Fiscal Year 2012 Report to Congress on Administration of the Tribal Self-Governance Program

In Response to:
Section 458aaa-13 of the Indian Self-Determination and Education Assistance Act, as amended

Prepared by the
Department of Health and Human Services
Indian Health Service

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One Attachment:
Exhibit A – Funds Transferred to Each Self-Governance Tribe

Report to Congress on the Administration of the Tribal Self-Governance Program

A. Introduction

The 2012 Report to Congress on the Administration of the Indian Health Service (IHS) Tribal Self-Governance Program is prepared as required in section 458aaa-13 of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 et seq. The report addresses the Agency's administration of the Tribal Self-Governance Program and provides an accounting of the level of need being funded for each Indian Tribe under Self-Governance compacts[1] and funding agreements[2] authorized under Title V of the ISDEAA.

B. Background

Title V of the ISDEAA allows Tribes to assume operation of Federal programs and to receive at least the funding amount that the Secretary, Department of Health and Human Services (Secretary) would have otherwise provided for the direct operation of the programs. Approximately one-third of the Agency's appropriation is compacted through Title V of the ISDEAA.

The following are specific elements of the annual report as required by statute (25 U.S.C. § 458aaa-13(b)):

- The relative costs and benefits of Self-Governance;
- Funds specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance participants;
- Funds transferred to each Self-Governance Indian Tribe and the corresponding reduction in the Federal bureaucracy;
- The funding formula for individual Tribal shares of all Headquarters funds, together with the comments of affected Indian Tribes or Tribal organizations;
- Amounts expended in the preceding fiscal year (FY) to carry out inherent Federal functions by type and location; and
- Comments on this report received from Indian Tribes and Tribal organizations.

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[1] A Self-Governance compact is a legally binding and mutually enforceable written agreement that affirms the government-to-government relationship between a Self-Governance Tribe and the United States. A compact shall include general terms setting forth the government-to-government relationship consistent with the Federal Government's trust responsibility and statutory and treaty obligations to Indian Tribes and such other terms as the parties intend to control from year to year (25 U.S.C. § 458aaa-3; 42 C.F.R. §§ 137.30-31).

[2] A funding agreement is a legally binding and mutually enforceable written agreement that identifies the programs, services, functions, or activities (PSFAs), or portions thereof, that the Self-Governance Tribe will carry out, the funds being transferred from service unit, area and Headquarters levels in support of those PSFAs and such other terms as are required or may be agreed upon pursuant to Title V (25 U.S.C. § 458aaa-4; 42 C.F.R. § 137.40).

This report has been compiled using information contained in funding agreements, annual audit reports, and data from the Secretary regarding the disposition of Federal funds. No reporting requirements have been imposed on participating Indian Tribes or Tribal organizations related to this report, as required by section 458aaa-13(a)(2) of the ISDEAA.

C. Linkage with Other Reports to Congress

None.

D. The Relative Costs and Benefits of Self-Governance

The Tribal Self-Governance Program strengthens the nation-to-nation relationship between the United States and Indian Tribes by enabling each Indian Tribe to choose the extent of its participation in Self-Governance and by transferring full control and funding of Federal programs, services, functions, or activities (PSFAs), or portions thereof, to Tribal governments.

Under Title V of the ISDEAA, Tribes have the discretion to plan, conduct, redesign, and administer the PSFAs, or portions thereof, that they have assumed. As a result, significant variation exists among Tribally-administered health programs. These benefits can include:

- Creation of a comprehensive approach to health services;
- Increased community engagement;
- Program design driven by the needs and priorities of each Tribal community;
- Improvement in communication and coordination between Tribal programs, resulting in the elimination of service duplication and improving efficiency;
- The ability to leverage self-governance funding, maximize resources, and provide more comprehensive community-wide services; and
- Development of innovative health programs and services.

The costs associated with the Tribal Self-Governance Program are detailed in the subsequent section, *Funds Related to the Provision of Services and Benefits to Self-Governance Tribes*.

E. Funds Related to the Provision of Services and Benefits to Self-Governance Tribes

The funds specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance participants include the IHS budget for administration of the Tribal Self-Governance Program and the funds available to the Secretary to provide health care for each Indian Tribe (as reflected by the amount eligible to each Tribe in a Self-Governance funding agreement).

(1) **IHS, Office of the Director, Office of Tribal Self-Governance line item, FY 2012 appropriation** $6,044,000

(2) IHS, Area Offices, total of FY 2012 budgets for Self-Governance activities $0

(3) Amount available for current Self-Governance Tribes $1,597,378,913

IHS Area Office	All Funds
Alaska	$599,192,434
Albuquerque	$19,655,683
Bemidji	$87,044,215
Billings	$26,662,952
California	$76,799,755
Nashville	$78,978,199
Navajo	$92,696,520
Oklahoma	$421,888,773
Phoenix	$72,274,867
Portland	$122,185,515
Total	$1,597,378,913

Note:
Contract support costs are not included in this report but are identified and reported in the Report to Congress on Funding Needs for Contract Support Costs (CSC) of Self-Determination Awards.

(4) Total funds related to the provision of services and benefits to Self-Governance Tribes $ 1,603,422,913

F. Funds Transferred to Each Self-Governance Indian Tribe and the Corresponding Reduction in the Federal Bureaucracy

(1) Funds transferred to Tribes for PSFAs assumed under Title V of the ISDEAA for FY 2012 $1,497,759,114

IHS Area Office	Funds Transferred
Alaska	$521,650,452
Albuquerque	$15,329,391
Bemidji	$82,875,214
Billings	$26,431,865
California	$74,521,875
Nashville	$74,846,685
Navajo	$90,949,712
Oklahoma	$420,602,352
Phoenix	$72,231,951
Portland	$118,319,617
Total	$1,497,759,114

Notes:

Contract support costs are not included in this report but are identified and reported in the Report to Congress on Funding Needs for Contract Support Costs (CSC) of Self-Determination Awards.

For amounts by Tribe, please see Exhibit A.

(2) Corresponding reduction in the Federal bureaucracy

Prior to FY 2000, the rate of reduction in Federal bureaucracy was greater than subsequent years due to increased participation in the IHS Tribal Self-Governance Program, increased assumption of Tribal shares, and reduced IHS staffing levels. Some of the reduction in IHS staffing may also be attributed to retirement, job transfers, Federal government downsizing, or Federal government contracting. Also, some of the job transfers resulted in increased Tribal employment, enabling Tribal communities to address their own health care needs and priorities.

G. The Funding Formula for Individual Tribal Shares of All Headquarters Funds, Together with the Comments of Indian Tribes or Tribal Organizations

Tribes may elect to assume responsibility for PSFAs formerly administered by the IHS. The Tribe may negotiate a compact and funding agreement with the Secretary for its share of the funds associated with the PSFAs. The funds for each PSFA may be found in one or more budget line items.

(1) Funding formulas for individual Tribal shares of all Headquarters funds

(a) Tribal Size Adjustment Formula

In FY 2012, $29,243,947 was provided to Self-Governance Tribes using the Tribal Size Adjustment (TSA) formula. For most IHS Headquarters programs, eligible shares for each Tribe were determined using the TSA Formula in the mid-1990's. The amount calculated by the TSA formula was originally determined in proportion to the aggregate user population of each Tribe. A small supplemental amount was added for Tribes with less than 2,500 users in partial compensation for inefficiencies related to small size. The amount determined by the TSA formula is termed the Tribe's "base" HQ shares in subsequent years and is not increased or decreased based on fluctuation in user population.

Shares of Headquarters PSFAs were originally computed by the TSA formula in the mid-1990s for all Federally recognized Tribes (including Tribes that had not entered into an ISDEAA Title I contract[3] and annual funding agreement[4] or ISDEAA Title V compact and funding agreement) and have been preserved ever since as base shares. This is because the ISDEAA prohibits reductions of recurring funding to Tribes (Headquarters TSA shares are considered recurring) except as specifically provided in 25 U.S.C. §458aaa-7(d)(1)(C). Annual fluctuations in user counts would cause the Headquarters TSA formula to unavoidably reduce shares to some Tribes if recomputed annually. Over time, the base Tribal shares have been adjusted proportionately for inflation or in response to congressional action.

Indian Health Service, Indian Health Manual, Special General Memorandum No. SGM 95-2, Policy Decisions for Self-Governance/Self-Determination Demonstration Project Negotiations-ACTION, Apr. 19, 1995, *available at* http://www.ihs.gov/ihm/index.cfm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihm_sgm_9502.

(b) Special program formulas

Some IHS programs determine Tribal shares based on special program formulas, including the following:

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[3] Self-Determination contracts (25 U.S.C. § 450f).

[4] Annual funding agreement means a document that represents the negotiated agreement of the Secretary to fund, on an annual basis, the programs, services, activities and functions transferred to an Indian Tribe or tribal organization under the Act (25 C.F.R. § 900.6).

Contract Health Services, Fiscal Intermediary
In FY 2012, $2,237,496 was provided to Self-Governance Tribes using the Contract Health Services, Fiscal Intermediary formula. The fiscal intermediary is an IHS contractor that calculates and pays contract health services (health care purchased from private providers) claims.

Tribal Share = A x B
Where
A = Tribal percent of 1993 Total Claims
B = Current Fiscal Intermediary Expenditures

Office of Environmental Health and Engineering (OEHE), OEHE Support
In FY 2012, $888,262 was provided to Self-Governance Tribes using the Office of Environmental Health and Engineering (OEHE), OEHE Support formula.

Headquarters Program funds for OEHE Support are allocated to the Tribes, when requested, based on their pro-rata share of the Area Environmental Health Services workload.

H. Total Amounts Identified in the Preceding Fiscal Year (FY 2011) to Carry Out Functions that the IHS must Carry Out as an Integral Part of its Duties as a Federal Agency

(1) IHS Headquarters residual amount $27,715,284

I. Comments on this Report Received from Indian Tribes and Tribal Organizations

The IHS received four sets of comments from Indian Tribes and Tribal organizations on this report. Those comments are summarized as follows:

[Summaries of Tribal comments to be inserted]