

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 Fiscal Year 2012 Report to Congress on the Administration of the Indian Health Service (IHS or Agency) 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<sup>1</sup> and funding agreements<sup>2</sup> 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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<sup>1</sup> 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).

<sup>2</sup> 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*.

For example, a Self-Governance consortium, the Alaska Native Tribal Health Consortium (ANTHC), provides world class health services to more than 150,000 Alaska Native and American Indian people, including comprehensive medical services at the Alaska Native Medical Center, wellness programs, rural provider training, disease research, and rural water and sanitation systems construction.

Demonstrating the ability to maximize resources, the Eastern Aleutian Tribes (EAT) formed a consortium with regional school districts to offset the high costs of operating high-speed telecommunication lines between the villages and Anchorage. Both the clinics and schools achieved cost savings and have high-speed links to enhance health and education.

**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** \$6,044,314
- (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

<b>IHS Area Office</b>	<b>All Funds</b>
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 City	\$421,888,773
Phoenix	\$72,274,867
Portland	\$122,185,515
<b>Total</b>	<b>\$1,597,378,913</b>

Note:

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

- (4) **Total funds related to the provision of services and benefits to Self-Governance tribes** \$ 1,603,423,227

**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

<b>IHS Area Office</b>	<b>Funds Transferred</b>
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 City	\$420,602,352
Phoenix	\$72,231,951
Portland	\$118,319,617
<b>Total</b>	<b>\$1,497,759,114</b>

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 Tribal Self-Governance Program, increased assumption of tribal shares, and reduced IHS staffing levels. Some 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**

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, the IHS transferred \$29,230,183 to Self-Governance tribes for their individual tribal shares of all Headquarters funds. For most IHS Headquarters programs, eligible shares for each tribe were determined using the Tribal Size Adjustment (TSA) formula developed in the mid-1990s. 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 fewer 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" Headquarters' shares in subsequent years and is not increased or decreased based on fluctuations 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<sup>3</sup> and annual funding agreement<sup>4</sup> 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 the link that follows*:  
[https://www.ihs.gov/ihtm/index.cfm/index.cfm?module=dsp\\_ihm\\_sgm\\_main&sgm=ihtm\\_sgm\\_9502\\_9502](https://www.ihs.gov/ihtm/index.cfm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihtm_sgm_9502_9502).

#### **(b) Special program formulas**

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

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<sup>3</sup> Self-Determination contracts (25 U.S.C. § 450f).

<sup>4</sup> 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, \$2,237,495 was provided to Self-Governance tribes using the Contract Health Services Fiscal Intermediary formula. The fiscal intermediary is an IHS contractor who 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, Indian Health Facilities, Environmental Health Services Support**

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

Headquarters Program funds for OEHE Environmental Health Services Support are allocated to the tribes, when requested, based on their pro-rata share of the applicable Area Facilities and Environmental Health Support 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**

<b>(1) IHS Headquarters residual amount</b>	<b>\$27,715,284</b>
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### **I. Comments on this report received from Indian tribes and tribal organizations**

The FY 2012 and FY 2013 reports were jointly distributed for tribal comment. The IHS received five sets of comments from Indian tribes and tribal organizations on these reports. Three submissions were submitted on behalf of 16 Indian tribes and tribal organizations and contained identical comments. Two additional comments were submitted by individual Indian tribes. The comments received are summarized as follows:

#### General

- One comment states that more funding is needed for health services to American Indians and Alaska Natives and suggested that improvements to the appropriations process are needed to ensure continuity of operations.



IHS response: Thank you for your comment. The annual tribal consultation process for budget formulation is one forum to raise this recommendation.

- One comment expresses concern regarding the need for additional funding to the IHS Bemidji Area Office, requesting the elimination of sequestration, and requesting full funding for Contract Support Costs.

IHS response: The IHS is committed to working with all tribes to address the needs of their local communities. However, the IHS does not have the authority to eliminate sequestration. The issue of funding for Contract Support Costs is addressed in the Report to Congress on Funding Needs for Contract Support Costs of Self-Determination Awards.

- One comment stated that the report does not adequately address unfunded need.

IHS response: One purpose of this report is to address the level of need being funded, not the unfunded need for each tribe under Self-Governance compacts. Additionally, 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 of Self-Determination Awards. The budget formulation process provides tribes with the opportunity to present their unfunded needs to the Agency.

- One comment requests a section be added detailing efforts to expand Self-Governance within the U.S. Department of Health and Human Services.

IHS response: Thank you for your comment. The sole focus of this document is to report on the administration of the IHS Tribal Self-Governance program.

#### Section F(1)

- One comment expresses concern regarding the timely submission of the Report to Congress on Funding Needs for Contract Support Costs of Self-Determination Awards.

IHS response: The IHS is working to finalize the Report to Congress on Funding Needs for Contract Support Costs of Self-Determination Awards.

#### Section F(2)

- One comment requests that IHS quantify savings to IHS and outside agencies due to reductions in federal bureaucracy as a result of tribal contracting.

IHS response: The IHS does not currently track this movement. IHS data shows a general downward trend in the federal bureaucracy from the mid-1990s to 2001, when administrative layers were reduced by more than half, due to a major Agency reorganization. However, no existing data can demonstrate that the downward trend in the federal bureaucracy (i.e., reduced staffing levels) was directly attributable to the Self-Governance Program. Additionally, workforce data (i.e., staffing levels) for tribal

health care programs is unavailable. Therefore, no comparative analysis can be done with existing data to quantify savings as a result of tribal contracting or compacting.

#### Section G

- One comment states that the funding formulas included in the report do not reflect all components of the IHS. The comment further requests that the IHS consider a process by which tribal contractors can renegotiate historic “base amounts.”

IHS response: Tribes and tribal organizations may renegotiate their funding agreements to assume new PFSAs; however, the funding amount associated with those PFSAs have been established through consultation. Revising these “base amounts” would require tribal consultation.

#### Section H

- One comment requests additional detail on the type and location of inherent federal functions.

IHS response: Inherent federal functions are those functions that cannot legally be delegated to tribes and are the inherent responsibility of the federal government. Inherent federal functions can be located at the service unit, Area, or Headquarters’ level of the IHS.