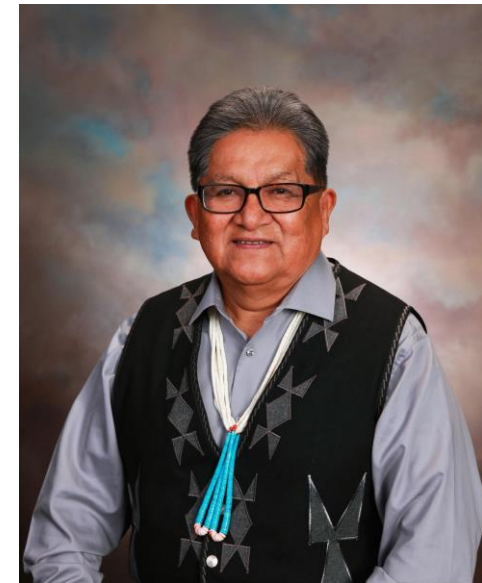




COVID-19 RESPONSE

**Webinar On
Office of Management &
Budget's Administrative Relief
Related to COVID-19:
Funding & Impacts on Tribes &
Tribal Federal Awards
April 30, 2020**

Presented By:
KIVA Institute, LLC
www.kivainstitute.com
info@kivainstitute.com



Ben H. Nuvamsa
President/CEO
[KIVA Institute.com](http://KIVAInstitute.com)
ben@kivainstitute.com





Purpose of the Virtual Conference

COVID-19 IMPACTS

- March 20, 2020 - President declared a National Emergency on Impacts of Coronavirus (COVID-19) Pandemic.
- Presidential National Emergency Declaration impacted federal, state, local and tribal governments.
- States and tribal governments issued own State of Emergency Declarations, closing “non-essential” programs; closed offices; implemented teleworking; and orders of “shelter-at-home.”
- Impacted operations and delivery of services. In some instances shut operations down.



Purpose of the Virtual Conference

The webinar is intended to provide guidance and clarity on the impacts of the OMB Exceptions on federal awards:

- How much funding is provided to tribal governments?
- Are there other funds available to tribes?
- How do the OMB Exceptions affect our existing federal awards?
- What about the new awards funded with CRF?
- When do the Exceptions expire?
- Can we get reimbursed for our COVID-19 expenses?
- What about our reporting requirements?
- What about impacts on tribal indirect costs?
- What about audits?



Outline - Virtual Conference

Today's webinar will address the following basic categories:

1. Pub. L. 116-136 COVID-19 Funding (CARES Act)
 - A Global View
 - Funding Opportunities for Tribes
 - BIA, BIE, IHS, HUD, Other
2. OMB Exceptions for Federal Awards (Uniform Administrative Guidance) – 13 Exceptions & Impacts
 - Impacts on Existing Federal Awards
 - New COVID-19 Federal Awards
 - KIVA Guidance Memorandum 2020-02
3. Tips & Reminders
4. General Rules on Cost Allowability
5. Adjourn



Pub. L. 116-136 CARES ACT

What is the CARES Act?

- Support for hospitals and health care workers on the front lines
- Funding to purchase personal protective equipment & medical equipment
- Support for law enforcement, firefighters, other first responders
- Funding for scientists researching treatments and vaccines
- Support for small businesses
- Support for local schools and universities
- Funding for affordable housing and homelessness programs



Pub. L. 116-136 CARES ACT FUNDING

CARES Act provides over \$2.0 trillion in economic relief package in following major categories:

**Assistance for
American Workers &
Families**

**Assistance for Small
Businesses**

**Preserving Jobs for
American Industry**

**Assistance for State and
Local Governments
\$150 Billion**



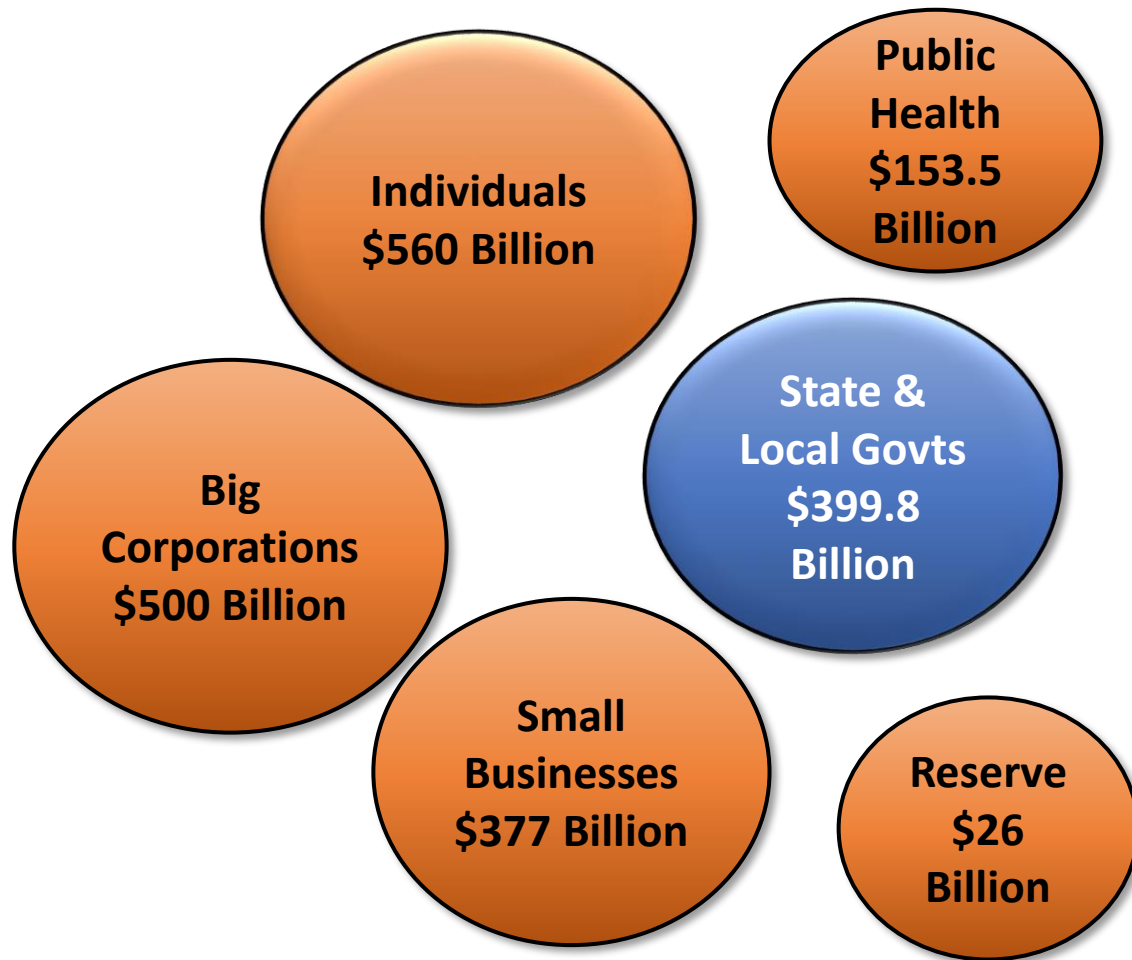
Pub. L. 116-136 CARES ACT FUNDING

Cares Act requires that payments from the Coronavirus Relief Fund (CRF) only be used to cover expenses that:

- 1) Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- 2) Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or local government;
- 3) Were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

Pub. L. 116-136 CARES ACT FUNDING

COVID-19 Appropriations



Public Law 116-136
“Coronavirus Aid, Relief
and Economic Security
Act” (CARES Act), signed
into law on March 27,
2020, provides special \$2.0
trillion one-time
supplemental funding to
speed relief across the
American economy. This is
the third relief package
from Congress.



Indian Country COVID Funding

CARES Act provides over \$10 Billion in set-aside funding for Indian Country in the following areas:

- Economic Development and Employment
 - \$454B for loans, loan guarantees, investments in support of Federal Reserve's lending facilities to eligible businesses, states, tribal nations, municipalities
 - \$8B set-aside funding for tribal nations for COVID-19 Public Health Emergency Relief
 - Up to \$10M for small tribal businesses eligible for Small Business Act Section 7(a) program to cover salaries, paid sick leave, mortgages/rent, employee health insurance premiums
 - Authority for federal government to provide up to 50 percent reimbursement for cost of unemployment compensation
 - Direct relief for tribal fishery participants from Department of Commerce



Indian Country COVID Funding

- Tribal Governance and Housing/Community Development
 - \$453M for BIA Operation of Indian Programs & Bureau of Indian Education until September 30, 2021. (See April 13, 2020 Dear Tribal Leader Letter from AS-IA Sweeney).
 - \$453M BIA
 - (\$420M Direct Payments to Tribes)
 - \$69M BIE
 - \$300M authorized through September 30, 2024 for HUD Native American Programs
 - \$200M for Indian Housing Block Grants (IHBG)
 - \$100M for Indian Community Development Block Grants (ICDBG)



Indian Country COVID Funding

- Health, Education and Nutrition
 - \$1.032B for Indian Health Service
 - Up to \$65M for electronic health record stabilization and support
 - Not less than \$450M for IHS directly operated programs; and for tribal and urban health programs under Pub. L 93-638; and under Title V of Indian Health Care Improvement Act
 - \$125M for transfer to and merge with IHS Facilities account
 - Not less than \$15M from Health Resources and Services Administration for telehealth and rural health services
 - Not less than \$15M for Substance Abuse and Mental Health Services Administration Health Surveillance Program



Indian Country COVID Funding

- Health, Education and Nutrition (continued)
 - Not less than \$15M from Public Health Service and Social Services Emergency Fund for essential medical resources
 - Not less than \$125M set aside from Centers for Disease Control – Wide Activities and Program Support account
 - Extension of Special Diabetes Program for Indians through November 30, 2020
 - \$4.5M for tribal domestic violence shelters through the Family Violence and Prevention Services Act (10 percent tribal set-aside from \$45M overall)
 - Extension of TANF Program through November 30, 2020
 - \$20M for Older Americans Act, Tribal Nutrition Program for delivery of nutritional services to American Indians, Alaska Native, and Native Hawaiian elders
 - \$900M for LIHEAP



Other Potential Tribal Funding

- Department of Health & Human Services
 - \$275M for Human Resources & Services Administration (HRSA) (\$90M Ryan White HIV/AIDS; \$185M Rural Critical Access Hospitals)
- Centers for Disease Control
 - \$4.3B Federal, State, Rural, Tribal Health Activities (PPEs, Surveillance for COVID, Laboratory Testing, Contact Tracing, Infection Control & Mitigation, Other Public Health Preparedness)
 - \$500M Global Disease Detection
 - \$500M Public Health Data Surveillance
 - \$300M Infections, Diseases Rapid Response Reserve



Other Potential Tribal Funding

- Department of Homeland Security:
 - \$45M Disaster Relief Fund to protect tribal citizens, help in recovery from effects of COVID-19; reimbursable activities may include medical response, PPEs; National Guard deployment, logistics, safety measures, community services.
 - \$100M Assistance to Firefighter Grants
 - \$100M Emergency Management Performance Grants to support coordination, communications, logistics

Tribal COVID Funding

COVID-19 Appropriations for Tribes

IHS Direct Service;
Tribal & Urban Health
Programs. Expanded
support for medical
services, equipment,
supplies, education,
purchased/referred
care, new investments,
telehealth, disease
surveillance, records
improvement.

**Indian Health
Service
\$1.032 Billion**

\$200M ICDBG
\$100M Imminent
Threat via COVID19

**HUD NAP
\$300
Million**

**BIA
\$522.0
Million**



**Tribes
\$420
Million**

\$453M BIA OIPS
\$69M BIE:
(\$2.7M Haskell/SIPI
\$16.8M Tribal Colleges
\$3.4M Tribal Tech Colleges)
\$46.1 BIE Schools-TCCs

\$380M ATG
\$20M WAG
\$20M Reserve
*"At lease \$400M
shall be made available
to meet direct needs of
tribes"*

Office of Management and Budget

Memorandum M-20-17

March 19, 2020

OMB issued two memoranda to provide thirteen (13) administrative relief items for recipients with federal awards affected by the loss of operational capacity and increased costs due to the COVID-19 Crisis. The memoranda offer temporary relief for administrative, financial management, and audit requirements under 2 CFR Part 200, OMB Uniform Administrative Requirements, for federal awards without compromising federal financial assistance accountability requirements.

Tribal nations operate two basic types of federal awards: (1) discretionary grant programs; and (2) entitlement programs, such as Pub. L. 93-638 awards. We will discuss how the 13 exemptions affect both types of federal awards.

Tribes Operate Two Types of Federal Funded Programs

Funded Through NOFOs



- One-Time Grants
- Formula Grants
- Competitive Grants
- At the discretion of agencies
- No Entitlements
- Funding Not Guaranteed
- Capability Tests

Entitlement Programs (Pub. L. 93-638)



- Tribes Entitled to Contracts & Grants
- No Competition
- Tribes Presumed Capable
- Recurring Funding (Full Funding)
- Funding Protections
- Contract Support Costs (Indirect)
- Other Entitlements

Purpose of the Virtual Conference

COVID-19 IMPACTS

- March 9, 2020 – Office of Management & Budget issued Memorandum M-20-11 “Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19).”
- Above OMB Exceptions intended provide relief for awardees under their federal awards.



DEPUTY DIRECTOR
FOR MANAGEMENT

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 19, 2020

M-20-17

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Margaret Weichert
Deputy Director of Management

SUBJECT: Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations

On March 9, 2020, OMB issued M-20-11, “*Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19)*,” to provide agencies with additional flexibilities for grants assisting the response to COVID-19. The scope of the M-20-11 was narrowly crafted to provide flexibility to grant recipients performing essential research and services necessary to carry out the emergency response related to COVID-19.

This memorandum provides similar administrative relief listed in M-20-11 to an expanded scope of recipients affected by the loss of operational capacity and increased costs due to the COVID-19 crisis. Many of the operational impacts and costs are unknowable at this point, as they will depend on the spread of the coronavirus and response dictated by public health needs. This memorandum provides short term relief for administrative, financial management, and audit requirements under 2 CFR Part 200, *Uniform Administrative Requirements, Cost principles and Audit Requirements for Federal Awards*, without compromising Federal financial assistance accountability requirements. As program managers are considering administrative relief, they should be prudent in their stewardship of Federal resources which includes giving consideration to potential offsets—e.g. reduction in training and travel. In addition, the flexibilities provided within this memorandum, agencies are reminded of their existing flexibility to issue exceptions on a case-by-case basis in accordance with 2 CFR § 200.102, *Exceptions*. M-20-11 shall continue to apply, and Appendix A describes the exceptions granted under this memorandum to recipients affected by the loss of operational capacity. These exceptions are time limited and will be reassessed by OMB within 90 days of this Memo.

Questions regarding the above administrative relief provisions should be directed to Office of Federal Financial Management Grant link at GrantsTeam@omb.eop.gov. OMB will continue to provide updates and additional information as the situation unfolds. For the latest information, sign up for the Grants Community of Practice by clicking at: <https://www.performance.gov/CAP/grants/>



Purpose of the Virtual Conference

COVID-19 IMPACTS

- March 19, 2020 – Office of Management & Budget issued a follow-up memorandum, M-20-17 “Administrative Relief for Recipients of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations, to expand the scope of exceptions.
- Above OMB Exceptions provide relief for awardees under their federal awards.
- OMB Memoranda affects current federal awards; and new awards with CRF funding.

OMB Exceptions

1. Flexibility with SAM Registration (2 CFR §200.205)
2. Flexibility with Application Deadlines (2 CFR §200.202)
3. Waiver for Notice of Funding Opportunities (2 CFR §200.203)
4. No-Cost Extensions on Expiring Grant Awards (2 CFR §200.308)
5. Abbreviated Non-Competitive Continuation Requests (2 CFR §200.308)
6. Allowability of Salaries and Other Project Activities (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)
7. Allowability of Costs Not Normally Chargeable to Awards (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)

OMB Exceptions

8. Prior Approval Requirement Waivers (2 CFR §200.407)
9. Exemptions of Certain Procurement Requirements (2 CFR §200.319(b); 2 CFR §200.321).
10. Extension of Financial, Performance, and Other Reporting (2 CFR §200.327; §200.328)
11. Extension of Currently Approved Indirect Cost Rates (2 CFR §200.414(c))
12. Extension of Closeout (2 CFR §200.343)
13. Extension of Single Audit Submission (2 CFR §200.512)



OMB Exception & Impacts

Exception 1 – Flexibility with SAM Registrations. (2 CFR §200.205)

Awarding agencies can relax the requirement for active SAM registration at time of application to expedite funding.

- Tribes with active SAM registrations due to expire before May 16, 2020 are afforded a 60-day extension so that release of funds may be expedited.
- Exception does not apply to Pub. L. 93-638 awards as SAM registration is not required to contract for programs, functions, services and activities under Pub. L. 93-638.



OMB Exception & Impacts

Exception 2 – Flexibility with Application Deadlines. (2 CFR §200.202)

Funding agencies may provide flexibility in establishing application deadlines for new grant opportunities.

- Tribes must monitor grant Notice of Funding Opportunity (NOFO) announcements to ensure they submit proposals within application deadlines.
- Exception does not apply to Pub. L. 93-638 awards as tribal governments are not required to apply and compete for Pub. L. 93-638 awards.



OMB Exception & Impacts

Exception 3 – Waiver for Notice of Funding Opportunities(NOFO) Publications. (2 CFR §200.203)

Funding agencies are permitted to publish emergency NOFOs for less than 30 days.

- Tribes must monitor grant Notice of Funding Opportunity (NOFO) announcements to ensure they submit proposals within application deadlines.
- Exception does not apply to Pub. L. 93-638 awards as tribal governments are not required to apply and compete for Pub. L. 93-638 awards.



OMB Exception & Impacts

Exception 4 – No-Cost Extensions on Expiring Grant Awards. (2 CFR §200.308)

Funding agencies may automatically extend grant awards that are active as of March 31, 2020; and that are scheduled to expire prior to, or up to December 31, 2020, at no cost for a period of twelve (12) months.

- Tribes should check their current grant awards that are due to expire December 31, 2020, request an extension from the awarding agencies and ask that granting of extensions are documented.
- Reports will be due ninety (90) days following the date of extension. Awarding agencies may consider the need to grant further extension as needs arise.



OMB Exception & Impacts

Exception 4 – No-Cost Extensions on Expiring Grant Awards. (2 CFR §200.308)

- Pub. L. 93-638 contracts and compacts are awarded on a recurring basis as term contracts (1 year up to 3 years), as mature contracts, or as self-governance compacts. Savings from prior years are automatically carried over to the following years without a need for further justification. Because self-determination agreements are recurring in nature, it is not necessary to request no-cost extensions.



OMB Exception & Impacts

Exception 5 – Abbreviated Non-Competitive Continuation Requests. (2 CFR §200.308)

Awarding agencies may accept requests from tribes for continuation of federal awards beginning April 1, 2020 to December 31, 2020. Tribes should submit requests with a brief statement that they are prepared to resume or restore project activities; and are prepared to accept continuing grant awards.

- Tribes should check their federal awards that are scheduled to be completed December 30, 2020; and project out the anticipated completion dates to use in the request for an extension.
- Check with funding agencies on requirements on time extensions and any associated terms and conditions that may be required. Be sure to document any grant extension for the record and audit purposes.
- This exception does not apply to Pub. L. 93-638 awards. See Exception 4.



OMB Exception & Impacts

Exception 6 – Continuation of Salaries and Other Project Activities. (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)

Agencies may allow tribes to continue to charge salaries and benefits to current federal awards under unexpected and extraordinary circumstances, in accordance with tribal policies, from all funding sources (federal and non-federal).

Agencies may allow other costs to be charged to federal awards necessary to resume activities supported by the award, consistent with federal cost principles and benefits to the federal project. Awarding agencies may also evaluate the tribes' ability to resume the project activity in the future and appropriateness of future funding. Agencies must require tribes to maintain and retain records; and cost documentation related to interruption of operations or services.



OMB Exception & Impacts

Exception 6 – Continuation of Salaries and Other Project Activities. (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)

- Tribes may pay for necessary costs of responding to COVID-19 (under extraordinary circumstances), such as charges for salaries and benefits, extended leave such as FMLA or Administrative Leave, teleworking, associated administrative costs, etc., to their federal awards.
- Agencies may allow other costs to be charged to federal awards necessary to resume activities supported by the award consistent with applicable federal cost principles and benefits to the projects.
- Agencies will require tribes to maintain records and cost documentation as required under §200.302, *Financial Management*; and 2 CFR 200.333, *Retention Requirement of Records*, to substantiate the charging of any salaries and other project activities related to the interruption of operations and services.



OMB Exception & Impacts

Exception 6 – Continuation of Salaries and Other Project Activities.

(2 CFR §200. 403; 2 CFR §200.404; 2 CFR §200.405)

- Agencies may also evaluate tribes' ability to resume the project activity in the future and the appropriateness of future funding, as done under normal circumstances, and based on progress reports.
- Purchases of goods and services must be done consistent with federal cost principles; and tribal procurement management, property management; and record-keeping policies.

Exception 6 – Continuation of Salaries and Other Project Activities.

(2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)

- Put extra effort into providing full justification and explanation for the necessity to charge costs to all agreements, including Pub. L. 93-638 agreements during suspension of work (when work was suspended and when work resumed).
- Special COVID-19 funds are used to meet necessary costs to respond to the COVID pandemic; and as such, are used to supplement existing tribal or federal grant funds; and not to supplant, or replace, or take in place of, funds that were made available for the same purposes.
- Keep records of emergency leave and extended leave, such as FMLA or Administrative Leave granted to employees because of extenuating circumstances related to COVID-19.

Exception 6 – Continuation of Salaries and Other Project Activities. (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405)

- No doubt this exemption will come under close scrutiny of awarding agencies so it is important tribes follow the terms and conditions of federal awards, make sure documents are maintained that will stand the test of an audit, or special monitoring.
- Exception 6 also applies to Pub. L. 93-638 awards because Subpart E – Cost Principles, and Subpart F – Audit Requirements also apply to awards under Pub. L. 93-638.
- Tribes that may have received special CRF funding and incorporated the funds into existing Pub. L. 93-638 agreements, make sure separate and distinct records are kept for all COVID-19 expenditures; and make sure the Annual Funding Agreement clearly identifies the separate COVID-19 related, approved work statements, and budgets.

Exception 7 – Allowability of Costs not Normally Chargeable to Awards. (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405).

Awarding agencies may allow tribes that incur costs related to the cancellation of events, travel, or other activities necessary and reasonable for the performance of the award, or the pausing and restarting of funded activities due to the public health emergency, to charge these costs to grants without regard to 2 CFR §200.403, *Factors affecting allowability of costs*; 2 CFR §200.404, *Reasonable costs*; and 2 CFR §200.405, *Allocable costs*.

- Be mindful that funds may be limited, or may not be available to meet these needs. But expect that funding agencies will require additional documentation to ensure that expenses were actually incurred due to the cancellation of events, suspension of approved travel, and other related activities due to the pandemic.
- This means records must be maintained to satisfy the requirements under 2 CFR §200.302, Financial management; and 2 CFR §200.333, Retention requirement of records; and for audit purposes.

Exception 7 – Allowability of Costs not Normally Chargeable to Awards. (2 CFR §200.403; 2 CFR §200.404; 2 CFR §200.405).

- COVID-19 Relief Funds (CRF) made available under Pub. L. 116-136 CARES Act are or will be allocated to federal agencies serving Indian tribes. The agencies, in turn, will distribute the funds to the tribes in accordance to distribution plans. Other federal agencies also have funding that they will distribute to tribes.
- If CRF funds are added to Pub. L. 93-638 agreements either as new awards or amendments to existing agreements, make sure appropriate amounts of Contract Support Costs (CSC) are addressed to meet increased needs for administrative and overhead costs. Contact the awarding agencies for guidance. CSC may not be available for these awards. See Exception 11 for discussion on Indirect Costs.

Exception 8 – Prior Approval Requirement Waivers. (2 CFR §200.407)

Awarding agencies are authorized to waive prior approval requirements on the allowability of costs as necessary to effectively address the response.

- Tribes must make sure charges to federal awards are consistent with Subpart E – Cost Principles; and special Pub. L. 93-638 Cost Principles under section 106(k) of Pub. L. 93-638; and that there is proper documentation of the expenditures.
- This exception also applies to Pub. L. 93-638 awards. Tribes have a right to request for a waiver of regulations; and the Secretary's declination to approve the waiver request is appealable under 25 CFR §900.150(f). See section 107(e) of Pub. L. 93-638.

Exception 9 – Exemption of Certain Procurement Requirements. (CFR §200.319(b)); 2 CFR §200.321).

Federal awarding agencies may waive procurement requirements contained in 2 CFR §200.319(b) pertaining to full and open competition; and 2 CFR §200.321 regarding contracting with small and minority businesses, women owned businesses, and labor surplus area firms.

- Tribes should follow established tribal procurement policies, financial management policies that provide for tribal preference policies, etc. to acquire needed products and services necessary to carry out the federal awards. Tribal procurement policies should already address emergency purchases, sole source purchases; minority set-asides, conflicts of interest; and be in conformance with 2 CFR §200.317.
- This exception also applies to Pub. L. 93-638 awards.

Exception 10 – Extension of Financial, Performance, and Other Reporting. 2 CFR §200.327; 2 CFR §200.328)

Federal awarding agencies may allow tribes to delay submission of financial, performance and other reports up to three (3) months beyond the normal due date. Progress reports must be submitted at the end of the postponed period.

- If an agency allows such a delay, tribes may continue to draw down federal funds without the timely submission of reports.
- Awarding agencies may waive the requirements for recipients to notify the agency of problems, delays, or adverse conditions related to COVID-19 on a award-by-award basis, and in accordance with 2 CFR §200.328(d)(1).
- It is advisable, however, that tribes endeavor to submit the required reports on time to avoid potential issues at a later time.

Exception 11 – Extension of Currently Approved Indirect Cost Rates. (2 CFR §200.414(e)).

Awarding agencies may allow recipients to use currently approved indirect cost rates (i.e. predetermined, fixed, or provisional rate) to recover their indirect costs on federal awards under this exception. OMB Memorandum also authorizes agencies to approve requests for extension of current indirect cost rates for one (1) additional year without having to submit a new indirect cost rate proposal.

- OMB Uniform Guidance (2 CFR §200.414) addresses indirect costs in several ways:
 - (1) Requires that all federal agencies must accept negotiated indirect cost rates but may use a different rate for a class of federal awards; for a single award only when required by federal statute or regulation; or when approved by a federal awarding agency head based on justification.

Exception 11 – Extension of Currently Approved Indirect Cost Rates. (2 CFR §200.414(e)).

- OMB Uniform Guidance (2 CFR §200.414) addresses indirect costs in several ways: (continued)
 - (2) a federal awarding agency must notify OMB of any approved deviations;
 - (3) the awarding agency must implement and make publicly available the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates;
 - (4) OMB Uniform Guidance (2 CFR §200.414(g)) provides that recipients may apply for a one-time extension of their current negotiated indirect cost rate for up to four (4) years. IBC limits indirect cost rate extensions to final and predetermined rates.

Exception 11 – Extension of Currently Approved Indirect Cost Rates. (2 CFR §200.414(e)).

- Negotiated indirect cost rates apply to all federal awards, either under a simplified rate method or multiple rate method. Tribes should carefully review potential impacts on other federal awards;
- Indirect cost rate proposals are due to the Federal Cognizant Agency for Indirect Costs six (6) months before the beginning of the new tribal fiscal year. Under Exception 11, it would be assumed that current indirect cost rates, when extended, would apply throughout the entire following fiscal year; and a new proposal would be due six (6) months prior to the next (third) fiscal year. *Reference: 2 CFR §200.414; and Appendix VII to 2 CFR Part 200, “States and Local Governments and Indian Tribe Indirect Cost Rate Proposals”.* Contact the Cognizant Agency for Indirect for guidance.

Exception 11 – Extension of Currently Approved Indirect Cost Rates. (2 CFR §200.414(e)).

- Tribes should contact their Cognizant Agency for Indirect Costs to ensure the request for an indirect cost rate extension is approved properly to prevent potential adverse impacts to the recover of indirect costs; and that the extended indirect cost rate stands the text of an audit.
- Tribes should expect that more information and guidance to be forthcoming from OMB or Cognizant Agency for Indirect Costs exactly how Exception 11 will be implemented.
- Tribes should contact their awarding agencies for further guidance and to ensure indirect cost rate extensions are properly recorded in the federal awards; and that extended rates will apply to federal awards.

Exception 11 – Extension of Currently Approved Indirect Cost Rates. (2 CFR §200.414(e)).

Pub. L. 93-638 contains special provisions, particularly section 106(a)(1) and section 106(a)(2) that mandate full funding for direct costs and indirect costs for tribes and tribal organizations operating programs under Pub. L. 93-638.

- Above provisions would apply to Pub. L. 93-638 awards, including CRF funded agreements;
- Question would be if indirect costs would constitute allowable costs under federal awards, whether new or amended awards; and would agencies allow for full indirect cost funding;
- If use of CFR funds to cover indirect costs would not be permissible, it will result in shortfalls in tribal recovery of indirect cost funding and may have adverse impacts on future rates.

Exception 11 – Extension of Currently Approved Indirect Cost Rates.

(2 CFR §200.414(e)).

- Regarding the question of whether grant match, cost sharing and in-kind contributions requirements apply to CRF funded federal awards:
 - Some awarding agencies may require a federal match, cost sharing or in-kind contributions, but use of federal funds to meet matching or cost-sharing requirements are not permissible under existing OMB rules. 2 CFR §200.306(b)(5).
 - Unrecovered indirect cost, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching, only with prior awarding agency approval. 2 CFR §200.306(c).
 - Pub. L. 93-638 at section 103(c) and section 106(j) provide that Pub. L. 93-638 funds may be used to meet federal grant match or cost sharing requirements.

Exception 12 – Extension of Closeout. (2 CFR §200.343).

Awarding agencies may allow tribes to delay the submission of any pending financial, performance reports, and other required reports, as required by the terms of the federal award, for close out of expired projects for up to one (1) year, provided that proper notice is provided by the tribe to the awarding agency.

- OMB Exceptions No. 4 and No. 10 will impact the requirement to comply with closeout requirements with existing federal awards, including federal financial reports (SF-425s), performance reports, and other required reporting requirements.
- Tribes must provide advanced notice to awarding agencies regarding delays in submission of required reports otherwise closeout reports will still be expected to be submitted on time.
- This exception applies to Pub. L. 93-638 awards.



OMB Exception & Impacts

Exception 13 – Extension of Single Audit Submission. (2 CFR §200.512).

Awarding agencies “should allow” recipients and subrecipients that have not yet submitted their single audit reports with the Federal Audit Clearinghouse (FAC) as of March 19, 2020; and that have fiscal years ending June 30, 2020, to delay the submission of the single audit report to six (6) months beyond the normal due date. Exception 13 may have the following effect:

Fiscal Year	Fiscal Year End	Report Due Date	Extended Due Date
July 1, 2018	June 30, 2019	March 31, 2020	September 30, 2020
October 1, 2018	September 30, 2019	June 30, 2020	December 31, 2020
January 1, 2019	December 30, 2019	September 30, 2020	March 31, 2021
July 1, 2019	June 30, 2020	March 31, 2021	September 30, 2021

Exception 13 – Extension of Single Audit Submission. (2 CFR §200.512).

- Exception 13 does not require tribes to seek approval for the extension from the Cognizant Agency for Audit, but tribes should maintain appropriate documentation of the reasons for the delayed filing.
- Tribes taking advantage of this extension will still qualify as “low risk” auditees. 2 CFR §200.520.
- Extension of report submission and fiscal yearend closeout reports (Exception No. 4 and No. 12) will have an impact on completion and submittal of the FY2020 annual audit report.
- Extension of FY2020 audit reports may have cascading impact on future single audit reports beyond 2021. So endeavor to complete and submit FY 2021 annual audit reports on time, despite the extension of the FY2020 annual audit report.

Exception 13 – Extension of Single Audit Submission. (2 CFR §200.512).

- Exception 13 will affect section 106(f) of Pub. L. 93-638, referred to as the “365-Day Rule” wherein it states “any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report”.

Tips on Use of COVID-19 Funds

Tips and Reminders:

- Document! Document! Document!
- Use of COVID-19 funds will be special focus of annual audits
- Maintain separate accounting of COVID-19 expenditures
- Consult with federal awarding agencies for further guidance especially on the question of Allowable Costs
- Funding agencies will undoubtedly issue own rules
- Remember that CRF funds are one-time funds, not continuing funds although completion of projects may extend beyond Fiscal Year 2020/2021
- Do not “supplant” current funds with CRF funds
- Exercise your right to seek an additional waiver of regulations
- Remember there are similarities and there are differences between federal discretionary grant programs and entitlement programs
- Address in-house tribal capacity and capability to operate and administer the new awards

General Rules on Allowable Costs

General Rules on Cost Allowability (2 CFR §200.400)

Exemption 7 provides general waiver of the application of federal cost principles for expenditures incurred for cancellation of events, travel, and other activities upon public health emergency declaration, but tribes must ensure other expenditures must meet the requirements of Subpart E – Cost Principles under 2 CFR Part 200, Uniform Administrative Requirements, applying the following general rules:

Costs must be:

- Necessary;
- Reasonable to carry out the approved projects under federal awards;
- Allocable to the funded project; and
- Allowable under the cost principles, or otherwise authorized by the federal grant/contract statute.

General Rules on Allowable Costs

General Rules on Cost Allowability (2 CFR §200.400)

OMB Exceptions will also apply to new federal awards. In determining the allowability of costs related to use of COVID-19 Relief Funds (CRF) think in terms of the following broad areas in the use of these funds:

1. Pre-Emergency Declaration Costs See OMB Exception No. 6 and 7 of the OMB Memorandum M-20-17 (Program Interruption)
2. COVID-19 Prevention Costs
3. COVID-19 Preparedness Costs
4. COVID-19 Response Costs

There have been many questions about cost allowability under COVID-19 funds. There is no single source (site) that provides the answers. KIVA will start a blog on Frequently Asked Questions (FAQs) on the KIVA website.

Question & Answer Session



Thank you for attending.

We will distribute information shared on this webinar via email to you.

Should you have additional questions, please send them to: info@kivainstitute.com or contact us on our toll-free line at

1-866-202-5482