September 2020

**Self-Governance Advisory Committee (SGAC) Technical Workgroup Program Formulas Matrix Update Report (PFMUR)**



(2012 Program Formula Matrix Workgroup members included Danny Santiago, Cyndi Ferguson, Rhonda Butcher and Vickie Hanvey)

# Dedication

This Report is dedicated to the late Robert (Bob) L. Scabby, of Salt River Pima-Maricopa Indian Community who sadly passed away during the production of this report. Bob served as the Self-Governance Coordinator for Salt River Pima-Maricopa Indian Community since 1995 (when the Tribe entered into Self-Governance). Prior to serving as Self-Governance Coordinator, he served as the Tribal Comptroller.  Everyone who had the opportunity to meet Bob knows that he was passionate about Self-Governance as a vehicle for Tribal governments to reach even greater heights of progression in serving their people. Bob happily dedicated his life to serving the Pima and Maricopa people as a public administrator for more than 35 years. This Workgroup is grateful for his insight, wisdom and guidance in the development of this report.

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# Executive Summary

In 2011, the Self-Governance Advisory Committee (SGAC) discussed concerns raised by Tribal leaders and staff that Self-Governance Tribes were not being properly included in Bureau of Indian Affairs (BIA) program formulas and not sharing equitably in the distribution of funds. As a result, SGAC established a Joint Tribal/Federal Technical Workgroup and tasked the Workgroup with conducting a detailed review and analysis of various programs within BIA. The Workgroup initially convened on October 12-13, 2011 in Washington DC, and summarized their findings into a document entitled, “Program Formulas Matrix Report”. The Report identified the current formulas in place for the requested BIA programs so that Tribes would have a clear understanding of how BIA program funds were being distributed. The Workgroup developed and published a report outlining the issues and proposed recommendations on the following:

* How BIA funds are being distributed;
* Identify areas where the formulas and methodologies currently used by the BIA for distribution can be improved and provide recommendations;
* Confirm that Self-Governance Tribes are being properly included in the formulas; and,
* Ensure that Self-Governance Tribes are being treated equitably.

The Program Formulas Matrix Report was presented at the Annual Self-Governance Conference in New Orleans, LA in May 2012. Unfortunately, although the recommendations were supported by the Office of Self-Governance (OSG), many of the Workgroup recommendations were not acted upon or implemented within BIA.

In 2017, the Office of Inspector General (OIG) published a report focused on the “distributions of funds to Title IV Self-Governance Tribes, examining the accuracy of the distributions, how OSG maintained Tribal records, and the internal controls present." Several of the findings and recommendations in the OIG report correlated to many of the recommendations previously developed by the Program Formula Matrix Workgroup. Specifically, the OIG report included the following:

* OIG Recommendation #1: We recommend that AS-IA: Direct the Office of Self-Governance to work with Tribes to track the components of the Consolidated Tribal Government Program (CTGP) funding and publish these individual amounts each year in the BIA's Budget Justifications.
* OIG Recommendation # 2: We recommend that AS-IA: Direct the Office of Self-Governance to determine "appropriate levels" of Child Welfare and Social Services program funding that should have appeared in the FY 2014 Budget Justifications.
* OIG Recommendation # 3: Not applicable.
* OIG Recommendation #4: We recommend that AS-IA: Direct the Office of Self-Governance to determine the actual funding levels of individual tribal programs and report them annually in the Budget Justifications.

As a result of the OIG Report Recommendations (combined with the previous work developed by the Program Formula Matrix Workgroup), the SGAC established the formation of a **new** Joint Tribal/Federal Workgroup in July 2018 to update their analysis and provide any necessary revised recommendations. The new Workgroup divided their work into two phases and spent significant time and resources to thoroughly engage with relevant BIA Program Directors and staff, as well as, the OSG Director and staff to develop an updated analysis, evaluate various options and then propose recommendations for action.

**Phase 1:**

* Tribal Priority Allocations (TPA)
	+ Base funds
	+ Consolidated Tribal Government Programs (CTGP)
	+ Aid to Tribal Government (ATG)
* Paycost

This phase included allocations which correlated with the OIG Report in order to assist with addressing the OIG recommendations. Phase 1 of the Report was completed, and consensus was reached on the recommendations in 2019. These recommendations were then presented at the 2019 Annual Self-Governance Conference. A post-conference presentation and discussion with the SGAC leadership followed in April 2019.

**Phase 2:**

* Other “Discretionary” Program, Region or Central Office Funds
* Contract Support Cost (CSC)
* New Tribes
* Small and Needy
* Human Services- Welfare Assistance
* Human Services- Program Increase Tiwahe Example
* Law Enforcement
* Facilities Management
* Johnson O-Malley
* Scholarships and Adult Education
* Education Program Management
* Tribal Transportation

This phase included the remaining program allocations. The Workgroup continued to engage with relevant BIA Program Directors and staff, as well as, the OSG Director and staff reviewing documents, conducting phone interviews and discussing issues, options and recommendations on numerous conference calls. Consensus was reached on the Phase 2 recommendations and subsequently presented to SGAC leadership in September 2020.

The following Program Formula Matrix is a summary of program allocation methodologies addressed in this report. Each section of the report is a complete analysis of each program that was reviewed by the Joint Workgroup. While some of the programs and recommendations are very technical, the goal of the Workgroup was to provide a thorough analysis and record of the work to assist both Tribal and Federal representatives in understanding how recommendations were developed. It should be noted that some program issues and concerns expressed during the Workgroup conference calls may have already been addressed.

#





PHASE 1

# Tribal Priority Allocation

1. **Background and Current Operations:**

The Title IV system was jointly designed and created by Tribal/Federal staff and approved with Tribal consultation almost 30 years ago to track SELF-GOVERNANCE funding. Given the broad Title IV authority of self-governance Tribes to consolidate and redesign programs and reallocate program funds, the decision was made to streamline the annual base adjustment process through the use of a single non-program line item. This system of recordkeeping operates in the same manner since inception in the 1990’s. Total funding amounts are displayed for Title IV Tribes in the Budget Justification. Title IV tracks historical base amounts by individual program line item. Congressional increases/decreases are recorded in non-program accounts as a cumulative total.

* Decreases: (T9240) Self-Governance Compacts- There is a negative amount in this line which represents the cumulative across the board (ATB) rescission or decreases that Congress has enacted for all years that the Tribe has been operating under Tribal Self-Governance. Conversely, under Title I, the particular program line is reduced for the rescission.
* Increases: Line items (T9901) - TPA General Increase, (T9902) - Pay Cost and (T9903) - Retirement Adjustment display the increases that Congress has enacted for all years that the Tribe has been operating under Tribal Self-Governance. Conversely, under Title I, the increase is applied to the corresponding program line associated with the increase.
* It should be noted that for Pay Cost allocation, Title IV Tribes do NOT submit salaries by program for this funding allocation but instead one salary amount for all base funding. Conversely, under Title I, Tribes report salaries by individual program and pay cost is applied to the corresponding program associated with the increase.



The bottom line is that Title IV does not reflect the exact amount of actual current funding that a Tribe has by particular program line, rather the program lines remain the same historical amount from the time a tribe begins operating under Tribal Self-Governance. Again, the actual current funding is reflected in total by individual Tribe in the Budget Justification. A Current Operations Comparison of Title I and Title IV operations is as follows:



1. **TPA Allocation Issues and Recommendations:**
2. **TPA Allocation Issue: Base funds**

In 2012, the Self-Governance Advisory Committee (SGAC) had concerns regarding the way Self-Governance base amounts were displayed on Funding Agreements and consequently the Green Book and wanted the initial workgroup to review that Self-Governance Tribes were being properly included in formulas and being treated equitably in the distribution of funds. The recommendations related to TPA from the 2012 initial report (Attachment 1) were discussed with the BIA on several occasions but were never implemented. The recent OIG Report[[1]](#footnote-1) addressed the same TPA allocation issue and made the following recommendation, “4. Direct the Office of Self-Governance to determine the actual funding levels of individual tribal programs and report them annually in the Budget Justifications.”

**Options for Resolution:**

**Option A: Forensic Accounting since Inception**

Previous Years: A forensic accounting would be performed for each Self-Governance Tribe since inception (or when the Tribe entered Self-Governance) to determine the actual increases/decreases FOR EACH PROGRAM LINE.

Future Years: The congressional increases/decreases currently recorded in non-program accounts in cumulative total would no longer be used. Future increases/decreases would be posted to the individual program lines.

* Decreases: (T9240) Self-Governance Compacts- Currently, there are negative amounts in this line which represents the cumulative across the board (ATB) rescission or decreases that Congress has enacted for all years that the Tribe has been operating under Self-Governance. Under this option, the particular program line is reduced by the rescission.
* Increases: Line items (T9901)- TPA General Increase, (T9902)- Pay Cost and (T9903)- Retirement Adjustment currently display the cumulative increases that Congress has enacted for all years that the Tribe has been operating under Self-Governance. Under this option, the particular program line is increased.
* Pay Cost: Currently, Title IV Tribes submit one salary amount for all base funding, Tribes do NOT submit salary data by program for this funding allocation. Under this option, the Self-Governance Tribes would have to report salaries by individual program and pay cost would be applied to the corresponding program associated with the increase.

Advantages/Disadvantages: The advantage to this option is that hypothetically the actual amounts could be verified by individual programs. The disadvantages include the difficulty in researching the congressional increases and decreases since inception of Self-Governance over the past 30 years. There are currently over 280 Tribes that entered Self-Governance at various periods of time as well as compacted and/or returned programs at various intervals. There are currently approximately 100 program lines to be researched per tribe. The forensic accounting option would be very labor and cost intensive to both Federal and Tribal staff and could take a considerable amount of time and effort to complete. There is also the reality that Tribal paycost salary data has never been reported by program and that data would not be available.

**Option B: “Aggregate Net” or Prorated Allocation**

Previous Years: Under this option, the congressional increases/decreases currently recorded in non-program accounts in cumulative total would be distributed on a prorated allocation basis. For example, the congressional decreases in (T9240) Self-Governance Compacts would be prorated among all program line items. Congressional increases in (T9901)- TPA General Increase, (T9902)- Pay Cost and (T9903)- Retirement Adjustment would be prorated among all program line items.

Future Years: Same as Option A. The congressional increases/decreases currently recorded in non-program accounts in aggregate would no longer be used (Self-Governance Compacts, TPA General Increase, Pay Cost and Retirement Adjustment). Future increases/decreases would be posted to the individual program lines.

Advantages/Disadvantages: The disadvantage to this option is that it would not be an “actual” or “to the dollar” accounting of each program line. However, it would be a fair approximation or estimate. The advantages to this option are that it would be less labor intensive, less costly and would be easier to implement. (See also SGDB Upgrade recommendation on page 12)

**Option C: Continue current operations**

Under this option, current operations since the inception of Self-Governance would continue as funding or approval to implement recommendations are at the discretion of administration.

Recommendation I.(1).: The consensus of the workgroup was to implement Option B, the “Aggregate Net” or Prorated Allocation option due to the cost benefit comparison. The forensic accounting would be a futile exercise as Title IV Tribes have the authority to reprogram certain funds. The Tribal representatives would rather those funds be used in a manner to best serve Tribes, including updating the SGDB which Tribes access on a daily basis.

Again, the consensus was to perform a prorated allocation of congressional increases and decreases to individual program lines for previous years. Once the prior years’ prorated allocation is complete, future increases/decreases would be posted to the individual program lines. The non-program accounts (Self-Governance Compacts, TPA General Increase, Pay Cost and Retirement Adjustment) would no longer be utilized. The intent of this process is to provide program funding amounts on a line by line basis for the purpose of equitable future funding allocation distributions.

An example of the “Aggregate Net” or Prorated Allocation applied to the SGDB for the initial year of implementation is displayed below.



1. **TPA Allocation Issue: Paycost**

Currently, Title IV Tribes do NOT submit salaries by program for paycost allocation but instead one salary amount for all base funding. In order for increases/decreases to be posted to individual program line items, the way paycost is allocated will need to be addressed.

**Options for Resolution:**

**Option A: Report by Individual program**

Once prior years’ increases have been prorated, Self-Governance Tribes would have to report salaries by individual program and pay cost would be applied to the corresponding program associated with the increase for future years.

**Option B: Continue to Report Total Salary Data**

Under this option Title IV Tribes would continue to submit one salary amount for all base funding. This option would require OSG to prorate each paycost increase to individual program line items on an annual basis. There are currently approximately 259 individual program lines for each of 133 Tribal funding agreements.

Recommendation I.(2).: The consensus of the Tribal representatives was Option B, to continue to submit one salary amount for the calculation of the paycost allocation. OSG staff would then be required to either manually prorate the paycost increase to individual programs or to upgrade SGDB to electronically perform the function of allocating to individual programs.

1. **TPA Allocation Issue: CTGP**

The third issue pertaining to TPA allocations relates to Consolidated Tribal Government Program (CTGP) line item. CTGP was a BIA implemented exercise that encouraged Tribes to transfer programs into CTGP in the mid-1990s to reduce the number of contract modifications and to consolidate like-programs. Title I Tribes transferred a number of programs into CTGP. Title IV funding agreements and/or footnotes specifies the historical individual program amounts consolidated into CTGP while the Tribe operated under Title I. In other words, the Title I CTGP rolled over into the Title IV funding agreements. However, the breakout of programs included in CTGP is not published in the Budget Justifications (Greenbook) and could be overlooked during program increase calculations by program staff.

**Options for Resolution:**

**Option A: Publish CTGP breakout in the Green Book.**

This option was a recommendation in the recent OIG Report[[2]](#footnote-2) which stated, “Direct the Office of Self-Governance to work with Tribes to track the components of the CTGP funding and publish these individual amounts each year in the BIA’s Budget Justifications.”

**Option B: Zero out CTGP line item**

Under this option the CTGP line item would be zeroed out and those programs that were once consolidated would be broken out into the original individual programs.

Recommendation I.(3): Consensus of the workgroup was Option B, to zero out the CTGP line item and breakout the program amounts to the actual program line item. This option would eliminate the need for footnoting the program breakout in the funding agreements, eliminate the need to produce a separate CTGP breakout for the Budget Justifications and facilitate program increase/decrease calculations by individual programs. The dollar amounts will be agreed upon during the annual negotiation and processing of the Reprogramming Request document with each Tribe or Tribal organization.

(Refer to the example of the “Aggregate Net” or Prorated Allocation applied to the SGDB as displayed on page 8 of this report.)

**NOTE: Tribal budgets may still be consolidated as determined by Tribal priorities within the legal authorities of Self-Governance.**

1. **TPA Allocation Issue: ATG and Other ATG**

Another issue pertaining to TPA allocations relates to the Aid to Tribal Government (ATG) and Other ATG line items. Title I and Title IV Tribes have program funds contained within the ATG line items. Title IV funding agreements and/or footnotes specifies the historical individual program amounts consolidated into ATG. These programs may be overlooked during program increase calculations by program staff. However, unlike CTGP there are true ATG funds. Program funds contained in the ATG line items was not addressed in the recent OIG Report and a recommendation was not made regarding ATG program funds.

Recommendation I.(4): Consensus of the workgroup was to breakout into individual programs line items ONLY program amounts, not true ATG funds which would remain in that account. This would eliminate the need for footnoting the program breakout in the funding agreements, eliminate the need to produce a separate ATG breakout for the Budget Justifications and facilitate program increase/decrease calculations by individual programs. The dollar amounts will be agreed upon during the initial year of negotiation and processing of the Reprogramming Request document with each Tribe or Tribal organization.

1. **TPA Allocation Issue: SGDB Upgrade**

In order to implement the recommendations discussed above for prorating increases/decreases to individual line items, a process for calculations and posting of the results to SGDB for transparency to Tribes is necessary.

**Options for Resolution:**

**Option A: No SGDB Upgrade; Manual calculation**

Under this option SGDB upgrades are either not approved or not funded. Manual calculations utilizing excel would be required with results posted utilizing the current SGDB structure.

**Option B: SGDB Upgrade with Electronic calculation**

This option allows the SGDB upgrade to incorporate electronic calculations and posting. This option would require an initial cost but would likely be more cost effective and time efficient than performing manual calculations on an annual basis.

Recommendation I. (5a): Consensus of the workgroup was Option B, to request an upgrade to the SGDB which would allow electronic calculations. The workgroup considers that Tribes would be better served to update the SGDB which Tribes access on a daily basis rather than expend funds for a forensic analysis of past congressional increases and decreases.

Recommendation I. (5b): Consensus of the Tribal members of the workgroup is that system upgrades are the responsibility of the Department and that DOI should find other sources to pay for the upgrade and not out of program or OSG budget. Tribal workgroup members pointed out that in 2004 an across the board (ATB) rescission of .24% was applied to every Tribe for IT services. The actual documentation reflected, “39240 TPA/Tribal Self-Governance Compacts 2004 Information Technology Reduction”.  For example, Red Lake had $11,419 taken each year, or $182,704 to date (CY 2004 $11,419 X 16 years = $182, 704).

# Paycost

1. **Background and Current Process:**

|  |
| --- |
| Tribal Pay Cost Enacted / Eligible salaries (all tribes) = Percentage of Pay Cost to be funded |
| Eligible salaries (per Tribe) x Percentage of Pay Cost to be funded = Pay Cost distribution (per Tribe) |

The Paycost formula has remained unchanged since the 2012 Program Formula Matrix Report. The recommendation from the report stated, “The BIA Office of Budget Management should make available to Tribes a Pay Cost Calculation Procedure that is consistent across the Regions to include guidance, timeframes, and methodologies for the data collection. There should be coordination between BIA and the Tribes to identify whom at the Tribal level the data request should be sent. The President’s Budget Request to Congress should include an Appendix that provides a Tribal breakout of the pay cost request.” The current process is described below. There are two procedures involved with Paycost, budget projections submitted for appropriations and actual distribution of the individual tribal allocations.

**Budget projections:** During November 2018, Office of Budget and Performance Management (OBPM) collects data from Regions for the actual amount of pay cost dollars that were used in budget fiscal year 2018. (Using enacted 2018 amounts, calendar year 2018 budget fiscal year 2019). It should be noted that 2018 paycost salaries submitted are utilized for the 2020 projected budget estimates, in other words budget estimates are based upon two year old data. Regions collect data from all Tribes in the region, including Self-Governance Tribes and submit to OBPM staff that combine the data into a cumulative report for calculations. Title IV Tribes do NOT submit salaries by program for paycost allocation but instead one salary amount for all base funding. Conversely, under Title I, Tribes report salaries by individual program and pay cost is applied to the corresponding program associated with the increase.

During December 2018 the DOI Office of Policy, Management and Budget (PMB) applies OMB economic assumptions formula to determine the amount of the paycost adjustment. (Using enacted 2018 amounts, calendar year 2018 budget fiscal year 2019)

October to December 1/4 gross \* (2019 calendar year economic assumption)

January to September 3/4 gross \* (2020 calendar year economic assumption)

October to December 1/4 gross \* (2020 calendar year economic assumption)

January to September 3/4 gross \* (2021 calendar year economic assumption)

Also, an economic assumption is used for benefit and Federal Employees Retirement System (FERS) increase adjustments. Economic assumptions are publically available through OMB. Finally another calculation for more or less pay days of the fiscal year is applied to the pay cost adjustment. This is used to spread the fixed cost adjustment across the Comp Table in preparation for 2020 budget submission. Amounts are then sent to the Department, OMB, and finally Congress for approval and are embargoed until passed. Once approved these amounts will be part of the Comp Table in the 2020 Green Book. Paycost funds are not officially available nor distributed until a full year appropriation is passed for Indian Affairs.

**Actual distribution:** The 2018 paycost salary submission is used to calculate the 2018 paycost allocation. Not all programs are eligible for paycost and are denoted in the spreadsheet instructions. Paycost salary submitted can NOT be more than the total base amount for the fiscal year. OBPM staff compares the submitted paycost to the “total base amount” listed for Self-Governance Tribes in the Greenbook.

1. **Paycost Allocation Issues and Recommendations:**

(Refer back to TPA Allocation Issue 2. Paycost)

1. **Paycost Allocation Issue: Data call schedule**

OBPM central office corresponds with Regional Budget Officers regarding the Paycost data call. The data call and calculation is scheduled around the Thanksgiving and Christmas holidays.

Recommendation II. (1): The workgroup suggests making the data call in October to provide additional time to submit data.

1. **Paycost Allocation Issue 2: Regional deadlines**

Each Region sets their own deadlines and establishes their own communication with the Tribes in their respective regions. Tribes reported having from 2 weeks to a few days to comply with the data call deadline.

Recommendation II. (2.a): OBPM should consider establishing a standard deadline for all regions.

Recommendation II. (2.b): OBPM should ensure consistent information is provided to all Tribes across the Regions to include guidance, timeframes, and methodologies for the data collection. Possibly establish and publish a timetable for each budget cycle.

1. **Paycost Allocation Issue: Instructions**

The only instructions in the data call pertaining to Self-Governance Tribes states “Regions are responsible for collecting pay cost data for all Self-Governance Tribes.” Most Self-Governance Tribes do NOT submit salaries by program but instead one salary amount in aggregate for all base funding. Also, they do not complete the spreadsheet by program included in the data call. It was reported that those Tribes that did submit individual program data at the regional level was aggregated at the central office anyway.

Recommendation II. (3): OBPM should consider including additional instructions regarding Self-Governance Tribes.

1. **Paycost Allocation Issue: No tribal data reported**

If no data is received from a Tribe, Regional Budget Officers are instructed to use the last available information which could be several years old. It was reported that some regional staff add 5% to the last data submitted in order to compensate for no current data submission. It was also reported that when no data was received from certain Tribes in 2019 those Tribes did not receive an allocation in the initial distribution.

Recommendation II. (4): Implementing the recommendations above would better accommodate Tribal submissions. However, if Tribes do not submit data there should be a consistent process applied across regions to ensure equitable treatment. There should also be a tracking mechanism as to what year the Tribe last reported data.

1. **Paycost Allocation Issue: Base threshold comparison**

Regular, recurring, on-going program tribal salary data funded through Title I and Title IV is excluded when the salary data is limited to tribal TPA base programs. Tribal salaries in such on-going programs includes, but is not limited to , Law Enforcement, Detention, Timber Fish and Wildlife, U.S./Canada Conservation Law Enforcement Officers, etc. For example, Tribal Law Enforcement and Detention program salaries are eligible for paycost increases even though Law Enforcement and Detention base program funding is maintained by OJS rather than OSG. Law Enforcement and Detention base program funding is not included in respective Tribal Self-Governance base funding. OBPM’s paycost data collection forms do not include Law Enforcement and Detention and does not provide a data field in which a Tribe could report Law Enforcement, Detention or other recurring program salary data. As a result, for Self-Governance Tribes, law enforcement, detention and other recurring program Tribal salary data may not be included in “total base amount” threshold comparison performed by OBPM staff.

Recommendation II. (5): OBPM should include Law Enforcement, Detention or other eligible recurring program salary data with the “total base amount” for the threshold comparison.

PHASE 2

# Other “Discretionary” Program, Region or Central Office Funds:

1. **Background and Current Operations:**

This section pertains to funding that is available at various levels of Indian Affairs (Program, Region or Central Office) due to unexpended funds or carryover and is deemed available for distribution. Factors that can lead to this situation include: unfulfilled obligations, delays, budgeted but unfilled positions, or various other operational factors. Historically, these types of funds have been available at the “discretion” of either BIA/BIE program, regional or Central Office staff. For example, in FY2020, there could be an unprecedented amount of unexpended funding due to COVID-19 such as cancelled conferences, trainings and meetings, unfulfilled travel, staff vacancies and other operational factors.

1. **Issues and Recommendations**:
2. Transparency

A concern often expressed by the Self-Governance Tribes has been the need for transparency on all program funding distributions. Time and again, Self-Governance Tribal leaders have provided formal comments regarding notification of availability of funds, eligibility criteria, and method of distribution. Many times, this information is provided after the fact and distribution has already be made.

Recommendation III. (1): In order to ensure transparency, the following process and steps are recommended:

* DOI provides formal notice via a Dear Tribal Leader (DTL) Letter to all Tribes regarding availability of funds. The DTL should include:
	+ Description of funds and amount available;
	+ Form and type of consultation (either deadline for written comments, a conference call or actual consultation meeting schedule); and,
	+ May include proposed options for funding distribution methodology.
* Notice is formally made via DTL Letter to ***all Tribes*** of decision(s) made based upon the feedback received from the consultation, including:
	+ Feedback results (at least in summary); and,
	+ How determinations were made (eligibility criteria, distribution methodology, etc)
1. Distribution

There is not a standard process, established guidelines or principles within DOI for the distribution of these discretionary funds. In the past, these funds have been distributed based upon competitive applications, on a pro-rata basis, specific request, or some other criteria. Tribes have expressed concerns that historically these distributions could be considered “arbitrary and capricious”. It was reported to the Workgroup that some Regions notify Tribes to submit miscellaneous funding requests in anticipation of regional year-end funding availability. Generally, these are one-time non-recurring distributions. However, it is the Workgroup’s understanding that some of these funds have been base transferred for certain Tribes. It should be acknowledged that there is a benefit to the Department in having a standardized process to address unplanned or emergency situations that arise at the Tribal or Regional levels.

Recommendation III. (2.): Establish a written standardized process and publish within the Indian Affairs Manual (IAM) utilizing the following principles:

* All Regions should be subject to the standardized process or general guidelines.
* All Tribes should have equal access and opportunity. (For example, for Regional unexpended funds all Tribes within the Region should have equal access or opportunity.)
* Ensure adherence to DOI Consultation Policy.
* Ensure that principles of fairness and impartiality are appropriately applied in regards to
	+ Notification of funds availability- Official DTL Letter to all pertinent Tribes. Was the notification timely in order to allow Tribal response?
	+ Evaluation of applications- Who served on the selection panel? On what basis were applications ranked? Were applicants notified of status?
	+ Eligibility criteria- What was the eligibility criteria? How was the criteria developed? Were applicants apprised of established criteria in advance?
	+ Notice of award- Official DTL Letter to all pertinent Tribes.

# Contract Support Cost (CSC)

1. **Background and Current Operations**

The original Program Formula Matrix Report with corresponding recommendations was issued in 2012. Since that time, the CSC Workgroup comprised of federal and tribal representatives developed a new CSC Policy. IAM Part 13 Chapter 7 was approved and signed by the Principal Deputy Assistant Secretary- Indian Affairs on January 10, 2017. Upon approval of the new Policy, OSG developed a CSC Analysis Form and instructions (Attachment 3) to conform to the new Policy. The CSC Analysis Form is not required, as OSG will currently accept the data in any format but the form provided as a tool to assist in the calculation and payment process for Self-Governance Tribes. Tribes have been utilizing the form for several years and minor adjustments have been made to improve upon the data collection. OSG will be processing the form for OMB approval in the near future.

It should be noted that the Federal/Tribal CSC Workgroup developed the Policy to be applicable to Title I contracts as well as Title IV compacts with the overarching purpose to provide for the full payment of CSC and to ensure payment is accurate, timely, and meets 100 percent of the Tribe’s CSC as calculated under the policy. While drafting the Policy, the CSC Workgroup also began drafting a Handbook, or procedures which would describe in more detail the data collection and calculation processes for Regions (Title I contracts) as well as OSG (Title IV compacts). The primary difference in data collection is that under Title I contracts Tribes are required to submit budgets. Therefore, the Regions have access to all the data elements necessary to complete the calculation. Under Title IV, Tribes are not required to submit budgets, therefore OSG does not have access to all the data elements necessary to complete the calculations. The intent of the draft documents for the Handbook was to provide detailed procedures and standardized spreadsheets for all regions (Title I contracts) to follow as well as provide detailed procedures for OSG (Title IV compacts) to follow.

The first meeting of the CSC Workgroup since approval of the IAM was held on July 30-31, 2019. The primary goal was to review, edit and prepare the Handbook draft documents for publication, which is currently in process. OSG was to work with self-governance Tribes on procedures specific to Title IV compact data collection and payment. This Workgroup has addressed the following CSC issues and has made recommendations for SGAC Tribal leadership’s consideration. Upon approval, the recommendations specific to OSG (Title IV compact) will be provided to the CSC Workgroup and OIS for consideration in the development of the Handbook.

1. **Contract Support Cost Issues and Recommendations**
2. **CSC Issue: Annual Report to Congress**

The last CSC Annual Report to Congress published was for fiscal year 2014. At the time of this writing, reports for fiscal years 2015 and 2016 have been prepared and are in the surname process and review with the Solicitor’s Office. The fiscal year 2017 Annual Report is in process and all reports are in the same format.

Recommendation IV. (1): The CSC Annual Reports to Congress should be finalized and published in order to provide transparency regarding the Tribal allocations of CSC.

1. **CSC Issue: Payment of CSC for Self-Governance Tribes**

OSG currently is making an initial payment to Tribes of 80% of the previous year’s CSC requirement. Upon receipt of the CSC Analysis Form, or other submission of data for calculation, 100% of the current year requirement is paid in accordance with Policy formulas.

 

The other data elements that are readily available, or could be obtained by OSG, in order to facilitate the calculation include;

* Indirect Cost Rate (IDC)
* Secretarial Amount awarded to the Tribe (OIP funds)
* CSC Amount Paid

In order to calculate and pay CSC, the following data elements are NOT available to OSG until provided or reported by the Tribe.

* Tribal budgeted salary cost (not including fringe): Self-Governance Tribes do not submit budgets, therefore OSG does not have access to this data until submitted by a Tribe. Regional Offices pay Title I Tribes based upon a “preliminary budget” that is submitted by the Tribes but finalize based upon any final budgets submitted. OSG does not receive budget data from Self-Governance Tribes.
* Tribal budgeted fringe cost: For those Tribes with a SWF (Salaries/Wages with Fringe) distribution base, this data must also be submitted by the Tribe. Again, OSG does not receive budget data from Self-Governance Tribes.
* Exclusions and pass-throughs: OSG does not have knowledge of this data until reported by the Tribe.

**Options for Resolution:**

**Option 1:** **Pay an initial payment (80% of the previous year’s requirement) and adjusted payment (100% of current year’s requirement) upon the receipt of current data from the Tribe.** Regional Offices pay Title I Tribes based upon a “preliminary budget” that is submitted by the Tribes but make adjustments based upon any final budgets once submitted. Title IV Tribes are not required to submit budget data. This option allows OSG to treat the previous year’s data as “preliminary budget data” or “estimated data” for the current year.

Advantage: This option allows Self-Governance Tribes to receive funds at the beginning of the year with adjusted payment upon submission of current data. This has been the historical practice for many years, except the percentage of previous year’s requirement was 70% then went to 75% in 2000 (Attachment 4). This option also allows Tribes to receive some funding as an initial payment at the beginning of the year to conduct operations.

Disadvantage: This option can result in “overpayments” to Tribes if the initial payment is more than the adjusted current year data calculation. Fluctuation in any, or a combination, of the data elements can affect the current year’s requirement. Once an “overpayment” occurs, it may take a long time for the Tribe to pay the funds back and often the funds are slated for another Self-Governance Tribe’s CSC payment.

**Option 2:** **Pay only upon receipt of data from Tribe.** This option would eliminate the initial payment to Tribes at the beginning of the fiscal year, and thus, the treatment of the previous year’s data as our “preliminary budget data” or “estimated data” for the current year. OSG would process payment based upon the current fiscal year data upon submission from the Self-Governance Tribes. The question then becomes, would Tribes be allowed to have multiple submissions of data (i.e. CSC Analysis Form) throughout the year?

Advantage: This option could result in one calculation, one payment at 100% of need which would alleviate workload for both Tribal and federal staff. This would eliminate any “overpayment” issues from the “initial payment”.

Disadvantage: OSG does not have the capacity to process multiple submissions of data from over 200 Tribes. The elimination of the initial payment (80% of the previous year’s requirement) will result in a delay of funds to Tribes until the current data (100% of current year’s requirement) is available and submitted by the Tribe.

Recommendation IV. (2a): This Workgroup recommends the Option 1, to pay an initial payment (80% of the previous year’s requirement) and with an adjusted payment (100% of current year’s requirement) upon the receipt of current data from the Tribe.

Recommendation IV. (2b): This process should be drafted and provided to the CSC Workgroup and OIS for consideration in the development of the CSC Handbook section for Self-Governance operations.

1. **CSC Issue: Tribal Submission of CSC Data**

OSG has experienced a lack of response by some Tribes to submit data for the CSC calculation. OSG developed a CSC Analysis Form and instructions to assist in the submission of data for Self-Governance Tribes, however data is currently accepted in any format. OSG sends out an annual Dear Tribal Leader (DTL) Letter to OSG Tribes for CSC data, posts the DTL Letter on the Self-Governance Data Base and follows up with email and phone calls when a Tribe does not respond.

Recommendation IV. (3.): It is recommended that an official notice via certified letter be sent to the Tribal Official that in accordance with Section 1.10 of the CSC Policy, if the Tribe does not initiate any of the policy options available, the Tribe **will not** be paid. OSG should also offer technical assistance as appropriate.

1. **CSC Issue: Request of additional CSC funds by the Department.**

After implementation of the CSC Policy in FY2017, an additional twenty-two Tribes entered in to Title IV funding agreements and discontinued their respective Title I contracts. The transfer of funding authority from Title I to Title IV increased the annual CSC need for OSG and decreased the corresponding annual CSC need at the BIA Regional level. There have been instances where OSG’s allocation for CSC was depleted before all self-governance Tribes have been paid for the year. OIS allocates CSC funds to regional offices and OSG, generally based upon prior-year allocation data. Some regions may have funds remaining (or not yet disbursed) while others have depleted their allocation. There is not a standard process, guidance or instructions for Regions and OSG to request additional CSC funds to pay Tribes. It also was unclear what steps were involved for OIS to request additional funds from OMB and Treasury. Although CSC funds are "fully funded" by congressional indefinite appropriation, the amount appropriated for the fiscal year may be insufficient to meet 100% Tribal need as calculated.

Recommendation IV. (4a.): The consensus at the CSC Workgroup was to pay OSG Tribes on a first-come first-served basis until funds are depleted. Once additional funds have been received, the remaining Tribes should be paid on a first-come first-served basis. In order to provide full disclosure and keep Tribes informed, Tribes should be notified when insufficient funds have been transferred to OSG to meet the full 100% Tribal need as calculated.

Recommendation IV. (4b.): A standard form and/or process be developed for Regions and OSG to request additional funds for CSC payments. This standard process should be included within the Handbook for staff.

Recommendation IV. (4b.): The process and documentation required for OIS to request additional funds from OMB and Treasury should be documented in the Handbook along with timelines for submissions.

1. **CSC Issue: Delayed Payments of Program funds**

Individual program offices are responsible for initiating funding allocations and payments. The issue of delays in this process and postponement of payment to Tribes has been the subject of many discussions between SGAC leadership and the Department. Delays in program payments to the end of the fiscal year, and even into the next two fiscal years, causes a ripple effect on calculating CSC. The CSC Analysis Form, Line 13, allows any previous year Office of Indian Program (OIP) recurring program funds paid in the current year to be included in the calculation. This is in accordance with the CSC Policy Section 1.12, which states, *“The Secretarial amount will generate CSC in the year in which it is awarded, regardless of the year for which funds used for the Secretarial amount were appropriated.”*

Recommendation IV. (5.): It is imperative that program funding methodologies be clearly defined with Tribal consultation and procedures in place to accurately and timely distribute funds to Tribes. This Workgroup recommends that a Funding Distribution Tracking Report be provided to SGAC by the CFO, including but not limited to, a list of programs with OMB apportionment date, amount, date allotted to program, distribution methodology, date transferred to Regions/OSG, date processed to Tribes, etc.

1. **CSC Issue: IBC and Rate negotiations**

During Workgroup discussion, several Tribes expressed concerns that the Interior Business Center had a significant backlog in processing IDC proposals. There were concerns that this may be due to 1) an employee shortage, or 2) increased workload from IHS reconciliation processes. It was reported that in order to address the backlog, IBC was “making offers” to Tribes on a case by case basis.

Recommendation IV. (6.): Issues which caused the backlog should be investigated by OIS and mitigated where possible. Should there be a significant workload increase resulting from the IHS reconciliation processes, having IHS bear some of the financial burden should be explored.

1. **CSC Issue: Policy Approval**

During the July 2019 CSC Workgroup meeting there was discussion that the IAM published was NOT the language that went through the CSC workgroup. The historical timeline pertaining to the policy is as follows;

* March 22, 2016 DTLL Tribal Consultation
* August 16-18, 2016 CSC Workgroup meeting in OKC, OK.

The workgroup reviewed the consultation feedback and edited the policy. This resulted in a revised document dated August 16, 2016.

* January 10, 2017 IAM signed
* January 19, 2017 IAM DTLL with signed IAM.

The 1/10/2017 signed document is different than the original consultation version as well as the workgroup edited 8/16/2016 version. The language regarding the CSC workgroup meeting was deleted, other language was also changed. (Tribal attorneys were preparing a comparison document.)

Recommendation IV. (7.): The PFMUR Workgroup has concerns regarding the deletion of the Policy provision for the CSC Workgroup to meet on an annual basis, considering the Handbook has not been completed and the ongoing CSC related issues. The CSC Federal/Tribal Workgroup should meet regularly for input into completion of the Handbook and address any on-going issues pertaining to CSC. However, the PFMUR Workgroup defers this issue to the CSC Workgroup.

# New Tribes

1. **Background and Current Operations**

The “New Tribes” TPA base funding is to support new federally recognized Tribes, new federally acknowledged Tribal governments, and BIA Regions or Agencies in their provision of support services for such Tribes. It provides Tribes with the funding resources they need to fund their basic governmental affairs. Once a Tribe has been acknowledged as a federally recognized Tribe, it remains in the “New Tribes” category for three fiscal years.[[3]](#footnote-3) New Tribes are funded based upon the following criteria.

* 1,700 and below = $160,000
* 1,701 to 3,500 = $320,000
* 3,501 and up = determined on a case by case basis
1. **Issues and Recommendations**

No issues were identified for the New Tribes allocation.

# Small and Needy

1. **Background and Current Operations**

In 1992, the Senate Committee on Indian Affairs authorized the establishment of the Joint Tribal/BIA/DOI Task Force on BIA Reorganization which issued a report to Congress in 1994 entitled, *“The Tribal Budget System- Preliminary Assessment of Most Needy Small Tribes.”* One of the recommendations was a Small Tribes Initiative created with the purpose to provide small Tribes with a minimum TPA base funding by which they could run viable Tribal governments. The designation was given to Tribes with a population of 1,500 or less and less than $160,000 in recurring TPA funds in the lower 48 states and $200,000 in recurring TPA funds in Alaska. Having funds below this threshold inhibits a Tribe’s ability to carry out basic Tribal services and programs.

**Budget projections:** Funding is requested in the annual budget justification to Congress. The requested level is defined and proposed by the Office of Indian Services. Funds are enacted by Congress and apportioned by OMB. OBPM moves all apportioned funds to the high level budget address and then directly to Office of Indian Services as the allottee responsible for coordinating all calculations and distribution to the regions/Tribes. There are two edibility criteria for these funds.

1. A “small” Tribe, as determined to be a federally recognized Tribe with 1,500 or fewer enrolled members
2. A “needy” Tribe, as determined to be a federally recognized Tribe with
	1. less than $160,000 in recurring TPA funds in the lower 48 states, or
	2. less than $200,000 in recurring TPA funds in Alaska

**Actual distribution:**  The determination of eligible Tribes includes direct service Tribes as well as contract and compact Tribes to ensure equitable treatment. The “small” criteria is the first to be considered. Tribes with a population of less than 1,500 (based upon NAHASDA data) are determined and compiled.

From the list of Tribes that meet the “small” criteria, the current base funding for each Tribe is determined for the second “needy” criteria. TPA recurring base funding is provided by OBPM. Base funding amounts for Law Enforcement, Tribal Management/Development Program (TMDP) and Rights Protection Implementation (RPI) are provided by either the Central Office program or the region.

NOTE: The 1994 deductions[[4]](#footnote-4) of Agency Executive Direction, Administration and Trust Services funding is no longer valid. At the time, TPA funding was first being determined and these were all considered inherently federal functions. Each of these areas now has contracted funding and designated TPA base funding that has to be considered under this activity. Law Enforcement, Tribal Management/Development Program (TMDP) and Rights Protection Implementation (RPI) base funding are also included in the calculation as these are non TPA budget lines that are distributed as base funding from the Central Office programs.

Once all Tribes with an eligible population and their current base amounts are confirmed, a comparison is made to minimum levels ($160,000 for the lower 48 states and $200,000 in Alaska). Example: ($130,000 current base) + ($30,000 distribution needed) = ($160,000 minimum level for lower 48). A distribution is made in order to bring each Tribe to the minimum levels (subject to appropriation amount). Distributions are made to the appropriate region or Office of Self-Governance where funds are modified into agreements.

1. **Small and Needy Allocation Issues and Recommendations:**
2. **Small and Needy Issue: Terminology**

Some Tribes have expressed concern with the terminology of “small and needy” as comparison to other Tribes as “large and greedy”.

Recommendation VI. (1): Different description or terminology as “small and needy” funds should be explored. At TIBC, the term “Small Tribes Supplement” was recommended. It is our understanding this recommendation has already been implemented.

1. **Small and Needy Issue: Transparency and Accuracy of Data**

Some Tribes expressed concern regarding the accuracy of the base amount utilized for the eligibility criteria. This issue was addressed in the 1994 report[[5]](#footnote-5) and further stated that, “Information should be certified by Area Directors”. The workgroup could not confirm if the information is currently being certified by the regions. Nonetheless, Tribes have not been afforded the opportunity to review the TPA recurring base amounts utilized for distribution calculations.

Recommendation VI. (2a): The base amounts should be certified by Regional Directors, confirmed with the Tribes, or at minimum, supplied to the Tribe upon request.

Recommendation VI. (2b): Should the appropriation amount not be sufficient to bring all Tribes to the minimum levels ($160,000/$200,000), the methodology for distribution should be developed in consultation with Tribes.

# Human Services- Welfare Assistance

1. **Background and Current Operations**

Welfare assistance is only provided when no comparable financial assistance or social services are available from state, Tribal, county, local or other federal agencies. The assistance categories (general, child, adult, burial, emergency) are funded each year at rates established by the Assistance Secretary- Indian Affairs or by the state and are subject to change. A Tribe may operate welfare assistance funds through the following mechanisms:

* ISDEAA Title I Contract administered by BIA Regional Offices
* ISDEAA Title IV Compact administered by Office of Self-Governance (OSG)
* P.L.102-477 Plan administered by Division of Workforce Development (DWD)

Welfare assistance funds are distributed by Office of Indian Services (OIS) in accordance with Indian Affairs Manual (IAM), Part 70 Chapter 3, which outlines the policy and procedures for submission of the Financial Assistance and Social Service Report (FASSR), the Request for Additional Funds (RAF), and the required accompanying documentation. There are two distributions each year described in brief below.

1. Initial Distribution: This distribution is based upon 75% of estimated need. October 1st each year the actual expenditures reported in the last completed FASSR (2 years old data), or the prior year approved RAF FASSR, adjusted for carryover, is used to calculate estimated need.

2. Final Distribution: This distribution is based upon reported actual expenditures reported in the FASSR from the previous year. The end-of-year FASSR is due by October 31st for fiscal year Tribes and January 31st for calendar year Tribes. The Final Distribution is to be processed by OIS no later than June 15th.

Since 2009, Congress has placed a statutory cap on the amount of welfare assistance funding that can be distributed to Tribes. Should the national welfare assistance need (accumulated from Tribal FASSR submissions) be greater than the capped amount, then funds are disbursed on a pro rata basis of actual need. However, Tribes that have chosen a Tribal Redesign Plan for General Assistance receive the fixed amount agreed upon pursuant to 25 CFR 20.202 to 20.210. It should be noted that the appropriations language has historically provided that, Tribes may use their tribal priority allocations (TPA) for unmet welfare assistance costs.

1. **Issues and Recommendations**
2. **Welfare Assistance Issue: Historical pro-rata reduction.**

The welfare assistance funds, which assist the neediest of the needy, has experienced approximately $26 million reduction from 1993 to 2016[[6]](#footnote-6) (Attachment 5). This has resulted in a continual reduction in the percentage of actual need funded (Attachment 6). This Workgroup discussed exploring ways to address this particular issue, including, removal of the CAP, requesting additional funds through the budget process or Tribes lobbying Congress for additional funding.

Recommendation VII (1a): The Department and OIS should ensure that the unmet need due to the CAP is reflected in the data provided to OMB and in Congressional reports. This workgroup refers this issue as a Self-Governance Strategy Session topic for subject matter experts to address. This issue may also be a topic for discussion at NCAI and TIBC since a Human Services nor OIS Federal/Tribal workgroup no longer exists.

1. **Welfare Assistance Issue: 2012 Recommendation regarding additional funding requests.**

The 2012 Program Formula Matrix Report (page 8) identified the issue that there was not a uniform process in place for requesting additional funds. At that time, additional funds were provided on a first come first served basis. In 2013, the Welfare Assistance Distribution Methodology established a new process to request additional funds (RAF) for Tribes that experience shortfalls. The current Methodology establishes criteria, justification and review processes for the RAF’s rather than the old first come first served basis.

The 2012 Report also stated that the new process “does not set a limitation on the total amount that will be awarded among all the Tribes that get approved for additional funding. A reasonable limitation is necessary to minimize the impact on the available funding for final distribution. It is recommended that the limitation will be established at 2% of the total Welfare Assistance enacted or $2 million, whichever is smaller.” Currently, Tribes have the option to operate under an approved Tribal Redesign Plan for general assistance and receive a negotiated fixed amount which allows for a stable funding allocation for general assistance. It should be noted that Tribes have the authority to reprogram TPA funds.

Recommendation VII (2a): OIS implemented the 2012 recommendation regarding criteria, justification and review of Requests for Additional Funds.

Recommendation VII (2b): The 2012 Workgroup also recommended that a 2% limitation be established for additional funds requests with the intent to establish a reasonable limitation for additional funds requested above the normal distribution. This workgroup refers this matter to program experts within the P.L. 102-477 Workgroup.

# Human Services- Program Increase Tiwahe Example

1. **Background and Current Operations**

The Tiwahe Initiative was funded as a 5-year pilot program (FY2015 to FY2019) designed to support child welfare and family stability, and to promote an integrated approach to addressing the interrelated problems of poverty, violence, and substance abuse in Tribal communities. Tiwahe is intended to expand social services and similar programs to address child and family welfare, job training, and incarceration issues. There were two portions of the Tiwahe Initiative 1) an allocation to selected Tribes as demonstration project sites, and 2) appropriations increases for all eligible Tribes. These funding increases were supposed to be permanently added to the Tribal TPA funds after Tiwahe ends.

The Office of Indian Services allocated funds based upon what was termed the “Greenbook Methodology” (or FY 2014 TPA amounts as published in the 2014 Greenbook line items) which did not take into account that congressional increases and decreases for Title IV Self-Governance Tribes are not recorded in the individual program line items. The 2012 Report recommendations regarding TPA allocations were not implemented. This resulted in the inaccurate distribution of Tiwahe funds to Self-Governance Tribes. The calculation became the subject matter within an OIG Report.[[7]](#footnote-7) It should be noted that the Tiwahe allocation to the demonstration project sites was not part of the 2017 OIG Report.

In response to the OIG Report, the Indian Affairs Manual was updated to include Part 14, Chapter 2 Office of Self-Governance Initiative Funding and Funding Increase Distribution (Attachment 7). In addition, an internal MOU was between OIS and OSG for distribution of Social Services and Indian Child Welfare Act Program initiative funding and funding increase distributions was finalized (Attachment 8)

1. **Issues and Recommendations**

**Recommendation VIII (1): Tiwahe Example: Base funds**

(refer to TPA Allocation Issue on page 8)

**Recommendation VIII (2): Tiwahe Example: Paycost**

(refer to TPA Allocation Issue on page 11)

**Recommendation VIII (3): Tiwahe Example: CTGP**

(refer to TPA Allocation Issue on page 11)

**Recommendation VIII (4): Tiwahe Example: ATG**

(refer to TPA Allocation Issue on page 12)

**Recommendation VIII (5): Tiwahe Example: SGDB Upgrade**

(refer to TPA Allocation Issue on page 12)

# Law Enforcement

1. **Background and Current Operations**

Prior to 1999, funding for Law Enforcement and Detention/Corrections was included in Tribal Priority Allocations (TPA). As TPA funds, Tribes had the discretion to reallocate base funding among BIA-funded programs and prioritize funds based upon Tribal priorities. In 1999, the TPA designation was removed in order to ensure those funds were spent for Law Enforcement activities and to strengthen Federal accountability for public safety in Indian Country. The amount of TPA funds that Tribes allocated to Law Enforcement and Detention/ Corrections programs in 1999 became the historical base amount for each Tribe and is the basis for the current funding levels distributed to each Tribe today. The budget increases provided since that time have been distributed on top of the historical base amounts, since by law, one Tribe’s base funding under contract or compact cannot be reduced in order to increase the base funding of another Tribe. Allocation of funds is governed by the Congressional appropriation language and the line item for compliance with the three elements of legal availability (purpose, time, and amount).

1. **Law Enforcement or Criminal Investigations and Police Services (CIPS):** Only programs currently receiving funds are considered eligible for on-time or recurring funding increases, unless specific instructions from Congress. OJS has determined that for eligibility, Programs/Tribes must have submitted at least 9 of 12 required monthly Uniform Crime Reports (UCR) for the previous year, and 9 of 12 Drug Reports if the distribution is drug enforcement related. According to the OJS Report to Congress[[8]](#footnote-8), the 5 factors used by OJS to distribute CIPS funds included:
	* violent crime rate,
	* staffing levels/shortages by parity ratios,
	* service population,
	* size/land base to be serviced,
	* calls for service and prevalence of drug/gang activity.

Each factor is assigned a weight (percentage) by OJS and a pro-rata calculation is performed for all eligible Programs/Tribes.

1. **Detention/Corrections**: OJS has determined that for eligibility, Programs/Tribes must have submitted at least 12 of 12 required monthly Detention Operations Monthly Reports (DOMR). According to the OJS Report to Congress[[9]](#footnote-9), the 6 factors used by OJS to distribute CIPS funds included:
	* violent crime rate (previous year),
	* staffing levels/shortages by parity ratios,
	* service population,
	* size/land base to be serviced (transport), and
	* annual inmate intake,
	* consideration of new facilities.

Each factor is assigned a weight (percentage) by OJS and a pro-rata calculation is performed for all eligible Programs/Tribes.

1. **Tribal Courts**: The Tribal Courts program remains in the TPA category which allows Tribes to reallocate and redesign Tribal Courts funding to best meet Tribal priorities within their own communities. Tribal Courts funding is distributed according to historical base allocations. BIA distributes Tribal Courts budget increases utilizing either a pro-rata methodology, or request-based determinations that are supported by court assessment data. Generally, a Tribal court assessment must be initiated or completed in order for the Tribal court program to be considered eligible. The Tribe submits a funding request including a statement of work and budget. Distributions are based upon the funding requests and court assessment reports. If sufficient funding is not available for the year, partial funding of requests could occur.
2. **Program Increase Opioid Example:**

On June 25, 2019, a DTL letter (Attachment 9) was sent as notice to Tribes receiving a portion of the 2018 appropriations for opioid funding. The 2018 appropriation had a funding increase of $7.5 million within CIPS program line to “help people affected by opioid addiction.” These funds were awarded as one-time or non-recurring funds based upon the ‘OJS funding methodology’ with the following 4 weighted factors

* FY2018 violent crime rate,
	+ staffing levels/shortages by parity ratios,
	+ size/land base to be serviced,
	+ FY2018 Drug-related offenses (monthly drug statistics reported by Tribe)

On August 1, 2019, a DTL letter (Attachment 10) was sent as notice to Tribes that a portion of the opioid funding from FY2018 and FY2019 had been allocated and was available to their program. The 2019 amount was awarded on a recurring basis. The 2019 appropriation had a funding increase of $8.25 million for “patrol officers hit hardest in the opioid crisis.”

1. **Issues and Recommendations**
2. **Law Enforcement Issue: Eligibility (Opioid example)**

Tribes have expressed concern that it is unclear what the eligibility criteria is for the various funding increases. For example, the FY2019 Opioid Base Funding (Attachment 11) distribution table provides a summary of the OJS funding methodology.

As depicted below, 71% of the total 183 programs/Tribes operating a Law Enforcement program were excluded from the distribution. Only 29% received an allocation of FY2019 Opioid base funding increase. Half of the programs/Tribes operating a Law Enforcement program (92 of 183), were excluded on the basis of ‘Less than 50 Drug Crimes Reported in FY2018.”



**Recommendation IX.(1a):** There are concerns that 71% of programs/Tribes operating a Law Enforcement program were excluded from the opioid distribution when the appropriation language was so broad. The recommendation is that OJS, in consultation with programs/Tribes, develop a written eligibility criteria and funding formulary PRIOR to funds distribution.

**Recommendation IX.(1b):** It was brought to the PFMUR Workgroup’s attention that Alaska Tribes are NOT funded through OJS, therefore, did not participate in any opioid funding distributions. Should there have been consultations prior to distribution, this may have been a matter of discussion in order to address the particular issues in Alaska.

1. **Law Enforcement Issue: OJS Funding Methodology and Transparency**

The 2012 Program Formula Matrix Report identified the issue that the criteria used by the BIA Office of Justice Services (OJS) for Law Enforcement increases did not include weighted factors and how the formula was calculated. The 2012 recommendation was to designate a Tribal consultation session on the criteria (e.g. crime rate, land base, population, etc.) and weights (percentages) applied in the formulas to distribute funding. The ‘OJS funding methodology’, including criteria/factors and weights assigned was developed and implemented but without a Tribal consultation session with Tribes. The following concerns have been identified:

* + - 1. Criteria/Factors:
				* The factors (e.g. crime rate, land base, population, staffing level, service calls or drug activity) were derived by OJS and seem to change from various funding allocations.
				* Why exclude 50% of programs/Tribes with less than 50 drug crimes? Who decided this criteria? These are items that should have been discussed during Tribal consultation.
				* There are 6 factors listed in the 2017 TLOA report to Congress, only 5 were used for the Opioid distribution, as the factor for Service Population was not included.
				* There are concerns that 71% of programs/Tribes operating a Law Enforcement program were excluded from the opioid distribution when the appropriation language was so broad.
			2. Weights:
				* The weights (percentage of formula) assigned to the criteria/factors have not been consulted upon and historically have not been provided even after the fact. It is our understanding, that the formula (factors and assigned weights) are changed by OJS depending upon the appropriation.
				* In the August 1st letter, Tribes were informed (after the Opioid distribution calculations were complete) that the “drug related offense rate was assigned the greatest weight”.
			3. Transparency:
				* DTL Letters should have been sent to ALL Tribes. The DTL Letters were sent to only those 53 programs/Tribes which were funded. The other 130 or 71% did not receive any communication from OJS regarding the distributions.
				* The FY2018 appropriation was $7.5 million and the FY2019 appropriation was $8.25 million. FY2019 Opioid Base Funding (Attachment 9) distribution table provided accounts for only $3,047,479 distributed to 53 programs/Tribes. Tribes have requested the ‘OJS Funding Methodology’ weighted formulary used to distribute OJS funds.
				* The 130 (71%) excluded programs/Tribes did not know that they would be excluded, or the criteria by which they were excluded.
				* The programs/Tribes that did not receive the recurring base will be affected long-term as those funds are lost for multiple years to come (subject to future appropriations).

**Recommendation IX.(2a):** OJS should initiate a Tribal consultation session to define ‘OJS Funding Methodology’ in clear precise terms. The workgroup suggests OJS as a pilot program to work with Tribes on joint development of a funding allocation methodology.

**Recommendation IX.(2b):** OJS, upon consultation with programs/Tribes, develop a written eligibility criteria and funding formulary PRIOR to funds distribution.

**Recommendation IX.(2c):** In order to ensure transparency, it is recommended that OJS adopt the process outlined in Recommendation III (2).

**Recommendation IX.(2d):** Consistent with the issue and process for transparency, the Workgroup requests that OJS provide a report on the Opioid appropriations including

1. How and when was the DOI consultation policy followed on the methodology for distribution of opioid funding?
2. A breakout of the full distribution of the $15.75 million:
	* A list of the 53 programs/Tribes that received a portion of the $3,047,479 distribution,
	* Detail of the remaining $12.7 million of the $15.75 million appropriation.
	* How much of the recurring funds are allocated to OJS or BIA?
	* How much of the one-time funds were allocated to OJS or BIA?
	* How much has been allocated towards internal programs such as the DOI Drug Task Force?
3. Number of increased DOI FTEs funded by Opioid appropriations
4. How many of the Federally Recognized Tribes received a portion of the Opioid appropriations?
5. A list of Tribes OJS is actively engaged with prior to the Opioid funds and after the implementation of the Drug Task Force. What Tribes directly benefited from the remaining $12.7 million appropriations?
6. **Law Enforcement Issue: Reporting and District Offices**

Tribes have also expressed concern regarding reporting criteria. The June 25th letter stated, “… Tribes must have submitted their monthly crime statistics and drug reports each month for the entire previous year…” However, the August 1st letter stated, “…the Tribe must have submitted their monthly crime statistics and drug reports each month for at least 9 of the 12 month reporting period…” There were 38 programs/Tribes (or 21% of the 183 total), that were excluded for missing reports.

It should be noted that the OJS letters mention crime statistics AND drug reports, however the Funding Agreements and footnotes refer to “monthly uniform crime data reports” but do not mention drug reports. It was also conveyed by several Tribes that the District Office Special Agent in Charge had stated that the monthly drug reports were “optional” only to find out the Tribe was penalized for not submitting reports.

OJS Field Operations (District Offices) are the Tribe’s first contact as they are responsible for administrating, developing, and implementing OJS objectives. The District Offices are the Tribe’s primary contact for Law Enforcement matters including reporting. Monthly reports are required under 25 C.F.R. Part 12. However, it was conveyed by several Tribes that they have experienced issues with District Offices including, no assistance provided, not returning phone calls or emails, lack of communication or timely sharing of information, and continual staff turn-over.

**Recommendation IX. (3 a):** The fact that 21% (or 38 of the 183 Tribes) were excluded from the Opioid increase for lack of reporting could be indication that technical assistance is needed. It is recommended that OJS send an official notice to the Tribal Official, with a copy to OSG, that the Tribe is not in compliance with 25 C.F.R. Part 12 and what the ramifications are should the Tribe not submit the required reports. OJS should also offer technical assistance as appropriate.

**Recommendation IX. (3 b):** The reporting criteria for funding eligibility should be clear to all parties. The workgroup recommends that OJS develop written criteria in consultation with Tribes and that the Negotiation Guidance and Reprogramming Request footnotes be updated

# Facilities Management

1. **Background and Current Operations**

Division of Facilities Management and Construction (DFMC), headquartered in Albuquerque, N.M, is responsible for O&M funds distribution. Information on the authority, policies, and responsibilities for the Operations and Maintenance (O&M) Program can be located in the IAM Part 80 Chapter 3. The O&M allocation formula determines the amount of funding distributed to each facility. The formula includes inventory data for square footage of rooms in each building and supporting utility systems such as heating and cooling systems. The formula can be stated as:

Total Budget / Funded Square Foot = Cost per Square Foot

Cost per Square Foot x Funded Square Foot per Facility = Total Distribution per Facility

The inventory data is maintained within the Facility Management Information System (FMIS) which was re-engineered in the 1990’s from the old BIA database. FMIS was developed as a modern application to carryout Indian Affairs’ responsibility for planning, design, construction, operations and maintenance of Bureau-funded facilities. In 2010, the client-server FMIS (Indian Affairs data) began migrating data to the DOI Enterprise Maintenance Management System, MAXIMO (Department wide data). The DFMC website (<https://www.bia.gov/as-ia/ofpsm/dfmc>) maintains resources such as guidance, handbooks and other reference material as well as training material. A flowchart depiction of the process can be found in Attachment 12.

The primary goal of O&M is to ensure that all facilities are maintained in a safe and healthy environment for the occupants and for the protection of the property. O&M is divided into three categories, Operations, Preventive (Scheduled) Maintenance, and Unscheduled Maintenance. A facility which houses a federally funded program (BIA, OJS or BIE) is eligible for Operations and Maintenance (O&M) funding. Examples:

* BIA – Agencies or other BIA Field locations that house and service BIA funded program such as IIM; Real Estate Services; Facilities Management; Social Services and other Trust or Indian Services programs.
* OJS – Detention Centers and associated facilities that house and service OJS funded Corrections programs. This may include Law Enforcement (PD & CI) if housed in same facility as Corrections program.
* BIE – BIE funded schools and related facilities that house and service a BIE educational program.

Facilities housing federally funded programs may be administered by a Tribe under compact, contract or grant agreements but would still be eligible for O&M funding. However, it should be noted that some Tribes may have O&M funded through contract support costs (CSC). O&M funding is also included in lease payments for leased facilities.

1. **Issues and Recommendations**
2. **O&M Issue: Qualifications for adding facilities**

The 2012 Program Formula Matrix Report (page 8), addressed the issue that at the time qualification criteria and steps for including square footage into the formula for O&M was unclear or unavailable to Tribes. The workgroup recommended that DFMC should develop a manual in coordination with BIA, OJS, and BIE. During our interviews it came to our attention that there was O&M Handbook developed years ago but is so outdated it is not useful.

Recommendation X (1): We recommend that a new O&M Handbook be developed to provide detailed guidance for both federal and Tribal officials including a list of all trust PFSAs eligible for O&M that Tribes can contract.

1. **O&M Issue: Section 105(l) Leases**

Leases under Section 105(l) of P.L. 93-638 are facility cost agreements that compensate the owner for facility operational expenses “to the extent that no element is duplicative”.[[10]](#footnote-10) It is our understanding that a team is currently working on the development of policy and procedures for Section 105(l) leases.

Recommendation X (2): As policy and procedures for Section 105(l) leases are currently being drafted, the Workgroup has no recommendations at this time.

# Johnson O’Malley

1. **Background and Current Operations**

Under authority of the Johnson-O’Malley Act of 1934, as amended, BIE awards supplemental assistance to Tribal organizations, school districts, and other partner organizations to address the unique cultural and academic needs of Indian students in public schools. In 1988, the Bureau reviewed various methods of equitable funding distribution. In 1988, the new minimum weight factor formula was approved by Congress in Public Law 100-446 (the Appropriations Act of September 27, 1988). In 1989, the minimum weight factor was phased in over a three year period to a 1.3 minimum weight factor.

In 1995, Congress directed the BIA to determine each Tribe/contractor’s recurring base funding level (via a formula in consultation with Tribes) and transfer the JOM funds from the Other Recurring Programs budget category into each tribe/contractor’s base funding within the Tribal Priority Allocations (TPA) budget category. The BIA conducted a student count which resulted in the 1995 official student count of 271,884 eligible Native students. With the transfer of the JOM base funding level to each tribe/contractor, it was considered that no further need existed for an annual JOM student count to distribute the JOM funds. Each year since 1996, the BIE continues to distribute annual JOM funds to all JOM contractors based on the 1995 verified student count. For Tribes, JOM funds are transmitted as part of their base funding to the Region (Title I contract) or OSG (Title IV compact). For public schools, JOM funds are distributed to the appropriate Education Line Office (ELO) to place in the state or school district’s JOM contract. No new JOM contractors/providers have been approved since 1995.

The 2012 Program Formula Matrix Report (Attachment 1) addressed the issue that the 1995 student count was continuing to be used for the JOM distribution. There have been attempts to update the official student count including 2012 (identified 321,273) and 2014 (identified 341,126), however these counts were considered unverifiable and incomplete. The 1995 student count continued to be utilized for distributions. Great strides have been made with the JOM Program since December 2018 when the Johnson-O’Malley Supplemental Indian Education Modernization Act established several major requirements for BIE, including:

* Update the current count of Indian students eligible for the JOM Program.

Status: BIE sent out a data call for submission of a student count for the 2018-19 school year on an excel form (Attachment 13) with a due date of Wednesday, May 22, 2019. Upon a request from the National Johnson O’Malley Association (NJOMA), BIE delayed finalizing the student count until April 30, 2020. NJOMA made this request to allow contractors/public schools extra time to respond to the request. The count has been finalized, and 315 of the 340 contractors did respond to the request. The results of the student count are available in the JOM Preliminary Report.

* Conduct consultation on the most applicable and accurate data examining multiple data sources from the U.S. Census Bureau, U.S. Department of Education/National Center for Education Statistics (NCES) and data from current grantees.
* Conduct consultation on the interest in expanding the JOM Program e.g., adding more contractors.

**Status:** On June 21, 2019, the BIE engaged in Consultation with Tribes and other eligible entities through a teleconference.

* Publish a Preliminary Report that includes the number of eligible students receiving JOM services or potentially eligible, based on feedback from Consultation

**Status**: The Preliminary Report was completed and is posted on the BIE/JOM website <https://www.bie.edu/JOM>.

* Conduct Rulemaking to determine how the regulatory definition of ‘eligible Indian student’ may be revised, and how the funding formula may be clarified and revised.

Status: During the month of July 2019, six sessions on the Proposed Rule (25 CFR 273) were conducted at various locations throughout Indian Country. On February 25, 2020, the final rule was published in the Federal Register.

* Publish a Final Report on the initial determination of the number of eligible Indian students served or potentially served by each eligible entity.

***Status***: The Final Report was completed in early May, 2020 and is currently going through the surname process. As soon as the report is cleared for public release, it will be posted on the BIE/JOM website <https://www.bie.edu/JOM>.

* Publish an Annual Report that includes the number of eligible students receiving JOM services, recommendations on appropriate funding levels, assessment of the contracts.
1. **Issues and Recommendations**
2. **JOM Issue: Annual Report**

One of the provisions within the Modernization Act was for BIE to publish an Annual Report that includes the most recent determination of the number of eligible Indian students served by each contracting party (Tribes and other eligible entities), recommendations on appropriate funding levels for the program based on such determination, and an assessment of the contracts. The Final Rule 25 CFR 273.152, requires all contracting parties (Tribes and other eligible entities) to submit an annual report to the BIE Director on or before September 15 of each year which covers the previous academic year. There is an established deadline for the contracting parties (Tribes and other eligible entities) to submit annual reports to BIE, however there appears to be no established deadline for BIE to produce and publish an accumulated Annual Report.

Recommendation XI. (1): BIE should establish a deadline for JOM to compile the Annual Reports from contracting parties (Tribes and other eligible entities) and publish the cumulative Annual Report.

1. **JOM Issue: Funding Formula**

Congress decides the level of funding for the JOM program through the Federal appropriation process. The funding is allocated on a prorated basis in accordance with the funding formula, which is calculated using data obtained by the Department of Education from the previous year. The JOM funding formula is outlined in the Final Rule published in the Federal Register on February 25, 2020, and which became effective on March 26, 2020. The JOM funding formula described in 25 CFR 273.140 can be simply stated as:



The Weight Factor, the first component to the funding formula is the State average cost per pupil count divided by the national average cost per pupil count. However, there is a provision for a default weight factor of 1.3 should the calculation produce a factor less than 1.3, thus the minimum Weight Factor a contracting party can receive is 1.3. The second component to the funding formula is student count or “number of eligible Indian students.”

The student count for the 2018-19 school year has been finalized, and 315 of the 340 contractors responded. Results of the student count are available in the JOM Preliminary Report posted to the BIE website <https://www.bie.edu/JOM> . The Office of Sovereignty in Indian Education will be providing BIE Leadership with options on how to incorporate the student count into a JOM funding formula for future disbursements. At the present time, it is unclear if the new funding formula will be established before the next distribution of JOM funds.

Recommendation XI. (2a): BIE JOM should coordinate with OSG regarding communication with Self-Governance Tribes in order to improve the timely distribution of information as well as improving responses from Self-Governance Tribes.

Recommendation XI. (2b): On several occasions, BIE staff have contacted the Self-Governance Communication & Education Tribal Consortium (SGCE) regarding topics which were referred to OSG. Therefore, this workgroup also recommends that BIE coordinate with OSG to provide BIE staff training on ISDEAA, SGAC, SGCE and other Self-Governance matters.

Recommendation XI. (2c): BIE JOM should improve and formalize the data collection form, as well as, explore a system to electronically collect the data from Tribes. (The current 2018-19 “form” is an excel spreadsheet “Johnson O’Malley Program Contact Information and Number of Eligible Students Served”.)

1. **JOM Issue: Eligibility**

During previous student counts there has been confusion regarding the interpretation of eligible students which affected student counts submitted by JOM contracting parties. In 2014, during the student count, the BIE sent out two Dear Tribal Leader (DTL) letters: Both letters provided a definition regarding student eligibility. The DTL letter dated July 24, 2014 stated: “*American Indians age 3 through grade 12 who are enrolled in public schools are eligible if they are at least one fourth degree of Indian blood* ***and*** *recognized by the Secretary of the Interior as eligible for BIE services.”*  The DTL letter dated December 2, 2014 stated: *“American Indians age 3 through grade(s) 12 who are enrolled in public schools are eligible if they are either a member of a tribe* ***or*** *at least one fourth degree of Indian blood and also recognized by the Secretary of the Interior as eligible for BIE services*.*”* The Final Rule (25 CFR 273.140) clarified that a student is eligible if the student is:

1. From age three (3) years through grade(s) twelve (12);
2. Not enrolled in a Bureau-funded school or sectarian school (except the student is eligible if enrolled in a previously private school controlled by an Indian Tribe or Tribal organization); and
3. Is either:
	1. At least one-fourth (1/4) degree Indian blood descendant of a member of an Indian Tribe as defined in § 273.106; **or**
	2. A member of an Indian Tribe as defined in § 273.106.

Recommendation XI. (3): Now that clarification has been provided by BIE with Tribal consultation, training should be provided to contracting parties on implementation of the Final Rule.

1. **JOM Issue: Failure to Comply and Hold Harmless Provisions**

The JOM Modernization Act also established reporting requirements for JOM contracting parties and included a ‘failure to comply’ provision which states, *“A contracting party that fails to submit a report under paragraph (1) shall receive no amounts under this Act for the fiscal year following the academic year for which the report should have been submitted.”* However, Congress also made allowance for a 4 year implementation period by also including ‘hold harmless’ provisions which states, *“… no existing contractor will receive an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student that the existing contractor received for Fiscal Year 2018…”.*  The ‘hold harmless’ provisions sunset 4 years after December 31, 2018, or the date of enactment of the JOM Modernization Act. After the ‘hold harmless’ period, or beginning December 31, 2022, a maximum decrease was established of no more than a 10 percent decrease in funding per eligible Indian student from the previous year.

Recommendation XI. (4): This Workgroup recommends that BIE provide training and technical assistance sessions during the implementation period. Coordination with Self-Governance Advisory Committee (SGAC), National Johnson-O'Malley Association (NJOA), National Congress of American Indians (NCAI) and other organizations would provide opportunity to reach a large number of Tribal officials and staff as well as facilitate reduction in travel costs.

# Scholarships and Adult Education

1. **Background and Current Operations**
2. **Scholarships and Adult Education:** BIE funds post-secondary scholarships and adult education programs administered by the Tribes. For the most part, scholarships are distributed at the discretion of Tribes to their members under criteria established by the Tribe to meet Tribal objectives. Scholarships and Adult Education are categorized as TPA base funding which allows Tribes the flexibility of establishing their own priorities and reallocating Federal funds among programs in this budget category. All appropriated funds are distributed based upon historical TPA base amounts. Any program increases are prorated based upon Tribal share of historical TPA base amounts. There are three budget lines in which a Tribe can be funded for Scholarships and Adult Education, 1) individual program line, 2) CTGP and 3) ATG.

 

1. **Issues and Recommendations**

Recommendation VIII (1): Scholarships and Adult Ed: Base funds

(refer to TPA Allocation Issue on page 8)

Recommendation VIII (2): Scholarships and Adult Ed: Paycost

(refer to TPA Allocation Issue on page 11)

Recommendation VIII (3): Scholarships and Adult Ed: CTGP

(refer to TPA Allocation Issue on page 11)

Recommendation VIII (4): Scholarships and Adult Ed: ATG

(refer to TPA Allocation Issue on page 12)

Recommendation VIII (5): Scholarships and Adult Ed: SGDB Upgrade

(refer to TPA Allocation Issue on page 12)

* + 1. **Scholarship and Adult Education: Scholarship formula proposal**

The 2012 Formula Matrix Report (page 9) proposed a new formula for the allocation of Scholarship funding. The proposal would require Tribes to submit the number of student scholarships for the preceding fiscal year. (The report recommendation was for the number of students that applied for scholarships, not were awarded scholarships.) The theory was to calculate the national need for scholarships and prorate any Scholarship funding increases based upon individual Tribal need. It should be noted that one Tribe’s base funding under contract or compact cannot be reduced in order to increase the base funding of another Tribe.

Recommendation XII. (6): The position of the current Workgroup is that the scholarship formula proposal from the 2012 Report is not feasible.

# Education Program Management

* + 1. **Background and Current Operations**

Education Program Management is funded as Education Line Officers (ELO) and the Tribal share is calculated at 2% of the sum of Education programs included in the Self-Governance funding agreement (JOM, scholarships and adult education). The formula can be stated as:

(JOM + Scholarships + Adult Education) x 2% = ELO

Once the ELO Tribal share is included in a Self-Governance base budget, that share become subject to adjustment only in accordance with 25 CFR Parts 1000.106 and 1000.109.

* + 1. **Issues and Recommendations**

No issues were identified for Education Program Management.

# Tribal Transportation

1. **Background and Current Operations**

 Current distribution methodologies for the various transportation programs are as follows;

1. **Tribal Transportation Program:** BIA and FHWA (through its Office of Federal Lands Highway) jointly administer the TTP, to address transportation needs of Tribes. The TTP is funded through the highway account of the Highway Trust Fund and is designed to address eligible transportation-related activities on Tribal lands. Program funding is distributed to Tribes by formula (established by statute) after “set-asides” (funding amounts that the Secretary of Transportation may or must deduct from the funding for various purposes) are determined. Many of the Tribal concerns and issues pertaining to allocation of transportation funds have been addressed by statutory language. Current authorization of the Fixing America’s Surface Transportation (FAST) Act expires on September 30, 2020. Tribes may select from various federal contracts and agreements to implement their transportation programs including;
2. BIA Direct Service
3. BIA 638 Contract
4. Tribal Transportation Program Agreement
	* BIA TTPA = “G2G Agreement”
	* FHWA TTPA = “Program Agreement”
5. Self-Governance Funding Agreement
	* OSG Self-Governance Funding Agreement
	* FHWA Self-Governance Funding Agreement
6. **BIA Road Maintenance:** Maintenance funds are allocated from Central Office based on the historic percentages for allocation to the Regions. The allocation at the field level is based on Regional priorities as established by Tribes within that particular Region. The region methodology usually includes miles of roads by surface type and in some cases establishes a base amount first. The BIA – Division of Transportation (DOT) has determined that Tribes eligible for BIA Road Maintenance funds are those Tribes that have BIA owned roads that are currently included in the BIA Road Inventory Field Distribution System (RIFDS). Tribes that receive Tribal Transportation Program funding pursuant to Title 23 are authorized to utilize TTP funds up to 25% (or $500,000, whichever is greater) under the FAST Act for the upkeep of these roads.

1. **Planning funds:** Planning funds come from the Tribal Transportation Program funding formula as found in 23 USC 202(c) (1). Once the Tribal shares percentages are determined for each Tribe of the available funds, the 2% set-aside referred to in 23 USC 202(b)(3)(A)(i) is calculated from the Tribal shares percentages and added to the total Tribal shares allocation.
2. **Bridge funds:** Bridge funding comes from the amount set-aside in 23 USC 202(c)(1) and 23 USC 202(d). Funds are provided based on the requirements of 23 CFR 661 (IRR Bridge Program). Qualifying bridges that require planning, engineering design and construction need to be identified in FHWA’s National Bridge Inventory (23 USC 144) as deficient. Deficiency is determined based on bi-annual inspections by licensed bridge engineers that have assessed the bridges based on criteria of the National Bridge Inspection Standards (23 CFR 650 Subpart C). Annually the FHWA-Federal Lands Highways Office reviews bridge proposals for planning/design, rehabilitation or replacement, and sends an award list to the BIA to allocate to the Regions and the Office of Self-Governance for inclusion in contracts and agreements.
3. **Safety funds:** Safety funds are provided based on applications from Tribes in response to a Notice of Funding Opportunity published by the Secretary of Transportation annually. USDOT, Federal Lands Highways, reviews each application based on criteria in 23 USC 202(e). The Secretary of Transportation announces the awards and FHWA will allocate the funds associated with the successful project applications to BIA in the specific amount and BIA will allocate to the Regions and the Office of Self-Governance for inclusion in contracts and agreements.
4. **Tribal Transportation Issues and Recommendations**
5. **Tribal Transportation Issue: Administrative set-aside**

The FAST Act implemented a lower set-aside for Bureau of Indian Affairs and FHWA administration of program management and oversight (now 5 percent instead of 6 percent), and a higher set-aside for Tribal bridges (now 3 percent instead of 2 percent). Tribes have expressed concern at the amount of carryover funds available from this set-aside. There is also concern that the funds do not follow the workload at the regions or OSG. Some Tribes reported that permit approvals were taking up to eighteen months.

Recommendation XIV. (1a): A basis for determining workload (i.e. base amount by region and OSG, number of agreements processed, number of transactions, etc) should be established in consultation with Tribes to provide equitable administrative support services to Tribes.

Recommendation XIV. (1b): BIA Division of Transportation or Office of Budget and Performance Management (OBPM) should provide a report on the historical carryover of the administrative set-aside to SGAC.

1. **Tribal Transportation Issue: Roads Inventory**

The Bureau of Indian Affairs (BIA) uses the National Tribal Transportation Facility Inventory (NTTFI) to document existing and proposed roads on Tribal lands that are eligible for Tribal Transportation Program (TTP) funding. The 2012 Program Funding Matrix Report (Attachment 1, page 11) identified a concern from Tribes regarding the accuracy of the roads inventory, especially in the State of Alaska. The recommendation of the workgroup was that the issue be further explored to discover areas where the process could be improved. In May 2017, the Government Accountability Office issued a report[[11]](#footnote-11) which delineated three recommendations for ensuring that NTTFI provides quality information to support management and program oversight.

* *coordinate with the FHWA and tribal stakeholders and reexamine the need for road-description and condition data currently collected in the NTTFI and eliminate fields that do not serve an identified purpose,*
* *for fields determined to have continued relevance for management and program oversight take steps to improve the quality of these data by clarifying guidance in the NTTFI coding guide that tribes use to collect data and by providing additional guidance on steps needed to ensure that data are consistently reported, and*
* *establish a process to monitor data to facilitate timely and targeted corrections to missing or erroneous data.[[12]](#footnote-12)*

BIA agreed with the recommendations regarding NTTFI and stated, *“that eliminating fields that do not serve an identified purpose will reduce the large amount of missing and erroneous data and noted that it will take steps to improve the quality of data by updating the NTTFI coding guide.”[[13]](#footnote-13)*

Recommendation XIV. (2): BIA Division of Transportation should provide a status on the implementation of the GAO recommendations to SGAC.

1. **Tribal Transportation Issue: Tribal Choice of Funding Mechanism**

The 2012 Program Funding Matrix Report (Attachment 1, page 11) also identified that there was no deadline for Tribes to inform the respective offices of their selection from various federal contracts and agreements to implement their transportation programs. This caused delays in the process for distributing funding to other Tribes. The 2012 recommendation was that BIA should adopt a policy to establish a June 1st deadline for Tribes to inform the respective offices which funding mechanism the Tribe has selected for the upcoming fiscal year. Although this process has stabilized over the past few years a deadline has not been established.

Recommendation XIV. (3): BIA Division of Transportation should adopt a policy that establishes a deadline for Tribes to make notification of which selection of funding mechanisms the Tribe has selected to implement their transportation programs. A deadline of June 1st was suggested in the 2012 Report.

1. Indian Affairs Offices' Poor Recordkeeping and Coordination Threaten Impact of Tiwahe Initiative” Report No. 2017-ER-018 [↑](#footnote-ref-1)
2. Indian Affairs Offices' Poor Recordkeeping and Coordination Threaten Impact of Tiwahe Initiative” Report No. 2017-ER-018 [↑](#footnote-ref-2)
3. 2020 Greenbook (page IA-TG-3) [↑](#footnote-ref-3)
4. The Tribal Budget System- Preliminary Assessment of Most Needy Small Tribes. (Page 10) [↑](#footnote-ref-4)
5. The Tribal Budget System- Preliminary Assessment of Most Needy Small Tribes. (Page 12) [↑](#footnote-ref-5)
6. Webinar presentation by Babette Howe, Program Manager Division of Human Servies, OIS December 2016 [↑](#footnote-ref-6)
7. Indian Affairs Offices' Poor Recordkeeping and Coordination Threaten Impact of Tiwahe Initiative” Report No. 2017-ER-018 [↑](#footnote-ref-7)
8. Bureau of Indian Affairs- Office of Justice Services, (TLOA) Report to Congress on Spending, Staffing and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, September 12, 2017 [↑](#footnote-ref-8)
9. Bureau of Indian Affairs- Office of Justice Services, (TLOA) Report to Congress on Spending, Staffing and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, September 12, 2017 [↑](#footnote-ref-9)
10. 25 CFR Part 900, Subpart H: Section 900.70 [↑](#footnote-ref-10)
11. GAO-17-423 Tribal Transportation Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies [↑](#footnote-ref-11)
12. GAO-17-423 Tribal Transportation Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies (page 48)

 [↑](#footnote-ref-12)
13. GAO-17-423 (page 49) [↑](#footnote-ref-13)