

## § 200.407

## 2 CFR Ch. II (1–1–14 Edition)

### § 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal awarding agency in advance of the incurring of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.332 Fixed amount subawards;
- (f) § 200.413 Direct costs, paragraph (c);
- (g) § 200.430 Compensation—personal services, paragraph (h);
- (h) § 200.431 Compensation—fringe benefits;
- (i) § 200.438 Entertainment costs;
- (j) § 200.439 Equipment and other capital expenditures;
- (k) § 200.440 Exchange rates;
- (l) § 200.441 Fines, penalties, damages and other settlements;
- (m) § 200.442 Fund raising and investment management costs;
- (n) § 200.445 Goods or services for personal use;
- (o) § 200.447 Insurance and indemnification;
- (p) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (q) § 200.455 Organization costs;
- (r) § 200.456 Participant support costs;
- (s) § 200.458 Pre-award costs;
- (t) § 200.462 Rearrangement and reconversion costs;

(u) § 200.467 Selling and marketing costs; and

(v) § 200.474 Travel costs.

### § 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

### § 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 200.412 Classification of costs through 200.415 Required certifications) of this subpart;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 Cost allocation plans and indirect cost proposals and 200.417 Inter-agency service) of this subpart; and
- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

### § 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also

## OMB Guidance

## § 200.413

Subpart D—Post Federal Award Requirements of this part, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance.

### § 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (pre-determined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as

the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

### DIRECT AND INDIRECT (F&A) COSTS

### § 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

### § 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.