

# Congress of the United States

## Washington, DC 20515

April 24, 2023

The Honorable Samantha Power  
Administrator  
U.S. Agency for International Development  
Ronald Reagan Building  
Washington, D.C. 20523

Dear Administrator Power,

We write to request transparency concerning your agency's stewardship of U.S. taxpayer dollars, specifically the U.S. Agency for International Development's (USAID) Negotiated Indirect Cost Rate Agreements (NICRA) with partners delivering humanitarian assistance. USAID issues NICRAs as the cognizant agency for over 300 organizations and companies, many of which are large multinational organizations headquartered outside the United States. In fiscal year 2022, USAID issued \$14.94 billion across 5,788 transactions.<sup>1</sup>

We understand that some indirect costs are a necessary expense when delivering humanitarian assistance; however, we have serious concerns over the lack of oversight regarding the issuing and review of your agency's NICRAs with USAID's partners. We fear NICRAs have ballooned due to a lack of stewardship and care. USAID has been entrusted with record amounts of U.S. taxpayers' hard-earned income over the past year; it is important that USAID can show Congress and the American people that it is undertaking every effort to ensure the maximum amount of funds provided to international NGOs, United Nations agencies, and contractors are being used to actually deliver urgently needed assistance to impoverished and developing communities which your agency is charged with assisting.

Indirect costs, which can include rent for a partner's corporate headquarters, lobbying costs, and other miscellaneous expenses can easily exceed 25% of an organization's total award. Your agency is responsible for renegotiating these rates every year and ensuring that USAID's partners are limiting their indirect costs to the absolute minimum. Despite the increases in USAID's operations over the years, the number of staff reviewing USAID issued NICRAs has remained flat at seven individuals for more than five years.

NICRA rates reviews are an important mechanism for ensuring cost accountability on awards at USAID. However, despite efforts to work with your team to view and assess your agency's issued NICRAs, USAID has continued to block such requests. In addition to your most recent justification for refusal, the shifting rationale for rejection indicates that current justification is equally arbitrary.

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<sup>1</sup> USASpending.gov; Accessed on April, 4, 2023; Link: <https://www.usaspending.gov/agency/agency-for-international-development?fy=2023>

Senator Ernst's staff first reached out to your agency requesting NICRAs in November of 2022.<sup>2</sup> On February 1, 2023, your agency responded to our request for information on NICRAs by claiming that *"USAID does not have a system to track or report on this data, as it is not possible to compare indirect costs between for-profit and nonprofit organizations at the rate level..."*<sup>3</sup>

On February 8, 2023, Senator Ernst's staff followed up with a link to a publicly reported NICRA database that USAID confirmed does exist on February 13, 2023. At this point, USAID's justification for refusing to provide NICRA rate data shifted and your agency claimed that *"USAID is legally restricted from sharing an implementing partner's proprietary information, including its NICRA. These legal constraints arise from a number of statutory and regulatory proscriptions, including the Economic Espionage Act, Protection of Trade Secrets Act, and Disclosure of Confidential Information Act that carry civil and criminal penalties."*<sup>4</sup> This was a disappointing response. As you well know, Congressional oversight on federal agencies spending and contracting negotiations most certainly does not violate federal law, including the acts listed in your response.

Your agency acknowledged this reality when it shifted to its most recent justification on February 17, 2023, noting that *"USAID wanted to clarify a point we included in Monday's responses. The Agency protects the confidential business information of its implementing partners, including NICRAs. It is longstanding executive branch practice, under Presidents of both parties, to protect confidential business information from disclosure outside the scope of a formal oversight request by a committee of jurisdiction."*<sup>5</sup>

It is concerning that USAID refuses to provide information to Senator Ernst and myself on these troubling grounds. As stewards of taxpayer dollars, Members of Congress are responsible for ensuring that such funds are not unduly wasted on paying for awardee's rent in Geneva or Rome or Paris. Now that USAID is in receipt of this formal oversight request by its principal oversight committee in the U.S. House of Representatives, it must provide requested information on NICRAs without further delay.

Please provide the following no later than May 16, 2023:

1. Documents sufficient to show all NICRA rates since January 21, 2021;
2. Access to USAID's NICRA rate database;
3. Documents sufficient to show USAID's policies and practices for NICRA rate negotiations, as well as staffing for NICRA rate negotiations; and

All documents and communications referring or relating to NICRA rate negotiations, including but not limited to: all documents and communications with recipients of USAID funds exceeding the 10% *de minimis* rate for indirect costs since January 21, 2021.

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<sup>2</sup> Senator Ernst staff, email message to USAID Bureau of Legislative and Public Affairs, November 17, 2022.

<sup>3</sup> USAID Bureau of Legislative and Public Affairs, email message to Senator Ernst staff, February 1, 2023.

<sup>4</sup> USAID Bureau of Legislative and Public Affairs, email message to Senator Ernst staff, February 13, 2023.

<sup>5</sup> USAID Bureau of Legislative and Public Affairs, email message to Senator Ernst staff, February 17, 2023.

The American people are the most generous in the world, in part through the work which your agency conducts every day. We implore you to work with us to ensure that the good will of the American people is not squandered on excessive NICRAs.

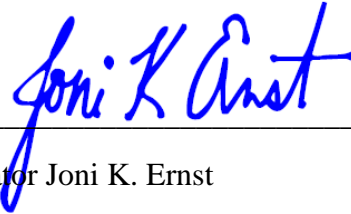
Congress' oversight powers are derived from the U.S. Constitution.<sup>6</sup> Under House Rule X, the Committee has legislative and oversight jurisdiction over relations of the United States with “foreign nations generally,” “diplomatic service,” “measures to foster commercial cooperation with foreign nations and to safeguard American business interests abroad,” and “United Nations organizations.”<sup>7</sup>

Sincerely,



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Chairman Michael T. McCaul



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Senator Joni K. Ernst

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<sup>6</sup> See generally U.S. CONST. art. I, § 8, cl. 8; *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927) (holding that “the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function”); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 (1975) (holding that “the power to investigate is inherent in the power to make laws”); *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) (holding that “the scope of power of inquiry ... is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”).

<sup>7</sup> *Rules of the House of Representatives: One Hundred Eighteenth Congress*, U.S. HOUSE OF REP. 7 (Jan. 10, 2023), <https://rules.house.gov/sites/republicans.rules118.house.gov/files/documents/Rules%20and%20Resources/118-House-Rules-Clerk.pdf>.