



Dear Tribal Leader,

I am writing to update you on the progress made by the U.S. Department of Health and Human Service (HHS) on advancing Tribal self-governance in the work we as a Department do to improve health care and human services programs for American Indian and Alaska Native communities.

Recently, the HHS Intradepartmental Council on Native American Affairs (ICNAA) and Secretary Sebelius's Tribal Advisory Committee reviewed options to expand Tribal self-governance beyond the Indian Health Service (IHS) and into other operating divisions in HHS. The purpose of this letter is to inform you of the outcome of that review, request Tribal input on self-governance expansion, announce two upcoming education sessions, and solicit nominations for a Tribal Federal Workgroup dedicated to dealing with issues regarding the expansion of Tribal self-governance.

Over the past ten months, HHS undertook an extensive review of a previously completed 2003 HHS feasibility study on the expansion of Tribal self-governance into other areas of HHS. Upon completing the review, HHS posed two questions to HHS programs: do any HHS programs have existing legislative or regulatory authority that would allow for a demonstration project as proposed by the feasibility study under Title VI of the Indian Self-Determination and Educational Assistance Act (ISDEAA) and if no such authority exists, does any existing program have authority to permit a demonstration project that would allow Tribes more flexibility and authority over their decision-making?

After reviewing the answers received, HHS has concluded that there is no existing authority that would permit a demonstration project of the sort proposed by the 2003 feasibility study carried out under Title VI of the ISDEAA. In order to conduct a demonstration project as proposed by the 2003 feasibility study under Title VI, specific legislative authority would be required.

We also discussed these findings with Tribal groups including the IHS Tribal Self-Governance Advisory Committee and the HHS Secretary's Tribal Advisory Committee. In order to continue progress in advancing Tribal self-governance in HHS, we realized we needed to understand more specifically how self-governance would work in each of the 11 programs proposed by the 2003 feasibility study. We have attached our current version of the questions for your review and hope that you can help us further craft the answers in partnership. For example, we are interested in hearing from Tribes which programs, services, functions, and activities (PSFAs) or portions thereof would be of interest to tribes in the 11 proposed programs as well as how limited funding would be made available for those PSFAs. We have heard from some Tribal representatives and due to the importance of this topic we feel it is important to consult with all Tribes on the answers to these questions.

Please submit your responses to any or all of the attached questions no later than **December 23, 2011** to the address included in the latter part of this letter. We are holding two in-person sessions to provide technical assistance and an opportunity for discussion. The session times and locations are listed below. You will need to pre-register for the sessions; details and pre-registration information will be forthcoming.

1. Washington, DC - Wednesday November 30, 2011 from 9:30 – 3:30 PM
2. Minneapolis, MN - Tuesday December 13, 2011 from 9:30 – 3:30 PM

In addition, we are requesting nominations for a Self-Governance Tribal Federal Workgroup (SGTFW). The purpose of the SGTFW is to assist HHS in developing further plans for self-governance in HHS. The SGTFW will be comprised of ten Tribal delegates and ten alternates from across the country. Four of the Tribal delegates and alternates will be current members of the HHS Secretary's Tribal Advisory Committee and the other six workgroup delegates and alternates will come from this solicitation of nominations from across the country. The selection process will ensure broad representation. We plan to host the first SGTFW meeting in January 2012.

In order to comply with the Federal Advisory Committee Act (FACA) Intergovernmental Committee Exception, all nominees must either be elected or appointed tribal officials, acting in their official capacity as elected officials of their tribes, or be designated by an elected tribal official with authority to act on behalf of the tribal official. Nominations *must be* made in writing by an elected or appointed official from a federally recognized tribe, acting in his or her official capacity. HHS will support the travel of the primary representative to attend in-person meetings of the SGTFW or, if the primary delegate cannot attend, will pay for the alternate's travel. We encourage you to submit your nomination letter no later than **December 9, 2011** to:

Paul Dioguardi, Director
Office of Intergovernmental and External Affairs
U.S. Department of Health and Human Services
200 Independence Avenue, SW, Room 620-E
Washington, DC 20201
Fax: (202)205-2727
E-mail: STAC@hhs.gov

We will make selections and notify the individual delegates and alternates by **December 22, 2011**. If you have further questions or concerns, please feel free to contact Stacey Ecoffey, Principal Advisor for Tribal Affairs, at Stacey.Ecoffey@hhs.gov or phone at (202) 690-6060.

Sincerely,

/Paul Dioguardi, Director/

Paul Dioguardi, Director
Office of Intergovernmental and External Affairs

Attachment

CONSULTATION ON A POTENTIAL DEMONSTRATION PROJECT TO EXPAND SELF-GOVERNANCE INTO OTHER AGENCIES WITHIN HHS

Background

In 2000, Congress authorized self-governance compacting as a permanent authority under Title V of the ISDEAA, replacing the Tribal Self-Governance Demonstration Project previously authorized under Title III. Tribal Self-Governance Amendments of 2000, Pub. L. No. 106-260, 114 Stat. 711 (codified as amended at 25 U.S.C. §§ 458aaa-458aaa-18). At the same time, Congress added Title VI to the ISDEAA, requiring the Secretary of the Department of Health and Human Services (HHS or Department) to perform a demonstration project feasibility study. 114 Stat. 731-32 (codified at 25 U.S.C. § 450f note). The study was to determine the feasibility of a tribal self-governance demonstration project that would extend self-governance beyond the Indian Health Service (IHS) to programs, services, functions and activities of other HHS agencies. 114 Stat. 731. In conducting the study, the Secretary was to consider: (1) the probable effects of a demonstration project on specific programs and the program beneficiaries; (2) statutory, regulatory, and other impediments to implementation of a demonstration project; (3) strategies for implementing a demonstration project; (4) probable costs or savings associated with a demonstration project; (5) methods to assure quality and accountability in a demonstration project; and (6) other issues identified by the Secretary or developed through consultation with Indian tribes. 114 Stat. 731 (codified at 25 U.S.C. § 450f note). After conducting the feasibility study, HHS submitted the required report to Congress in March of 2003. Although Congress has considered legislation authorizing a self-governance demonstration project, it was never enacted into law.

Goal of the Process

If given the necessary legislative authority, the Department would like to be prepared to implement a Self-Governance demonstration project. The Department recently circulated 40 questions to be responded to by tribal leaders and government officials. Tribal leadership asked for an extension of time to respond to the questions. While the Department would still appreciate a response to those questions, we understand that all Tribes may not have the resources to respond in depth. Thus, we have streamlined some of the questions we feel are most important and are requesting that tribal leadership undertake an in-depth examination of these questions to provide responses from the tribal perspective.

Questions for Tribal Leadership

- 1) How do tribes envision receiving the funds pertaining to the grant programs in the demonstration project: through a new consolidated grant mechanism, added to existing IHS or BIA ISDEAA contract or negotiating directly with other departmental agencies for an ISDEAA-like contract, or some other mechanism? Please explain.
- 2) How will participation in the demonstration project be determined?
 - a) With limited funding, is there an amount available for every tribe or will there be a competitive process, and would the agency be expected to continue to fund tribal contractors annually at a recurring amount?
 - b) Will the demonstration project include only tribes currently contracting under Title I of the ISDEAA, Title V of the ISDEAA or open to direct service tribes as well?
 - c) Would it be a prerequisite that the tribe has previously carried out the grant program that it is proposing to administer?

- 3) Would the tribe be able to access all of the benefits of the ISDEAA and incorporated statutes like the IHCA for programs under the demonstration project? For example:
- a) Access to Federal Sources of Supply
 - b) Use of Federal Personnel
 - c) Federal Tort Claims Act coverage
 - d) Authority to Redesign and Rebudget
 - e) Recurring Funding
 - f) Contract Support Costs- If yes, how would the amount be calculated and would this be an additional amount requested from Congress? Would the amount be carved out of the existing grant amount to cover the Contract Support Costs if additional funding is not appropriated?
 - g) Other: Please specify
- 4) What is the program, function, service, or activity (PSFA) that is being contracted for each of the 11 previously identified programs? Please see the attached list of the 11 programs that are being considered for inclusion in the demonstration project.
- 5) How much funding is associated with the PSFA and how would it be calculated?
- 6) Since these funds are currently grant funds with no residual amount, would there be a residual amount or administrative shares calculated? Would this be an additional amount requested from Congress or would a residual amount be carved out of the existing grant amount to cover the residual if additional funding is not appropriated? What would be the responsibilities of the federal program when a tribe assumes the program?
- 7) What program rules, policies, or procedures would the tribe have to follow?
- a) Would the tribes be subject to the same oversight, monitoring and enforcement measures (site visits, high risk status designation, and suspension of payments) as other grantees?
 - b) With respect to financial management, what audit requirements and reporting requirements would the tribe have to abide by?
- 8) What ISDEAA declination/final offer criteria should apply to a tribe's proposal to contract for the program under the ISDEAA, if any? What appeal rights would the tribe have?
- 9) If a tribe contracts for a program, what if any responsibility would states have to the tribal members in their state, and would the tribe's funding for the program be carved out of the funding that the tribe's state would have received to provide those services?
- 10) Who will be considered eligible for services under the each program? Would IHS eligibility regulations be followed or would individuals who are required to be served under the current grant program be served or would some other eligibility requirements apply? Would the Tribe provide services to non-Indians?