De Minimis Indirect Cost Rate Guidance

This guidance highlights areas of compliance typically required of recipients of Federal assistance awards. It is not intended to fully document all requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200 or 2 CFR Part 910.

What is the De Minimis Indirect Cost Rate?

The de minimis indirect cost rate (de minimis ICR) is a simplified method for calculating indirect costs, allowing organizations without a negotiated indirect cost rate to apply a rate up to 15% of Modified Total Direct Costs (MTDC). Organizations can determine the appropriate rate up to this limit. Federal agencies and pass-through entities can not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected unless required by Federal statute or regulation. Organizations can not apply the de minimis rate to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. The de minimis ICR is described in 2 CFR § 200.414(f).

MTDC is an allocation base that includes all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the subaward's period of performance under the award). Any organization using the de minimis ICR must first calculate its MTDC (i.e., add up all eligible components of Modified Total Direct Costs) and then multiply by the de minimis ICR to calculate the amount of allowable indirect costs. The definition for MTDC is located in 2 CFR 200.1.

A de minimis ICR is not inclusive of a fringe benefit rate. A recipient's fringe benefit rate recovers the cost of employee benefits (e.g., taxes, insurance, retirement, paid time off) through a rate typically applied to total labor. As fringe costs are based in part on federally and state mandated employer paid benefits, the expectation is that they will be incurred by all recipients with employees.

If a de minimis ICR is elected, it is in lieu of any other indirect cost rates including rates for overhead, general and administrative (G&A), and facilities capital cost of money (FCCM). Additional information on indirect rates may be found in the OCED publication entitled *Indirect Cost Rate Agreement and Rate Proposal Guidance*, located on OCED's Budget and Financial Management Related Guidance page.

Who can use the De Minimis Indirect Cost Rate?

Recipients and subrecipients that do not have current Federal negotiated indirect cost agreement (including a provisional rate) can elect to use the de minimis ICR. However, if a recipient or subrecipient is a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receiving more than $35 million in direct Federal funding, they cannot use the de minimis ICR as they are required to submit an indirect cost rate proposal to their cognizant Federal agency (See 2 CFR Appendix-VII-to-Part-200 D.1.b.).

This guidance document does not supersede Federal laws and regulations. This OCED guidance document is for informational purposes only and is not a requirements document. If there are inconsistencies between this OCED guidance document and any specific program or project document, the specific OCED program or project document should be relied upon as it is the controlling document.

Organizations new to managing Federal funds or organizations that want to reduce the risk associated with negotiating an indirect cost rate may consider electing the de minimis ICR. OCED recipients and selectees who are negotiating DOE awards for the first time may prefer to choose this simpler approach after weighing the advantages and disadvantages, discussed below.

What are the Advantages of Using the De Minimis ICR Compared to Negotiating a Rate?

Using the de minimis ICR decreases the administrative burden and costs associated with proposing and negotiating indirect cost rates including the time required of the organization to establish, monitor, and finalize indirect rates. Using the de minimis ICR does not preclude an organization from applying to negotiate a rate in the future, although the de minimis ICR can be used indefinitely by all eligible organizations.

Reduced Administrative Burden and Associated Costs: The development and submission of indirect cost rate proposals and cost allocation plans can be complicated and burdensome. Many organizations hire external consultants to help prepare their indirect cost rate proposals because the process is so complex. This can increase the costs associated with negotiating an indirect cost rate. Furthermore, organizations lacking Federal cost allocation practices may need to address systematic issues and document their processes prior to negotiating an indirect rate, thereby creating more administrative burden.

The de minimis ICR requires no documentation to justify the rate and no review of actual indirect costs. Therefore, the de minimis ICR election can save organizations considerable time and effort compared to the preparation of an indirect cost rate proposal followed by negotiations with the cognizant Federal agency. Comparatively, once an organization negotiates a rate with the cognizant Federal agency, it is required to submit an annual indirect cost rate proposal at the close of each fiscal year during which it has Federal award funding, unless other written arrangements are made. Finalizing a negotiated rate includes the cognizant Federal agency reviewing supporting documentation for the organization's claimed indirect costs. An organization's annual incurred cost rate proposal is also subject to audit, which may be burdensome.

Improved Timeliness: For organizations that are moving quickly to launch new projects with the Federal government, using the de minimis ICR will result in less time spent establishing, monitoring, and finalizing rates. A negotiated rate is typically agreed to provisionally and then finalized after actual costs are incurred. This requires the organization to adjust indirect costs previously claimed based on the finalization of the negotiated rates. In contrast, the de minimis ICR will not be adjusted, which means claimed costs do not change.

What are the Disadvantages of Using the De Minimis Indirect Cost Rate?

Under recovery: Using the de minimis ICR may cause an organization to under-recover its indirect costs. Organizations are limited to the de minimis ICR even though actual costs may justify charging a higher rate. The de minimis ICR has been codified at up to 15% because the Federal government believes there is low risk that this rate would allow a recipient or subrecipient to over-recover indirect costs. When using the de minimis ICR, the organization must use that same de minimis ICR on all its Federal awards.

The Uniform Guidance mandates that any organization using the de minimis ICR must also use the MTDC allocation base. Using the MTDC base - instead of other commonly used allocation bases such as total direct costs may trigger additional under-recovery. This is because the types of costs excluded from the MTDC allocation base are the types of costs that normally require significant administrative (indirect) support. For example, the Uniform Guidance prohibits charging the de minimis ICR on the entire cost of a subaward, and the MTDC base must exclude the costs of capital expenditures and equipment. Both of those cost categories typically require significant administrative oversight (e.g., mandatory risk assessments, flow-down provisions, budget, and performance monitoring).

Therefore, organizations using the de minimis ICR do not recover the indirect costs associated with administratively intensive functions because those costs are excluded from the allocation base by definition. Anyone using the de minimis ICR must accept that imbalance in cost recovery.

Finally, as noted above, if chosen, the de minimis ICR rate must be applied consistently across all the organization's Federal awards until it chooses to negotiate an indirect cost rate with the cognizant Federal agency.

Can organizations apply the De Minimis ICR to their cost share contribution and can they claim unrecovered indirect costs?

Organizations that elect the de minimis ICR may use the de minimis rate to support cost share contributions. However, organizations cannot claim "unrecovered indirect costs" and therefore **cannot** use "unrecovered indirect costs" as part of their cost share contribution. Alternatively, organizations may use an approved negotiated indirect cost rate(s) to support their cost share contribution and **can** claim "unrecovered indirect costs" as cost share contribution with prior approval from the Grants and Agreements Officer if the negotiated rate is less than actual costs.

Who Reviews the Rates?

The OCED Financial Oversight and Performance (CD-50) Office is responsible for (i) establishing recipient fringe and indirect rate agreements, (ii) assessing the application of existing negotiated indirect cost rates or the de minimis ICR, if elected, and (iii) providing the Grants and Agreement Officer's a memorandum communicating indirect rate information, including instances when the recipient opts to forego indirect cost recovery.

If a recipient does not have a negotiated indirect cost rate agreement, DOE OCED may become the cognizant agency for indirect and fringe costs and CD-50 will review a recipient's indirect cost rate proposal for purposes of establishing an indirect and/or fringe cost rate agreement with the recipient.