



# ISSUE GUIDE

## *What's the Issue?*

FEDERAL, STATE & CITY

## **OMB Uniform Guidance on Indirect Costs, How will New York Respond?**

### *Background:*

In December 2014, the federal Office of Management and Budget formally recognized, in new rules called the [Uniform Guidance](#), that when governments hire nonprofits to provide services, those nonprofits legitimately incur and need to be paid for their indirect costs, often referred to as overhead or administrative expenses. The Uniform Guidance supersedes all previous OMB directives regarding use of federal funds to pay nonprofits for services delivered under grants and contracts and streamlines the rules governing administrative requirements, cost principles and audit requirements on awards of grants and contracts that use federal funds.

Importantly, the new rules expressly require pass-through entities using federal funds (typically state and local governments, as well as some larger nonprofits) and all federal departments/agencies to reimburse nonprofits for the reasonable indirect costs they incur when performing services on behalf of governments. Nonprofits that previously have negotiated a federal indirect cost rate must be paid using that rate. Nonprofits that have never had a federally approved indirect cost rate can elect either the minimum rate of 10 percent of their modified total direct costs or to negotiate a higher rate in accordance with federal cost principles.

### *Implications for the Philanthropic Sector:*

For decades, the philanthropic sector has been forced to subsidize government programs when governments at all levels have failed to pay nonprofits the full costs of delivering services for which the governments have entered written agreements with nonprofits. Recent data reveal how substantial those subsidies have been. The Urban Institute research shows that, of surveyed nonprofits in New York with government contracts, 54 percent reported that governments imposed a limit on their overhead costs, and of those 20 percent reported being paid zero, 40 percent reported being paid 7 percent or less, and 79 percent reported being paid 10 percent or less. To fill these gaps, nonprofits then divert limited resources and incur more costs trying to raise private funds.

New York has the opportunity to be a leader in ensuring that its nonprofits have the resources necessary to fulfill the work that government often commissions them to perform.

The OMB Uniform Guidance really presents only a *promise* of fair reimbursement practices for nonprofits providing services under programs funded in whole or in part by the federal government. It is not clear how State and City governments, or even the nonprofits that have long sought reimbursement for the full costs of providing services, will integrate the Uniform Guidance into their daily practices going forward.

Changing longstanding practices overnight is a challenge, one that is significantly compounded by the fact that change depends on the individual decisions and actions of tens of thousands of different federal, state and local government employees who may or may not know all of the details of the new federal requirements. Even though the OMB Uniform Guidance is the law of the land, it is possible, especially in the early stages of implementation, that nonprofits will encounter resistance when seeking full compliance by pass-through entities.

That is why the National Council of Nonprofits is encouraging philanthropic leaders to take action on several fronts. First, they urge funders to alert their grantees to the promise of the Uniform Guidance and the need to know and protect their rights. (See “Know Your Rights” below.) Second, if grantees need to establish stronger cost allocation systems to be able to comply with the Uniform Guidance’s directives, the Council of Nonprofits encourages funders to provide funding for opportunities for professional development and systems improvements.

In New York City, the Nonprofit Coordinating Committee, the Human Services Council, and other nonprofit associations are talking directly with State and City government officials to understand what actions they will take to ensure contracting offices respond appropriately. The outcome of those talks is far from certain.

There is a potentially important and positive role for philanthropy to play in those discussions. Leaders of the philanthropic sector can be an immensely important and constructive voice at the table to further impress the message that nonprofits need to be paid for the full cost of providing services, which includes indirect costs.

It is very possible that legislative bodies at the federal, state and city levels may further reduce project budgets or keep them flat -- despite the requirement’s implicit imperative to *add* an additional 10 percent or more to begin paying indirect costs that nonprofits have incurred under their government contracts. If they don’t, then the new grants and contracts will therefore need to reduce the amount provided in contracts dedicated to direct service provision. This may mean that, in order to maintain the same level of services, nonprofits would need to seek additional resources from the philanthropic sector to make up the difference. Philanthropy’s active voice in the conversation between government and nonprofits on this matter could be essential in ensuring that philanthropy does not get left holding the bag.

## ***Philanthropy New York's Position:***

Philanthropy New York has not taken an official position on how New York City and State governments should respond to the OMB Uniform Guidance. However, it is encouraging its members to alert their grantees about the promise of better treatment through the OMB Uniform Guidance and join with us in our efforts to ensure that city and state officials respond to the new regulations appropriately.

### ***Check out these additional information sources:***

[“Know Your Rights ... and How to Protect Them”](#) – National Council of Nonprofits

[“OMB Uniform Guidance”](#) (an overview) – National Council of Nonprofits

[“The Word for Today is ‘Overhead’: OMB Uniform Guidance Takes Effect”](#) – Nonprofit Quarterly

[“New Regulations Spotlight Nonprofit Overhead”](#) – PhilanthroFiles

[“Progress on Cost Reimbursement: The Early Reviews on the OMB Uniform Guidance”](#) – National Council of Nonprofits

[“One Small Step for Government, One Giant Leap for Nonprofits”](#) – GuideStar

[“Nonprofits Win Key Victory in Overhead Battles with Government”](#) – The Chronicle of Philanthropy

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