CAPLAW FAQ

A series of common legal questions and answers for the CAA network

Indirect Cost Webinar Series Q&A

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This Q&A was created pursuant to the webinar series CAPLAW offered earlier this year, Ins and Outs of Indirect Costs Under the Super Circular. We received over 60 questions relating to indirect costs during and after the series and have attempted to answer many of those questions in this Q&A. The questions are grouped into the following six subject areas, mostly organized in the order they were addressed in the webinar series. Click below for direct access to those particular questions.

Recordings of the four webinars along with the PowerPoints for each are available on CAPLAW's website and we recommend listening to those for more detailed explanations and examples of the concepts addressed in this Q&A.

As discussed in the webinar series, the Super Circular (or Uniform Guidance) retains the two existing options for recovering indirect and/or joint (often referred to as "shared") costs incurred by a non-federal entity – via a federally negotiated indirect cost rate (NICR) and/or a cost allocation plan. The option for recovering indirect costs via a NICR remains available only to a non-federal entity that receives funding directly from a federal agency (e.g., a Head Start grant). It is important to remember that a grantee may only recover costs specifically identified as "indirect" in the cost principles section of the Uniform Guidance if the grantee has a federal NICR. The Uniform Guidance added one new option for recovering indirect costs – a rate of 10% of "modified total direct costs" (also known as the "de minimis rate") – which is available to non-federal entities that receive direct federal funding and have never previously obtained a federal NICR.

One other new, notable concept discussed in the webinar series is the requirement that pass-through entities (i.e., state Community Service Block Grant (CSBG) offices that make CSBG grants to Community Action Agencies (CAAs) and CAAs that make subgrants to Head Start delegate agencies or partners) are now required to accept a subrecipient's federal NICR, if it has one. For those subrecipients without a federal NICR, a pass-through entity must either permit the subrecipient to use the 10% de minimis rate or negotiate a higher rate with the subrecipient. The pass-through entity cannot force or entice a subrecipient to accept a negotiated rate that is lower than the 10% de minimis rate.

This Q&A is not authorized or approved by federal Office of Community Services (OCS) (the office within HHS that administers the block grant) or by the federal Office of Management and Budget (OMB, which issued the Uniform Guidance) and does not constitute legal advice. Rather, the webinar series and Q&A are intended to help CAAs understand new requirements relating to indirect costs and

assess whether the ways in which they comply with the unchanged requirements are sound and effective. Citations in this Q&A are to OMB's version of the Uniform Guidance at 2 Code of Federal Regulations (C.F.R.) Part 200 and to the version of the Uniform Guidance adopted by the U.S. Department of Health and Human Services (HHS) at 45 C.F.R. Part 75. Also, references to the Council on Financial Assistance Reform's (COFAR) FAQ are included throughout and we recommend that CAAs review the FAQ when addressing issues arising out of the implementation of and compliance with the Uniform Guidance.

Modified Total Direct Costs (MTDC)

1. When would the modified total direct cost (MTDC) base be used by a non-federal entity?

MTDC is used as the base to which the 10% de minimis rate is applied and also serves as the base to which some of the federally negotiated indirect cost rates are applied depending on the calculation method chosen by the non-federal entity.

2. What costs make up a modified total direct cost (MTDC) base and which costs are excluded when determining the base?

MTDC includes 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 determination specifically excludes the following:

- Equipment
- Capital expenditures
- Charges for patient care
- Rental costs
- Tuition remission
- Scholarships and fellowships
- Participant support costs
- Portion of each subaward in excess of $25,000

See 2 C.F.R. § 200.68, 45 C.F.R. § 75.2. Other items not specifically identified may be excluded only when it is necessary to avoid a serious inequity in the distribution of indirect costs and if prior approval is received from the cognizant agency for indirect costs.

3. What type of rental costs are excluded from modified total direct cost (MTDC)?

Generally, all rental costs are excluded from MTDC – for example, rental costs paid by the non-federal entity for use of a facility as well as those that are paid on behalf of clients as rental assistance payments. Rental costs paid on behalf of a client are most commonly deemed "flow through" costs and excluded from the MTDC base as distorting items. These payments typically reflect the reality that managing them does not require the full range of management services that is necessary for managing programs that are directly operated by the nonfederal entity. If a CAA believes that inclusion of the flow through amounts (for rental assistance) would result in a fairer distribution of indirect costs, the CAA could propose including such costs in its MTDC base but will need to be prepared to defend this decision in discussions with a federal indirect cost rate negotiator or a pass-through entity.

4. Are non-federal funds included in modified total direct costs (MTDC)?

Yes. The MTDC rate option requires the inclusion of all direct costs in the base regardless of the funding source that will pay for them and regardless of whether they are allowable or not allowable for federal purposes. The numerator must include only costs that would be allowable for federal award purposes, including all such allowable indirect costs whether they will be funded through a federal award or other sources. As seen in the indirect cost rate examples in the third webinar, *What is the Best Option for Calculating Our CAA's Indirect Cost Rate*, if there are unallowable indirect costs, they cannot be charged to any federal award and must be funded through some other source.

5. What is a participant support cost?

A participant support costs is a direct cost paid to or on behalf of participants or trainees for items such as stipends or subsistence allowances, travel allowances, and registration in connection with conferences or training projects. 2 C.F.R. § 200.75; 45 C.F.R. § 75.2.

6. Who is a participant for purposes of determining participant support costs excluded from the modified total direct costs (MTDC)?

A participant is an individual generally receiving benefits and services from an organization's federally-funded programs. A participant is not an employee. 2 C.F.R. § 200.75; 45 C.F.R. § 75.2.

7. Which of the payments in the following scenarios are participant support costs that are excluded when determining the modified total direct cost (MTDC) base?

a. Utility payments to utilities, i.e., vendors and/or customers for the Low Income Home Energy Assistance Program (LIHEAP)

b. Financial assistance to participants in the Emergency Solutions Program, i.e., payment of deposits and first month's rent

c. Food donated to a regional food bank that is then distributed to the public

d. Workforce Innovation and Opportunity Act (WIOA) travel and training payments for dislocated workers

e. WIOA housing (i.e., mortgage or rent) or gasoline payments to help participants attending school

f. WIOA stipend payments to youth participants

As to the payments in a, b, and c, none of these payments fall within the definition of "participant support costs" set forth in the Uniform Guidance because they are not direct costs for items such as "stipends or subsistence allowances, travel allowances and registration fees paid to or on behalf of participants or trainees in connection with conferences, or training projects." 2 C.F.R. § 200.75; 45 C.F.R. § 75.2. Payment of rent in scenario b would most likely be excluded from MTDC as a rental cost, i.e., rental payment made on behalf of a client.

As to the WIOA payments in d, e and f, these payments appear to fall within the definition of participant support costs and would be excluded from MTDC. The payments are necessary expenses for successful participation in conferences and training projects. However, many of the WIOA programs provide funds to be utilized for participant wages or stipends and the total dollars involved can be significant. Excluding the wages and stipends from the MTDC base may therefore result in minimizing the share of indirect costs that may be charged to the WIOA awards despite the fact that the administrative demands of payroll and related functions for the participant/employees are substantial. If a CAA believes that including these costs would result in a fairer distribution of indirect costs, the CAA could include such costs in its MTDC base but should document and be prepared to defend its decision if questioned by a funding source.

8. Are in-kind services (i.e., donated services) included in modified total direct costs (MTDC)?

"The value of services donated to a nonprofit organization used in the performance of a direct cost activity must be considered in the determination of the organization's indirect cost rate... when the following circumstances exist..."

Yes, if the services are donated to a nonprofit organization (as opposed to a state or local government) and certain criteria are met. The value of services donated to a nonprofit organization used in the performance of a direct cost activity must be considered in the determination of the organization's indirect cost rate and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist: (1) the aggregate value of the services is material; and (2) the services are supported by a significant amount of the indirect costs incurred by the nonprofit organization. In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect costs to the services. Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal

award or used to meet cost sharing or matching requirements. 2 C.F.R. § 200.434(e); 45 C.F.R. § 75.434(e).

9. If we pay a Weatherization Assistance Program (WAP) contractor more than $25,000 as part of our contract with him, must this expense over $25,000 be excluded from the modified total direct costs (MTDC) determination?

"The arrangement with the WAP contractor would be a subcontract."

No. The arrangement with the WAP contractor would be a subcontract. Only the portion of each *subaward* in excess of $25,000, not subcontract, must be excluded from the MTDC determination. MTDC includes, among other costs, up to the first $25,000 of each *subaward*. See 2 C.F.R. § 200.68, 45 C.F.R. § 75.2 (emphasis added).

10. If the subaward(s) to a subrecipient is made up of several separately executed funding agreements, in the course of the period of performance may the non-federal entity include up to $25,000 of each separate subaward agreement in the MTDC base for the award segment even if the scope of the subaward(s) remains the same?

Yes, according to a September 2015 update the COFAR FAQ explains that:

> *If the subaward needs to be separately negotiated or renegotiated over the period of performance, this would support including an additional $25K in MTDC for each subaward negotiation. The allowance of $25K is for the life of the award, or for each period of performance. Renewals of subawards may be considered, for determining the $25K inclusion in MTDC, if they need to be formally renegotiated within the period of performance of the grant.*

COFAR FAQ 200.68-1.

10% de Minimis Rate

11. If a recipient had an approved federally negotiated indirect cost rate (NICR) over 18 years ago, does the recipient have the option of using the 10% de minimis rate?

No. The Uniform Guidance clearly states that a non-federal entity is only eligible for the 10% de minimis rate if it has never received a negotiated indirect cost rate.

12. Are you aware of a website or source to determine if a CAA has ever had a federally negotiated indirect cost rate (NICR)?

No. To determine if it ever had a NICR, the CAA would need to review its own financial records. If the CAA never received a federal grant directly from a federal agency, such as a Head Start grant, then the CAA would not have been able to obtain a NICR. If the CAA has, at any time, received federal grants directly from a federal agency, there is a greater likelihood that the CAA may have previously had a NICR.

13. Does a recipient have to justify using the 10% de minimis rate?

No. The Council on Financial Assistance Reform (COFAR), the group designated to develop and facilitate OMB's Uniform Guidance, explained in the preamble to the proposed Uniform Guidance that it settled on 10% for the rate because "an automatic rate without any review of actual costs . . . should remain at the conservative levels . . . to protect the Federal government against excessive over reimbursement." Federal Register, Vol. 78, No. 248, 78598 (Dec. 26, 2013). This means that if a CAA's actual indirect costs are less than 10% of modified total direct costs (MTDC), it is not required to charge a rate that reflects those actual costs but rather may charge the 10% of MTDC.

"...if a CAA's actual indirect costs are less than 10% of modified total direct costs (MTDC), it is not required to charge a rate that reflects those actual costs but rather may charge the 10% of MTDC."

14. If we opt for the 10% de minimis rate and we receive federal funds on a reimbursement basis, do we bill for 10% of monthly expenses for each program?

Yes. As a part of billing for its expenses, the CAA would apply the 10% de minimis rate to the modified total direct costs (MTDC) calculated and invoiced for each program (not simply 10% of monthly expenses).

Federally Negotiated Indirect Cost Rates

15. How is cognizant agency defined under the Uniform Guidance?

There are two types of cognizant agencies under the Uniform Guidance: a cognizant agency for indirect costs and a cognizant agency for audit. A cognizant agency for indirect costs is the federal agency responsible for reviewing, negotiating and approving cost allocation plans or indirect cost proposals. 2 C.F.R. § 200.19, 45 C.F.R. 75.2. The federal agency from which a CAA receives the largest amount of direct federal funding is its cognizant agency for indirect costs. Appendix IV to Part 200, C.2; Appendix V to Part 200, F.1; Appendix IV to Part 75, C.2; Appendix V to Part 75, F.1.

For example, if a CAA receives the following federal funding:

- Head Start - $2,000,000,
- Housing and Urban Development (HUD) - $500,000,
- Community Services Block Grant (CSBG) - $750,000 and
- Weatherization Assistance Program (WAP) - $2,500,000,

Its cognizant agency for indirect costs would be the U.S. Department of Health and Human Services (HHS) because the largest amount of direct federal funding the CAA receives is from the Office of Head Start within the Federal Department of Health and Human Services' Administration for Children and Families. The other source of direct federal funding the CAA receives is from HUD and is a smaller amount. The CSBG and WAP funding is not received directly from the federal government; rather the funding flows through the state, which is a pass-through entity. The cognizant agency for audit may be different than the cognizant agency for indirect costs and is defined as the agency that provides the predominant amount of direct funding to a non-federal entity unless the Office of Management and Budget designates otherwise. 2 C.F.R. §§ 200.18, 200.513; 45 C.F.R. §§ 75.2, 75.513.

16. What are examples of costs that can only be recovered from a federal award if the grantee has an indirect cost rate (i.e., they can only be recovered as indirect costs)?

"The concept of indirect costs only exists for those grantees and subgrantees that have an indirect cost rate."

The concept of indirect costs only exists for those grantees and subgrantees that have an indirect cost rate. Under the Uniform Guidance (as was the case under the prior federal cost principles, OMB Circular A-122 for nonprofit CAAs, and OMB Circular A-87 for public CAAs), only those grantees and subgrantees with an indirect cost rate can charge costs classified as indirect costs by the federal cost principles. For those grantees and subgrantees without an indirect cost rate, costs that benefit multiple programs are referred to as joint or shared costs and are recovered using the direct charging allocation method. See Appendix IV to Part 200, B.4; Appendix IV to Part 75, B.4. A few costs under the Uniform Guidance are specifically designated as indirect costs, which means that OMB has determined that the benefit to different funding sources is not readily identifiable and such costs can only be recovered from a federal grant if the grantee or subgrantee has an indirect cost rate. An example is proposal costs. Under the Uniform Guidance, costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals, are now allowable but only as indirect costs. See 2 C.F.R. § 200.460. This means that those grantee and subgrantees without an indirect cost rate may not charge costs relating to proposals to the federal award. It is important to note that only proposal costs of the current accounting period of both successful and unsuccessful bids maybe recovered.

17. When can a non-federal entity negotiate a federally negotiated indirect cost rate (NICR)?

Only when a non-federal entity receives an award directly from a federal funding agency may it negotiate a NICR. The non-federal entity negotiates an NICR with its cognizant agency for indirect costs which is the federal agency from which it receives the greatest dollar amount of federal funding. See Appendix IV to Part 200.B.2.a; Appendix V to Part 200.F.1.

18. Is there a chance that more predetermined indirect rates will be given to nonprofits?

Neither the Uniform Guidance nor any of the general guidance currently indicates that there will be a change in the number of nonprofits eligible to receive predetermined rates.

19. Does the Department of Labor (DOL) require a recipient/subrecipient to charge its full federally negotiated indirect cost rate (NICR)?

Yes. The DOL explains in an FAQ about indirect costs available on its website that "all indirect costs, using the approved rate, must be allocated to all grants/contracts regardless of any restrictions or funding limitations. Any allocable indirect costs that exceed any administrative or statutory restrictions on a specific Federal grant/contract may not be shifted to other Federal grants/contracts, unless specifically authorized by legislation. Non-Federal revenue sources must be used to pay for these unrecovered costs." See FAQ #15 from *Section V Questions and Answers in A Guide for Indirect Cost Rate Determination – Applicable to nonprofit and commercial organizations*.

20. Can a recipient change the base when preparing its federally negotiated indirect cost rate (NICR) proposal? Specifically, our organization currently uses total direct salaries and would like to change to total direct personnel costs.

A recipient may propose changing the base used to calculate its NICR when it submits its rate proposal for review by its cognizant agency for indirect costs. However, the cognizant agency's negotiators may resist or deny the request to make the change. A recipient considering proposing a base different than one used in previous indirect cost proposals should be prepared to justify why the proposed change provides a more reasonable basis for allocating indirect costs.

21. In the federally negotiated indirect cost rate (NICR) examples from the webinar, when it says "Salaries Only" is that literally salaries only or are the benefits also included in that number?

The Total Direct Salaries and Wages base includes only gross salaries and wages that are treated as direct costs. The Total Direct Personnel Costs base includes salaries and wages, employer payroll taxes, and employer paid fringe benefits that are treated as direct costs.

22. How can one collect the same total recovery of indirect costs when you have different rates (i.e., how is slide number 31 from the third webinar, *What is the Best Option for Calculating Our CAA's Indirect Cost Rate*, possible)?

"The choice a CAA makes for the base – Total Direct Salaries and Wages, Total Direct Personnel Cost, or Modified Total Direct Costs – will change its indirect rate."

The third webinar offers examples to help clarify how the same total recovery of indirect costs occurs when different rates are used. We recommend listening to the discussion beginning around slide 15 which explains that the total indirect costs, i.e, the numerator in the fraction used to calculate an indirect cost rate, remains the same regardless of the base a CAA chooses to use for the denominator. The choice a CAA makes for the base – Total Direct Salaries and Wages, Total Direct Personnel Cost, or Modified Total Direct Costs – will change its indirect rate. The smaller the denominator, the higher the rate will be. When a CAA applies its rate to the base it has selected, all indirect costs will be distributed. Consequently, all indirect costs will be recovered. One issue to consider in the selection of a base is the impact on distribution of indirect costs to cost centers which are funded by sources that refuse to honor a CAA's indirect rate – for example, cost centers funded with foundation grants if the foundations will not recognize the CAA's indirect rate. The base that a CAA selects may change the amount of indirect costs distributed to each distinct cost center but not the total amount of indirect costs distributed to all cost centers.

Statutory Administrative Cost Limits

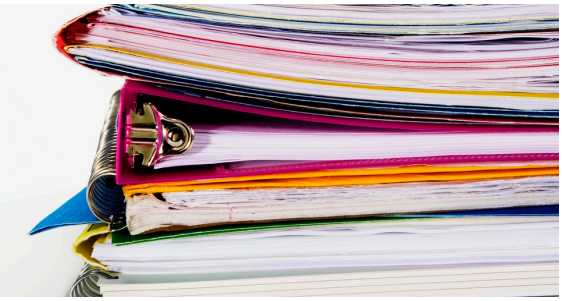
23. Does the federal Weatherization Assistance Program (WAP) have a statutory administrative limit of 5%?

No. The federal WAP statute and regulations require a state to impose an administrative limit that is not less than 5% and no more than 10%. A state is permitted to retain up to 5% of the administrative limit for its own administrative purposes and, if a state retains less, then it may impose an administrative limit that is higher

than 5% but not more than 10%. See 42 U.S.C. § 6865(a)(1), 10 C.F.R. § 440.18(e).

24. How do we reconcile a 16% federally negotiated indirect cost rate (NICR) with a statutory administrative cap/limit of 15%? Specifically, our Head Start funding imposes a 15% administrative limit and our NICR is 16%, does this mean that Head Start has to increase the administrative limit that applies to our organization to 16% to be in line with our indirect cost rate?

No. The 15% administrative limit/cap imposed by the federal Head Start Act must be complied with and is not changed by the indirect cost rate that a grantee negotiates with its cognizant agency for indirect costs. See 42 U.S.C. § 9839(b); 45 C.F.R. § 1301.32. The Uniform Guidance explains that when a federal award is subject to a statutory cost limit, and the maximum amount allowable under the statutory limit is less than what would otherwise be permitted to be recovered under the Uniform Guidance (i.e., pursuant to a higher NICR), the amount over the statutory cost limit may not be charged to the federal award. 2 C.F.R. § 200.408, 45 C.F.R. § 75.408.



Keep in mind that the indirect cost rate may include costs that, while indirect, may not fall within the Head Start Act's definition of "administrative" costs subject to the limit on administrative costs. Thus, the percentage of administrative costs included in the rate may be equal to or lower than the 15% cap.

It is important to remember, however, that the Head Start 15% administrative limit applies to all administrative costs charged to the award – those administrative costs included in an indirect cost rate as well as those directly charged to Head Start. Thus, a CAA will also need to identify what, if any, administrative costs are being directly charged to its Head Start award to determine if it is staying within the statutory administrative limit. For more information about administrative costs under the Head Start program including examples regarding the relationship between administrative and indirect costs, see this Office of Head Start *Administrative Cost Limitations Narrative*.

25. If our federal award has a statutory administrative cost limit of 15% but our organization has opted to use the 10% de minimis rate, can we still recover the additional 5% of administrative costs permitted by the statutory administrative cost limit? If so, how?

Yes. If the benefit received by the funding source from an administrative cost is readily identifiable, then, even though the cost is administrative in nature, it can be allocated to the funding source as a direct cost rather than treated as an indirect cost. It is therefore important to understand the difference between administrative and indirect costs. An indirect cost is one where the benefit received by the different funding sources is not readily identifiable. An administrative cost may be an indirect cost or it may be a cost where the benefit to a funding source is readily identifiable (i.e., a direct cost). For example, the Executive Director's time spent reviewing and revising financials for a board meeting is an administrative cost that would be treated as an indirect cost because it is difficult, if not impossible, to determine the benefit received by each of the funding sources. However, the time spent by a Program Assistant managing a database of client information for a program funded solely by one funding source is administrative in nature and would be treated as a direct cost because the benefit received by the funding source is readily identifiable.

It is important to note that under the Uniform Guidance the salaries of administrative and clerical staff may only be charged as a direct cost if (1) the administrative or clerical services are integral to a project or activity; (2) the individuals involved can be specifically identified with a project or activity; (3) such costs are specifically included in the budget or have the prior written approval of the federal agency; and (4) the costs are not also recovered as indirect costs. 2 C.F.R. § 200.413(c), 45 C.F.R. § 75.413(c).

26. If one federal award has a statutory administrative cost limit of 5% and another federal award has a limit of 15%, can we cover more of the administrative costs with funds from the award with a higher administrative limit rather than using unrestricted sources?

No, unless the specific federal awards involved allow for the shifting of costs between awards. Generally, costs allocable to one federal award may not be charged to other federal awards "to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons." 2 C.F.R. § 200.405(c), 45 C.F.R. § 75.405(c). This requirement, which was also in the prior federal cost principles (OMB Circulars A-122 (applicable to nonprofit CAAs) and A-87 (applicable to public CAAs)), means that administrative costs that exceed the 5% administrative cost limit for the one federal program may not be allocated to the other federal program with the greater (15%), administrative cost limit. However, unlike the prior federal cost principles, the Uniform Guidance allows non-federal entities to shift costs that are allowable under two or more awards *if the federal statutes, regulations or terms and conditions of those awards allow for such cost shifting*. 2 C.F.R. § 200.405(c), 45 C.F.R. § 75.405(c). It is also important to note that there is no standard, overarching definition of what constitutes an administrative cost. The definition of administrative costs may vary from funding source to funding source and a CAA should ensure that it understands what is classified as an administrative cost under each respective funding source.

27. Can certain costs, such as capital expenditures, that may be excluded when calculating indirect cost rates also be excluded when determining which costs fall under a specific federal grant's administrative cost limit such as the Low Income Home Energy Assistance Program (LIHEAP) administrative cost limit?

It depends. The funding source statute and regulations, not the Office of Management and Budget's Uniform Guidance, dictate which costs are subject to an administrative limit or cap, if such a limit or cap exists. For example, the LIHEAP statute specifies that a state may use no more than 10% of the LIHEAP funds it receives in a fiscal year for planning and administration. 42 U.S.C. § 8624(b)(9)(A). LIHEAP regulations interpret this limit as also applying to organizations, such as CAAs, that receive LIHEAP funds from the state as subrecipients. 45 C.F.R. § 96.88(a). Any cost incurred in excess of the limit must be paid for with non-federal funds. 42 U.S.C. § 8624(b)(9)(B). Neither the LIHEAP statute nor regulations specifically define administrative costs. The only applicable LIHEAP regulation merely explains that administrative costs subject to the statutory limit must "include any expenditure for governmental functions normally associated with administration of a public assistance program." Guidance issued by the federal Office of Community Services (OCS), Information Memorandum (IM) 2000-12, explains that OCS will defer to a state's definition of administrative costs unless its interpretation of the federal statute is clearly erroneous. However, in an attempt to offer states some guidance as to what types of costs may be considered administrative, the IM refers to the preamble of the LIHEAP regulations which is not binding but offers a brief list of what may be considered administrative costs. Thus, for LIHEAP, if a state does not include capital expenditures in its definition of administrative costs, then the cost would not be subject to the LIHEAP administrative limit.

It is important to remember that in addition to determining if capital expenditures are included in the definition of administrative costs subject to a statutory administrative cost limit, a CAA will also need to follow the funding source requirements, including the Uniform Guidance federal cost principles, to determine if the cost is generally an allowable one, i.e., if the program funds may be used to cover that cost or if the cost is prohibited. For example, the LIHEAP statute generally prohibits the use of LIHEAP funds "for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or other facility." 42 U.S.C. § 8628. Additionally, the Uniform Guidance generally requires that a non-federal entity receive prior approval from a funding source before using federal funds for capital expenditures. 2 C.F.R. § 200.439; 45 C.F.R. § 200.439.

28. Where can we find a listing of the federal grant program statutes that limit administrative costs?

Generally, the grant agreement entered into with a federal agency or the pass-through entity, i.e., state agency facilitating the federal funding, will include information about any applicable statutory administrative cost limits or, at a minimum, reference the citations to the applicable federal program statute and regulations. Currently, there is no centralized location that lists the administrative cost limits for each federal funding source.

29. Have the guides from the federal agencies for federally negotiated indirect cost rates (NICR) been updated pursuant to the Uniform Guidance?

We are currently only aware of one updated guide to date. The federal Department of Labor has updated its guide.

Pass-through Entities

30. Do pass-through entities, i.e., state CSBG offices or CAAs with subgrants, have to allow a subrecipient the choice of either accepting a flat 10% rate or negotiating a rate?

Under the Uniform Guidance, pass-through entities are required to recognize a subrecipient's approved federally negotiated indirect cost rate (NICR). If the subrecipient does not have one, then the pass-through entity must either permit the subrecipient to use the 10% de minimis rate or, if the subrecipient prefers, may negotiate a rate. However, the Council on Financial Assistance Reform (COFAR) explains in its FAQ that a pass-through entity cannot force a subrecipient to accept a rate lower than 10%. Thus, it appears that, a state must allow even those CAAs that may not be eligible for the "de minimis rate" as defined in the Uniform Guidance (i.e., the CAA previously had a NICR) to, at least, apply a 10% rate if the state chooses not to negotiate a rate with the CAA. See 2 C.F.R. § 200.331; 45 C.F.R. § 75. 352, COFAR FAQ 200.331-6.

"Under the Uniform Guidance, pass-through entities are required to recognize a subrecipient's approved federally negotiated indirect cost rate (NICR)."

31. If we use the direct cost charging allocation method, are pass-through entities under the Uniform Guidance required to accept and pay all those costs directly charged to the federal award?

A pass-through entity is not required to accept a subrecipient's direct cost allocation plan. 2 C.F.R. § 200.331; 45 C.F.R. § 75. 352. Generally, if a non-federal entity is charging costs directly, a pass-through entity must determine if the costs being charged are allowable and will do so by applying the criteria for allowability under the Uniform Guidance (2 C.F.R. § 200.403; 45 C.F.R. § 75.403) and any additional criteria that may exist if the cost is included as a selected items of cost.

Cost Allocation

32. Does the option to use a cost allocation plan, rather than an indirect cost rate, exist under the Uniform Guidance?

Yes. The Council of Financial Assistance Reform (COFAR) acknowledges in its FAQ that there may be some non-federal entities that "are able to allocate and charge 100% of their costs directly" and that those entities may continue to do so. COFAR explains that claiming reimbursement for indirect costs is never mandatory and that some non-federal entities may find that recovering such costs is not worth the effort that would be expended to do so. COFAR FAQ 200.331-5.

33. If human resources staff is attending a job fair that will likely identify applicants for one program, should the registration fee to attend the job fair be charged against the program or treated as an indirect cost?

The Uniform Guidance is the same as the prior federal cost principles (OMB Circulars A-122 and A-97) in requiring that, for a cost to be allowable under any federal award, it must be "accorded consistent treatment. A cost must not be assigned to a Federal award as a direct cost if any other cost incurred for the same purposes in like circumstances has been allocated to the Federal award as an indirect cost." 2 C.F.R. § 200.403(d); 45 C.F.R. § 75.403(d). Thus, if the CAA usually treats registration fees for human resource staff to attend job fairs as an indirect cost, the CAA will need to treat all such costs consistently and continue to charge them to indirect to ensure compliance with the federal cost principles. Conversely, if the CAA generally

charges registration fees for job fairs directly to the benefiting programs, it may charge such costs directly. Note that HR staff time spent attending job fairs will be governed by the Uniform Guidance provision stating that salaries of administrative and clerical staff may only be charged as a direct cost if (1) the administrative or clerical services are integral to a project or activity; (2) the individuals involved can be specifically identified with a project or activity; (3) such costs are specifically included in the budget or have the prior written approval of the federal agency; and (4) the costs are not also recovered as direct costs. 2 C.F.R. § 200.413(c), 45 C.F.R. § 75.413(c).

34. How can a grantee or subgrantee change its cost allocation process midyear?

All grantees and subgrantees should have a written cost allocation plan to justify the allocation of costs to specific awards. If a grantee or subgrantee determines that the cost allocation plan it has adopted and implemented no longer provides a reasonable basis for allocating joint (or "shared") costs, it may prepare a revised written cost allocation plan. There are several important factors to consider before doing so:

- The organization must continue to use its original cost allocation plan until the revised plan becomes effective and therefore should identify the effective date for the new plan.
- Since implementation of the revised plan will likely result in changes in the joint cost amounts allocated to individual awards, the organization may need to obtain approval to revise its award budgets.
- If approval of budget amendments will be required, the organization should make the new plan effective after all the required approvals are received. Because waiting for budget revision approvals may make it difficult to implement a revised plan within a current fiscal year, it may be more practical to wait until the beginning of the next fiscal year to make the revised plan effective.

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