Fiscal Year 2014 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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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 2014 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[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.

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.

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 2014 appropriation** $4,727,000

(2) **IHS, Area Offices, total of FY 2014 budgets for Self-Governance activities** $0

(3) **Amount available for current Self-Governance tribes** $1,873,873,825

IHS Area Office	All Funds
Alaska	$741,288,372
Albuquerque	$19,154,412
Bemidji	$87,667,621
Billings	$27,939,045
California	$97,500,114
Nashville	$84,621,415
Navajo	$103,618,133
Oklahoma City	$491,227,532
Phoenix	$86,062,669
Portland	$134,794,512
Total	$1,873,873,825

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** $1,878,600,825

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 2014 $1,772,241,775

IHS Area Office	Funds Transferred
Alaska	$661,794,402
Albuquerque	$15,044,197
Bemidji	$83,204,477
Billings	$27,668,280
California	$95,587,205
Nashville	$81,039,235
Navajo	$101,915,715
Oklahoma City	$491,227,532
Phoenix	$83,787,651
Portland	$130,973,081
Total	$1,772,241,775

Note: 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. <u>The funding formula for individual tribal shares of all Headquarters funds</u>

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 2014, the IHS transferred $26,888,664 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[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 the link that follows:*
https://www.ihs.gov/ihm/index.cfm/index.cfm?module=dsp_ihm_sgm_main&sgm=ihm_sgm_95
02 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).

Purchased/Referred Care,[5] Fiscal Intermediary
In FY 2014, $2,328,380 was provided to Self-Governance tribes using the Purchased/Referred Care Fiscal Intermediary formula. The fiscal intermediary is an IHS contractor who calculates and pays purchased/referred care (health care purchased from private providers or private sector 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 2014, $927,626 was provided to Self-Governance tribes using the Office of Environmental Health and Engineering (OEHE) Environmental Health Services Support formula.

Headquarters Program funds for the OEHE Environmental Health Services Support program are allocated to the tribes 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 2013) 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 $29,234,974

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. Three sets of comments were submitted on behalf of individual Indian tribes and tribal organizations. The fourth set of comments was submitted on behalf of the IHS Tribal Self-Governance Advisory Committee. The comments received are summarized as follows:

General

- One comment speaks to the funding needs of a specific tribal community.

- IHS response: The IHS is committed to working with all tribes to address the needs of their local communities.

[5] In January 2014, the Consolidated Appropriations Act of 2014 changed the name of the Contract Health Services program to the Purchased/Referred Care program.

Section D

- Two comments request that the report include additional examples of the benefits of Self-Governance, including the ability of Self-Governance tribes to leverage other federal legislation to expand services, create tribal-private partnerships to improve care, or lead innovation within the entire IHS system.

  IHS response: In response to this comment, IHS included several examples of the benefits of Self-Governance under Section D.

Section E

- One comment questions whether this section reflects all funding used to administer Self-Governance contracts.

  IHS response: Section E does not reflect all funding used to administer Self-Governance contracts. For example, 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.

- One comment requests that the note regarding contract support costs funding be clarified.

- IHS response: The IHS agrees that this note is confusing; it has been removed.

Section F(2)

- Two comments suggest that the report more specifically describe the reductions in federal bureaucracy to better illustrate program impact.

- One comment specifically suggests a year-to-year comparison to measure reductions in federal bureaucracy and further illustrate Self-Governance tribal successes.

  IHS response: 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 and increased ISDEAA Title I and Title V activities across the country. However, the IHS does not have a metric that collects data that measures federal bureaucracy (i.e., reduced staffing levels) in correlation to the Self-Governance Program. Additionally, workforce data (i.e., staffing levels) for tribal health care programs is unavailable. Consequently, at this time, there is no existing data to conduct a year-to-year comparative analysis.

Section G

- One comment requests that the IHS assess the parity of the tribal size adjustment formula in light of changes in tribal population and other factors since the formula's initial adoption.

  IHS Response: The IHS adopted the Tribal Size adjustment formula in 1996 following several consultation activities and tribal-federal workgroups. To date, the IHS has not formally assessed the parity of the tribal size adjustment formula. Any changes to this methodology requires nationwide tribal consultation.

- Two comments note that the draft report is inconsistent in the use of the term Purchased/Referred Care.

- IHS response: The final report corrects this oversight.

Section H

- Three comments suggest that the report clarify what functions are provided through the IHS Headquarters residual amount and how this amount is determined annually.

  IHS response: The residual refers to the funding associated with inherent functions, which are functions that cannot legally be delegated to tribes and are the inherent responsibility of the federal government. The IHS Headquarters (HQ) residual amount and associated HQ-managed programs are identified annually in the HQ Table #3: Breakdown of HQ Allowances. The amounts are adjusted annually for any congressional increases or decreases.