



Ramah Class Action Settlement Workshop



Ramah Class Action Settlement Workshop

- **Introductions**

- **Class Counsel**

- Michael P. Gross, Class Counsel
- C. Bryant Rogers, Co-Class Counsel
- Lloyd B. Miller, Co-Class Counsel for DCSC Claim
- Marcel Kerkmans, Consultant

- **National Business Center**

- Deborah Moberly, Indirect Cost Coordinator
- Doris Jensen, Deputy Indirect Cost Coordinator



Ramah Class Action Settlement Workshop

- Ground Rules for Session
- Informal Technical Assistance / Discussion After Formal Session



Ramah Class Action Settlement Workshop

Agenda

- Settlement Background
- Carryforward Schedule
 - Basic changes to the template
 - Optimizing calculations
 - Examples/Exercise
- Special Rates Options
 - Overview
 - Examples/Exercise
- Updates on related topics



Timelines for Implementation

- Carryforward Revisions are effective for your FY2010 Rate Proposal
 - Actual Expenses beginning with FY 2008 will be used on the new carryforward template
 - All prior years (i.e. FY2007 and earlier) must use the older version of the carryforward template



Carryforward Template Terminology (see A-1 Handout)

- Actual Direct Costs
- Indirect Cost Pool (allocated by program)
- Indirect Cost Rate Amount
- Indirect Cost Collections
- Underfunded Indirect (formerly Shortfall)
- Overfunded Indirect
- Carryforward
 - Overrecovery
 - Underrecovery



Carryforward (CF) Template Basic Changes

- “Overfunded Indirect”
- “Underfunded Indirect”
- Footnotes
- Calculation changes



Need for the CF Revisions

Prior to the revision

- Underfunded amounts were placed in the “Shortfall” column and not carried forward
- Overfunded amounts were placed in the “Carryforward” column and carried forward



Effect of change to the CF Calculation

- Overfunded indirect amounts will not appear in the carryforward column
- Overall reduction in the number of situations that result in an overrecovery



Where do Overpayments Go?

- Overpayments are now isolated from overrecoveries and placed in the “Overfunded Indirect” Column
- Changes in the underlying calculation separately identify overrecovery carryforward amounts and overfunded amounts.



What Produces an “Overfunded Indirect”

- Overpayments due to errors
- Funds received “out of cycle” due to the timing of the payment and the closing of the tribe’s books based on the tribes fiscal begin and year-end date
- Accounting errors when recording payments
- Using an “old rate”



What is an “Overfunded Indirect”?

- When **both** the actual Pool **and** the Rate amount are less than Collection amount
 - The overfunded amount is equal to Collection amount minus either the Rate or the Pool amount (whichever is the larger amount)

[$P < C$ and $R < C$ then $(C - \text{larger of } P \text{ or } R)$]

- Collection (–) Pool, when the pool is larger
- Collection (–) Rate, when the rate is larger

Example, Pool of 90, Rate of 100, and Collections of 150
= $150 - 100 = 50$



“Underfunded Indirect” Replaced “Shortfall” Column

- Provides a more accurate description
- Underlying calculation did not change
- Reasons for underfunded indirect are unknown to NBC



What Produces an “Underfunded Indirect”

- Appropriation shortfalls
- Restrictions on Rate (less than negotiated rate)
- Underpayments due to errors
- Funds not yet received due to the timing of the payment and the closing of the tribe’s books based on the fiscal year-end date (cash/accrual)
- Accounting errors when recording payments
- Using an “old rate”



What is an “Underfunded Indirect”?

- When **both** the actual Pool **and** the Rate amount are more than the Collection amount
 - The underfunded amount is equal to the Pool or the Rate amount (whichever is the smaller amount) minus the Collection amount
- [$P > C$ and $R > C$ then (smaller of P or R $-$ C)]
- Pool $-$ Collection, when pool is smaller
 - Rate $-$ Collection, when the rate is smaller
- Example, Pool of 100, Rate of 150, and Collections of 90
 $= 100 - 90 = 10$



Handout A-4



- Consultant's Example
 - Spending program base carryover funds in next year with no additional CSC paid for that year



Handout A-5



- Consultant's Example
 - Program base awards (expenditures) increase after Contract Support Cost award



Revised Under/Overfunded Footnote 5

“Underfunded indirect should be reported to the respective granting agencies. Underfunded amounts may be, but are not necessarily, due to shortfalls in appropriations. The presence of an amount in either of these columns does not constitute a determination or admission that either the government or the contractor is liable to the other for any amount.”



Types of Carryforwards

- An **underrecovery** results in an increase in the next periods' rate
- An **overrecovery** results in a decrease in the next period's rate



What produces an underrecovery carryforward?

- When the actual Pool amount is more than **both** the Rate amount **and** the Collection amount
 - The underrecovery carryforward amount is equal to the actual Pool amount minus the Rate or Collection amount (whichever is larger).

[$P > R$ & $P > C$ then $P (-)$ larger of R or C]

- **Pool (-) Rate, when rate is larger**
- **Pool (-) Collection, when collection is larger**

Example, Pool of 150, Rate of 100, and Collections of 90
= $150 - 100 = 50$



What produces an overrecovery carryforward?

- When the actual Pool amount is less than **both** the Rate amount **and** the Collection amount
 - The overrecovery carryforward amount is equal to the actual Pool amount minus the Rate or Collection amount (whichever is smaller)
- [$P < R$ & $P < C$ then $P (-)$ smaller of R or C]**
- **Pool (-) Rate, when rate is smaller**
 - **Pool (-) Collection, when collection is smaller**

Example, Pool of 90, Rate of 100, and Collections of 150
 $= 90 - 100 = (10)$



Carryforward Exercise Handout E-1

- See Exercise E-1



Footnote Clarification for “Indirect Cost Collection”

- Questions often arise concerning what to include in this column, particularly when diverted program and tribal funds are used to cover unfunded indirect contract support costs.



“Indirect Cost Collection” Column Footnote

- The amount of the “Indirect Cost Collection” need **not** include **direct funds (including direct program funds, direct Contract Support Costs (CSC), or indirect CSC funds lawfully redirected to pay for unfunded direct CSC), private funds, or tribal funds diverted to pay indirect costs in the pool**, provided that the amount listed is consistent with the tribal contractors’ audited financial statements or post-audit statements, pursuant to Section III B. 1 (a) and (b) of PSA III.



What to report as “Indirect Cost Collections”

- The only Federal/State/Other sources of funds that must be included in this column are those received from Federal/State/Other sources for indirect costs:
 - 638 programs collections from CSC awards
 - Other Federal programs
 - State programs
 - Private programs
- Direct 638 program funds used for indirect expenses need not be included in the collections column even if spent to cover shortfalls in IDC funding (for 638 programs)
- Federal indirect cost collections (revenues) corresponding with the same fiscal year’s expenses should be included in the collections column (do not include future period collections)



Optional Collections Reporting Tool (See Handout A-6)

- To assure the appropriate reporting of collection amounts in the carryforward template, Tribes could complete a reconciliation similar to the example on handout A-6

- Tribes are not required to make the adjustments shown on Handout A-6. Not making these adjustments:
 - Will give the government credit for paying more CSC than was actually received
 - Could cause adverse carryforward adjustments, such as:
 - Reduced underrecovery CF
 - Overstated overrecovery CF
 - Overstated entries in the overfunded indirect column
 - Understated entries in the underfunded indirect column



Strategies to Optimize the CF Schedule

- The carryforward formula uses the following elements:
 - Indirect Cost Pool Actual Expenses
 - Negotiated Indirect Cost Rate \times Program Base
 - Indirect Cost Collections
- It is important to keep audits and rates current



Why current rates matter?

- The indirect cost rate on the carryforward schedule is the negotiated rate and it is not necessarily the rate used by the funding agency to reimburse the indirect costs.
- The “Indirect Cost Collection” column is affected by the rate used by the funding agencies to reimburse the indirect costs.
- Therefore, if these two rates, negotiated rate and the rate used by funding agencies to reimburse the indirect costs are different, the carryforward calculations are impacted.



Understanding How Indirect Costs are Funded

- Indirect cost need may not be fully funded by some federal/state programs
- Differences in indirect cost funding



Indirect Cost Need May Not be Fully Funded

- 100% of the IDC need based on the negotiated rate may not always be met due to
 - Appropriation shortfalls
 - Some federal/state programs limit or cap the amount of indirect costs eg. DOL, DOJ, HHS, DOE, state substance abuse program, etc.
 - Other federal programs do not reimburse indirect costs expenses at all eg. COPS grants
 - Differences between estimated indirect costs and actual indirect costs



Differences in Indirect Cost Funding

- Public Law 93-638 (ISDA) funding
 - The rate is applied to the base program funding and then IDC amounts are paid in addition to P.L. 93-638 funding
- Other Federal funding
 - The rate is applied to the program funding and the rate generated amount is the amount of the total federal funding that can be used for indirect cost from that funding award, although as pointed out above some agencies will not permit payment of indirect cost in the amount generated by the NBC negotiated rate or the rate approved for that agency's funds may be lower than the NBC negotiated rate



Examples of IDC Funding Differences



(1) 638 contract funds (with full IDC funding)

Direct Funding	\$1,000,000
Indirect Cost Rate	15%
Indirect Costs Paid	<u>+150,000</u>
Total Funding	\$1,150,000

(2) 638 contract funds (with shortfall in IDC funding)

Direct Funding	\$1,000,000
Indirect Cost Rate	15%
Indirect Costs Paid	<u>+140,000</u>
Paid at only 14%	
Total Funding	\$1,140,000

* If rate is 15% then underfunded amount of \$ 10k may be paid with 638 program dollars or other sources

(3) Non-638 Funds (without restricted IDC rate)

Direct Funding	\$869,560
Indirect Cost Rate	15%
Indirect Cost Allowed	<u>+130,440</u>
Total Funding	\$1,000,000



Examples of IDC Funding Differences

(4) Non-638 Funds Subject to Restricted IDC Rate

Direct Funding	\$ 909,091
Restricted Rate	10%*
Indirect Cost Allowed	+<u>90,909</u>
 Total Funding	 \$ 1,000,000

* The underfunded amount of 5% or approximately \$ 50K will need to be paid for with tribal funds

(5) Non-638 Funds from which no IDC can be Paid

Direct Funding	\$ 1,000,000
Restricted Rate	0%*
Indirect Cost Allowed	<u>0</u>
 Total Funding	 \$ 1,000,000

* The underfunded amount of 15% or approximately \$ 150K will need to be paid for with tribal funds



Understanding How Indirect Costs are Paid or Not Paid is Important

How Indirect costs are paid or not paid:

- Impacts collection recovery estimates and actual recoveries
- Impacts the amount of indirect costs you can expect to recover
 - Impacts how you estimate (budget) for indirect cost recoveries
 - Impacts decision making on whether to accept grant or contract, i.e. when deciding to take on additional programs
- May impact the amount recorded in the collection column on the carryforward schedule



Ramah Class Action Settlement Training

- Plaintiff's to address...
 1. Isolating appropriation shortfalls from errors in calculation and application
 2. Considering ways to deal with shortfalls caused by either appropriation shortfalls or computational or similar errors
 3. Making up the difference (often you can't)
 4. Contract Disputes Act claims
 5. Bill of Collection process
 6. Appeal of IDC Rate Determination Disputes



Carryforward Template Revision Wrap-up

- Questions and Discussion
- Please complete the evaluations



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Day Two

Special Rates Options



What are Special Rates?

- Special Rates allow a tribal government to have more than one indirect cost rate
- Examples of Special Rates include:

Two Rate Option

638 rate and

All other program rate or

Three Rate Option

BIA (638) rate,

IHS (638) rate, and

All other program rate



Special Rates Optional

- Tribes may continue with single rate or change to Special Rates
- During Transition years
 - Tribes are encouraged not to switch back and forth, i.e. to special rates and then a single rate and then back to special rates



Characteristics of Special Rates

- Allows tribes to propose a single (common) indirect cost pool that is allocated on groupings of base program expenses
- Once the pool is allocated, indirect costs may be added if there are identified indirect costs that benefit a specific base and the cost is not funded as a Direct Contract Support Costs (DCSC)
- Allows calculation of a 638 program rate which more accurately identifies the cost of operating 638 programs
- Protects each rate from carryforwards from other programs



Indirect Costs Specific to Base

- If a tribal contractor can (1) identify a type of an otherwise allowable indirect cost that is chargeable to particular special rate bases (e.g., an ISDA-only special rate base), but not to the other special rates bases, and (2) that identified cost is not funded as Direct CSC, the tribal contractor may choose to add the identified indirect cost to the indirect cost pool for that special rates base only. If the contractor wishes to pursue this option, the identified indirect cost would be added to the applicable special rates pool before calculating the rate for that applicable special rates base. These indirect costs must be identified and described in the indirect cost proposal submitted to NBC.



Special Rates Example

- See Handouts B-1 through B-4
 - 3-rate example



Special Rate Computation

- Exercise Handout E-2
 - Computation of special rates



Special Rates

- FY2010 Carryforward Templates
 - FY2010 Actuals
 - See Handout B-5
 - 2-step process on carryforward schedule
 - See Handout B-6



The “All Other Program” Rate Carryforward Calculation

- The use of the indirect cost collections is no longer necessary. Only the pool expenses and the rate amounts are used.
- The calculation is less complex and isolates the difference in the pool expenses and the rate amount (actual compared to estimate).



Consultant's Advice on Tracking of the “All Other Program” Collections

- The template will no longer record what was collected for the “all other program” (NBC does not need this information on the template)
- Tribes may want to track collection amounts to ensure amounts due are received or are properly charged to program funds
- Tribes may need this information for management and decision making purposes



Special Rate Carryforward Template Examples

Consultant's Examples:

- Underfunded Indirect Example 3
 - Handout B - 7
- Underfunded Indirect Example 4
 - Handout B - 8



NBC Special Rates Option Proposal Examples and Templates

- Special Rates Proposal and Templates (1st and 2nd year)
- Special Rates Proposal and Templates (3rd year and later)
 - To be used no earlier than FY 2012 Rate will be posted on webpage at a later date

www.aqd.nbc.gov/indirect/tribal.asp

Email NBC at: ics@nbc.gov



Ramah Class Action Settlement Workshop

- Conclusion and Related Issues
 - NBC to address
 - General questions
 - Please complete the evaluations
 - Plaintiff's to address:
 - DCSC and 2006 CSC Policy
 - The Appeal on the Caps Issue and possible effects of the new procedures
 - Status of 50% Rule re inclusion of tribal council costs in tribal IDC pools
 - Provisional Final Rate option and relationship to new templates



**Thank you
for attending!**