



KIVA Advisory Memorandum
Applicability of Indirect Cost Rates
Federal Emergency Relief Funds
December 11, 2021

Background

Questions have been raised on the applicability of tribal Negotiated Indirect Cost Rate Agreements (NICRAs) to Federal Emergency Relief Funds (CARES Act, American Rescue Plan Act, Infrastructure Investment & Jobs Act), and other future emergency appropriations related to the Coronavirus Pandemic (COVID-19). Tribal governments received significant amounts of funding in FY 2020 and FY 2021 to respond to the Coronavirus Pandemic. Questions were also raised if tribal organizations may recover administrative costs directly from the Federal Emergency Relief Funds without applying their Indirect Cost Rates (ICRs). This Advisory Memorandum provides basic background information on ICRs used by tribal organizations; and provides guidance to address these questions.

Negotiated Indirect Cost Rates

Tribal organizations typically recover their administrative costs through an annual NICRA, or through other agreements such as Administrative Cost Grants, Lump Sum Agreements. Problems arise when tribal organizations do not have current NICRAs, or when certain federal agencies do not provide full reimbursement of the ICRs or administrative costs. In any event, tribal organizations incur a significant amount of administrative costs when administering federal programs (especially funding as large as the recent Federal Emergency Relief Funds) and recovery of administrative or overhead costs is always a challenge for tribal organizations.

The Office of Management & Budget (OMB) provides guidance and instructions on Indirect Costs (Facilities & Administration) at 2 CFR §200.414(c) of the Uniform Administrative Requirements, as follows:

- NICRAs must be accepted by all federal awarding agencies. (2 CFR §200.414(c)(1).
- A federal awarding agency may use a rate different from the NICRA 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. (2 CFR §200.414(c)(1).

- Any non-federal agency that has never received a NICRA may elect to charge a de minimis rate of 10% of the Modified Total Direct Costs (MTDC) which may be used indefinitely. 2 CFR §200.414(e).
- Any non-federal entity that has a federal NICRA may apply for a one-time extension of the current NICRA for a period of up to four years; and this extension will be subject to the review and approval of the cognizant agency for indirect costs. At the end of the four-year extension the non-federal entity must re-apply to negotiate a rate. 2 CFR §200.414(g).

To address the lack of current NICRAs of tribal organizations, and to comply with the requirement for full funding under Public Law 93-638 Indian Self-Determination & Education Assistance Act (25 U.S.C. §5325(a)(1)), the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) issued internal policies that would provide for payment of Contract Support Costs using past NICRAs in instances where tribal organizations do not have current NICRAs. We refer you to the following:

- Bureau of Indian Affairs. See Indian Affairs Manual, Part 13, Chapter 7 – Indian Self-Determination Contract Support Costs, Release No. 17-15; January 10, 2017.
- Indian Health Service. See Indian Health Service Manual, Part 6, Chapter 3 - Contract Support Costs; October 28, 2016.

OMB Guidance on Indirect Costs on CARES Act Funds

In normal instances, all funds that benefit from the program services and activities provided through a tribal organization's Indirect Cost Pool (ICP) should be included in a tribal organization's Direct Cost Base (DCB) when negotiating the NICRA.

What is a DCB and why is it important to calculating the ICR? DCB is the denominator in the ICR equation that represents awards tribal organizations receive each year, the amount of which is divided into the ICP amount to determine an Indirect Cost Rate to be expressed as a percentage. There are two primary types of DCBs: (1) Modified Total Direct Costs less Pass-Through Costs; and (2) Total Direct Salaries & Wages. The option is decided by tribal organizations. The DCB selected should result in each award bearing its fair share of Indirect Costs in a reasonable relation to the benefits received from such costs.

The question was whether tribal organizations should apply their ICRs to Federal Emergency Relief Funds to recover administrative costs related to CARES Act, ARPA, Infrastructure Investment & Jobs Act, or should tribal organizations simply charge

appropriate amounts of administrative costs directly to the Federal Emergency Relief awards.

A potential impact on future tribal ICRs is of great concern if tribal organizations included the amounts of Federal Emergency Relief Funds to calculate the ICRs. Federal Emergency Relief Funds represent a significant amount of one-time (non-recurring) funding and if/when tribal organizations apply their NICRAs to these awards, and there is a potential for significant impacts to future tribal ICRs which may affect other federal awards that tribal organizations receive.

- Initially, the U.S. Treasury advised that CARES Act awards are not traditional grant programs and the provisions in the OMB Uniform Administrative Requirements applicable to NICRAs do not apply to the Coronavirus Relief Funds (CRF). This means recipients of CARES Act (and CRF) cannot apply their ICRs to these awards. Treasury advised, however, that CRF recipients may directly charge administrative overhead costs incurred for time spent on administrative work related to COVID-19 but they must track the administrative expenses.
- Concerning ICRs relating to American Rescue Plan Act (ARPA) awards, the U.S. Treasury advised that if a recipient has a current NICRA established with a federal cognizant agency for indirect costs, the recipient may use its current NICRA to apply to the ARPA State & Local Fiscal Recovery Funds (SLFRF). U.S. Treasury further advised that, in the alternative, recipients may use the ARPA SLFRF for administering the ARPA awards, including cost of consultants to support effective management and oversight; and for ensuring compliance with legal, regulatory, and other requirements.
- In each instance of the above, the U.S. Treasury advises that tribal organizations may, in the alternative, recover tribal administrative costs by directly charging administrative costs to Federal Emergency Relief Funds. To do so, we advise that tribal organization develop an appropriate methodology to charge reasonable amounts of administrative costs that can withstand a level of scrutiny

Office of Management & Budget Guidance on CARES Act Funding (New)

On November 2, 2021, the Office of Management and Budget (OMB) issued an exception that organizations may exclude CARES Act CRF amounts in the calculation of the DCBs that deny Indirect Cost Recovery. This is an important and positive policy change that will help tribal organizations as they prepare their NICRAs covering Fiscal Year 2020 and forward.

The policy states”

“This note is to announce that, pursuant to its authority under 2 CFR §200.102(a), the Office of Management and Budget (OMB) has approved an exception to 2 CFR §200.405(b), Allocable Costs; and allow tribal, state, and local governments to exclude from the direct cost base any CARES Act funds that deny indirect cost recovery. This exception applies to CARES Act funding granted under the Treasury’s Coronavirus Relief Funds (CARES Act; P.L. No. 116-136, Division A, Title V (2020), codified at 42 U.S.C. §801) that does not permit indirect cost recovery. In addition, such CARES Act funding should not be included toward the threshold amount for indirect cost rate proposal submission requirements per 2 CFR Part §200, Appendix VII, paragraph D.1.b.”

The above essentially means that tribal organizations may not include the amount(s) of CARES Act Coronavirus Relief Funds (CRF) in calculating the amount of federal program funds that will constitute the Direct Cost Base. Keep in mind, the OMB exception only applies to CARES Act Coronavirus Relief Funds.

DOI Business Center (IBC) and DHHS Cost Allocation Services Center

The DOI-IBC posted the OMB Policy Exception on its website, acknowledging this change is applicable to Tribal, state, and local governments. The DOI-IBC also noted that this subset of CARES Act funding should not be counted toward the threshold amount for indirect cost rate proposal submission requirements. The Department of Health and Human Services (DHHS-Cost Allocation Services Center) also published this guidance and provided contact information for entities that negotiate their rates with the DOI or DHHS.

We recommend that tribal organizations visit the above websites of the above federal cognizant agency for indirect costs for further guidance relating to this topic. DOI/IBC website: <http://ibc.doi.gov/ics/icrna>. DHHS/Cost Allocation Services Center website: <https://rates.psc.gov/>.

Future Advisories

KIVA will provide future Advisory Memoranda regarding the issue of Indirect Costs relating to the American Rescue Plan Act (ARPA), Infrastructure Investment and Jobs Act (IIJA), and the Build Back Better Act (H.R. 5376). Should you have any questions, please contact us at: info@kivainstitute.com, or visit our website: www.kivainstitute.com.