development and negotiation of the indirect cost rate.
- (b) The approval of a NICRA should be signed by the authorized representative of the USDA agency and the NFE, for-profit entity, foreign public entity or foreign organization. (See [Appendix A](#) and [Appendix B](#).)

(2) Options for Issuing a NICRA

(a) External NICRA Issuance

1 When it is determined that USDA is the cognizant agency, the agency within USDA responsible for the issuance of a NICRA will be able to enter into an Interagency Agreement (IAA) with the Department of Health and Human Services (DHHS) or the Department of Interior (DOI) by contacting the offices listed below to obtain indirect cost rate negotiation services to establish a NICRA for NFEs (e.g., colleges or universities, non-profit organizations, state, local or tribal governments, and for-profit organizations). DOI also provides indirect cost rate negotiation services for foreign public entities and foreign organizations.

- a The Division of Cost Allocation (DCA) located within DHHS. Additional information may be obtained by visiting the following website: <http://www.psc.gov/psc-homepage-redesign/service-area/my servicedetails/grants-finance-and-administration/indirect-cost-negotiations>

b The Interior Business Center, Indirect Cost Rate Services, located within the DOI, can be accessed by visiting the following website: <https://www.doi.gov/ibc/services/finance/indirect-cost-services>

(b) USDA Agency Self-issuance

1 When an agency is appropriately staffed with training, accounting, and budget personnel, the cognizant USDA Agency may choose to negotiate and establish the NICRA.

(c) Internal USDA Agency Issuance

1 A USDA cognizant agency may enter into an inter-agency agreement with another USDA agency to negotiate and establish a NICRA on its behalf instead of using the external NICRA issuance option.

2 USDA agencies can obtain the indirect cost rate services of the Forest Service (FS) by sending a request to the following email address: FCOB@FS.FED.US or by visiting the FS CFO Audit and Assurance website: <http://www.fs.fed.us/about-agency/audit-assurance>.

i. This section discusses USDA policy when a NFE, for-profit entity, foreign public entity or foreign organization requests the use of a de minimis rate of 10% of MTDC.

- (1) To be eligible, the NFE, for-profit entity, foreign public entity or foreign organization has never received a NICRA, except that any governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs.
- (2) The NFE, for-profit entity, foreign public entity or foreign organization requesting to charge a de minimis rate of 10% of MTDC should submit a request by their authorized representative to the USDA Federal awarding agency from which they are requesting Federal financial assistance.
- (3) The USDA Federal awarding agency will complete a 10% De Minimis Indirect Cost Rate Agreement that is to be signed by the authorized representative of the USDA agency and the NFE, for-profit entity, foreign public entity or foreign organization. (See [Appendix C.](#))
- (4) The USDA Federal awarding agency will notify the NFE, for-profit entity, foreign public entity or foreign organization if they do not qualify for the use of the de minimis rate of 10% of MTDC.
- (5) Indirect costs using the de minimis rate of 10% of MTDC found to be inconsistently charged will require reimbursement.

- j. Requirements for the development and submission of indirect cost rate proposals are found in:
- (1) Appendix III to 2 CFR Part 200 – Indirect Cost (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
  - (2) Appendix IV to 2 CFR Part 200 – Indirect (F&A) Costs Identification and Assignment and Rate Determination for Nonprofit Organizations; and
  - (3) Appendix VII to 2 CFR Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.
- k. This section discusses USDA policy when a NFE voluntary chooses to waive or reduce its indirect cost rate on a Federal award.
- (1) Instances where the NFE receiving a direct Federal award, or the subrecipient, has a federally approved indirect cost rate, but voluntarily chooses to waive indirect costs or use a lower rate than its full negotiated indirect cost rate (see Frequently Asked Questions (FAQ) for OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, at [FAQ .414-8](#)):
    - (a) The USDA agency or staff office, or the pass-through entity, can allow this. The USDA Federal awarding agency head or delegate does not have to sign off. There is no need to notify OMB.
    - (b) The lower rate than the federally negotiated indirect cost rate represents the NFE’s, or subrecipient’s, maximum billing rate under the award.
    - (c) The decision must be made solely by the NFE, or subrecipient, that is eligible for indirect cost reimbursement, and must not be encouraged or coerced in any way by the USDA awarding agency or staff office (or pass-through entity).
    - (d) For these award-specific and voluntary reductions, the USDA agency or staff office will need to document the decision to accept an indirect cost rate that is lower than the full negotiated indirect cost rate and include the agreed-upon rate in the award terms and conditions. The decision should clearly indicate the NFE’s, or subrecipient’s, voluntary election to use a lower rate than their NICRA.
  - (2) Instances where the NFE receiving a direct Federal award, or a subrecipient, qualifies for the 10% de minimis rate but elects to use a rate lower than the 10% de minimis rate:

- (a) The USDA agency or staff office, or pass-through entity, can allow this. The USDA Federal awarding agency head or delegate does not have to sign off. There is no need to notify OMB.
- (b) The lower rate than the 10% de minimis rate represents the NFE's, or subrecipient's, maximum billing rate under the award.
- (c) The USDA agency or staff office (or pass-through entity) will need to document the agreement and include the agreed-upon indirect cost rate in the award terms and conditions. The agreement should clearly indicate the NFE's, or subrecipient's, voluntary election to use a lower rate than the 10% de minimis rate.

## 5. RESPONSIBILITIES

### a. USDA Agencies/staff offices:

- (1) Appoint an Indirect Cost Coordinator (ICC) that will serve as a liaison between the USDA agency/staff office and the Office of the Chief Financial Officer (OCFO). The USDA agency/staff office will notify the OCFO of appointments and subsequent replacements.

#### (a) The ICC:

- 1 Coordinates with or ensures that agency staff coordinate with award recipients at the beginning of award negotiations to determine cognizance and indirect cost rate determination requirements.
- 2 Ensures that agency staff make award recipients aware of their obligation to prepare and submit annual indirect cost rate proposals in accordance with applicable cost principles.
- 3 Ensures that agency staff maintain procedures for compliance with indirect cost rate considerations and applicable cost principles in the award and administration of the Federal award.
- 4 Ensures that agency staff require recipients to provide a copy of the NICRA if they are requesting indirect costs with their application.
- 5 Ensures that agency staff provide OCFO with a copy of the NICRA in the event of an audit or other inquiry.
- 6 Ensures that agency staff provide OCFO with a copy of the approved de minimis rate of 10% of MTDC of a Federal award in the event of an audit

or other inquiry. Agency staff office must keep the documentation of this decision on file.

- 7 Submits to OCFO a copy of the written justification signed by their head of the agency or delegate of the USDA Federal awarding agency's deviation from the approved NICRA to the appropriate OMB official. The written justification should explain the program, include whether a deviation related to the program has been granted in the past, and the process for negotiating and/or communicating to recipients the indirect cost rate requirements under the program. The program must make its documentation, rate deviations, and other program information publically available.
- 8 Keeps on file documentation regarding the number of NFEs voluntarily choosing to waive or reduce indirect cost rates on Federal awards. Will provide information to OCFO as needed.
- 9 Keeps on file documentation regarding the number of agency exceptions to the provisions of federally approved NICRAs and the number of indirect cost rate extensions approved by the Federal cognizant agency. Will provide information to OCFO as needed.

b. OCFO will:

- (1) Act as USDA's primary ICC for coordinating indirect cost rate issues within USDA.
- (2) Receive written documentation from USDA agencies/staff offices of approved deviations submitted to OMB.
- (3) Provide a copy of OMB's most recent FAQs via SharePoint: <https://ems-team.usda.gov/sites/OCFO/TARD/FFAC/Indirect%20Cost/Forms/AllItems.aspx>. In case of any discrepancy, 2 CFR Part 200 governs.

## 6. DEFINITIONS

- a. Cognizant agency for indirect costs. The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under 2 CFR Part 200 on behalf of all Federal agencies. The cognizant agency for indirect costs is not necessarily the same as the cognizant agency for audit. (See §200.19.)
- b. Contract. A legal instrument by which a NFE purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the NFE considers it a contract, when the

substance of the transaction meets the definition of a Federal award or subaward. (See §200.22.)

- c. Cooperative agreement. A legal instrument that, in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (FGCAA), reflects a relationship between a Federal agency and a NFE where the principal purpose of the relationship is to transfer a thing of value to the NFE to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government and where substantial involvement is expected between the Federal agency and the NFE when carrying out the activity contemplated in the agreement. (See §200.24; 31 U.S.C. § 6305.)
- d. Cost sharing or matching. The portion of project costs not paid by Federal funds (unless otherwise authorized by Federal statute). (See §§200.29 and 200.306.)
- e. Federal award. As set forth in §200.38, Federal award has the meaning, depending on the context, in either paragraphs (1) or (2) of this section:
  - (1) The Federal financial assistance that a NFE receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability; or the cost-reimbursement contract under the Federal Acquisition Regulations that a NFE receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in §200.101 Applicability.
  - (2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of §200.40 Federal financial assistance, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.
  - (3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).
  - (4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.
- f. Federal financial assistance. As set forth in §200.40:
  - (1) Federal financial assistance means assistance that NFEs receive or administer in the form of:
    - (a) Grants;
    - (b) Cooperative agreements;

- (c) Non-cash contributions or donations of property (including donated surplus property);
  - (d) Direct appropriations;
  - (e) Food commodities; and
  - (f) Other financial assistance (except assistance listed in paragraph (2) of this section).
- (2) For §200.202 Requirement to provide public notice of Federal financial assistance programs and Subpart F – Audit Requirements, Federal financial assistance also includes assistance that NFEs receive or administer in the form of:
- (a) Loans;
  - (b) Loan Guarantees;
  - (c) Interest subsidies; and
  - (d) Insurance.
- (3) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in §200.502 Basis for determining Federal awards expended, paragraphs (h) and (i).
- g. Foreign organization. An entity that is:
- (1) A public or private organization located in a country other than the United States and its territories that are subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;
  - (2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;
  - (3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or
  - (4) An organization located in a country other than the United States not recognized as a Foreign Public Entity. (See §200.47.)
- h. Foreign public entity. Foreign public entity means:
- (1) A foreign government or foreign governmental entity;
  - (2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288-288f);

- (3) An entity owned (in whole or in part) or controlled by a foreign government; or
  - (4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities. (See §200.46.)
- i. Grant agreement. A legal instrument that, in accordance with the FGCAA, reflects a relationship between a Federal agency and a NFE where the principal purpose of the relationship is to transfer a thing of value to the NFE to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government and where substantial involvement is not expected between the Federal agency and the NFE when carrying out the activity contemplated in the agreement. (See §200.51; 31 U.S.C. § 6304.)
- j. Indian tribe (or “federally recognized Indian tribe”). Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services. (See §200.54.)
- k. Institution of Higher Education (IHE). IHE is defined at 20 U.S.C. 1001 as an educational institution in any State that:
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d) of title 20 of the U.S. Code;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary of Education;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

- l. Indirect (facilities and administrative (F&A)) costs. Indirect F&A costs means 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 cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived. (See §§200.56 and 200.414.)
- m. Modified Total Direct Costs (MTDC). 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. Other items may 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. (See §200.68.)
- n. Non-Federal Entity (NFE). Non-Federal entity means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient. (See §200.69.)
- o. Nonprofit organization. Nonprofit organization means any corporation, trust, association, cooperative, or other organizations, not including IHEs; that:
  - (1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
  - (2) Is not organized primarily for profit; and
  - (3) Uses net proceeds to maintain, improve, or expand the operations of the organization. (See §200.70.)
- p. Pass-through entity. Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. (See §200.74.)
- q. Recipient. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. (See §200.86.)
- r. Subaward. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. (See §200.92.)

- s. Unrecovered indirect cost. The difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the NFE's approved negotiated indirect cost rate. (See §200.306(c).)

-END-

**APPENDIX A**

**SAMPLE**

**NEGOTIATED INDIRECT COST RATE AGREEMENT  
NON-PROFIT ORGANIZATION**

**ORGANIZATION:**

ABC Organization  
Street Address  
City/State/Zip Code

**DATE:**

**FILE REF:** Replaces the agreement dated

The rates approved in this Agreement are for use on grants, contracts, and other agreements with the Federal Government to which 2 CFR Part 200 applies, subject to the conditions in Section II, A, below. The rates were negotiated by ABC Organization and the U.S. Department of Agriculture, (Agency) in accordance with the authority contained in Subpart E and Appendix IV of 2 CFR Part 200.

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**SECTION I: RATES**

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<u>EFFECTIVE PERIOD TYPE</u>	<u>FROM</u>	<u>TO</u>	<u>RATE</u>	<u>LOCATION</u>	<u>APPLICABLE TO</u>
<b>INDIRECT COST:</b>					All
Final	7/1/00	6/30/01	7.74%	All	Programs
					All
Final	7/1/01	6/30/02	9.24%	All	Programs
					All
Provisional	7/1/02	6/30/03	8.75%	All	Programs
					All
Provisional	7/1/03	6/30/05	9.00%	All	Programs

**(SEE SPECIAL REMARKS)**

**BASE:**

Total direct costs excluding capital expenditures (buildings, individual items of equipment; alterations and renovations), and that portion of each sub-award in excess of \$25,000.

**TREATMENT OF FRINGE BENEFITS:**

Fringe benefits are specifically identified to each employee and are charged individually as direct or indirect costs (as applicable).

**TREATMENT OF PAID ABSENCES:**

Sick leave, holiday, and other paid absences are included in salaries and wages and are claimed on grants, contracts and other agreements as part of the normal cost for salaries and wages. Separate claims for these absences are not made. Vacation pay is accrued and charged the same as other fringe benefits.

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## SECTION II: GENERAL

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- A. **LIMITATIONS:** Use of the rate(s) contained in the Agreement is subject to all statutory or administrative limitations and is applicable to a given grant or contract only to the extent that funds are available. Acceptance of the rate(s) agreed to herein is predicated upon the following conditions:
1. That no costs other than those incurred by the grantee/ contractor or allocated to the grantee/contractor via an approved central service cost allocation plan were included in its indirect cost pool as finally accepted and that such incurred costs are legal obligations of the grantee/ contractor and allowable under the governing cost principles,
  2. That the same costs that have been treated as indirect costs have not been claimed as direct costs,
  3. That similar types of costs have been accorded consistent treatment, and
  4. That the information provided by the grantee/contractor which was used as a basis for acceptance of the rate(s) agreed to herein is not subsequently found to be materially inaccurate.

The elements of indirect cost and the type of distribution base(s) used in computing provisional rates are subject to revision when final rates are negotiated. Also, the rates cited in this Agreement are subject to audit.

- B. **CHANGES:** The grantee/contractor is required to provide written notification to the indirect cost negotiator prior to implementing any changes which could affect the applicability of the approved rates. Changes in the indirect cost recovery plan, which may result from changes such as the method of accounting or organizational structure, require the prior written approval of the Federal cognizant agency. Failure to obtain such prior written approval may result in cost disallowance.
- C. **NOTIFICATION TO FEDERAL AGENCIES:** A copy of this document is to be provided by this organization to other Federal funding sources as a means of notifying them of the Agreement contained herein.
- D. **PROVISIONAL-FINAL RATES:** The grantee/contractor must submit a proposal to establish a final rate within six months after their fiscal year end. Billings and charges to federal awards must be adjusted if the final rate varies from the provisional rate. If the final rate is greater than the provisional rate and there are no funds available to cover the additional indirect costs, the organization may not cover all indirect costs. Conversely, if the final rate is less than the provisional rate, the organization will be required to pay back the difference to the funding agency. Indirect costs allocable to a

particular award or other cost objective may not be shifted to other Federal awards to overcome funding deficiencies to avoid restrictions imposed by law or by the terms of the award.

E. **SPECIAL REMARKS:**

1. Indirect costs charged to Federal grants/contracts by means other than the rate(s) cited in this Agreement should be adjusted to the applicable rate(s) cited herein and be applied to the appropriate base to identify the proper amount of indirect costs allocable to the program.
2. Contracts/grants providing for ceilings as to the indirect cost rate(s) or amount(s) which are indicated in Section I above, will be subject to the ceilings stipulated in the contract or grant agreements. The ceiling rate or the rate(s) cited in this Agreement, whichever is lower, will be used to determine the maximum allowable indirect cost on the contract or grant agreement.
3. Administrative costs consist of all **Direct** and **Indirect** costs associated with the management of an organization's programs. Organizations should refer to their contracts/grants terms and specific program legislation for the applicable definition of Administrative Costs and any related limitations.
4. The indirect cost pool consists of its allocable share of the following administrative expenses (all costs identifiable to a specific contract or grant must be charged directly):
  - a. Salaries:
    - (1) 100% indirect- President, Executive Director, Administrative Assistant, Personnel Staff, Office Services, Accounting, Network Support, Receptionist.
    - (2) The remaining salaries are charged either to direct or indirect costs by individual time sheets.
  - b. Employee fringe benefits for indirect employees- FICA, Unemployment Insurance, Workers Compensation, health insurance, pension, long term disability, and life insurance. Vacation pay is accrued and charged like other fringe benefits.
  - c. Professional fees & contract services
  - d. Supplies & materials
  - e. Telephone

- f. Postage and shipping
- g. Occupancy
- h. Rental & maintenance of equipment
- i. Printing & publication, visual aids
- j. Travel
- k. Training and educational assistance costs
- l. Depreciation and amortization costs

**ACCEPTANCE BY THE ORGANIZATION:**

**BY THE COGNIZANT AGENCY ON BEHALF OF THE FEDERAL GOVERNMENT:**

<b>ABC Organization</b>	<b>U.S. DEPARTMENT OF AGRICULTURE</b>
(Grantee/Contractor)	(Agency Name)
(Signature)	(Signature)
(Name)	(Name)
(Title)	(Title)
(Date)	(Date)

Telephone: (xxx) xxx-xxxx

**APPENDIX B**

**SAMPLE**

**NEGOTIATED INDIRECT COST RATE AGREEMENT  
FOR-PROFIT ORGANIZATION**

**COMMERCIAL RATE AGREEMENT**

EIN #: XX-XXXXXX

DATE:

**COMPANY:**

Name

Street Address

City/State/Zip Code

The rates approved in this agreement are for use on grants, contracts and other agreements with the Federal Government to which the Federal Acquisition Regulations, Subpart 31.2, applies, subject to the conditions in Sections II and III.

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**SECTION I: INDIRECT COST & FRINGE BENEFIT RATES**

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<u>TYPE</u>	<u>EFFECTIVE PERIOD</u>		<u>RATE</u>	<u>LOCATIONS</u>	<u>BASE</u>
	<u>FROM</u>	<u>TO</u>			
Final	01/01/2011	12/31/2011	43.4%	FRINGE BENEFITS	(A)
Provisional	01/01/2012	06/30/2013	42.0%	FRINGE BENEFITS	(A)
Final	01/01/2011	12/31/2011	82.6%	OVERHEAD	(B)
Provisional	01/01/2012	06/30/2013	82.0%	OVERHEAD	(B)
Final	01/01/2011	12/31/2011	37.9%	GENERAL & ADMINISTRATIVE	(C)
Provisional	01/01/2012	06/30/2013	37.0%	GENERAL & ADMINISTRATIVE	(C)

Rate Application Base(s):

(A) Total labor excluding paid absences (vacation, holiday, sick and other paid leave).

(B) Direct labor, bid & proposal labor and IR&D labor.

(C) Total costs excluding G&A expenses.

COMPANY:  
Name

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SECTION II: NOTES

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**TREATMENT OF FRINGE BENEFITS:** Fringe benefits are charged using the rate(s) listed in Section I of this Agreement. Fringe benefits include: FICA, Group Medical and Dental Insurance, 401K, Workers Compensation and Paid Absences (vacation, holiday, sick and other paid leave).

**TREATMENT OF PAID ABSENCES:** Total labor excludes the cost of paid absences (vacation, holiday, sick, and other paid leave). Rather, paid absences are included in the company's fringe benefit rate(s). Accordingly, claims for direct labor must exclude paid absences.

**TREATMENT OF INDEPENDENT RESEARCH & DEVELOPMENT (IR&D):** Independent research and development (IR&D) costs are unallowable.

**DEFINITION OF EQUIPMENT:** Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

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SECTION III: GENERAL TERMS

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- A. **LIMITATIONS:** Use of the rate(s) contained in this agreement is subject to any applicable contractual or grant limitations. Acceptance of these rates agreed to herein is predicated upon the following conditions: (1) that no costs other than those incurred by the contractor or grantee were included in its indirect cost proposal and that such costs are legal obligations of the contractor or grantee, (2) that the same costs that have been treated as indirect costs have not been claimed as direct costs, and (3) that similar types of costs have been accorded consistent treatment.
- B. **ACCOUNTING CHANGES:** The rate(s) contained in this agreement is based on the accounting system in effect at the time the proposal was prepared and the rates negotiated. Changes to the method of accounting, which affect the amount of reimbursement resulting from the use of this rate(s), require the prior approval of the authorized representative of the cognizant negotiation agency. Such changes include, but are not limited to, changes in the charging of a particular type of cost from indirect to direct. Failure to obtain such approval may result in subsequent cost disallowances.
- C. **AUDIT:** All costs, direct and indirect, Federal, and non-Federal are subject to audit. As a result, adjustments to grants, contracts and future negotiations may result from audit of the indirect cost rate proposal upon which this agreement was based.
- D. **NOTIFICATION TO FEDERAL AGENCIES:** copies of this document may be provided to other Federal offices as a means of notifying them of the rates agreed to herein.

COMPANY:  
Name

BY THE COMPANY:

Name

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

ON BEHALF OF THE FEDERAL  
GOVERNMENT:

U.S. Department of Agriculture  
(Agency Name)  
\_\_\_\_\_  
(Agency)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

Telephone: (xxx) xxx-xxxx

**APPENDIX C**

**SAMPLE**

**FEDERAL AWARDEE ELECTION OF  
10 PERCENT DE MINIMIS INDIRECT COST RATE**

ORGANIZATION:  
ABC Organization  
800 9<sup>th</sup> Street, SW  
Washington, D.C. 20004

DATE: February 9, XXXX

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**10 PERCENT DE MINIMIS INDIRECT COST RATE**

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<u>NAME</u>	<u>EFFECTIVE PERIOD</u>		<u>RATE</u>	<u>BASE</u>
	<u>FROM</u>	<u>TO</u>		
INDIRECT COSTS	01/01/15	UNTIL AMENDED	10%	(A)

Rate Application Base:

(A) Modified Total Direct Costs (MTDC). 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.

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**NOTES & GENERAL TERMS**

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**APPLICABILITY AND TYPE OF RATE:** The 10 percent de minimis rate is for use on grants, contracts and other agreements with the Federal government to which 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) applies. Once elected, the 10 percent de minimis rate must be used consistently for all Federal awards received by the non-Federal entity until such time as the non-Federal entity chooses to negotiate for a rate.

**COGNIZANT AGENCY DETERMINATION:** Issuance of the 10 percent de minimis rate does not infer cognizance. Rather, cognizance will be determined upon the Federal government's receipt of a request to establish a Negotiated Indirect Cost Rate Agreement (NICRA).

**LIMITATIONS:** Use of the 10 percent de minimis rate is subject to any applicable contractual or grant limitations. Acceptance of the 10 percent de minimis rate is predicated upon the following conditions: (1) the non-Federal entity has never received a Negotiated Indirect Cost Rate Agreement (NICRA) from a Federal agency and is therefore eligible for the 10 percent de minimis rate; (2) that no costs other than those incurred by the non-Federal entity will be

recovered by using the 10 percent de minimis rate and such costs are legal obligations of the non-Federal entity; (3) that the same costs that have been treated as indirect costs have not been claimed as direct costs; and (4) that similar types of costs have been accorded consistent treatment.

AUDIT: All costs, direct and indirect, Federal, and non-Federal are subject to audit. As a result, adjustments to grants and contracts may result from audits.

NOTIFICATION TO FEDERAL AGENCIES: Copies of this document may be provided to other Federal offices as a means of notifying them of the non-Federal entity's election of the 10 percent de minimis rate.

ORGANIZATION:  
ABC Organization

BY THE ORGANIZATION:

ON BEHALF OF THE FEDERAL  
GOVERNMENT:

\_\_\_\_\_  
Organization

\_\_\_\_\_  
U.S. Department of Agriculture  
(Agency Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Telephone: (xxx) xxx-xxxx