The National Congress of American Indians
Resolution #ATL-14-030

TITLE: Require Tribal Consultation by the Department of the Interior’s Indian Business Center for Indirect Cost Rate Policy Changes

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Interior Business Center (IBC), formerly named the National Business Center, within the Department of the Interior (DOI) provides administration of the indirect cost reimbursement program and has revised, without consultation or negotiation with Indian tribes, its policies and procedures for reimbursing Indian tribes for indirect costs, particularly indirect costs associated with registration and enrollment of tribal citizens; and

WHEREAS, these costs are associated with federally funded programming through DOI and other federal agencies, which are governed by Title 2 CFR part 225 in the Code of Federal Regulations (formally OMB Circular A-87); and

WHEREAS, IBC’s effort to change long-established reimbursement practices violates the federal policy of consultation with Indian tribes before substantive changes are made and would undermine years of progress in the area of tribal indirect cost reimbursement; and

WHEREAS, there is no statutory basis for this change; and

WHEREAS, IBC has justified this change by citing a Word document on the DOI website that does not meet the Office of Management and Budget (OMB) criteria for a significant guidance document; and
WHEREAS, tribal budgets include indirect cost reimbursements as tribes exercise their right to self-determination, by taking on more responsibility for programs formerly managed by the federal government, many of which arise from long-standing treaty obligations and Congress’s efforts to implement the federal trust responsibility; and

WHEREAS, the class action Salazar v. Ramah Navajo Chapter, 132 S. Ct. 2181 (2012), the United States Supreme Court reaffirmed the binding contractual nature of contacts and compacts issued pursuant to directives of the Indian Self Determination Act, 25 U.S.C. 450, as well as in Cherokee Nation of Oklahoma v. Leavitt S. Ct. 631 (2005); and

WHEREAS, through self-governance under Pub. L. 93-638, the federal government recognizes such services are best administered by the tribes themselves, though this should not constitute diminished federal support or commitment to the tribes and their citizens; and

WHEREAS, the federal government is required to negotiate indirect cost reimbursement rates which reflect the ongoing responsibilities of the federal government and the tribes; and

WHEREAS, especially because pre-determined rates are encouraged by IBC to promote financial stability and planning in program governance, a sudden divergence from such funding support costs burdens and threatens consistent and predictable funding cycles of indirect costs, particularly those associated with enrolling citizens, reimbursed to tribal governments on a government-to-government basis in line with federal trust responsibility, and commitments made by the United States to the tribes in treaties and statutes.

NOW THEREFORE BE IT RESOLVED, that NCAI insist the IBC make no changes to its policies and procedures governing indirect cost reimbursement and rates, prior to consultation sessions with tribes engaged with such indirect cost reimbursements; and

BE IT FURTHER RESOLVED, that NCAI urges the Administration to exercise its appropriate oversight authority to ensure that the IBC reinstates its original policy on the reimbursement of indirect costs and that any future change(s) to such policy be done only in close coordination and consultation with tribes; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26-31, 2014 in Atlanta, Georgia, with a quorum present.

President

ATTEST:

Recording Secretary