



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

The Lower Brule Sioux Tribe Did Not Account for CARES Act Funds Appropriately

This is a revised version of the report prepared for public release.



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INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

SEP 19 2022

Memorandum

To: Darryl LaCounte
Director, Bureau of Indian Affairs

From: Kathleen Sedney *Kathleen Sedney*
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Final Audit Report – *The Lower Brule Sioux Tribe Did Not Account for CARES Act Funds Appropriately*
Report No. 2021–FIN–032–A

This memorandum transmits the final results of our audit of Agreement Nos. A18AV00084 and A20AV00168 between the Bureau of Indian Affairs and the Lower Brule Sioux Tribe. We conducted this audit to determine whether the Lower Brule complied with the requirements in these agreements and whether incurred costs were allowable and allocable in accordance with applicable Federal laws and regulations.

We consider Recommendations 1 and 2 resolved and implemented. We will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations. We will also post a public version of this report on our website.

If you have any questions about this report, please call me at 202–208–5745.

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Results in Brief

What We Audited

The Bureau of Indian Affairs (BIA) awarded the Lower Brule Sioux Tribe (Lower Brule) \$1,077,146 in Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funds through Agreement Nos. A18AV00084 (\$32,871) and A20AV00168 (\$1,044,275). These funds must be used for preventing, preparing for, and responding to the COVID-19 pandemic. We conducted this audit to determine whether the Lower Brule complied with the requirements in Agreement Nos. A20AV00168 and A18AV00084 with the BIA and whether incurred costs were allowable and allocable in accordance with applicable Federal laws and regulations. The population of expenses tested totaled \$69,652 (82 percent of \$84,742 in costs incurred as of March 1, 2021).

What We Found

We found that the Lower Brule did not follow Federal regulations for CARES Act-related welfare assistance payments it made under Agreement No. A18AV00084. Specifically, we found that the Lower Brule did not verify that CARES Act welfare assistance payments were to help the recipients prevent, prepare for, and respond to the COVID-19 pandemic. Therefore, we questioned all costs incurred to Agreement No. A18AV00084, for a total of \$32,871 or 100 percent of the funding provided under the CARES Act. We also determined that the Lower Brule commingled the CARES Act funds it received with other funds, which is not allowed under Federal regulations.

We did not identify any deficiencies related to the \$36,781 examined in expenditures under Agreement No. A20AV00168.

Why This Matters

To ensure compliance with governing law and to promote accountability and proper oversight of CARES Act funds distributed by the BIA and spent by the Lower Brule, the BIA and Lower Brule should be appropriately tracking and monitoring CARES Act expenditures. Without doing so, neither the BIA nor the Lower Brule can ensure CARES Act funds are spent on tribal needs to prepare, prevent, and respond to the COVID-19 pandemic.

What We Recommend

We make two recommendations to help the BIA provide oversight and assist the Lower Brule in accounting for and monitoring funds provided by the Federal Government.

Introduction

Objectives

We conducted this audit to determine whether the Lower Brule Sioux Tribe (Lower Brule) complied with the requirements in Agreement Nos. A20AV00168 and A18AV00084 with the U.S. Department of the Interior’s (DOI’s) Bureau of Indian Affairs (BIA) and whether incurred costs were allowable and allocable in accordance with applicable Federal laws and regulations.

See Appendix 1 for the audit scope and methodology.

Background

On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116–136, 134 Stat. 281, which provided the BIA with \$453 million to support “Operation of Indian Programs.” Among the areas on which the BIA could spend the funding were:

- Public safety and justice programs.
- Deep cleaning of facilities.
- Purchase of personal protective equipment.
- Information technology to improve teleworking capability.
- Welfare assistance and social services programs (including assistance to individuals).
- Assistance to tribal governments.¹

CARES Act, Division B, Title VII, concerning the operation of Indian programs, allows tribes to incur costs associated with preventing, preparing for, and responding to the COVID–19 pandemic. The BIA’s *Frequently Asked Questions (FAQs) Regarding Funding Directly Appropriated to Indian Affairs from Division B, Title VII of the CARES Act* guidance to Tribes, issued on July 2, 2020, states that the CARES Act funds may be used to cover costs incurred prior to the date the CARES Act was enacted if the costs were to prevent, prepare for, and respond to the coronavirus.

On April 17, 2020, the BIA awarded Agreement No. A20AV00168 to the Lower Brule under the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. No. 93–638).² Under the agreement, the BIA provided the Lower Brule \$968,997 of CARES Act funding to prevent,

¹ CARES Act, Pub. L. No. 116–136, 134 Stat. 281, 546, Title VII (2020).

² Self-determination funds are provided pursuant to this law, which gave Native American tribes the authority to contract with the Federal Government to operate programs serving tribal members and other eligible persons.

prepare for, and respond to the COVID–19 pandemic through tribal government and community and economic development programs. On November 9, 2020, the BIA modified the agreement and provided the Lower Brule with an additional \$75,278 in CARES Act funding.

In addition, on May 21, 2020, the BIA modified the Social Services and Welfare Assistance Pub. L. No. 93–638 agreement with the Lower Brule (Agreement No. A18AV00084) to provide \$32,871 in CARES Act funding for general assistance, adult care, burial assistance, and child assistance to help the Tribe prevent, prepare for, and respond to the COVID–19 pandemic.

Results of Audit

We found that the Lower Brule did not follow Federal regulations for CARES Act-related welfare assistance payments it made under Agreement No. A18AV00084. Regarding Agreement No. A20AV00168, all expenditures we reviewed appeared to be allowable and complied with agreement requirements and applicable Federal regulations.

We found that the Lower Brule incurred costs under Agreement No. A18AV00084 that were not allocable. Contrary to the agreement and Federal regulatory requirements that were conveyed to the Tribe in the agreement, the Lower Brule did not verify that welfare assistance payments provided to its members were related to the COVID-19 pandemic. We therefore questioned all welfare assistance payments made using CARES Act funds, which totaled \$32,871.

We found that the Lower Brule did not comply with applicable Federal regulations and the BIA guidance for Agreement No. A18AV00084. Specifically, the Lower Brule did not properly account for CARES Act funding. The Tribe commingled CARES Act funds with other funds in its accounting records.

These deficiencies occurred because the Lower Brule did not determine whether member welfare payments were related to the COVID-19 pandemic and because the Tribe's Welfare Assistance Program did not comply with the requirements of the agreement or the BIA guidance pertaining to commingling of funds. We questioned a total of \$32,871 on Agreement No. A18AV00084 for incurred costs that were not demonstrated as allocable to CARES Act funding. See Appendix 2 for a summary of the monetary impact of these questioned costs.

The Lower Brule Did Not Properly Document Pandemic Welfare Assistance Payments Totaling \$32,871

We found that the Lower Brule did not verify that the welfare assistance payments it provided to applicants using CARES Act funds under Agreement No. A18AV00084 were for needs related to the COVID-19 pandemic in accordance with 2 C.F.R. § 200.405, "Allocable costs." We examined all the costs for welfare assistance incurred between January 2020 and March 2021, totaling \$32,871, to determine whether the transactions were allocable to CARES Act funds.

The CARES Act states that funds provided under the Act must be used for preventing, preparing for, and responding to the COVID-19 pandemic. In addition, 2 C.F.R. § 200.405 states that a cost is chargeable if it is incurred specifically for the Federal award, benefits both the Federal award and other work for the non-Federal entity and is necessary to the overall operation of the non-Federal entity and assignable in part for the Federal award. To properly allocate costs incurred based on needs related to the COVID-19 pandemic, the Lower Brule should have documented a justification that the costs benefited and what costs were assignable to the agreement when the tribal members applied for welfare assistance.

We requested supporting documentation from the Lower Brule, including the welfare assistance applications it received and the reviews it performed to determine that the need described in the

applications met the requirements for CARES Act fund use. The program director responded that the applications used for the \$32,871 did not include information demonstrating that individuals' needs were based on the COVID-19 pandemic. After examining the application form, we agreed with this assessment. Because the Tribe could not demonstrate that the welfare assistance payments it issued using CARES Act funds were related to the COVID-19 pandemic, we questioned \$32,871 as not allocable.

We also noted that the Lower Brule did not require applicants to document welfare assistance related to COVID-19 until November 2020, 8 months after the CARES Act was signed. Tribal officials told us they were unaware of what supporting documentation would be required and that their efforts were focused on addressing the pandemic itself.³ In November 2020, the Lower Brule created and implemented the use of a CARES Act Assistance Program Application Packet. This application packet listed specific expenses that could be claimed as a result of the COVID-19 health emergency between March 1, 2020, and December 30, 2020. The application packet also required applicants to provide information explaining how they were impacted by COVID-19.

Because the Lower Brule did not require welfare assistance applicants to demonstrate that their requests were related to the COVID-19 pandemic until November 2020, it cannot ensure the CARES Act funds incurred using the outdated application were in accordance with regulations.

Recommendation
<p>We recommend that the BIA:</p> <ol style="list-style-type: none">1. Resolve the questioned costs of \$32,871 that were not demonstrated as allocable to CARES Act welfare assistance payments and require the Lower Brule to reallocate the costs to the appropriate funding source.

The Lower Brule Commingled CARES Act Funds

We found that the Lower Brule commingled CARES Act funds received under Agreement No. A18AV00084 with other tribal funds and was unable to provide a list of CARES Act-related welfare assistance expenditures from its accounting system.

Federal regulations⁴ require a tribe's financial management system to maintain records that can sufficiently identify the source and associated expenditures of self-determination agreement funds received. In addition, the BIA issued guidance on July 2, 2020, titled *Frequently Asked Questions (FAQs) Regarding Funding Directly Appropriated to Indian Affairs from Division B, Title VII of the CARES Act*, which states that CARES Act funds must be segregated from other

³ Modification No. 18 of Agreement No. A18AV00084, however, was issued by the BIA providing the CARES Act funds to the Tribe. The modification expressly stated that these funds were provided to prevent, prepare for, and respond to the coronavirus and that the contractor "must" maintain all appropriate records and cost documentation to substantiate COVID-19 related expenses.

⁴ 25 C.F.R. § 900.44(b).

funding in the recipient’s financial management system. Specifically, the guidance explains that “there must be separate accounts set up for audit purposes and separate tracking of expenditures. In addition, each appropriation has different purposes and authorizations that must be adhered to.”

The Lower Brule told us that it believed that the CARES Act welfare assistance funds could be commingled and that the BIA allowed it given the low dollar amount of this modification for CARES Act funds. This belief was incorrect—BIA officials stated that the guidance provided to the Tribes did not allow commingling of funds regardless of the dollar amount.

Without segregating the costs used for different purposes, the Lower Brule cannot appropriately track and monitor CARES Act expenditures and tribal needs. Further, commingling funds affects the Lower Brule’s ability to respond in a timely manner to inquiries and audits from the BIA.

Recommendation
We recommend that the BIA: 2. Require the Lower Brule to retroactively segregate the costs incurred related to the welfare assistance funds for Agreement No. A18AV00084.

Conclusion and Recommendations

Conclusion

We found that the Lower Brule could not properly account for the CARES Act welfare assistance funds. The deficiencies we found occurred because the Lower Brule's Welfare Assistance Program did not comply with agreement requirements or BIA guidance. Specifically, the Lower Brule did not require applicants to document that their welfare assistance applications were due to the COVID-19 pandemic, and the Lower Brule commingled its CARES Act funds for welfare assistance with all welfare assistance funds.

We make two recommendations to help the BIA provide oversight and assist the Lower Brule in accounting for and monitoring funds provided by the Federal Government.

Recommendations Summary

We provided a draft of this report to the BIA for review. Although the recommendations are directed to the BIA, it did not formally respond to the report or recommendations and instead forwarded the report to the Lower Brule. The Lower Brule responded directly to and concurred with the two recommendations, and the BIA sent an email dated August 4, 2022, in which it concurred with the Tribe's response and actions.⁵ We consider Recommendations 1 and 2 resolved and implemented. Below we summarize the Lower Brule's response to our recommendations, as well as our comments on their responses. See Appendix 3 for the full text of the Lower Brule's response; Appendix 4 lists the status of each recommendation.

We recommend that the BIA:

1. Resolve the questioned costs of \$32,871 that were not demonstrated as allocable to CARES Act welfare assistance payments and require the Lower Brule to reallocate the costs to the appropriate funding source.

Lower Brule Response: The Lower Brule concurred with this recommendation and stated that management reallocated costs to the appropriate funding source.

OIG Comment: We consider Recommendation 1 resolved and implemented. Although the BIA did not respond directly, it forwarded the report to the Lower Brule and stated by email that it agreed with the Lower Brule's response. We confirmed that the Lower Brule reallocated the costs to the appropriate funding source. Specifically, Agreement No. A18AV00084 has two different funding sources: (1) CARES Act and (2) Social Services and Welfare Assistance. Lower Brule made an adjusting journal entry to appropriately allocate the costs to its Social Services General Assistance account, which is an allocable cost for that funding source.

⁵ We have not included this email as an attachment to the final report.

2. Require the Lower Brule to retroactively segregate the costs incurred related to the welfare assistance funds for Agreement No. A18AV00084.

Lower Brule Response: The Lower Brule concurred with this recommendation and stated that management reclassified the costs and created a separate department to account for the CARES Act welfare assistance funding and payments.

OIG Comment: We consider Recommendation 2 resolved and implemented. Although the BIA did not respond directly, it forwarded the report to the Lower Brule and stated by email that it agreed with the Lower Brule's response. We confirmed that the costs related to the welfare assistance funds for Agreement No. A18AV00084 were retroactively segregated.

Appendix 1: Scope and Methodology

Scope

We audited the Lower Brule Sioux Tribe's (Lower Brule's) costs incurred under Agreement Nos. A18AV00084 and A20AV00168 with the Bureau of Indian Affairs (BIA). We examined \$69,652 of \$84,742 in costs incurred by the Lower Brule from January 1, 2020, through March 31, 2021. As part of our audit, we reviewed the Lower Brule's compliance with agreement requirements, applicable Federal regulations, and BIA guidance.

As a result of the COVID-19 pandemic, we could not complete site visits or review original records. We gathered data remotely and relied upon video conferences, emails, and telephone calls to substantiate our findings and conclusions.

Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We assessed whether internal control was significant to the audit objectives. We determined that the Lower Brule's control activities and the following related principles were significant to the audit objectives:

- Management designs appropriate types of control activities for the entity's internal control system.
- Management should use quality information to achieve the entity's objectives.
- Management should externally communicate the necessary quality information to achieve the entity's objectives.

We tested the operation and reliability of internal controls over activities related to our audit objectives. Our tests and procedures included:

- Review of Federal financial acquisition regulations, policies and procedures, the terms and conditions for Agreement Nos. A18AV00084 and A20AV00168, and the Lower Brule's policies and procedures.
- Gathering background information on the scope of work for Agreement Nos. A18AV00084 and A20AV00168.

- Interviewing officials, including the Lower Brule’s management and staff.
- Reviewing evidence that supported selected expenditures charged to the agreements.
- Testing the operation and reliability of the Lower Brule’s financial management and payroll systems.

We found deficiencies in internal control resulting in our two findings of the Lower Brule commingling funding.

We relied on computer-generated data provided by the Lower Brule for cost information and to select audit samples of payroll and other direct costs. To evaluate the accuracy of the data, we performed several analytical tests. Specifically, we:

- Reconciled data from the Lower Brule’s payroll system with payroll entries in its financial management system.
- Compared a sample of source documents to entries in the Lower Brule’s financial management and payroll systems to ensure that transactions were recorded properly.

To test payroll costs incurred under Agreement No. A20AV00168, we judgmentally selected 4 different General Ledger Descriptions for 26 employees that charged time to the award and verified the total amount paid, \$30,435, against timesheets and paystub details. We chose these positions because they represented a variety of roles and charged a relatively large dollar amount of the incurred costs to the agreement.

To test nonpayroll direct costs incurred under Agreement No. A20AV00168, we judgmentally selected four transactions totaling \$6,346. We chose items for the selection based on a number of risk factors, including the dollar amount and the vendor name.

We then reviewed source documents supporting the transactions, including vendor invoices and receipts, completed payment request forms, and check details. Because we selected samples for testing on a judgmental rather than statistical basis, we did not project the results of our judgmental samples to the total population of recorded transactions.

To test nonpayroll direct costs incurred under Agreement No. A18AV00084, we examined all 132 transactions and costs. The Lower Brule only incurred nonpayroll direct costs for this agreement.

Appendix 2: Monetary Impact

Agreement No.	Funds Awarded (\$)	Costs Incurred (\$)	Questioned Costs – Unallocable (\$)
A18AV00084	32,871	32,871	32,871
A20AV00168	1,044,275	51,871	0
Totals	\$1,077,146	\$84,742	\$32,871

Appendix 3: Responses to Draft Report

The Lower Brule Sioux Tribe's response to our draft report follows on page 13. The BIA did not respond directly to our recommendations but stated by email that it agreed with the Lower Brule Sioux Tribe's response.

Clyde J.R. Estes
Chairman



Tribal Administration
187 Oyate Circle
Lower Brule, SD 57548
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Date: July 14, 2022

To: Timothy LaPointe, Director
Great Plains Regional Office
Bureau of Indian Affairs
115 4th Avenue, SE Suite 400
Aberdeen, SD 57401

From: Clyde J.R. Estes, Chairman
Lower Brule Sioux Tribe

RE: Response to Draft Audit Report- *The Lower Brule Sioux Tribe Did Not Account For CARES Act Funds Appropriately (Report No. 2021-FIN-032-A)*

Dear Director LaPointe,

We received the above referenced draft report from the Office of the Inspector General. Below are our responses to the draft audit report recommendations.

1. Resolve the questioned costs of \$32,871 that were not demonstrated as allocable to CARES Act welfare assistance payments and require the Lower Brule to reallocate the costs to the appropriate funding source.

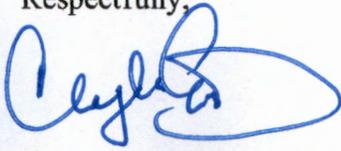
Lower Brule Sioux Tribe Management concurs with this finding. Management has reallocated the costs to the appropriate funding source.

2. Require the Lower Brule to retroactively segregate the costs incurred related to the welfare assistance funds for Agreement No. A18AV00084.

Lower Brule Sioux Tribe Management concurs with this finding. Management has reclassified costs of \$32,871 incurred related to the CARES Act welfare assistance funds for Agreement No. A18AV00084. Management has created a separate department to account for the CARES Act welfare assistance funding and payments.

We are confident that this resolves the above audit findings. Please let us know what documentation you would require to conclude this matter. Thank you for your consideration in this matter.

Respectfully,



Clyde J.R. Estes, Chairman
Lower Brule Sioux Tribe



Appendix 4: Status of Recommendations

Recommendation	Status	Action Required
1, 2	Resolved and implemented	No action is required.



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