

**Department of Commerce**  
**Approved Deviations from Negotiated Indirect Cost Rates under Federal Financial**  
**Assistance Programs and Awards**

**As of 09 April 2024**

In accordance with 2 C.F.R. 200.414(c)(1), a Federal awarding agency may use an indirect cost rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in 2 C.F.R. § 200.414(c)(3). The following programs have been approved by the head of the respective Department of Commerce awarding agency to use a rate that deviates from the Federally negotiated indirect cost rate agreements:

**1. National Institute of Standards and Technology (NIST).**

**A. The Small Business Innovation Research (SBIR) program.**

- i. **Program Description.** The SBIR program was originally established in 1982 by the Small Business Innovation Development Act (P.L. 97-219), codified at 15 U.S.C. § 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (P.L. 102-564), and received subsequent reauthorization and extensions, the most recent of which extends the SBIR program through 2025. (P.L. 117-183). The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns in Federally funded research or research and development (R/R&D). Specific program goals are to: (1) stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged small businesses and by women-owned small businesses in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity, and economic growth. Eleven Federal agencies, to include NIST, implements SBIR by setting aside a portion of the extramural research and development (R&D) budget each year to fund research applications from small science and technology-based entities. Through this set aside, NIST funds two SBIR programs – SBIR Phase I and SBIR Phase II. The SBIR Phase I awards provide up to \$100,000 to complete a feasibility study within a six-month period of performance. The SBIR Phase II awards cover the actual R&D phase. These awards provide a maximum of \$400,000 for a two-year period of performance.
- ii. **Justification for limiting Indirect Costs.** SBIR awards are made to small for-profit entities that often have no prior contracting or federal assistance relationship with the Federal government, which means NIST would be the cognizant federal agency, responsible for negotiating an indirect cost rate. This creates a potential problem for NIST because of the specific SBIR program requirements.

The brief six-month period of performance of the SBIR Phase I program makes the timeframe for indirect cost rate negotiation unreasonable. In most cases, the project

would end before the indirect cost rate negotiation could be completed. In addition, while the SBIR Phase II program provides a maximum award amount of \$400,000 and a two-year period of performance, only Phase I grantees who completed their project are eligible for a Phase II grant. Maintaining a set indirect cost rate allows the recipient to consistently charge costs.

As a result of the specific limitations in the SBIR program (outlined above), NIST does not negotiate indirect cost rates with SBIR Phase I awardees. Phase I recipients that do not have an approved negotiated indirect cost rate agreement may propose an indirect cost rate of up to 40 percent of total direct costs, which will be accepted by NIST without further negotiation. The 40 percent will allow recipients to recover a reasonable amount of indirect costs for their projects and is consistent with the approach taken by other agencies that award SBIR grants, including NIH. Phase II awardees are given the same option of a set 40 percent indirect cost rate however, if the Phase II awardee requests more than 40 percent, and NIST is the cognizant Federal agency, NIST will negotiate an indirect cost rate with that awardee.

- iii. **Governance Process.** NIST's process for communicating its indirect cost rate limitations for the SBIR program is as follows:
  - 1. The policy is published in the notice of funding opportunity for each competition.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

## **B. The Joint Institute for Laboratory Astrophysics (JILA) program.**

- i. **Program Description.** The JILA program was established in 1962 as a joint program between the University of Colorado Boulder (CU) and NIST to provide research and education in better understanding astrophysical phenomena at a time of intense national interest in space sciences. As the Institute evolved into a broader range of research and educational activities, in 1994 its name was changed to JILA (no longer an acronym) to reflect a broader scientific mission, which now includes the areas of Astrophysics, Atomic and Molecular Physics, Biophysics, Chemical Physics, Materials Physics, Nanotechnology, Optical Physics, and Precision Measurement. In addition, JILA serves as a unique training center for graduate students and postdoctoral researchers, many of whom then establish careers in measurement science, providing an innovative and skilled workforce, which NIST also relies upon to continue its mission. A key to the success of JILA is the close, daily interaction and collaboration between NIST scientists and CU graduate students, postdoctoral fellows, research associates, and faculty members. NIST financial assistance is provided to JILA via an Institutional Cooperative Agreement, which is renewed in five-year increments, following independent review of the program that evaluates the continued effectiveness of JILA in meeting its goals and objectives.
- ii. **Justification for limiting Indirect Costs.** Indirect costs for the JILA program are limited to CU's General Administrative Recharge (GAR). The GAR encompasses

overhead charges levied by CU on self-supporting operations that benefit from its central campus services and support. The GAR charges are outside of the indirect cost rate pool, and is calculated on an annual basis through a review of prior year expenditures within CU. For its JILA Institutional Cooperative Agreement, CU applies the GAR in lieu of its negotiated indirect cost rate issued by the Department of Health and Human Services. Limiting the indirect costs to only include CU's GAR prevents the double billing of operation and maintenance costs, which CU includes as direct expenditures in its Institutional Cooperative Agreement budget. In addition, a larger portion of funds will be available to support salaries and wages of staff directly engaged in the program, specific materials and supplies necessary for performing program work, and essential travel. This maximizes the impact of the project while ensuring the most appropriate uses of NIST resources. The GAR that is in effect at the time of initial award is set for the life of the award.

iii. **Governance Process.** NIST's process for communicating its indirect cost rate limitations for the JILA program is as follows:

1. The policy is published in the Request for Application for each JILA Institutional Cooperative Agreement renewal.
2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the Request for Application containing the policy for the indirect cost rate deviation.
3. Posting deviations on OAM website.

#### **C. Griffiss Institute Inc. – FY 2023 Congressionally Identified Projects Program**

- i. **Program Description.** The FY 2023 Congressionally Identified Projects Program (CIPP) is authorized by 15 U.S.C. § 272 *et seq.* and by the Consolidated Appropriations Act, 2023 (Pub. L. 117-328). The purpose of the CIPP is for identified recipients to adhere to the project goals and objectives submitted to Congressional sponsoring offices, and to expand and improve upon the scientific and technological capabilities of the United States. Pursuant to the CIPP Request for Applications (2023-NIST-RFA-CIPP-01), NIST awarded Griffiss Institute \$2,999,742.32 to support Smart-X Internet of Things (IoT) Living Lab. The period of performance for this award is 24 months.
- ii. **Justification for limiting Indirect Costs.** At the time of award, Griffiss Institute proposed a budget that included an indirect cost rate; however, there was no negotiated indirect cost rate agreement in place. It was subsequently discovered by NIST that Griffiss Institute receives most of its federal financial assistance funding from the Department of Air Force Research Laboratory (AFRL), under the Partnership Intermediary Agreements (PIA) program. Griffiss Institute has been unable to negotiate an indirect cost rate with The Defense Contract Management Agency (DCMA).

The involvement of AFRL and the nature of its agreements with Griffiss Institute make this situation unique. Negotiating a separate indirect cost rate agreement could disrupt established procedures for determining indirect costs for PIAs. Therefore,

DCMA has agreed to review Griffiss Institute's proposed indirect costs under NIST Award 60NANB23D182 and provide NIST with a recommended indirect cost rate specific to this award. NIST supports the approach suggested by DCMA for this award as it ensures consistency, efficiency, and compliance with the indirect cost rules, while minimizing the risk of disruption to ongoing projects. DCMA's review and recommendation further validate this course of action.

- iii. **Governance Process.** NIST's process for communicating its indirect cost rate limitations for the subject CIPP award to the Griffiss Institute Inc. is as follows:
  - 1. The indirect cost deviation will be included as a specific award condition for this award, which may take the form of incorporating by reference into the award term the DCMA review and resulting rate recommendation; and
  - 2. Posting this deviation on the OAM website.

## **2. National Oceanic and Atmospheric Administration (NOAA).**

### **A. The Small Business Innovation Research (SBIR) program.**

- i. **Program Description.** The SBIR program was originally established in 1982 by the Small Business Innovation Development Act (P.L. 97-219), codified at 15 U.S.C. § 638. It was then expanded and extended by the Small Business Research and Development (R&D) Enhancement Act of 1992 (P.L. 102-564), and received subsequent reauthorization and extensions, the most recent of which extends the SBIR program through 2022. (P.L. 114-328). The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concerns in Federally funded research or research and development (R/R&D). Specific program goals are to: (1) stimulate technological innovation; (2) use small business to meet Federal R/R&D needs; (3) foster and encourage participation by socially and economically disadvantaged small businesses and by women-owned small businesses in technological innovation; and (4) increase private sector commercialization of innovations derived from Federal R/R&D, thereby increasing competition, productivity, and economic growth. Eleven Federal agencies, including NOAA, implement SBIR by setting aside a portion of the extramural research and development (R&D) budget each year to fund research applications from small science and technology-based entities. Through this set aside, NOAA funds two SBIR programs – SBIR Phase I and SBIR Phase II. The SBIR Phase I awards provide up to \$150,000 to complete a feasibility study within a six-month period of performance. The SBIR Phase II awards cover the actual R&D phase. These awards provide a maximum of \$500,000 for a two-year period of performance.
- ii. **Justification for limiting Indirect Costs.** SBIR awards are made to small for-profit entities that often have no prior contracting or federal assistance relationship with the Federal government, which means NOAA would be the cognizant federal agency, responsible for negotiating an indirect cost rate. This creates a potential problem for NOAA because of the specific SBIR program requirements.

The brief six-month period of performance of the SBIR Phase I program makes the timeframe for indirect cost rate negotiation unreasonable. In most cases, the project would end before the indirect cost rate negotiation could be completed. In addition, while the SBIR Phase II program provides a maximum award amount of \$500,000 and a two-year period of performance, only Phase I grantees who completed their project are eligible for a Phase II grant. Maintaining a set indirect cost rate allows the recipient to consistently charge costs.

As a result of the specific limitations of the SBIR program (outlined above), NOAA does not negotiate indirect cost rates with SBIR Phase I awardees. Phase I recipients that do not have an approved negotiated indirect cost rate agreement may propose an indirect cost rate of up to 40 percent of total direct costs, which will be accepted by NOAA without further negotiation. The 40 percent will allow recipients to recover a reasonable amount of indirect costs for their projects and is consistent with the approach taken by other agencies that award SBIR grants, including NIH. Phase II awardees are given the same option of a set 40 percent indirect cost rate, however, if the Phase II awardee requests more than 40 percent, and NOAA is the cognizant Federal agency, NOAA will negotiate an indirect cost rate with that awardee.

iii. **Governance Process.** NOAA's process for communicating its indirect cost rate limitations for the SBIR program is as follows:

1. The policy is published in the notice of funding opportunity for each competition.
2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
3. Posting deviations on OAM website.

## **B. The Pacific Coastal Salmon Recovery Fund (PCSRF) program.**

- i. **Program Description.** Funding for PCSRF was requested by the Clinton Administration in 1999 as a new initiative in the FY2000 Federal budget in response to requests from the governors of Washington, Oregon, California, and Alaska for a stable source of Federal funding for a coast wide Pacific salmon restoration and conservation effort. The initiative requested \$100M "for grants to States and Tribes for the recovery of Pacific coastal salmon." The PCSRF program began with a FY2000 Congressional appropriation of \$58M for the States of Washington, Oregon, California and Alaska and the Pacific coast and Columbia River basin tribes "for necessary expenses associated with the restoration of Pacific salmon populations and the implementation of the 1999 Pacific Salmon Treaty Agreement between the United States and Canada" (Consolidated Appropriations, 2000, Pub. L. 106-113, November 29, 1999). PCSRF funds were authorized "for salmon habitat restoration, salmon stock enhancement, salmon research, and implementation of the 1999 Pacific Salmon Treaty Agreement and related agreements "States were required by law to limit program administrative expenses to three percent of the funds received. Such expenses were defined by NOAA as all costs, including direct and indirect costs, incurred by the State (and later Tribal Commission/Consortium) in administering a grant and managing the distribution of the PCSRF grant funds to subrecipients,

contractors, programs, or projects that undertake PCSRF activities. From FY2001 to FY2006, the direction and appropriation of funding for the program was promulgated through strikeout/interlineation amendments contained in various consolidated appropriations bills. However, Congressional statutory construction in 2001 may have inadvertently changed portions of the statute (e.g., reference to the cap on administrative expenses for recipient States, and later Tribal Commissions/Consortia) which were not targeted for amendment.<sup>1</sup> In 2007, the Magnuson-Stevens Reauthorization Act brought about yet another series of textual changes and funding. From 2009 until the present, however, Congress has provided consistent language for the PCSRF program.

- ii. **Justification for limiting Indirect Costs.** As noted above, Pub. L. 106-113 established a three percent cap on administrative expenses for the PCSRF program. Follow-on appropriation laws have been silent on this particular requirement. In the absence of clear statutory direction, however, NOAA has, since 2001, continued to require programmatically this three percent limitation. With the advent of new grants requirements that mandate acceptance of applicants' negotiated indirect cost rates, NOAA wishes to preserve its ability to negotiate with PCSRF State and Tribal Commission/Consortia recipients to ensure that administrative expenses for this important and highly scrutinized program are kept consistent with historic budgets and limitations, as well as with what NOAA considers to be Congressional intent in this regard.
- iii. **Governance Process.** NOAA's process for communicating its indirect cost rate limitations for the PCSRF program is as follows:
  - 1. The policy is published in the notice of funding opportunity for each competition.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

### **C. The Cooperative Science Center (CSC) program.**

- i. **Program Description.** The CSC program is a component of the Educational Partnership Program with Minority Serving Institutions. For the CSC program, the lead institution is a doctoral granting Minority Serving Institutions (MSIs). Award funding to the lead institution is sub-awarded to MSI and non-MSI academic partners to support the education, training, and graduation of students, particularly from underrepresented communities, in NOAA mission fields. Each of the CSCs has an educational focus in one of the four areas. These are the Atmospheric Sciences, Coastal and Marine Ecosystem Sciences, Living Marine Resources, and Earth System Sciences and Remote Sensing Technology. The CSCs are awarded as cooperative

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<sup>1</sup> In a manner similar to that of the cap on administrative expenses, reference to the twenty-five percent non-federal matching requirement for State recipients did not appear in the Consolidated Appropriations Act, 2001. A specific reference to the matching requirement did not appear again until 2009 (Omnibus Appropriations Act, 2009, Pub. L. 111-8), at which time Congress raised the rate to thirty-three percent. Language regarding the cap on administrative expenses was not included at this time.

agreements with significant NOAA involvement through a competitive process for five-year project periods. The CSC collaborative partnerships with NOAA are designed to: a) have NOAA scientists, resource managers, engineers, policy and regulatory experts jointly train CSC students; b) mentor and coach CSC students in a professional setting at NOAA facilities; c) conduct workshops and seminars for CSC students and faculty in specialized NOAA mission areas; and d) offer professional development and experiential learning opportunities at NOAA. The hands-on experience gained from participation in the program provides the students with the practical and operational type skills to compete successfully in the NOAA mission workforce upon graduation.

- ii. **Justification for limiting Indirect Costs.** The indirect cost rate for the CSC program is capped at 25% of modified total direct costs since NOAA provides substantial support in this partnership program through access and use of NOAA facilities and NOAA professionals in the performance of cooperative agreements by MSI recipients. The indirect cost rate cap of 25%, along with the NOAA substantial involvement, allows the recipient organization to support training an increased number of traditionally underrepresented students who graduate with STEM degrees supporting the NOAA mission. The indirect cost rate cap of 25% enables more NOAA funding to support the performing of activities that directly support faculty and professionals who train students at the MSIs. In this connection, it enables the MSIs to increase the number of traditionally underrepresented students who are trained and graduate with STEM disciplines consistent with the NOAA mission and eligible to successfully join the future workforce at NOAA and other federal, state, tribal and local government organizations. Any increase to the indirect cost rate above 25% will reduce research support for the faculty and professionals who are directly responsible for training and graduating students underrepresented in NOAA-mission STEM fields.
- iii. **Governance Process.** NOAA's process for communicating its indirect cost rate limitations for the CSC program is as follows:
  - 1. The policy is published in the notice of funding opportunity for each competition.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

#### **D. The Cooperative Institute (CI) program.**

- i. **Program Description.** The CI program is authorized under 15 U.S.C.1540, 118 Stat.71, which allows for NOAA to enter into cooperative agreements with designated Joint and Cooperative Institutes. CIs are comprised of academic and non-profit research institutions that conduct the highest quality research in NOAA's mission areas. Currently, NOAA supports nineteen CIs, consisting of 70 institutions across 28 states and the District of Columbia with a budget of approximately \$250 million annually. Each of the CI specializes in themes that are relevant to NOAA, such as climate research and modeling, marine ecosystems, and coastal hazards. The

work performed at the CIs advance NOAA's ability to predict weather, understand and maintain healthy oceans, prepare and respond to changes in climate and its impacts, maintain resilient coastal communities, and support NOAA's enterprise systems. The CIs are competed at ten-year intervals with awards issued in two, five-year segments. An institutional review is held in the fourth year to determine whether work performed is of sufficient quality to issue a second five-year segment noncompetitively.

- ii. **Justification for limiting Indirect Costs.** The awards supporting the CIs are designated "institutional" because their funding is premised upon a competition that seeks to establish a long-term partnership between DOC and its recipient. Under this arrangement, NOAA and the CIs often share resources such as facilities, equipment, or personnel, which may offset the use of the institution's facilities and administration, as recovered under the indirect rate. To ensure fair recovery of indirect costs and to best leverage the resources of its academic research partners, NOAA may elect to negotiate indirect cost rates with CI applicants whose rates (when adjusted for university size, cost sharing, amount of work to be performed, among other considerations) exceed the norm for the program. Moreover, in the course of considering a renewal application from an existing cooperative institute, NOAA may require use of the reduced indirect cost rate that was in effect during the initial five-year award period.
- iii. **Governance Process.** NOAA's process for communicating its indirect cost rate limitations for the CI program is as follows:
  - 1. The policy is published in the notice of funding opportunity for each competition.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

#### **E. The Cooperative Ecosystem Studies Unit (CESU) program.**

- i. **Program Description.** The CESU program is authorized under the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391) with the Department of Interior (DOI). Under this directive, seventeen units were competitively established as CESUs, whose network spans all states and territories. Each of the units focuses on a particular biogeographic region of the country. NOAA joined DOI and other Federal agencies in participating in the CESU network by signing Memorandums of Understandings with nine of the units. The units bring together expertise from universities, non-profit organizations, and governmental agencies to support research, technical assistance and education related to the country's natural resources.
- ii. **Justification for limiting Indirect Costs.** The CESUs are governed by the CESU Network Council, which includes administrators and senior scientists from each of the participating Federal agencies. The Network Council establishes the policies for the CESUs, including the indirect cost rate that is charged by member organizations. Since the CESUs were envisioned as a way to cost share on interdisciplinary work



that may benefit multiple parties, the Council has historically established a flat rate across the network. The Network Council monitors the rate and adjusts as needed. NOAA, as a member of the Network Council, will abide by the established rates for any projects funded under the program.

iii. **Governance Process.** NOAA's process for communicating its indirect cost rate limitations for the CESU program is as follows:

1. The policy is published in the notice of funding opportunity for each competition.
2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
3. Posting deviations on OAM website.

**3. International Trade Administration (ITA).**

**A. The Market Development Cooperator Program (MDCP).**

- i. **Program Description.** MDCP awards are authorized under 15 U.S.C. § 4723 and include financial and technical assistance to support projects that help U.S. firms export. An MDCP award establishes a partnership between ITA and non-profit industry groups such as trade associations and chambers of commerce. Such groups are particularly effective in reaching small- and medium-size enterprises (SMEs). ITA provides up to \$300,000 in total funds to MDCP to be spent over a 3-5 year project period. A recipient must put up at least a 1-to-1 match (50%). Historically, the largest group of entities eligible to apply for and receive MDCP funding is trade associations. These groups are funded primarily by dues paid by member companies and from fees collected from industry trade events. Both the constituency of these groups, mostly SMEs, and the focus of much of their activity, industry-promotion, make them ideal to undertake MDCP projects.
- ii. **Justification for Limiting Indirect Costs.** Trade associations tend to have very low overhead. Most of the trade association MDCP award recipients do not claim indirect costs because such costs are fairly low, the association usually has a fairly small staff, and the administrative burden is not worth the benefit. The indirect cost rates of those associations that do claim such costs generally range from 4 to 7%.

By contrast, MDCP award recipients affiliated with an educational institution usually have very high indirect cost rates ranging from 45 to 65%. Such institutions alone have never been eligible to receive MDCP awards, however, as indicated in the MDCP federal funding opportunity notice:

“[O]rganizations that are part of or affiliated with an educational institution for administrative, accounting, financial, legal, or logistical reasons may be eligible. Such organizations that are not independent legal entities, for example, an unincorporated organization, that otherwise may be classified under *III.A. Eligible Applicants*, above, as a trade association, non-profit industry association, or state department of trade and its regional associations, are eligible.”

So, while the educational institution itself is not eligible, an entity affiliated with it that would otherwise be eligible could be found to be eligible. One example is a Small Business Development Center (SBDC). There are scores of SBDCs around the United States that serve the SME community that ITA seeks to help. Most exist as stand-alone legal entities with their own accounting system but some SBDCs are affiliated with a college or university and use the host institution's accounting system. Such an SBDC benefits from the high overhead of the host educational institution because the overhead can be claimed as indirect cost and used as part of the required award match. By comparison, a stand-alone SBDC that serves the same type of SME pool would have much lower overhead, which means a lower indirect cost rate.

Higher Indirect Cost Rate Correlates Inversely with Project Performance. The primary measure of MDCP project success is dollar value of exports generated by the project. On average, MDCP award recipients affiliated with an educational institution have project results well below those reported by other types of MDCP award-recipients, especially trade associations. So, on average, the higher the indirect cost rate claimed, the lower the dollar value of exports that a project generates.

The 10% indirect cost rate is the only rate that may be claimed by MDCP award recipients. The rate is applied to total direct costs. This applies to all MDCP award recipients, including those that already have an indirect cost rate higher than 10% certified by another cognizant agency. This 10% indirect cost rate cap is implemented for the following reasons:

1. High overhead is not required to achieve satisfactory results from an MDCP project. MDCP awards are for export-promotion projects. No scientific research is involved. Minimal organizational expenses are all that are relevant or necessary for an organization to be able to successfully conduct export expansion activities.
2. MDCP recipients with low overhead have a greater match burden than recipients with high overhead. Stand-alone organizations have low overhead. Organizations associated with an educational institution generally have higher overhead to account for the great cost of maintaining such institutions. Because a high overhead translates to a high indirect cost rate, an MDCP recipient with a high indirect cost rate can significantly reduce the amount of match that must come from cash or in-kind sources. This means that a stand-alone organization that is identical in its purpose and staffing to an organization that is associated with a university would have to put up disproportionately more cash and/or in-kind match than would the university-associated organization. This puts the stand-alone organization at an unfair disadvantage.
3. ITA encourages recipients to cover participant travel and other support costs. Using an MTDC base would discourage it. For MDCP projects, the greater number of SME participants in project activity, the greater the export results, the primary measure of performance. To maximize participation in MDCP project activity, recipients often cover part of the travel, lodging, and registration cost of

an SME to participate in project events like trade shows abroad and outbound trade missions. Participating in such activity is how recipients help SMEs to generate export sales, the objective of all MDCP projects. Covering some of the support costs is how recipients help participant SMEs meet foreign buyers and sign sales contracts. Restricting recipient indirect cost basis to MTDC would limit the number of participants that a recipient helps by covering their support costs because MTDC specifically excludes support costs. As a hypothetical, for the same federal share, a recipient allowed to base its indirect cost claim on total direct cost could support 44 participants while it may only be able to support 40 if the basis is limited to MTDC. This is because, without the benefit of leveraging indirect costs for part of its 1-for-1 required match, it would make undertaking the project more expensive for small SME-serving recipients. As a result, the recipient would be constrained to assist fewer SMEs.

4. Use of an MTDC base would benefit larger recipients over smaller ones. Without the benefit of claiming indirect costs on travel expenses of participants, often a substantial part of an MDCP project budget, smaller recipients would be at a disadvantage compared to larger, better financed ones. Again, MDCP's goal is to help SMEs export. And very often, the most successful organizations to facilitate this are recipients that tend to have small staff and modest revenue. Requiring recipients to use an MTDC could have the unintended effect of a return to favoring recipients affiliated with colleges and universities, the entities that had the advantage of the big NICRs before ITA instituted its policy of requiring all recipients to claim indirect costs with the same 10% of total direct costs.
- iii. **Governance Process.** ITA's process for communicating its indirect cost rate limitation to MDCP award recipients is as follows:
1. The policy is set forth [here](#) on the MDCP website.
  2. The policy is published in the federal funding opportunity notice prior to each competition.
  3. An example of how to claim the 10% indirect cost rate is included on the [MDCP website](#).
  4. Posting deviations on OAM website.

#### 4. National Telecommunications and Information Administration (NTIA).

##### A. The Tribal Broadband Connectivity Program (TBCP).

- i. **Program Description.** TBCP is a federal grant program authorized by the Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905(c), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020) (Act), as amended by the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law, Division F, Title II, Section 60201, Public Law 117-58, 135 Stat. 429 (Nov. 15, 2021) (IIJA). The Tribal Broadband Connectivity Program provides new federal funding for grants to eligible entities, which include a Tribal Government, a Tribal College or University, the Department of Hawaiian Home Lands on behalf of the Native Hawaiian Community, including Native Hawaiian Education Programs, a Tribal

organization, or an Alaskan Native Corporation, to expand access to and adoption of: (i) broadband service on Tribal Land; or (ii) for programs that promote the use of broadband to access remote learning, telework, or telehealth resources during the COVID–19 pandemic. Grant funds available under this program may be used for the following purposes: (A) Broadband infrastructure deployment projects, including support for the establishment of carrier-neutral submarine cable landing stations; and (B) Projects that promote the adoption and use of broadband services, including: (i) affordable broadband programs, such as providing free or reduced-cost broadband service and preventing disconnection of existing broadband service; (ii) distance learning; (iii) telehealth; (iv) digital inclusion efforts; and (v) broadband adoption activities. NTIA made up to \$980,000,000 available for federal assistance under the TBCP under a Notice of Funding Opportunity (NOFO) issued on June 3, 2021. IIA's Tribal Connectivity Technical Amendments appropriated an additional \$2 billion in funding for TBCP. NTIA allocated an additional \$1 billion to fund applications received under the first NOFO. NTIA will make approximately \$980,000,000 available for federal assistance under the second NOFO issued on July 27, 2023. Applications under the second NOFO must be received by March 22, 2024.

- ii. **Justification for Limiting Indirect Costs.** Section 905(c)(6) of the Act establishing TBCP prohibits an eligible entity from using more than two percent (2%) of the grants funds it receives for administrative expenses. For this purpose, the two percent limitation on administrative expenses includes the combined total of indirect costs and direct administrative costs charged to an award. Accordingly, NTIA is required by statute to limit the indirect cost rate recovery to no more than two percent of the grant funds received by a recipient under this program.
- iii. **Governance Process.** NTIA's process for communicating its indirect cost rate limitation to TBCP award recipients is as follows:
  - 1. The policy is set forth in the federal funding opportunity notice for each Tribal Broadband Connectivity Program competition, which is posted [here](#) on the NTIA website.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the notice of funding opportunity containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

## **B. The Broadband Equity, Access, and Deployment (BEAD) program.**

- i. **Program Description.** BEAD provides new federal funding for NTIA grants for broadband planning, deployment, mapping, equity, and adoption activities to all fifty states, the District of Columbia, and Puerto Rico (States), as well as American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the United States Virgin Islands (Territories), and, in certain circumstances, political subdivisions of these States and Territories. Funding is distributed primarily based on the relative number of “unserved” locations (*i.e.*, broadband-serviceable locations that lack access to Reliable Broadband Service at speeds of at least 25 Mbps downstream

and 3 Mbps upstream and latency levels low enough to support real-time, interactive applications) in each State and Territory. NTIA released a Notice of Funding Opportunity for the BEAD Program on May 13, 2022.<sup>2</sup> States and Territories received their formal funding allocation notices on June 30, 2023. This funding allocation information then enabled States and Territories to develop their Initial Proposals regarding their use of BEAD Program funding. As of December 27, 2023, all States and Territories had submitted their Initial Proposals to NTIA.

- ii. **Justification for Limiting Indirect Costs.** 47 U.S.C. § 1702(d)(2)(B) prohibits Eligible Entities from using more than two percent of allocated funds for expenses relating (directly or indirectly) to the administration of the BEAD grant; this includes any costs incurred by contractors or subrecipients related to the administration of the Eligible Entity's grant. Note, the two percent statutory cap does not apply to funds allocated during the Initial Planning Funds phase of the BEAD Program or to the subgrantee's administrative expenses to manage its subaward. Accordingly, NTIA is required by statute to limit Eligible Entities' expenses relating (directly or indirectly) to administration of the grant to no more than two percent of the grant amounts received under the BEAD Program.
- iii. **Governance Process.** NTIA's process for communicating its indirect cost rate limitation to BEAD award recipients is as follows:
  - 1. The policy is set forth in the BEAD NOFO, which is posted on the NTIA website.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference into the award terms the in the BEAD NOFO containing the policy for the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

### C. The State Digital Equity Capacity Grant Program

- i. **Program Description.** The Digital Equity Act provides \$2.75 billion in funding for three grant programs that aim to ensure that all people and communities have the skills, technology, and capacity to enjoy the full benefits of our digital economy. These grant programs include the State Digital Equity Capacity Grant Program. Its purpose is to promote the achievement of digital equity, support digital inclusion activities, and build capacity for the broadband adoption efforts of States. In particular, the State Digital Equity Capacity Grant Program will provide funding to States and Territories to implement their State Digital Equity Plans, which were developed with funding from the State Digital Equity Planning Grant Program, also funded under the Digital Equity Act. The State Digital Equity Plans identify the barriers to achieving digital equity that confront certain disadvantaged groups and provide measurable objectives to promote such goals as affordable broadband access, digital literacy, and cybersecurity awareness for these groups.

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<sup>2</sup> Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program, National Telecommunications and Information Administration (May 13, 2022).

- ii. **Justification for Limiting Indirect Costs.** 47 U.S.C. § 1723(d)(3)(D)(v)(II) prohibits the use of more than three percent of the amount of a State Digital Equity Capacity Grant Program award for administrative expenses. Accordingly, NTIA is required by statute to limit the indirect cost rate recovery to no more than three percent of the grant funds received by a recipient under the State Digital Equity Capacity Grant program.
- iii. **Governance Process.** NTIA's process for communicating its indirect cost rate limitation to State Digital Equity Capacity Grant Program award recipients is as follows:
  - 1. The policy is set forth in the State Digital Equity Capacity Grant Program NOFO, which will be posted on the NTIA website.
  - 2. The policy is included as a specific award condition on each award, which may take the form of incorporating by reference the relevant NOFO requirement addressing the indirect cost rate deviation.
  - 3. Posting deviations on OAM website.

Questions about these deviations may be directed to the Financial Assistance Policy and Oversight Division at [bc-oam-grants@doc.gov](mailto:bc-oam-grants@doc.gov).