



101 Park Avenue Suite 700
Oklahoma City, OK 73102

T 405.602.9425
F 405.602.9426

HOBBSSTRAUS.COM

September 7, 2012

GENERAL MEMORANDUM 12-109

IHS Releases FY 2011 Self-Governance Program Report

The Indian Health Service (IHS) has released its Fiscal Year 2011 Report to Congress on Administration of the Tribal Self-Governance Program (Report) for comment. The IHS is required by law to submit such a report to Congress annually, and to seek tribal comments for inclusion in the final Report. The full Report and the letter from IHS seeking tribal comments are attached to this memorandum.

By statute, certain information must be presented in the Report, including an analysis of the level of need being funded or unfunded for each tribe under self-determination contracts, compacts, and funding agreements with the IHS. The Report should also include the relative costs and benefits of self-governance; funds expended on the provision of services by the IHS as well as funds transferred to each self-governance tribe; the funding formula used to determine tribal shares of all Headquarters funds; and a description of the methods used to determine tribal shares of funds controlled by all components of the IHS.

The IHS allocates tribal shares for most Headquarters programs through a "Tribal Size Adjustment" formula, where each tribe's share of funds is determined in proportion to user population, with a small supplemental amount for tribes of less than 2,500 users. Special program formulas apply to certain IHS programs, including Contract Health Services (based on a Fiscal Intermediary formula using a tribe's percent of the 1993 total claims) and the Office of Environmental Health and Engineering, Environmental Health Services Support (based on a tribe's pro-rata share of the Area Environmental Health Services workload). Tribal comments on these funding formulas must be included with the final Self-Governance report to Congress.

Comments must be submitted by *October 19, 2012*, via email to sgreport@ihs.gov or by postal mail to the Director of Indian Health Service at 801 Thompson Ave., Suite 440, Rockville, MD 20852.

Please let us know if you would like further information on the Report or assistance drafting comments.

###

Inquires maybe directed to:
Geoff Strommer (gstrommer@hobbsstrauss.com)



AUG 20 2012

Dear Tribal Leader:

I am writing to request your views and comments on the enclosed Fiscal Year 2011 Report to Congress on Administration of the Tribal Self-Governance Program.

The Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 450 et seq., was amended through the Tribal Self-Governance Amendments of 2000, 25 U.S.C. § 458aaa, to permanently establish the Tribal Self-Governance Program within the Indian Health Service (IHS). These amendments require that, prior to submitting the report to Congress, the IHS must seek your comments and views on the methods used to determine individual Tribal shares for inclusion in Self-Governance compacts or funding agreements and the report contents.

Please provide your views and comments for inclusion in the report by Friday, October 19, 2012. Comments may be submitted as follows:

- E-mailed comments may be sent to sgreport@ihs.gov.
- Comments delivered by postal mail may be sent to my attention at the following address:

Yvette Roubideaux, M.D., M.P.H.
Director
Indian Health Service
801 Thompson Ave, Suite 440
Rockville, MD 20852

The IHS is committed to meaningful consultation with Tribes and Tribal organizations as we report to Congress the level of need presently funded in the Tribal Self-Governance Program. I look forward to your views and comments.

Sincerely,

/Yvette Roubideaux/

Yvette Roubideaux, M.D., M.P.H.
Director

Enclosure

Fiscal Year 2011 Report to Congress on
Administration of the
Tribal Self-Governance Program

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

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

Director, Indian Health Service

Contents

A. Introduction.....	3
B. Background	3
C. Linkage with other reports to Congress	4
D. The relative costs and benefits of Self-Governance.....	4
E. Funds related to the provision of services and benefits to Self-Governance Tribes	5
F. Funds transferred to each Self-Governance Indian Tribe and the corresponding reduction in the Federal bureaucracy	6
G. The funding formula for individual Tribal shares of all Headquarters funds, together with the comments of Indian Tribes or Tribal organizations.....	7
H. Total amounts identified in the preceding fiscal year (FY 2010) to carry out functions that the IHS must carry out as an integral part of its duties as a Federal agency	8
I. Comments on this report received from Indian Tribes and Tribal organizations.....	8

Two Attachments:

Exhibit A – Funds Transferred to Each Self-Governance Tribe

Exhibit B – Comments from the affected Indian Tribes or Tribal organizations

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

A. Introduction

The 2011 Report to Congress on the Administration of the Indian Health Service (IHS) Tribal Self-Governance Program is prepared as required in section 458aaa-13(a) 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 compacts¹ and funding agreements² 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):

- 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.

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 (42 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 (42 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.

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 2011 appropriation** \$6,054,000
- (2) **IHS, Area Offices, total of FY 2011 budgets for Self-Governance activities** \$0
- (3) **Amount available for current Self-Governance Tribes** \$1,491,995,773

IHS Area Office	All Funds
Alaska	\$568,405,457
Albuquerque	\$12,297,032
Bemidji	\$84,065,432
Billings	\$27,928,701
California	\$79,274,677
Nashville	\$81,654,796
Navajo	\$24,828,876
Oklahoma	\$416,970,606
Phoenix	\$72,666,152
Portland	\$123,904,044
Total	\$1,491,995,773

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** \$1,498,061,773

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 2011** \$1,350,560,159

IHS Area Office	Funds Transferred
Alaska	\$454,320,645
Albuquerque	\$7,709,126
Bemidji	\$80,049,518
Billings	\$27,670,164
California	\$76,728,839
Nashville	\$71,388,694
Navajo	\$24,296,541
Oklahoma	\$415,684,151
Phoenix	\$72,629,821
Portland	\$120,082,660
Total	\$1,350,560,159

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. However, following FY 2000, the IHS achieved the staffing level required to meet the requirements of inherent Federal functions.

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. The amount of a Headquarters Tribal share is determined using formulas based on either user population, workload, or usage. Any appropriated increases or decreases to Headquarters Tribal Shares are adjusted proportionately.

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

(a) Tribal Size Adjustment Formula

In FY 2011, \$25,923,503 was provided to Self-Governance Tribes using the Tribal Size Adjustment (TSA) formula. For most IHS Headquarters programs, eligible shares for each Tribe were calculated using the TSA Formula. The TSA formula is a per-user approach for attributing benefits among all Tribes. Each Tribe's share of Headquarters funds is determined in proportion to user population. A small supplemental amount is added for Tribes of less than 2,500 users in partial compensation for functional inefficiencies related to small size and is intended to assist in building and maintaining the infrastructure needed to manage health care systems.

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 contract³ and annual funding agreement⁴ or ISDEAA Title V compact and funding agreement) and have been preserved ever since. 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(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 Tribal shares originally computed by the TSA formula have been adjusted proportionately with program funding to calculate current Tribal shares.

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/> (search for the full title of the memorandum).

(b) Special program formulas

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

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 U.S.C. § 900.6).

Contract Health Services, Fiscal Intermediary

In FY 2011, \$2,056,065 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, Indian Health Facilities, Environmental Health Services Support

In FY 2011, \$1,725,449 was provided to Self-Governance Tribes using the Office of Environmental Health and Engineering, Environmental Health Services Support formula.

Headquarters Program funds for the Environmental Health Services program are allocated to the Tribes based on their pro-rata share of the Area Environmental Health Services workload.

(2) Comments of Indian Tribes or Tribal organizations

Please see Exhibit B.

H. Total Amounts Identified in the Preceding Fiscal Year (FY 2010) 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 \$27,767,942

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

Please see Exhibit B.

**ISDEAA, Section 458aaa-13(b)(2)(C) Funds Associated With
Programs, Services, Functions, and Activities Transferred To
Tribes Under ISDEAA Title V**

Area	Funds Transferred
ALASKA	
Alaska Native Tribal Health Consortium	66,082,634
Aleutian Pribilof Islands Association, Inc.	5,344,722
Arctic Slope Native Association	12,042,848
Bristol Bay Area Health Corporation	30,287,119
Chickaloon Native Village	68,900
Chugachmiut	5,431,674
Copper River Native Association	2,963,619
Council of Athabascan Tribal Governments	3,180,594
Eastern Aleutian Tribes, Inc.	4,477,180
Native Village of Eklutna	206,559
Native Village of Eyak	815,695
Kenaitze Indian Tribe	2,693,948
Ketchikan Indian Community	9,216,996
Knik Traditional Council	81,702
Kodiak Area Native Association	8,047,232
Maniilaq Association	41,040,045
Metlakatla Indian Community	8,298,115
Mount Sanford Tribal Consortium	1,037,185
Norton Sound Health Corporation	28,440,081
Seldovia Village Tribe	2,299,110
Southcentral Foundation	72,054,914
SouthEast Alaska Regional Health Corporation	45,397,900
Tanana Chiefs Conference	36,925,695
Yakutat Tlingit Tribe	428,869
Yukon-Kuskokwim Health Corporation	67,457,309
Sub-Total	454,320,645
ALBUQUERQUE	
Pueblo of Jemez	4,237,805
Pueblo of Sandia	2,095,180
Taos Pueblo	1,376,141
Sub-Total	7,709,126
BEMIDJI	
Bois Forte Band of Chippewa Indians	3,292,892
Fond du Lac Band of Lake Superior Chippewa	13,233,401
Forest County Potawatomi Community	2,743,479
Grand Traverse Band of Ottawa and Chippewa Indians	3,571,154
Keweenaw Bay Indian Community	4,352,361
Little River Band of Ottawa Indians	2,514,676
Mille Lacs Band of Ojibwe	5,479,727
Oneida Tribe of Indians of Wisconsin	20,395,840
Sault Ste. Marie Tribe of Chippewa Indians	18,642,709
Shakopee Mdewakanton Sioux Community	1,897,834
Stockbridge-Munsee Community	3,925,445
Sub-Total	80,049,518
BILLINGS	
Chippewa Cree Tribe of R.B.	14,791,399
Salish & Kootenai Tribes	12,878,765
Sub-Total	27,670,164
CALIFORNIA	
Consolidated Tribal Health Project, Inc.	5,756,153

**ISDEAA, Section 458aaa-13(b)(2)(C) Funds Associated With
Programs, Services, Functions, and Activities Transferred To
Tribes Under ISDEAA Title V**

Area	Funds Transferred
Feather River Tribal Health, Inc.	6,363,100
Hoopa Valley Tribe	5,890,154
Indian Health Council, Inc.	11,417,428
Karuk Tribe of California	4,137,035
Northern Valley Indian Health, Inc.	3,692,161
Redding Rancheria	9,551,994
Riverside-San Bernardino County Indian Health, Inc.	27,568,551
Susanville Indian Rancheria	2,352,263
Sub-Total	76,728,839
NASHVILLE	
Chitimacha Tribe of Louisiana	1,491,823
Eastern Band of Cherokee Indians	24,873,532
Mississippi Band of Choctaw Indians	20,461,243
Mohegan Tribe of Indians of Connecticut	2,463,934
Penobscot Indian Nation	4,164,439
Poarch Band of Creek Indians	4,626,279
Seminole Tribe of Florida	3,369,803
St. Regis Mohawk Tribe	8,790,634
Wampanoag Tribe of Gay Head	1,147,007
Sub-Total	71,388,694
NAVAJO	
Tuba City Regional Health Care Corporation	16,532,867
Utah Navajo Health System, Inc.	325,644
Winslow Indian Health Care Center, Inc.	7,438,030
Sub-Total	24,296,541
OKLAHOMA	
Absentee Shawnee Tribe of Oklahoma	11,198,770
Cherokee Nation	136,461,240
Chickasaw Nation	89,605,238
Choctaw Nation of Oklahoma	76,849,544
Citizen Potawatomi Nation	17,508,316
Kaw Nation	1,836,652
Kickapoo Tribe of Oklahoma	8,707,870
Modoc Tribe of Oklahoma	130,269
Muscogee (Creek) Nation	47,224,590
Northeastern Tribal Health System	8,928,496
Ponca Tribe of Oklahoma	4,192,494
Prairie Band Potawatomi Nation	2,895,197
Sac and Fox Nation	7,925,325
Wyandotte Nation	2,220,150
Sub-Total	415,684,151
PHOENIX	
Duck Valley Shoshone-Paiute Tribe	9,603,132
Duckwater Shoshone Tribe	1,986,353
Ely Shoshone Tribe	1,583,221
Gila River Indian Community	46,635,475
Las Vegas Paiute Tribe	4,553,486
Washoe Tribe of Nevada and California	5,779,607
Yerington Paiute Tribe of Nevada	2,488,547
Sub-Total	72,629,821
PORTLAND	

**ISDEAA, Section 458aaa-13(b)(2)(C) Funds Associated With
Programs, Services, Functions, and Activities Transferred To
Tribes Under ISDEAA Title V**

Area	Funds Transferred
Coeur D'Alene Tribe	7,635,026
Confederated Tribes of Grand Ronde	9,501,953
Confederated Tribes of Siletz Indians of Oregon	10,201,679
Confederated Tribes of Coos Indians of Oregon	2,464,324
Confederated Tribes of the Umatilla Reservation	9,287,373
Coquille Indian Tribe	2,990,592
Cowlitz Indian Tribe	2,879,449
Jamestown S'Klallam Indian Tribe	1,331,940
Kalispel Tribe of Indians	1,084,564
Kootenai Tribe of Idaho	759,311
Lower Elwha Klallam Tribe	2,202,300
Lummi Indian Nation	10,512,262
Makah Indian Tribe	4,973,698
Muckleshoot Indian Tribe	6,970,973
Nez Perce Tribe	10,160,920
Nisqually Indian Tribe	2,993,737
Port Gamble S'Klallam Tribe	3,309,315
Quinault Indian Nation	7,578,585
Shoalwater Bay Indian Tribe	2,771,542
Skokomish Indian Tribe	2,624,949
Squaxin Island Indian Tribe	4,101,137
Suquamish Tribe	2,257,601
Swinomish Indian Tribal Community	3,038,541
Tulalip Tribes of Washington	8,450,889
Sub-Total	120,082,660
Grand Total	1,350,560,159

USE "PUBLIC" SPREADSHEET FY 2011 Self-Governance Data Table
draft

Data as of: Preliminary final 9/30/11

FY	Compacts	FAs	Funding Level for TSGP (\$ in mill)	IHS Budget (\$ in mill)	TSGP funding as % IHS Budget	Number of Tribes in TSGP	% of Federally Recognized Tribes
1994	14	14	\$51.0		2.4%	14	2.6%
1995	29	41	\$262.7		13.4%	225	42.0%
1996	29	41	\$272.0		13.7%	225	42.0%
1997	34	48	\$350.0		17.0%	238	43.0%
1998	39	55	\$410.5		19.6%	251	45.1%
1999	42	59	\$576.3	\$2,242.3	25.7%	259	46.5%
2000	44	63	\$659.8	\$2,390.7	27.6%	262	47.1%
2001	51	70	\$734.3	\$2,628.8	27.9%	270	48.6%
2002	57	76	\$796.9	\$2,759.1	28.9%	280	50.2%
2003	62	82	\$898.5	\$2,849.7	31.5%	286	51.3%
2004	65	85	\$917.8	\$2,958.2	31.0%	292	52.0%
2005	69	89	\$974.1	\$2,985.1	32.6%	303	53.9%
2006	72	93	\$1,014.4	\$3,045.3	33.3%	322	57.3%
2007	73	94	\$1,053.8	\$3,180.1	33.1%	323	57.5%
2008	73	94	\$1,111.8	\$3,346.2	33.2%	323	57.5%
2009	75	96	\$1,236.3	\$3,581.1	34.5%	329	58.3%
2010	77	98	\$1,376.0	\$4,052.4	34.0%	331	58.7%
2011	81	105	\$1,385.6	\$4,069.2	34.1%	337	59.6%

	Compacts	FA	Tribes
SMC	1	1	1
NVE	0	1	1
CNV	0	1	0
CIT	1	1	1
Jemez	1	1	1
TC	1	1	2
Winslow	0	1	0
Total New	4	7	6

Notes:

New in FY 11 - Stockbridge-Munsee Community, Native Village of Eyak, Chickaloon Native Village, Cowlitz Indian Tribe, Pueblo of Jemez, Tuba City Regional Health Care Corporation and Winslow Indian Health Care Center, Inc.

This page is a placeholder for future Tribal comments.