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## **Part 3 Post-Award**

### **Section 01 Indirect Costs and Other Cost Policies**

#### **A. Principles**

Purpose. This Grants Policy Directive (GPD) outlines key policies, including the roles and responsibilities of HHS staff, with respect to the award and administration of direct and indirect costs and fee under HHS grants.

Scope. The policies contained in this GPD apply to all discretionary grant awards. The indirect cost provisions of this GPD also apply to any other type of award, other than those subject to 45 CFR Part 95, Subpart E, that provides for reimbursement of indirect costs. Policies that are limited to certain types of recipients or categories of awards are specified in the following sections. This GPD does not apply to fellowships.

#### **B. Allowable Costs**

Basic Policy. Cost considerations are an integral part of HHS grant administration both in contributing to a successful project outcome and in ensuring the stewardship of Federal funds. It is HHS policy that, consistent with applicable statutes and regulations, Federal cost principles, and any limitations established by this GPD, grant awards provide direct cost amounts in relation to the project's scope and anticipated level of effort and an appropriate allowance for indirect costs.

It is also HHS policy that HHS staff exercise stewardship over funds awarded by limiting actual cost reimbursement to types of expenditures and amounts that comply with statutory, regulatory, cost principle and policy requirements, including, for indirect costs, amounts for time periods consistent with negotiated indirect rate agreements.

No HHS grant, other than an award under the Small Business Innovation Research (SBIR) or the Small Business Technology Transfer (STTR) program, will include any increment above cost, whether termed "profit" or "fee."

The total amount awarded (direct and indirect costs and fee, where applicable) is the ceiling on the amount payable to a grantee. HHS is not obligated to make any additional awards or provide additional funding for indirect costs or other purposes.

Grants Management Responsibilities. Grants management staff, in consultation with the Office of Audit Resolution and Cost Policy (OACRP) and the Division of Cost Allocation, HHS (DCA), as necessary, must ensure that application instructions, program guidelines, program regulations, or other guidance provided to applicants/grantees contain appropriate coverage of indirect cost and other cost and fee policies, including those referenced or included in this GPD.

Through reviewing grantee reports and other available information and through other means, such as site visits, grants management staff are responsible for monitoring grantee compliance with cost policies and requirements. Audits conducted by independent auditors, as required by Office of Management and Budget (OMB) Circular A-133, will assess organizational compliance with the direct and indirect cost provisions of the cost principles through sampling and other tests. The audit may highlight areas of concern and should be used by grants management staff as a supplemental monitoring tool.

In carrying out their responsibilities under this GPD, HHS staff should consult the applicable cost principles, implementation guides and other policies issued by OARCP, and information available from DCA, which includes negotiated indirect cost rate and research patient care rate agreements. DCA information is available under the Grant Management Office (GMO) Tools "intranet" site accessible to Departmental staff via the internet at <http://www.hhs.gov/progorg/gmotools/>. The cost principles and other cost guidance may be accessed through Grants Net (<http://www.hhs.gov/grantsnet>).

### **C. Indirect Costs**

Eligibility for Reimbursement. Indirect costs (also termed "facilities and administrative costs" for certain organizations) will not be provided on HHS grants to international or foreign organizations where the grant is performed entirely outside the territorial limits of the United States (other situations may require negotiation of a special rate as provided below), or on construction grants, grants to individuals, conference grants, grants to Federal institutions, or fellowships.

In all other cases, HHS considers activities conducted by grantees that result in indirect charges a necessary and appropriate part of HHS grants, and HHS awarding offices must reimburse their share of those costs. The appropriate share is either a fixed amount as specified in statute, in regulations or in this GPD, or is determined based on a rate negotiated by DCA other cognizant authorities with an applicant/grantee and reflected in a formal rate agreement.

Some grant programs' authorizing statutes and/or regulations limit the reimbursement of "administrative costs," which may include some or all of the indirect costs otherwise included in a negotiated indirect cost rate or approved cost allocation plan. Under these programs, reimbursement of indirect costs included in "administrative costs" will be limited to those that are within the statutory or regulatory ceiling.

If, on the basis of statute, regulation or policy, allowable indirect cost reimbursement is restricted to an amount less than full indirect cost reimbursement, the difference between those two amounts may be used to satisfy a grantee's matching requirement.

#### **Establishment and Application of Indirect Cost Rates.**

- a. Responsibilities. If indirect costs may be included in an award, grants management staff are responsible for determining if the applicant/grantee has an indirect cost rate that will cover the period of the anticipated award, either in whole or in part. If such a rate is not in effect, grants management staff must advise the applicant/grantee to establish a rate by consulting DCA or other cognizant office, and may not include any allowance in the award or reimburse indirect costs except as indicated below. Grants management staff are also responsible for consulting with the cognizant office on special situations (as described in a grant application or as defined by DCA or other cognizant office) and for ensuring that the provisions of negotiated rate agreements are appropriately applied.

DCA is responsible for negotiating indirect cost rates and, as applicable, approving cost allocation plans (both central service cost allocation plans and public assistance cost allocation plans) with applicants/grantees for which they are cognizant. These may include State governments, local governments, Indian tribal governments, educational institutions, hospitals, and other non-profit organizations.

For those organizations under DCA's negotiation cognizance, DCA is responsible for determining whether to negotiate a single, composite indirect cost rate applicable to all of the grantee's activities or whether separate or "special" rates, including "off-site" rates may be appropriate for certain types of activities or indirect costs. DCA is also responsible for coordinating with other Federal agencies, such as the Department of Labor or the Office of Naval Research, that may have negotiation cognizance for a particular organization, to obtain and make available rate information.

If a for-profit organization does not have a currently effective indirect cost rate negotiated by HHS or another Federal agency that would cover the grant-supported activity, the awarding OPDIV is responsible for negotiating (or having another OPDIV negotiate) an indirect cost rate. The awarding OPDIV, through designated OPDIV-level staff must coordinate with the other HHS OPDIVs to allow for negotiation by a lead agency, i.e., the OPDIV with the largest aggregate dollar amount of grant and/or contract awards to a particular organization will negotiate a rate on behalf of HHS. OPDIVs are encouraged to establish arrangements which leverage their resources in this area.

The negotiated indirect cost rate(s) will be included in a formal rate agreement specifying, among other things, the applicability of the rate(s) to the organization's performance sites and activities, the period of time covered, the base (salary and wages or other) to which they are to be applied, and the composition of the indirect cost pool(s). The rate agreement will also include information about any special indirect cost rates, such as "off-site" rates, and will specify whether the rate is a provisional, predetermined or final rate.

- b. Funding and Reimbursement of Indirect Costs. All Notices of Grant Award (NGA) must specify the budgeted amounts for direct and indirect costs. Grants management staff must use the applicable indirect cost rate covering the award budget period (or part thereof) in calculating the amount to be shown or to be included on the NGA. They must also make any necessary adjustments to rates negotiated by other Federal agencies to reflect HHS policy on independent research and development costs (IR&D) (see 45 CFR 74.27(b)(2)) and/or reductions as a result of the grantee's matching or cost sharing in direct or indirect costs. If grants management staff determine that a grantee does not have a currently effective indirect cost rate, the award may not include an amount for indirect costs unless the organization has never established an indirect cost rate (usually a new grantee) and intends

to establish one. In such cases, the award shall include a provisional amount equaling one-half of the amount of indirect costs requested by the applicant, up to a maximum of 10 percent of direct salaries and wages (exclusive of fringe benefits).

Grants management staff are also responsible for making award adjustments to reflect the initial establishment of a rate where one has never been established previously, the late submission of an indirect cost proposal for a subsequent fiscal year, or other changed circumstances. Grants management staff must be aware of such changes and their reporting by the grantee.

Grantees other than those subject to OMB Circular A-21 may be reimbursed at a higher rate than a provisional rate used in calculating the award if a permanent rate is established subsequent to award. Such grantees may also rebudget between direct and indirect costs (in either direction) to accommodate an increase or decrease in indirect costs and are not required to obtain HHS awarding office prior approval of the rebudgeting unless it would constitute a change in the scope of the project. For these grantees, the award amount will not be adjusted downward on the basis of a lower permanent indirect cost rate than that used in calculating the award unless the indirect cost proposal that served as the basis for the negotiation included unallowable costs.

For grantees subject to OMB Circular A-21, the rate in effect at the beginning of a competitive segment will be used to determine indirect cost funding levels for the entire segment; however, if that rate was provisional and is superseded by a permanent rate, the latter rate will be used to determine indirect cost reimbursement. If the rate agreement in effect at the outset of the competitive segment does not cover the entire competitive segment, then the rate in effect for the last year of the negotiated agreement will be used to determine indirect cost funding for the duration of the competitive segment. These grantees will not be entitled to an adjustment in the total amount awarded or reimbursed for indirect costs if a permanent rate is higher than the provisional rate.

For all grantees, the total amount awarded is not subject to upward adjustment during a current budget period unless one of the following circumstances exist:

- (1) The awarding office made an error in computing the award. This includes any situation in which a higher rate(s) than the rate(s) used in the grant award is negotiated and the resulting rate agreement becomes effective more than 1 calendar month before the beginning date of the grant budget period;
- (2) Additional direct costs have been awarded to supplement or extend a project consistent with the policies in GPD 2.04;
- (3) A previously restricted unobligated balance from a prior period has been approved for expenditure in the current budget period;
- (4) The award was made to a new grantee using a provisional amount for indirect costs and a valid rate is established subsequent to award; or
- (5) The award contained no indirect costs because the grantee was delinquent in submitting its indirect cost proposal and a rate is established after award. If the award is amended, indirect costs may not be awarded or reimbursement provided for any period prior to the date the indirect cost proposal was submitted.

c. Special Indirect Cost Rates (Including Off-Site Rates). The following conditions may indicate the need for establishment of a special indirect cost rate. Grants management staff should consult with DCA about the use of such a rate(s) if :

- (1) An activity will be conducted within a physical or administrative environment which will generate a significantly different level of indirect costs than other activities of the organization, the special rate would be substantially lower or higher than the rate applicable to the other activities, and the rate would apply to a material amount of federally supported direct costs, or
- (2) The provisions of authorizing program legislation impose restrictions on the reimbursement of certain types of indirect costs. DCA will be responsible for obtaining necessary information and supporting documentation from the applicant/grantee which justifies the use/non-use of a special rate(s). DCA will not negotiate special rates based solely on matching or costsharing arrangements.

- d. Exceptions. Indirect costs under training grants to organizations other than State, local or Indian tribal governments will be budgeted and reimbursed at 8 percent of modified total direct costs rather than on the basis of a negotiated rate agreement, and are not subject to upward or downward adjustment. Direct cost amounts for equipment (capital expenditures), tuition and fees, and subgrants and subcontracts in excess of \$25,000 are excluded from the actual direct cost base for purposes of this calculation.

Indirect costs under grants to local government agencies (other than those designated as "major" pursuant to OMB Circular A-87) shall be budgeted and reimbursed on the basis of the rates computed and proposed by the local government in its grant application unless the awarding office requests DCA involvement

#### **D. Research Patient Care Costs**

Eligibility for Reimbursement. Grants management staff may not award an amount for research patient care costs, i.e., the costs of routine and ancillary services provided by hospitals to patients participating in research programs, or approve a postaward request to incur such costs unless the hospital has established a research patient care rate with DCA or the grantee is expected to incur such costs on a single grant only and the amount will not be more than \$100,000 per budget period. Rates established by DCA will be specified in formal rate agreements issued and maintained by DCA in the same manner as indirect cost rate agreements.

For any applicant/grantee that is expected to incur research patient care costs but that is not expected to meet the threshold for negotiation of a rate, grants management staff may award such costs on the basis of rates proposed by the applicant/grantee in its application and should advise the applicant/grantee to contact DCA to determine applicable documentation requirements.

Patient care services needed to meet special research protocol demands should be treated as direct costs and are not subject to the requirements for negotiation or use of a composite research patient care rate.

Establishment and Application of Research Patient Care Rates. The responsibilities for establishing and applying research patient care rates include the following:

- a. The need to advise an applicant to submit its initial research patient care rate proposal to DCA as soon as possible after an award decision. If a rate cannot be established prior to award, grants management staff may accept estimated rates (such as Medicare interim billing rates) as the basis for including an amount for research patient care in the initial award. This amount must be adjusted in accordance with any subsequently negotiated rate or disallowed if a permanent research patient care rate is not established.
- b. Determination of the applicable research patient care rate to be used in subsequent awards, following DCA review of updated proposals and issuance of revised research patient care agreements. The agreement will specify the type of rate used and the fiscal year(s) covered.
- c. Only those amounts awarded for research patient care costs on the basis of provisional rates are subject to adjustment (upward, in accordance with OPDIV policy, or downward) following establishment of permanent rates.

#### **E. Direct Cost Considerations**

General. Grants management staff are required to be aware of and administer the direct cost aspects of awards in accordance with the allowability requirements of statutes, regulations and the applicable cost principles and as provided below.

Consultant Payments to Federal Employees. Consulting fees paid to Federal employees are not allowable charges to HHS grants (or to any required matching or cost sharing) unless:

- a. The Federal employees are medical personnel of a uniformed U.S. service (but not Commissioned Officers of the U.S. Public Health Service) providing medical services within the scope of the approved grant-supported activity;
- b. The grantee has documented that adequate numbers of qualified civilian personnel are not available to provide these services and engages the services of Federal medical personnel to supplement (rather than use in lieu of )the services of qualified civilian medical personnel, if any, who are available; and
- c. The Federal medical personnel have prior written statements from their commanding officers authorizing them to work on the grant-supported activity for pay outside their Federal duty hours or while on leave and stating that performance of duties on the grant



will not interfere with or cause a conflict of interest with the performance of their Federal duties.

Direct Costs Under Grants to Federal Institutions. Grants management staff may include in grant awards to Federal institutions the types of costs normally considered necessary to carry out the project unless restricted by statute or regulation. Except as provided below, the allowability and circumstances of allowability of costs at Federal institutions will be determined in accordance with the established policies of the institution consistently applied to both its grant-supported and other operations. If there is no institutional policy, the cost principles of OMB Circular A-87 should be used in making cost-related determinations.

No salary or fringe benefit payments may be made from HHS grant funds to career, career-conditional, or other Federal employee (civilian or military) with permanent appointments provided for under existing position ceilings of a Federal component.

#### **F. Fee Policy**

General. No increment above cost, in the form of profit or fee, may be paid under any HHS grant to any type of recipient except small businesses that receive awards under the SBIR or STTR programs. This exception is based on the guidelines established by the Small Business Administration, consistent with the purpose and objectives of these programs.

Establishment of Fee Amount. Under the SBIR/STTR programs, an applicant may request a profit or fee (hereafter, "fee"), in addition to direct and indirect costs, as part of its application. Fee amounts shall not exceed 8 percent of total costs, exclusive of fee, unless there is compelling justification as determined by an OPDIV official at least one organizational level above the Chief Grants Management Officer, as specified in OPDIV policy. HHS grants management staff will negotiate the overall fee amount for the approved project period and will include the proportionate share of that amount as a "fixed fee" in each award(s) (or a proportionate reduction based on any termination or withholding of funds). The fee amount must be accommodated within the overall statutory limitations on SBIR/STTR award amounts and will not be adjusted based on actual costs incurred. Grants management staff must advise grantees that the fee amount is to be drawn from the HHS Payment Management System in increments proportionate to the drawdown of funds for costs and to include the amount claimed as an outlay on the financial status report (SF-269 or equivalent). There is no additional accountability for fixed fee amounts.