



Frequently Asked Questions About Tribal Self-Governance

Q1: What is the Indian Health Service (IHS) Tribal Self-Governance Program (TSGP)?

A1: The TSGP is a tribally driven, congressional legislative option that authorizes federally recognized Tribes and Tribal Organizations to negotiate with the IHS and assume full funding and control over programs, services, functions or activities (PSFAs), or portions thereof, that the IHS would otherwise provide. The TSGP provides Tribes with the flexibility to manage program funds to best fit the needs of their citizens and Tribal communities.

Q2: How do you get started?

A2: The IHS Area Offices and the Office of Tribal Self-Governance (OTSG) can both provide information to Tribes interested in the TSGP. You can find this brochure and other resources posted on the OTSG website, as well as links to the relevant statute and regulations.

Q3: Who is eligible to participate in the TSGP?

A3: To be eligible for the TSGP, a Tribe must (1) successfully complete a planning phase, (2) request participation in the TSGP by Tribal resolution or other official action by the governing body of the Tribe, and (3) demonstrate financial stability and financial management capability by providing evidence that, for the three years prior to participation in the TSGP, the Tribe has had no uncorrected significant and material audit exceptions in the required annual audit of the Tribe's Self-Determination Contracts or Self-Governance Funding Agreements with any Federal agency.

Q4: What are the steps to participating in the TSGP?

A4: Each IHS Area has an Agency Lead Negotiator (ALN) who negotiates the self-governance instruments (Compacts and Funding Agreements) on behalf of the IHS Director. To begin the process, a Tribe should contact the ALN. The ALN will explain the eligibility criteria and the negotiation process. After determining that the Tribe is qualified to participate in the TSGP (see Question 3), the ALN will provide technical assistance as the Tribe prepares to participate in the program, including coordination of meetings with IHS program offices. Once the Tribe has completed all necessary preparation, the Tribe produces a draft Compact and Funding Agreement. Assisted by a Federal negotiation team, the ALN reviews the draft and works together with the Tribe to reach agreement on the final documents.

Q5: What is the difference between Title V Compacting and Title I Contracting under the Indian Self-Determination and Education Assistance Act (ISDEAA)?

A5: Both Title V and Title I provide for Tribal administration of programs formerly administered by the IHS. The major difference is a matter of oversight. Under Title V, a Tribe may redesign or consolidate PSFAs and reallocate or redirect funding without IHS approval in accordance with the ISDEAA. In contrast, IHS must approve any substantial changes to a Title I Contract. The programs are not exclusive. Because Tribes can choose which PSFAs (or portions thereof) to assume, a Tribe may combine Title V, Title I, and direct services to best meet the needs of its community.

Q6: Is there funding available to help with planning for Title V participation?

A6: Yes. The OTSG offers a limited number of competitive Planning Cooperative Agreements to help with the costs associated with the mandatory planning phase. The Planning Cooperative Agreements are not required for Self-Governance planning. A Tribe may use its own resources to perform planning activities as long as those activities are conducted to the satisfaction of the Tribe. Tribes that receive Planning Cooperative Agreements are not obligated to participate in Title V and may choose to delay or decline participation in the TSGP based on its planning activities.

Q7: How does a Tribe apply for a TSGP Planning Cooperative Agreement?

A7: The OTSG administers the Planning Cooperative Agreement. Announcements are made three ways: (1) through a Federal Register Notice, (2) via <http://www.grants.gov>, and (3) posted to the OTSG website, located at <http://www.ihs.gov/selfgovernance/>. The announcements contain information on the number of agreements available, how to apply, deadlines, eligibility requirements, and scoring criteria.

Q8: Is there funding to help with the negotiation of a Self-Governance Compact and Funding Agreement?

A8: Yes. The OTSG offers a limited number of competitive Negotiation Cooperative Agreements to assist with the costs of the negotiation process. Negotiation Cooperative Agreements are not required for Tribal Self-Governance negotiations. A Tribe may use its own resources to develop and negotiate its Compact and Funding Agreement. Tribes that receive Negotiation Cooperative Agreements are not obligated to participate in Title V.

Q9: How does a Tribe apply for a TSGP Negotiation Cooperative Agreement?

A9: The OTSG administers the Negotiation Cooperative Agreement. Announcements are made three ways: (1) through a Federal Register Notice, (2) via <http://www.grants.gov>, and (3) posted to the OTSG website, located at <http://www.ihs.gov/selfgovernance/>. The announcements contain information on the number of agreements available, how to apply, deadlines, eligibility requirements, and scoring criteria.

Q10: What is the award period for the IHS TSGP Planning and Negotiation Cooperative Agreements?

A10: Generally, the award period for each is 12 months.

Q11: If a Tribe has already received a Planning or Negotiation Cooperative Agreement, can the Tribe apply for an additional award?

A11: Yes, if a Tribe is planning to add a new program or expand an existing program.

Q12: What is a Tribal Self-Governance Compact?

A12: The Compact sets forth the general terms of the nation-to-nation relationship between the Tribe or Tribal Organization and the Secretary of the US Department of Health and Human Services (HHS). Unlike the Title I Model Contract, there is no model Self-Governance Compact; however, the ISDEAA does require some mandatory terms.

Q13: What is a Funding Agreement?

A13: The Funding Agreement is an annual or multi-year agreement that generally identifies the PSFAs to be assumed by the Tribe, describes the financial terms of the agreement, and sets out the responsibilities of the HHS Secretary.

Q14: Can a Tribe obtain copies of existing Compacts and Funding Agreements?

A14: Yes. Current Title V Tribes are often willing to share their documents with other Tribes. The OTSG can help to make an appropriate referral. A Tribe can also file a Freedom of Information Act (FOIA) request with the IHS to obtain copies. The FOIA request can be made through the Division of Regulatory Affairs by contacting (301) 443-1116 or by visiting its website for more information, located at: <http://www.ihs.gov/AdminMngrResources/FOIA/>.

Q15: Who is the Agency Lead Negotiator (ALN) and what authority does this person have?

A15: The ALN has the delegated authority to negotiate Tribal Self-Governance Compacts and Funding Agreements with Tribes and Tribal Organizations on behalf of the IHS Director.

Q16: Is the ALN the only person representing IHS during the negotiation process?

A16: No. While only the ALN has the authority to negotiate, each ALN is assisted by a Federal team, which may include representatives from health programs, administration, finance, the Office of the General Counsel, and the OTSG.

Q17: Does Tribal Self-Governance terminate the Federal trust responsibility?

A17: No. It has never been the intent of the Tribal Self-Governance initiative to terminate or reduce the Federal trust responsibility to Indian Tribes and Indian people. The ISDEAA clearly states: "The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions." 25 U.S.C. § 458aaa-6(g)

Q18: Where can I find the law and regulations related to the IHS TSGP?

A18: The statute can be found in Title 25 of the United States Code at 25 U.S.C. § 458aaa. The regulations can be found in the Code of Federal Regulations at 42 C.F.R. Part 137.

Q19: Where can I find information about the IHS Tribal Self-Governance Program budget?

A19: You can find copies of Congressional Justifications submitted as part of the President's Budget Request to Congress each year on the IHS Budget Formulation website located at: <http://www.ihs.gov/BudgetFormulation/>.

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