

Directive 437.1  
2/20/91

STATUTORY RESTRICTIONS ON THE PAYMENT OF INDIRECT  
COSTS FOR COOPERATIVE AGREEMENTS AND GRANTS

I.  
PURPOSE

This Directive states the policy and provides guidelines relating to the payment of indirect costs and tuition remission under cooperative agreements and grants with State cooperative institutions and other nonprofit institutions.

II.  
DEFINITIONS

A. Indirect costs means costs that are common to two or more of a grantee's projects or operations. Space occupancy, personnel administration, accounting, and other overhead activities are generally charged to grants and agreements as indirect costs.

B. State cooperative institutions (as defined in 7 U.S.C. 3103(16)) means institutions designated by:

1. The Act of July 2, 1862 (7 U.S.C. 301 et seq.), commonly known as the First Morrill Act;
2. The Act of August 30, 1890 (7 U.S.C. 321 et seq.), commonly known as the Second Morrill Act, including the Tuskegee Institute;
3. The Act of March 2, 1887 (7 U.S.C. 361a et seq.), commonly known as the Hatch Act of 1887;
4. The Act of May 8, 1914 (7 U.S.C. 341 et seq.), commonly known as the Smith-Lever Act;
5. The Act of October 10, 1962 (16 U.S.C. 582a et seq.), commonly known as the McIntire-Stennis Act of 1962; and
6. Subchapters V, XI, and XII of this chapter.

III.  
POLICY

It is AMS Policy that when cooperative agreements are awarded to State cooperative institutions and other nonprofit institutions, indirect costs and tuition remission must be treated as follows:

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A. Cooperative agreements awarded to State cooperative institutions, as defined in 7 U.S.C. 3103(16), must not allow indirect Costs or tuition remission to be charged against Federal funds provided under the agreements, if the cooperative program or project involved is of mutual interest to all the parties and if all the parties contribute to the cooperative agreement involved.

B. Cooperative agreements awarded to nonprofit

institutions which are not State cooperative institutions as defined in 7 U.S.C. 3103(16), may incorporate a negotiated indirect cost rate that does not exceed 10 percent of the total direct cost of the agreement for each cooperative agreement. Tuition remission may be charged to Federal funds provided to such nonprofit institutions under cooperative agreements, as set forth in the applicable Office of Management and Budget (OMB) circular.

IV. RESTRICTIONS AND EXCEPTIONS The cost principles of OMB Circulars A-21, A-87 and A-122 restrict Federal agencies from arbitrarily limiting reimbursement of any costs, including indirect costs, unless exempted by OMB or statute.

A. An exception was created with the passage of The National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, (7 U.S.C, 3319), which states:

Funds made available by the Secretary under established Federal-State Partnership arrangements to State cooperative institutions under the Acts referred to in section 3103 (16) of this title and funds made available under subsection (C)(2) and subsection (d) of section 450i of this title shall not be subject to reduction for indirect coats or for tuition remission. No indirect costs or tuition remission shall be charged against funds in connection with cooperative agreements between the Department of Agriculture and State cooperative institutions if the cooperative program or project involved is of mutual interest to all the parties and if all the parties contribute to the cooperative agreement involved....

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B. A second exception was created for fiscal year 1981 and subsequent years by provisions in the Annual Appropriations Act (section 618 of P.L. 96-528) which states:

No funds appropriated by this Act may be used to pay negotiated indirect cost rates on cooperative agreements or similar arrangements between the United States Department of Agriculture and nonprofit institutions in excess of ten per centum of the total direct cost of the agreement when the purpose of Such cooperative arrangements is to carry out programs of mutual interest between the two parties. This does not preclude

appropriate payment of indirect costs on grants and contracts with such institutions when such indirect costs are computed on a similar basis for all agencies for which appropriations are provided in this Act.

V.                   Division and Staff Directors involved in  
RESPONSI-           activities with State cooperative institutions and  
BILITIES           other nonprofit institutions must review these  
                      statutory limitations, and revise instructions as  
                      appropriate.

VI.                   Direct questions or comments to the Federal  
INQUIRIES           Assistance Officer, Financial Management  
                      Division, on 475-3735.

L. P. Massaro  
Deputy Administrator, Management

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