



## Indirect Costs: A New Strategy for Tribes

This paper explores a new paradigm for the way we examine indirect cost collections for federally recognized tribes. For the most part, the victories to assure parity for tribes have been won in the federal courts. Yet with each victory, the rules are changed so that the victory becomes almost an illusion. This is not meant to disparage the hard work put into these court battles. They were all important and did help the plaintiffs by forcing the funding agency to pay what the tribes were legally owed.

Our premise, however, is that we need to engage in a comprehensive debate that goes beyond the rules in place today. This debate needs to examine the differences between tribes and state and local governments, taking into consideration the unique legal, historical and cultural differences of Indian tribes.

We believe ultimately that the rules need to be modified to accommodate the uniqueness of tribal governments so that they can be assured their fair reimbursement of indirect costs and at the same time providing accountability to their funding sources.

1. The rule book is OMB Circular A -87 and ASMC 10. These rules were written for state and local governments. The words “federally recognized Indian tribes” were tacked on almost as an afterthought.
2. The rules assume that state and local governments (S/Ls) will not collect all their overhead (indirect costs) through federal awards as there is always an expectation that they will pay a portion of the overhead associated with the administration of such funds.
3. We also see this under certain awards which require in-kind contributions, such as Head Start and ANA grants. For state and local governments, fundraising events and, in certain cases, tax revenues are used to meet this requirement. On the reservation fundraising ability is quite limited due to the depressed state of reservation economies. And of course tribes have no tax revenue.
4. S/Ls are not allowed to charge any of the legislatures or chief executives costs to indirect, but must fund these out of local or state tax revenue. This can be significant, however keep in mind the tax base for these jurisdictions.
5. Tribes can charge legislatures and chief executives, but only that portion associated with the direct management or oversight of programs in the base. No one has figured out how to determine this, but it appears the record keeping requirements will be

burdensome. The problem is tribal governments are not like S/Ls and have operated a traditional form of government for centuries. So how are tribes to adapt to this new way? They have always blended all government oversight into one agenda whether the issue at hand is a federally funded activity or not.

6. Tribes do not have the ability to pay indirect costs from other funds. This issue more than any other is at the center of the debate. Tribes do not have the ability to raise revenue through taxes in the same way S/Ls do. Local governments tax real property, which represents the bulk of their revenue. Tribes are prohibited from doing this. The trust doctrine prohibits this on trust land and fee land is already taxed by the local government. So a tribe's largest potential is blocked off. They could impose a sales tax but only on the reservation and the amount would be insignificant as most purchases are made off the reservation and out of their jurisdiction. They could impose an income tax but tribal members who work off the reservation already pay this to the state. So the largest generators of tax revenue to S/Ls are pretty much closed off to tribal governments.
7. What this means is that the very generators of revenue to pay a portion of indirect cost and in-kind is shut off, with no corresponding consideration from the federal government when applying the rules to us.
8. A potential solution would be for ALL federal funding sources to be required to pay the full indirect costs associated with awards and for them to waive all in-kind requirements. The amount of money is insignificant for most programs, other than those funded through the Bureau of Indian Affairs and Indian Health Service. Keep in mind we are only suggesting that the full amount of the approved indirect costs be funded after taking into consideration tribal governments' unique culture and method of governing, and in many cases, their desperate economic situation which, in many ways was caused by various federal policies starting in the 18<sup>th</sup> Century.
9. So there is a solution which we feel will satisfy all parties to the issue. The rule book will still apply but with certain exceptions. Tribes will not be able to pile on to the indirect cost pool. Each item still must be reasonable, necessary, allocable and not otherwise unallowable by statute or regulation. Tribes will run their governments efficiently, which is what tribal citizens want. What tribes want is an understanding of their unique culture and methods of governing when imposing rules.
10. Last but not least a thanks to the legal community who has done an outstanding service in protecting tribal rights, from Ramah Navajo to cases that are still pending. The time for a comprehensive resolution through the legislative process is now so tribes can have assurance of the rules of the game and not have to rely on court decisions which could turn on them at any time.