

## An Alternative to Eichleay: HOOP!

**Executive Summary:** Contractors delayed by the owner often want to be reimbursed 'x' dollars per 'y' days for the cost of home office overhead. Most contractors are used to using the Eichleay Formula to recoup this cost. There's a new formula available from a case in Ohio: the HOOP Formula. It's stupid simple.

### HOOP (Home Office Overhead Payment) FORMULA

- ✓ Accepted in an Ohio court.
- ✓ Referenced in a Transportation Research Board of the National Academies' report
- ✓ Negates the need for cost audit.
- ✓ Simplifies home office daily rate determination.
- ✓ Vastly reduces negotiation duration.
- ✓ Decreases legal expense.

**What is the Eichleay Formula?** The Eichleay Formula was born out of a decision by the Armed Services Board of Contract Appeals in 1960 involving a construction company named Eichleay Corporation. Eichleay's case involved reimbursement of home office overhead cost. The unabsorbed home office overhead was calculated using the formula below:

### Eichleay Formula

$$\frac{\text{Contract Billing}}{\text{Total Billings for Contract Period}} \times \text{Total Home Office Overhead for Contract Period} = \text{Overhead Allocated to Contract}$$



$$\frac{\text{Overhead Allocated to Contract}}{\text{Days of Performance (including delay)}} = \text{Daily Contract Overhead Rate}$$



$$\text{Rate of Overhead Allocated to Project Per Day} \times \text{Number of Days Delayed} = \text{Amount of Home Office Overhead Allocated to Project}$$

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**HOOP is Ridiculously Simple.** HOOP stands for Home Office Overhead Payment. It was recently used in *Wood Electric, Inc. v. Ohio Facilities Construction Commission*, 2017 Ohio App. Lexis (May 9, 2017). It's also in the *Ohio DOT Construction and Material Specifications*, January 1, 2013. Here's the formula:

### HOOP Formula

$$\text{Daily HOOP} = (A * C) / B$$

HOOP = Home Office Overhead Payment

A = Original Contract Amount

C = Overhead Rate

B = Original Contract Duration in Calendar Days

The overhead rate used in the Wood Electric case was 0.08. The values for C provided in the Ohio DOT specification are

<u>Original Contract Amount</u>	<u>C</u>
Up to \$5,000,000	0.08
\$5,000,001 to \$25,000,000	0.06
Over \$25,000,000	0.05

As an example, let's take an \$8,500,000 project delayed 15 calendar days beyond its 100-calendar day original contract duration. According to the preceding table, the home office overhead compensation would be calculated as follows:

$$\text{Daily HOOP} = \$8,500,000 * 0.06 / 100 = \$5,100$$

$$\text{Home office overhead compensation} = \$5,100 * 15 \text{ calendar days} = \$76,500$$

**My Story.** I've used the Eichleay Formula on federal, state, and private jobs with varying levels of success.

The first problem that I run into is getting the owner to agree (s)he delayed me – that's entitlement, and we're talking quantum (calculating the numbers) here.

The next problem then becomes the proof of my overhead costs. It's always been a lengthy process to audit myself and provide acceptable and convincing documentation to the client.

The massive advantage in the HOOP Formula is that there's no debate from the Owner (or the contractor) on the daily rate of home office overhead; it's pre-calculated. This results in less time and a lesser cost of the actual claim process (i.e., consultants and lawyers).

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