

Charging GAP for Office Space: Can a Tribe charge rent to a GAP Grant?

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I. Source material (see excerpts in Section III):

- The cost principles for Rental Costs of Real Property and Equipment are in the Uniform Grant Guidance (UGG): 2 CFR §200.465 (b) and (c). This regulation addresses rental costs under less-than-arm's-length leases.
- Maintenance and Repair Costs are at UGG: 2 CFR §200.452
- Depreciation is at UGG: 2 CFR §200.436 and Appendix VII to 2 CFR Part 200
- Insurance and indemnification: 2 CFR §200.447

II. Testing Question: Who owns the building?

- ***The Building is owned by an entity completely unrelated to the Tribe, e.g. a local developer owns a building and the Tribe rents a space in that building.***
 - In this case, rental costs may be allowable under GAP. Costs may be based on market conditions of comparable properties, market conditions in the area, or property lease values. (2 CFR §200.465(a))
 - The Tribe must demonstrate that the costs are reasonable, allocable, and necessary. In addition, the costs assigned to GAP must adhere to a consistently applied method to split costs that bills GAP for only the portion of rental costs associated with the GAP-funded activities.

Note—if rent is included in the Tribe's indirect cost rate, the Tribe may not seek reimbursement of rental costs as a direct cost.

- ***The building is owned by the Tribe. In most cases this constitutes a "less-than-arms-length lease" which includes leases between a subdivision of the Tribe, a tribal economic interest, and leases between the Tribe and an officer, trustee, director, or key employee of the Tribe. It also includes leases with a family member of a Tribal government representative, officer, trustee, director, or key employee of the Tribe.***
 - In this case, eligible costs associated with the rental space would include depreciation, maintenance, taxes, and insurance but the rent itself would not be an allowable cost pursuant to 2 CFR §200.465.
 - The costs assigned to GAP must adhere to a consistently applied method to split costs that bills GAP (i.e. depreciation, maintenance, taxes, and insurance) for only the portion of these costs associated with the GAP-funded activities.

- When calculating this value, the Tribe must ensure these costs are not currently included in the Indirect Cost Pool used by the Tribe to calculate their indirect cost rate.

Note: If depreciation, maintenance, taxes, and insurance are included in the Tribe's indirect cost rate, the Tribe may not seek reimbursement of depreciation, maintenance, taxes, and insurance as a direct cost.

Note: Maintenance cost must not include costs for improvements which add to the permanent value of the building. (2 CFR §200.452)

III. Applicable Regulations

2 CFR §200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

- (1) Divisions of the non-Federal entity;
- (2) The non-Federal entity under common control through common officers, directors, or members; and
- (3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.
- (4) Family members include one party with any of the following relationships to another party:
 - (i) Spouse, and parents thereof;
 - (ii) Children, and spouses thereof;
 - (iii) Parents, and spouses thereof;
 - (iv) Siblings, and spouses thereof;

- (v) Grandparents and grandchildren, and spouses thereof;
 - (vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and
 - (vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in §200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.
- (6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

Appendix VII to 2 CFR Part 200 (http://www.ecfr.gov/cgi-bin/text-idx?SID=63a80a957e40bb70f9352263eabca374&mc=true&node=ap2.1.200_1521.vii&rgn=div9)

Appendix VII deals with depreciation for States, Local Governments, and Indian Tribes included as part of their indirect cost rate.

2 CFR §200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

- (1) The cost of land;
- (2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;
- (3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity where law or agreement prohibits recovery; and
- (4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

2 CFR §200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see §200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

2 CFR §200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

- (1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.
- (2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.
- (3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.