



MEMORANDUM

NORTHWEST PORTLAND AREA INDIAN HEALTH BOARD

Burns-Paiute Tribe
Chehalis Tribe
Coeur d'Alene Tribe
Colville Tribe
Coos, Suislaw &
Lower Umpqua Tribe
Coquille Tribe
Cow Creek Tribe
Cowlitz Tribe
Grand Ronde Tribe
Hoh Tribe
Jamestown S'Klallam Tribe
Kalispel Tribe
Klamath Tribe
Kootenai Tribe
Lower Elwha Tribe
Lummi Tribe
Makah Tribe
Muckleshoot Tribe
Nez Perce Tribe
Nisqually Tribe
Nooksack Tribe
NW Band of Shoshone Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Quileute Tribe
Quinalt Tribe
Samish Indian Nation
Sauk-Suiattle Tribe
Shoalwater Bay Tribe
Shoshone-Bannock Tribe
Siletz Tribe
Skokomish Tribe
Snoqualmie Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Suquamish Tribe
Swinomish Tribe
Tulalip Tribe
Umatilla Tribe
Upper Skagit Tribe
Warm Springs Tribe
Yakama Nation

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DATE: April 11, 2012
TO: Tribal Leaders, Health Directors and Board Delegates
FROM: Jim Roberts, Policy Analyst
SUBJECT: OMB Proposed Rule regarding changes for developing Indirect Cost Rates (IDC)

The attached Federal Register notice published by the Office of Management and Budget (OMB) is an advanced notice of proposed rulemaking to reform the Indirect Cost (IDC) rate process as well as the rules for grants management. The proposals being discussed in the Federal Register notice will have an impact on Tribes if implemented. The deadline for comments is 5:00 p.m. Eastern Standard Time, April 30, 2012.

In preparation for this process and to assist Portland Area Tribes prepare their comments we have prepared material included with this memorandum. The following attachments are included with a short explanation:

1. "Analysis of the Office of Management & Budget Federal Register Notice". NPAIHB has developed a preliminary analysis on the impact of the OMB proposals discussed in the Federal Register. This document provides an overview of the OMB proposals discussed in the Federal Register. It includes commentary on how the OMB proposals will impact Tribes. The Executive Summary provides a quick read on the proposals, with more detailed discussion in the sections that follow.
2. "NPAIHB Draft Comment Letter." We have included a comment letter that will be submitted by the Board. We invite you to provide comments and recommendations on our letter. We plan to adopt our letter by resolution at our Quarterly Board Meeting on April 19, 2012.
3. "Sample Tribal Comment Letter." A sample comment letter is included to assist your Tribe to submit its own comments. You are welcome to customize and change the letter as needed.

At this point OMB is not yet proposing to go forward with these changes, but rather is in the conceptual stage. Thus, OMB is seeking comments about whether it should continue with this concept, and if so what issues should be taken into consideration. These proposals will impact Tribes and it is important that we all submit comments. If OMB decides to go forward with any reforms--and all indications are that it will--then OMB will issue a formal notice of proposed rulemaking at a later date.

Please share this document with your financial staff responsible for developing your IDC proposal. The deadline for comments is April 30, 2012.

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Analysis of the Office of Management & Budget Federal Register Notice
Vol. 77, No. 39, Monday, February 28, 2012
Vol. 77, No. 58, Monday, March 26, 2012

Prepared by the NW Portland Area Indian Health Board
April 11, 2012

Introduction:

On Tuesday, February 28, 2012 the Office of Management and Budget (OMB) posted a notice in the Federal Register concerning broad reform efforts related to audits, indirect rates and administrative requirements¹. Comments are **due at 5:00 p.m. Eastern Standard Time on Monday, April 30, 2012.** The current notice is preliminary for purposes of soliciting comments. A proposed rule will likely be announced later. These changes will affect Tribes operating programs under Public Law 93-638 and it is very important to know what is being proposed. It is also important you provide comment on those items that will impact your Tribe. and how it may affect your contracts and your organizations. The proposals have been grouped into three categories relating to Single Audits, Cost Principles and Administrative Requirements.

Executive Summary

Single Audits: The recommendations related to the Single Audit Act include increasing the threshold for audits from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements for audits of organizations that expend between \$1 million and \$3 million in Federal funds. Increasing this threshold is likely a positive recommendation however Tribes should weigh this advantage against the fact that the BIA and the IHS rely on the Audit Reports as a way of demonstrating that the Tribe is carrying out Self-Determination programs in accordance with the requirements of its contracts or compact and Federal funds are properly expended. Without an Audit Report, the BIA and IHS may begin to increase monitoring efforts as a tradeoff on this issue. The OMB's proposal also includes strengthening the guidance on audit follow-up for Federal Agencies. This is counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard.

¹ Federal Register, Vol. 77, No. 39, Tuesday, February 28, 2012. "Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)." [This includes Cost Principles in OMB Circulars A-87 and A-122; Single Audit requirements in A-133; and the Administrative Requirements in A-102 and A-110 among others].

Cost Principles: The OMB is proposing several initiatives. These include consolidating requirements into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. This is something Tribes will need to be actively involved in but should be a positive proposal. The OMB recommends introduction of a “flat rate” for indirect costs as well as alternatives to time-and-effort reporting requirements. The Flat Rate proposal should only be supported as a voluntary option so Tribes can choose whether to participate or not. Initiatives that reduce the recordkeeping or reporting responsibilities should also be supported. There are numerous additional proposals that address specific issues that may be of interest to some Tribes. Most of these are also aimed at reducing costs to both Tribes and the Federal Government and are therefore not expected to be onerous.

Administrative Requirements: Reforms to Administrative Requirements relate to the consolidation of Circulars (A-102 and A-110) into a single publication. Tribes generally support this kind of streamlining, however we need to be attentive to what is included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included. The second OMB proposal is a case in point. The OMB is proposing pre-award consideration of a Tribe’s past experience in making a new award. Numerous provisions in expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in denying or declining to enter into a Self-Determination Agreement.² The OMB must recognize these regulations and incorporate an exception for Tribes and Tribal Organizations consistent with these Federal Regulations. Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and should be supported by Tribes and Tribal Organizations.

Additional Background Information:

The following is a more detailed discussion of each of the OMB proposals and things Tribes should take into consideration when providing individual comments. Comments on the February 28, 2012 OMB notice were requested by March 29, 2012 however during an open conference call on March 15, 2012 the OMB announced an extension to this deadline so the new deadline for comments is now 5:00 pm Eastern Standard Time on Monday, April 30, 2012.

Tribes and Tribal Organizations will be affected by these changes so everyone is encouraged to monitor this initiative and provide comments. The current notice is preliminary for purposes of soliciting comments and assisting the OMB in conceptualizing the proposed rule that will be announced later. There will also be a Public comment period associated with that announcement with any changes being

² See both the Title I Regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256); and the Title V Regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445).

published as a Final Rule at a later date. These changes relate to OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 C.F.R. Parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E. As part of this ongoing review, OMB will consider the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into Title 2 of the Code of Federal Regulations.

Because some of the above OMB Circulars are applicable to Public Law 93-638 Contracts and Compacts, Tribes and Tribal Organizations should evaluate for themselves the potential impact of these proposals on their organizations. It is noted that the Indian Self-Determination and Education Assistance Act (ISDEAA) allows the Secretary to waive cost principles adopted by regulation (see P.L. 93-638, Section 17(e) and 25 CFR Part 900, Section 900.140 and for Title V Compacts – P.L. 93-638, Section 512(b) and 42 CFR Part 137, Section 137.225), if the Secretary finds that granting the waiver is either in the best interest of the Indians served by the contract, or is consistent with the policies of the Act and is not contrary to statutory law. Therefore, Tribes should be aware that even if new Principles are adopted that are not appropriate for Tribes or are inconsistent with the ISDEAA, these principles can later be waived by the Secretary for ISDEAA contracts and compacts.

Single Audits:

The recommendations related to Single Audits are focused on proper stewardship of Federal funds and will certainly result in a reduction of reportable improper payments or waste, fraud and abuse simply because fewer audits will be performed.

The OMB Proposal includes an increase in the threshold for applicability of the Single Audit Act from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements to two for audits of organizations that expend between \$1 million and \$3 million in Federal funds. The immediate reaction is that this is probably a good thing and will benefit smaller Tribes however; because of the 365 day rule relating to the disallowance of costs at P.L. 93-638, Section 106(f) this may remove this protection for many Tribes who are no longer required to undergo a Single Agency Audit Report pursuant to OMB Circular A-133. The raising of this threshold is most likely a positive recommendation that Tribes should support.

Another consideration for Tribes to think about is the fact that the ISDEAA requires Tribes to provide the Secretary with a copy of its annual Single Agency Audit report as a means of demonstrating that the Tribe is carrying out Self-Determination programs in accordance with the requirements of its contracts or compact and Federal funds are properly expended. This refocusing of the Single Audit Compliance Supplements to concentrate on managing instances of improper payments or waste, fraud or abuse and away from program performance and compliance with the terms of the contract or compact may result in the IHS feeling as though it needs to increase its own monitoring efforts to balance this shift in emphasis. Many Tribes enjoy a better relationship with the Federal Government because they maintain

clean audits and based on that fact alone monitoring has been reduced. We would not want to see an increase in monitoring as a tradeoff on this issue.

The OMB's proposal to counteract the increased focus of the auditor on the integrity of funds is to encourage strengthening the guidance on audit follow-up for Federal Agencies. This is absolutely counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard.

Finally, by increasing the audit threshold the underlying assumption is that the federal government and audit community can focus on larger auditees (good news for small programs, but not necessarily for larger sized programs) and there may be some Tribal programs that fall into this category and may want to consider this fact.

Cost Principles:

Under this heading the OMB is proposing several initiatives. These include consolidating requirements into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. The introduction of a "flat rate" for indirect costs is being considered as well as alternatives to time-and-effort reporting requirements. There are numerous additional proposals that address specific issues that may be of interest to some Tribes. Most of these are also aimed at reducing costs to both Tribes and the Federal Government and are therefore not expected to be onerous.

Consolidation of Cost Principles – With regards to the consolidation of the Cost Principles in Circulars A-87 (State, Local and Indian Tribal Governments), A-21 (Educational Institutions), A-122 (Non-Profit Organizations) and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E, the OMB indicates that the consolidation will streamline the documents but still retain some principles that may be unique to certain types of organizations. This may be an opportunity to retain some of the best elements of each Circular in terms of allowable costs and perhaps remove some of the pre-approval requirements in these Circulars so that they mirror the additional allowable cost provisions found in the ISDEAA at Section 106(k). In any event the final consolidated Circular needs to recognize when other statutes provide for additional allowable costs. See also the "waiver" discussion already included on page 1 above.

When the regulations were being developed for the 1994 amendments to P.L. 93-638 there was some interest on the part of Tribes to have a separate OMB Circular that was specific to Indian Tribes and Tribal Organizations but this notion of consolidation would seem to run counter to such an approach. This may still be an opportunity to secure some Tribal specific cost principles, however since the OMB is open to some organization specific principles.

Indirect Costs – There are two proposals aimed at providing a Flat Rate for Indirect Costs that would be applicable for up to 4 years at a time without re-negotiation. One of these proposals would make the imposition of a Flat Rate mandatory and the other proposal would allow the option to negotiate a Flat Rate or to continue to negotiate an indirect cost rate much as they are now. Because of Tribe’s experience related to previous Flat-Rate proposals by the Government (namely BIA proposals in the 1980’s aimed at “grandfathering” and a “15% Flat Rate”) it is appropriate that Tribes should be skeptical of such proposals. The OMB states up front that this approach is intended to reduce the costs to the Government by the application of an artificially lower IDC Rate based on some of the savings associated with the reduced costs the Tribe might experience by not having to negotiate annually.

What are these savings? If a Tribe is doing its own IDC Proposals and negotiating them themselves, there may be little or no savings since the hours spent doing this by staff in the IDC Pool will similarly be spent on other activities within the IDC Pool. The actual savings are negligible. If the Tribe sub-contracts the preparation and negotiation of their IDC Rate to an outside entity then presumably it might save somewhere between \$30 and \$40 thousand dollars in three out of four years but a \$20,000 reduction (half of the total savings) in a Tribe’s IDC Pool will only result in about a half of one percent (.5%) reduction to an IDC Rate yet most Tribal IDC Rates fluctuate either up or down by more than this each year so the risk to the Tribe can be significant. The greatest contributor to the fluctuation in Tribal IDC Rates is increases or reductions in the direct cost base each year so fixing the Rate creates a significant risk for Tribes while it will almost always result in a savings for the Government since the Flat Rate will always be lower by design. This may be a more significant issue for large hospitals and universities who may be able to realize a greater dollar savings, however the percent reduction in the IDC Rates will likely be even less for those larger entities.

With regard to indirect costs, the most critical issue to Indian Tribes is full funding of these costs by the IHS, the BIA and other Federal and State Agencies. On the March 15 conference call with the OMB, the OMB staff were not encouraging when asked if they would support a principle aimed at full funding of whatever approved IDC Rate there is. Since Tribes continuously experience CSC shortfalls at the hands of the Federal Government, perhaps withholding support for any approach aimed at reducing our IDC Rates until we can be assured of full funding would be appropriate. Remember, if we are only getting 85% funding of our current IDC Rates then we can probably also expect to receive 85% of the lower Flat Rate as well.

To the extent there are any Tribes who wish to support the negotiation of a Flat Rate, they must indicate support for the second OMB proposal wherein the negotiation *is optional* thus allowing those Tribes who choose not to negotiate a Flat Rate to continue negotiating IDC Rates annually as they do now. Additionally, the Flat Rate should be treated as a fixed or final Rate thus if the Tribe is able to realize efficiencies in administering the new IDC Rate there should not be a carry forward adjustment that would take the Tribal savings away.

Two other thoughts to keep in mind, the IHS allows Tribes to treat an IDC Rate as current for up to three years without having to renegotiate a newer IDC Rate already (the BIA allows a Rate to be considered current for up to four years). Therefore, Tribes essentially have a type of flat rate system already except that when it comes time to negotiate a newer IDC Rate the National Business Center generally requires the negotiation of all the interim rates in order to receive a new rate. The other issue is that the IHS also has a CSC Pilot Project under which Tribes can already fix a flat rate for a period of up to three years. This Pilot Project Program has been available for at least the last 7 or 8 years yet only one or two Tribes have ever opted for a fixed IDC Rate for multiple years others have opted for fixed or lump sum amounts as opposed to a fixed Rate). One would assume that the number of Tribes who have expressed interest in the IHS Pilot Project system, fixed Rate might be a good predictor of how many Tribes would opt for this under the OMB system as well?

Finally, there are other proposals for consideration that could result in a savings to both Tribes and the Government that do not necessarily require a Flat Rate system to include. These include allowability for certain items of cost without prior Federal approval and reduced time-and-effort recordkeeping/reporting. Tribes would likely support both of these initiatives.

Administrative Requirements:

Reforms to Administrative Requirements include changes that would replace the government-wide common rule implementing Circular A-102 on Grants and Cooperative Agreements with State and Local Governments. It would also revise Circular A-110 on Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations (2 CFR part 215) and Circular A-89 on Catalog of Federal Domestic Assistance. The first proposal relates to the consolidation of these Circulars and regulations in a single publication. Tribes generally support this kind of streamlining, however we need to be attentive to what is included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included.

The second OMB proposal is a case in point. The OMB is proposing pre-award consideration of a Tribe's past experience in making a new award. A number of regulations expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in denying or declining to enter into a Self-Determination Agreement.³ The OMB must recognize these regulations and incorporate an exception for Tribes and Tribal Organizations consistent with these Federal Regulations.

Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and

³ See both the Title I regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256) and the Title V regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445)

reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and should be supported by Tribes and Tribal Organizations.

Conclusion:

In summary, the OMB proposals contained in the February 28, 2012 Federal Register Notice are a mixed bag of good and bad as far as Tribes are concerned. There are opportunities that should be seized here and Tribes have reason to be optimistic that the Obama administration might be more open and transparent and honest in dealing with Tribes than some previous administrations have been. It will take a concerted effort on the part of Tribes to assert their rights under P.L. 93-638 and all its implementing regulations at 25 C.F.R. and 42 C.F.R. to ensure that they do not lose ground that was gained at great expense and effort in the regulation development processes. Indeed, the OMB should be encouraged to invoke a Negotiated Rulemaking process for re-drafting all of these regulations in order to maintain the kind of transparency this Administration has embraced and to ensure equity for all affected stakeholders.

Questions related to any of the above issues or recommendations should be directed to Mr. Jim Roberts of the Northwest Portland Area Indian Health Board at jroberts@npaihb.org or (503) 228-4185. This analysis has been developed with the assistance of Mr. Ron Demaray of Demaray Consulting, and questions may also be directed to Mr. Demaray at RBDemaray@DemarayConsulting.com or (240) 778-3215.

SAMPLE TRIBAL COMMENT LETTER ON FEDERAL REGISTER:

April 11, 2012

Office of Management and Budget

ATTENTION: Office of Federal Financial Management “Grant Reform”

725 17th St N.W.

Washington, DC, 20025

REFERENCE: “OMB Advance Notice of Proposed Guidance, Published in Federal Register, Vol. 77, No. 39, Tuesday, February 28, 2012; Comment extension published in Federal Register, Vol. 77, No. 58, Monday, March 26, 2012.”

To whom it may concern:

The _____ Tribe hereby provides the following comments in response to the February 28, 2012 Federal Register Announcement regarding the “Reform of Federal Policies Relating to Grants and Cooperative Agreements; cost Principles and Administrative Requirements (including Single Audit Act).”

As a Federally recognized Tribe, we have a unique Government-to-Government relationship grounded in numerous historical, political, legal, moral, and ethical considerations. Treaties and laws, together with court decisions, have defined our relationship with the Federal Government such that it is unlike that between the Federal Government and any other group of Americans. The Federal Government has enacted numerous regulations that implement and support this trust relationship with Indian Tribes. An integral element of the Government-to-Government relationship is that consultation occur with Indian Tribes on issues that impact them and that Indian Tribes participate in the decision making process to the greatest extent possible. Tribes and Tribal Organizations will be directly affected by many of these changes and we therefor respectfully request that the Office of Management and Budget (OMB) allow Tribes to participate in the decision making process on these issues to the greatest extent possible; including Negotiated Rulemaking on the Final Rule before any changes are made.

The current notice is preliminary for purposes of soliciting comments and assisting the OMB in conceptualizing the proposed rule that will be announced later. There must also be a Public comment period associated with that announcement with any changes being published as a Final Rule at a later date. These changes relate to OMB Circulars A-21, A-87, A-110, and A-122 (which have been placed in 2 C.F.R. Parts 220, 225, 215, and 230); Circulars A-89, A-102, and A-133; the guidance in Circular A-50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 C.F.R. Part 74, Appendix E. As part of this ongoing review, OMB will consider

the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into Title 2 of the Code of Federal Regulations.

Our comments follow the general presentation in the Federal Register Announcement.

Single Audits:

The recommendations related to Single Audits are focused on proper stewardship of Federal funds. The _____ Tribe supports the OMB Proposal to increase the threshold for applicability of the Single Audit Act from the expenditure of \$500,000 of Federal funds to \$1 million and reducing the compliance requirements to two for audits of organizations that expend between \$1 million and \$3 million in Federal funds. We recommend, however that a provision be added to put the Government on notice that when a Tribe expends less than \$1 million of Federal Funds, the 365 day notice period provided in the ISDEAA begins when the Tribe notifies the Government in writing that it is not required to undergo a Single Audit for a particular fiscal year.

The _____ Tribe is concerned that the OMB's proposal to increase the focus of the auditor on the integrity of funds is accompanied by another proposal to expand the guidance on audit follow-up for Federal Agencies. This is absolutely counter to the spirit and intent of the ISDEAA wherein the Congress legislated a system of greater reliance on the Single Agency Audit Report and neutralizing the efforts of overzealous Federal Contracting Officers and Awarding Officials after the fact. The IHS and BIA already have a responsibility to address audit findings and questioned costs. They do not need to be encouraged to become more aggressive than they already are in this regard. Many Tribes enjoy a good relationship with the Federal Government because we maintain clean audits and based on that fact alone Federal monitoring (and the costs associated with that monitoring) have been reduced. We do not want to see an increase in monitoring as a tradeoff on this issue.

Cost Principles:

The _____ Tribe supports consolidating cost principles into a single Circular that streamlines the approaches for all Organizations while still retaining some provisions that would properly pertain to different types of recipients. We believe that Indian Tribes maintain a unique Government-to-Government relationship with the Federal Government and therefore there ought to be consideration for some Tribal specific cost principles as well. These cost principles should be developed in consultation with all Indian Tribes.

The _____ Tribe has grave concerns that the imposition of a "flat rate" for indirect costs is nothing more than another attempt by the Federal Government to shirk its responsibility to pay its full share of Tribal indirect costs. We do not object to this being offered as an option or a pilot project so that we can see how it will be implemented and whether there is

any mutual benefit, but we strenuously object to the implementation of any flat rate system that does not also include a requirement for full funding of Tribal indirect costs.

Finally, there are other proposals for consideration that could result in a savings to both Tribes and the Government that do not necessarily require imposing a Flat Rate system to include. These include Allowability for certain items of cost without prior Federal approval and Reduced time-and-effort recordkeeping/reporting. The _____ Tribe supports both of these initiatives.

Administrative Requirements:

As with the consolidation of the Circulars containing cost principles, the _____ Tribe would be in support of consolidating the Circulars and regulations as long as we are consulted on specific provisions to be included so onerous provisions that are not now applicable to Tribes and Tribal Organizations under ISDEAA contracts and compacts do not get included. For example, the OMB is proposing preaward consideration of a Tribe's past experience in making a new award. Numerous provisions in both the Title I regulations at 25 C.F.R Part 900 (900.32, 900.168, 900.175, 900.243 and 900.256) and the Title V regulations at 42 C.F.R. Part 137 (137.248, 137.435, and 137.445) expressly prohibit the IHS and the BIA from using past performance, appeals, retrocessions and reassumptions as a contributing factor in the Government's decision of whether or not to award a Self-Determination Agreement. The OMB must recognize these regulations and incorporate appropriate exceptions for Tribes and Tribal Organizations consistent with ISDEAA Federal Regulations.

Other proposals related to requiring Agencies to provide at least 90 day advance notice of Federal funding opportunities (grant announcements); providing a standard format for announcements; and reiterating that information collections are subject to the Paperwork Reduction Act are all improvements and we support these types of changes.

In summary, the OMB proposals contained in the February 28, 2012 Federal Register Notice are a combination of good and bad as far as we are concerned. There are opportunities for streamlining that will benefit both Tribes and the Federal Government and we have reason to be optimistic that the Obama administration will be more open and transparent and honest in consulting with us than some previous administrations have been. It will take a concerted effort on the part of both Tribes and the OMB to recognize the rights we already have under the ISDEAA and all its implementing regulations. Tribes should not lose ground that was gained at great expense and effort in the regulation development processes because the OMB streamlining is aimed at a "one size fits all" approach. The Federal Government has an obligation to consult with Tribes and provide opportunities for our active participation. The _____ Tribe recommends the OMB use "Negotiated Rulemaking" for re-drafting all of these regulations in order to provide Tribal participation in the decision making processes; to maintain the kind of

transparency this Administration has embraced; and to ensure equity for all affected stakeholders.

Thank you for the opportunity to submit our comments on this important issue.