

Executive summary | November 2024

# Wipfli Tribal Government CFO Exchange

**Host:** Lisa Desotelle | Wipfli

**SME:** Alan Post | Wipfli

**SME:** Craig Jacobson | Hobbs Straus Dean & Walker, LLP

**Facilitator:** Austin Evans | Profitable Ideas Exchange



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# Introduction

Fifteen chief financial officers (CFOs) from tribal governments met virtually to share leading practices and discuss topics of mutual interest based on an agenda created through a series of preinterviews. From Wipfli, Lisa Desotelle, partner, hosted the exchange, and Austin Evans of Profitable Ideas Exchange facilitated.

Craig Jacobson, partner at Hobbs Straus Dean & Walker, LLP, and Alan Post, director at Wipfli, joined to provide subject matter expertise. The focus of the discussion covered the following topics over the course of the hour:

- Updates from Wipfli
- Contract support
- 105(I) leases

# Updates from Wipfli

The discussion opened with an overview of changes to the Tribal General Welfare Exclusion Act, with further clarification on definitions of lavish and extravagant gifts.

- Consultations and public hearings related to these changes are forthcoming, and tribal leaders are encouraged to contribute to discussions.
- The Office of Management and Budget single audit update was also mentioned. Single audit thresholds have been increased to over \$1 million in federal expenditures. Tribes will be able to follow their own procurement policies under the new regulations.



# Updates from Wipfli

Wipfli's Alan Post provided an update on the American Rescue Plan Act (ARPA).

- No extensions will be granted for the obligation deadline for state and local fiscal recovery funds. Obligations must be in by December 31, 2024.
- Aside from contracts and subawards, amounts paid out for positions covered by ARPA funds that were established and filled prior to December 31, 2024, also count as obligations.
- Purchase orders or other documentation showing intent to procure are not sufficient to count as obligations.
- Lobbying and judgment payments do not qualify as eligible ARPA expenditures.
- The revenue loss funds calculation used either a safe harbor or a calculated amount; there is no opportunity to switch positions previously established. Tribes should consider utilizing all available revenue loss funds to reimburse general fund expenditures if they are unable to obligate ARPA funds to meet the deadline.
- Tribal government interagency agreements may be used to obligate ARPA dollars if they follow the conditions set forth in the Obligation Interim Final Rule FAQ 17.6. The agreement must be a hard agreement and irrevocable by the Tribe.
- Technology improvements are one option to facilitate contracts that would be considered obligations for ARPA funds. Post recommended reviewing tribal software options provided by Salesforce tribal member management software and Sage Intacct accounting software.
- Post also confirmed that payroll obligations and expenditures are allowable under ARPA.



# Contract support



Craig Jacobson discussed the outcome and recent developments resulting from the *Becerra v. San Carlos Apache Tribe* decision from the Supreme Court.

- The Indian Health Service (IHS) is required to pay tribes contract support costs (CSC) on expenditures related to third-party revenues.
- IHS has convened a working group to discuss how to fund tribes shorted on contract support costs and third-party data management for CSC obligations.
- The statute of limitations on federal claims is six years, meaning that in 2024, tribes can submit claims to IHS back to 2018. Tribes can work with their accounting firms and CFOs to better track expenditures related to third-party revenues for CSC.

# Contract support

One leader noted that one of their cases filed in federal court is being scrutinized on third-party revenues and how that is being used in the context of an indirect cost proposal negotiation.

- They wondered whether they could amend their indirect cost base related to pass-through expenses to collect more from the federal government.
- Jacobson stressed the importance of tracking the indirect costs associated with administering and implementing funds so as not to be in the position of under-recovery.

Lisa Desotelle of Wipfli stressed that changing position without discussing it with the governing bodies would likely lead them to deny the rate change.

- Jacobson also noted that some clients have transitioned to using two rates for health and non-health indirect cost rates, as blended

rates will not allow for the higher true rate on the health side. But tribes should be aware of whether this could dilute potential CSC recovery.

- Post highlighted previous success with a dual-rate strategy between 638 and non-638 funds based on the unbalanced nature of administrative effort between the two. This approach may include a time-based study.

Another CFO was interested in understanding how the federal government would consider contract support costs on expenditures related to other third-party revenue streams, such as housing.

- Jacobson's opinion was that it is unlikely that third-party revenue provisions would spread to housing or other areas.

# 105(l) leases

Facilities run by tribal governments used to carry out self-determination activities can qualify for 105(l) leases with the Bureau of Indian Affairs (BIA) or IHS and have the right to funding.

- Three methods are used to calculate 105(l) lease payments, including third-party appraisals, leveraging a cost methodology or a hybrid of the two methods.

The BIA and IHS have not denied proposals stemming from third-party appraisals.

- However, one leader noted that IHS has denied several of their claims for various reasons, stating that rules are inconsistent and arbitrary.

- Jacobson suggested confirming that a scope of work for facility usage matches the broad description of the general program under which it functions, and that IHS' odd position on vehicles or scope might be a proposal denial to appeal.
- For facilities with split use covered by BIA and IHS, submitting a floor plan with descriptions of use for areas and percentage of floorspace used is an acceptable approach.
- While the future of 105(l) leases under a new administration is uncertain, Jacobson stressed that this is a bipartisan issue with Republican support.

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