



Indian Health Service Tribal Self-Governance Program

Negotiations Handbook

A reference for Indian Self-Determination and Education Assistance Act Title V Negotiations

Updated Fiscal Year 2022

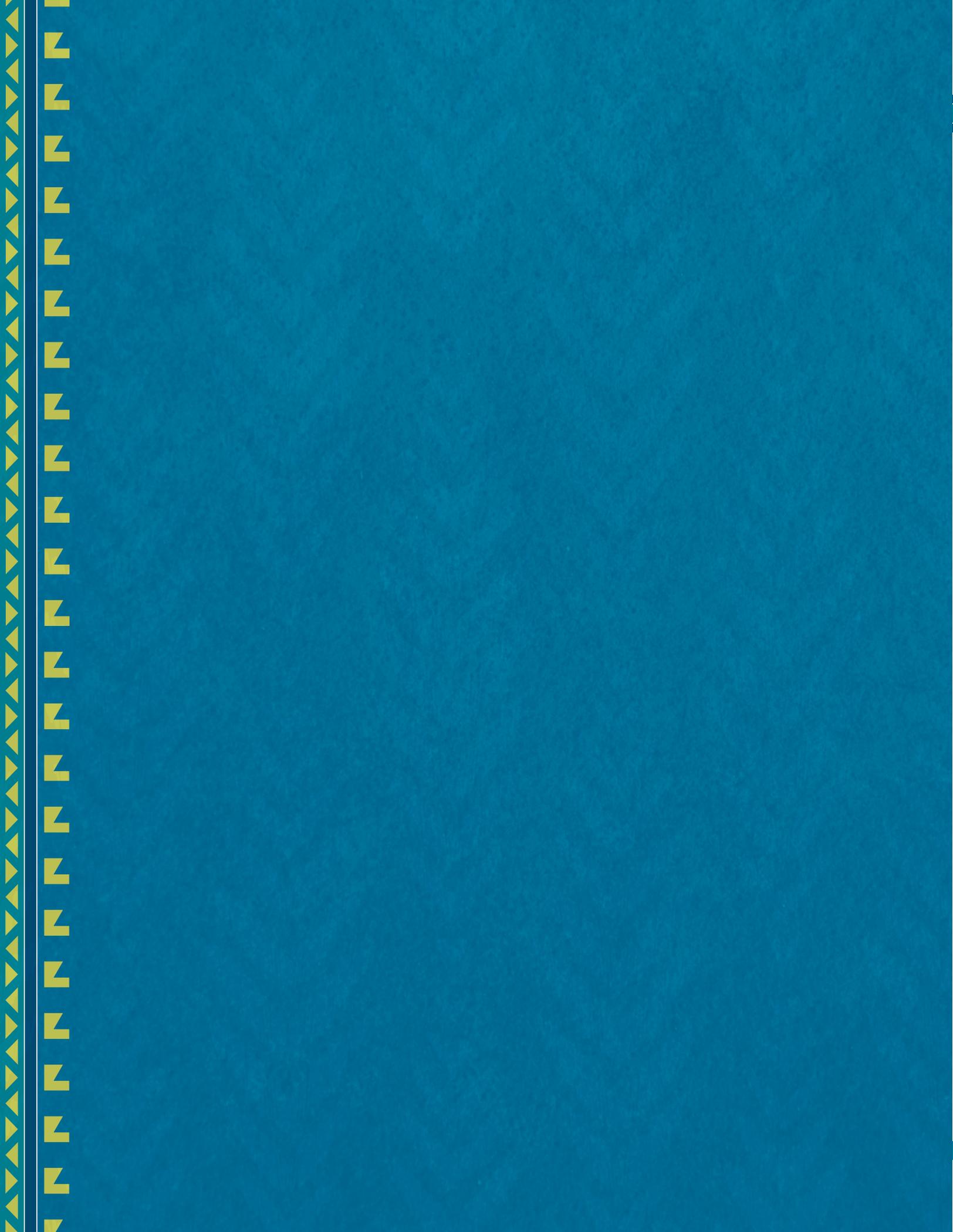
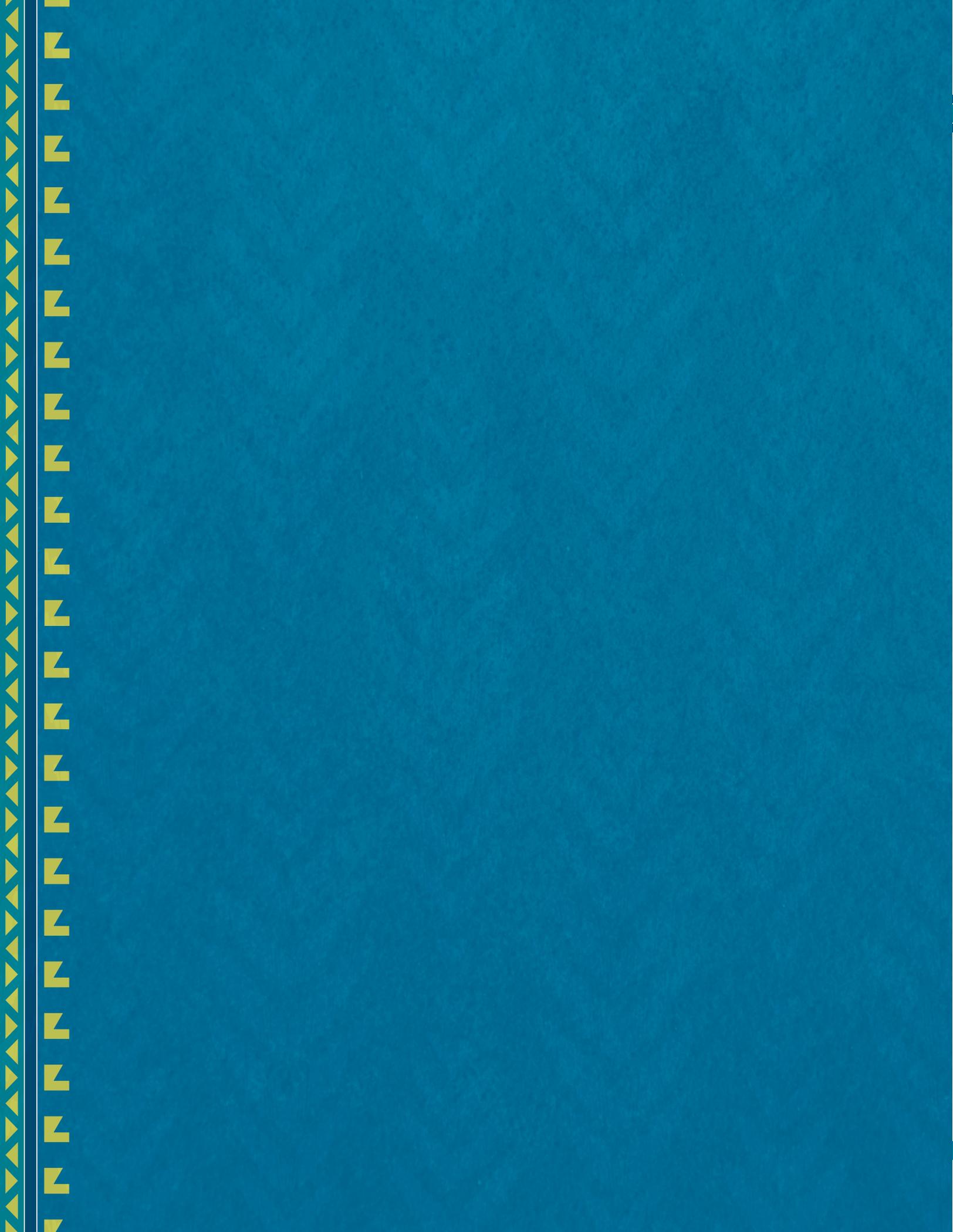


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Introduction

Purpose of the IHS Tribal Self-Governance Program Negotiations Handbook

This handbook was originally developed in March 2002 to provide new and existing self-governance Tribes and Indian Health Service (IHS) staff with a practical, user-friendly guide to negotiation of IHS Title V Self-Governance compacts and Funding Agreements. The handbook has been updated to reflect the many legal and policy changes that have taken place since its initial publication, including the permanent reauthorization of the Indian Health Care Improvement Act (IHCA) as part of the Patient Protection and Affordable Care Act of 2010 (ACA) (Pub. L. No. 111-148).

In 2020, the handbook was further updated upon the recommendation of a joint Tribal/Federal workgroup appointed by the IHS Tribal Self-Governance Advisory Committee (TSGAC). This joint workgroup developed recommendations to the TSGAC and IHS to address and incorporate shared principles for negotiations; create measurements for negotiation best practices; more clearly define negotiations roles for Tribal and Agency Lead Negotiators (ALN), Office of Tribal Self-Governance (OTSG), legal representatives and other subject matter experts; and provide additional clarification based on the continued growth and experience in implementation of the Tribal Self-Governance Program (TSGP) in IHS.

The handbook is an informational resource, combining policies, procedures, and material from several sources. It neither represents nor replaces any formal position of the IHS. Rather, it is intended to serve as a general reference tool for Tribal leaders and staff, IHS representatives, ALNs, and others on the IHS TSGP and the negotiation process.

For specific information on the legislation and regulations governing the IHS TSGP, please see Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 5381, et seq., and the accompanying ISDEAA regulations, 42 C.F.R. Part 137.

Questions, concerns, or comments regarding this handbook should be directed to: Director, Office of Tribal Self-Governance Indian Health Service, 5600 Fishers Lane, Mail Stop 08E05C, Rockville, MD 20857

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What Is the IHS Tribal Self-Governance Program?

The TSGP is more than an IHS program; it is an expression of the sovereign nation-to-nation relationship between the United States and each Indian Tribe. Through the TSGP, Tribes have the option to assume IHS program funds and manage them to best fit the needs of their respective Tribal communities. Tribes participating in the TSGP negotiate with the IHS and take on full funding, control, and accountability for those programs, services, functions, and activities (PSFAs), or portions thereof, that the Tribe chooses to assume.

Participation in the TSGP is one of three ways that Tribes can choose to obtain health care from the Federal government for their members. Specifically, Tribes can choose to:



These options are not exclusive; Tribes may choose to combine them based on their individual needs and circumstances. Participation in the TSGP affords Tribes the most flexibility to tailor health care services to the needs of their communities.

The TSGP has always been and remains a tribally driven initiative, and strong Federal-Tribal partnerships have been critical to the program's success. Tribal leaders and representatives have been involved in every stage of the TSGP's development and implementation.

The OTSG serves as the primary liaison and advocate for Tribes participating in the TSGP. The OTSG was established to implement Tribal Self-Governance legislation and authorities in the IHS, beginning with the IHS Tribal Self-Governance Feasibility Study authorized in 1991. The OTSG develops, directs, and implements Tribal Self-Governance policies and procedures; provides information and technical assistance to self-governance Tribes; and advises the IHS Director on Agency compliance with TSGP policies, regulations, and guidelines.

Tribal Sovereignty and the Nation-to-Nation Relationship

American Indian and Alaska Native peoples exercised their inherent rights to self-determination and self-governance long before the arrival of the non-indigenous peoples to the Americas. Later, the United States government recognized in the United States Constitution that Tribes are distinct political entities. Hundreds of treaties, Federal laws, and court cases have also reaffirmed that Indian nations retain their inherent right to govern themselves and their territories subject only to limitations imposed by Federal law. This is known as Tribal sovereignty. The United States Supreme Court has held that Tribes maintain their sovereignty unless a Federal statute specifically removes that authority.

Tribal sovereignty includes the inherent right to govern and protect the health, safety, and welfare of Tribal citizens. Tribal governments exercise their inherent rights through many means, including determining citizenship, establishing civil and criminal laws, developing and implementing regulations, and delivering services. Tribal governments are responsible for providing a wide range of activities and services, such as education, law enforcement, environmental protection, health care, and basic infrastructure.

American Indians and Alaska Natives are citizens of sovereign Tribal nations that have a legal and political relationship with the United States government. The nation-to-nation relationship between Tribal governments and the United States government has existed since the formation of the United States. This relationship has a strong historical foundation recognized in the United States Constitution, treaties, Federal statutes, case law, executive orders, and administrative policies. Presidential administrations continue to reaffirm the nation-to-nation relationship between Tribal governments and the United States. All Federal agencies interact with Tribes as governments, not as special interest groups or individuals. This sovereign relationship is the foundation on which the Tribal Self-Governance program has been built.

History of the IHS Tribal Self-Governance Program

In 1975, the ISDEAA (Pub. L. No. 93-638) was signed into law. The ISDEAA reaffirmed congressional support of the nation-to-nation relationship between the United States and each Tribal nation. The ISDEAA was enacted to ensure “effective and meaningful participation by the Indian people in the planning, conduct, and administration” of Federal services and programs provided to the Tribes and their members, see 25 U.S.C. § 5302(b). It provided Tribes with the option to exercise their sovereignty by either (1) assuming the administration and operation of PSFAs from the IHS or (2) continuing to receive health care through the IHS-administered, direct-care health system.

History of the IHS Tribal Self-Governance Program – continued

Following the passage of the ISDEAA, Tribes continued to advocate for increased autonomy in the administration of their health care programs. The ISDEAA was revised substantially in 1988 to “remove many of the administrative and practical barriers that [persisted] under the Indian Self-Determination Act” (Senate Report 100-274) and was comprehensively amended in 1994. In 1996, Tribal leaders and representatives participated with Federal agencies in a negotiated rulemaking process that resulted in a Final Rule to implement the program now known as Title I Self-Determination Contracting, see 61 FR 32482-534.

The 1988 amendments authorized the initial Self-Governance Demonstration Project (Pub. L. No. 100-472) within the Department of the Interior (DOI). Following the success of the DOI Self-Governance Demonstration Project, Congress extended the same authority to the IHS through the Indian Health Amendments of 1992 (Pub. L. No. 102-573). The first IHS Demonstration Project agreements were signed on September 30, 1993. In 1994 the IHS Tribal Self-Governance Demonstration Project was extended to 18 years, with authority to add 30 Tribes per fiscal year (Pub. L. No. 103-435). In 1996, the Tribal Self-Governance Advisory Committee (TSGAC) was created to provide advice to the Director of IHS and assistance on issues and concerns pertaining to Tribal Self-Governance and the implementation of the self-governance authority within the IHS.

In 2000, Congress enacted permanent authority for the IHS Tribal Self-Governance Program under Pub. L. No. 106-260, the Tribal Self-Governance Amendments of 2000 (Title V). This legislation required that regulations implementing the TSGP be developed through negotiated rulemaking. The IHS promulgated the regulations implementing the TSGP in the Federal Register on May 17, 2002, published at 42 C.F.R. Part 137.

In 2010, Congress passed the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148. The ACA contained several Indian-specific provisions and reforms that have positively affected many American Indians and Alaska Natives. The ACA also permanently reauthorized, revised, and expanded the Indian Health Care Improvement Act (IHCA), including new authorities for Tribes participating in the TSGP.

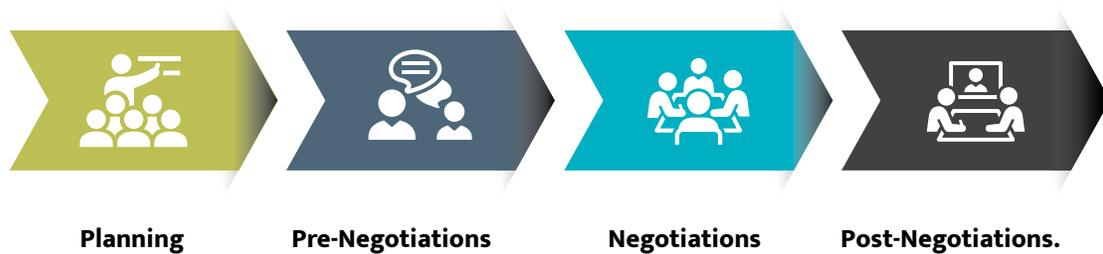
The IHS TSGP has grown dramatically since the execution of the initial 14 compacts and funding agreements in 1993. In Fiscal Year 2021, IHS transferred approximately \$2.6 billion of the total IHS budget appropriation to Tribes and Tribal organizations, located in all 12 IHS Areas, to support 105 ISDEAA self-governance compacts and 131 funding agreements.

The TSGP has proven to have a significant positive impact on the health and well-being of participating Tribal communities. The TSGP produces results because Tribal communities are in the best position to understand and address their own health care needs and priorities. Through the TSGP, Tribes continue to develop innovative solutions to provide and expand health care services and address health care delivery challenges facing their communities.

Negotiation Overview

The Indian Health Service (IHS) Tribal Self-Governance Program (TSGP) negotiation process was first developed by a workgroup composed of both IHS and Tribal representatives and was published as the Title III Transition Team Report in 1996. The Tribal Self Governance Advisory Committee (TSGAC) reviewed and suggested amendments to the report, which assisted in the development and eventual promulgation of the Indian-Self Determination Education Assistance Act (ISDEAA) Title V regulations in May 2002.

The efforts of the workgroup and TSGAC resulted in a collaborative process for entering the TSGP that has four major stages: Planning, Pre-Negotiations, Negotiations, and Post-Negotiations.



The design of the negotiation process:

1. Allows a Tribe to set its own priorities when assuming responsibility for IHS Programs, Services, Functions, and Activities (PSFAs).
2. Observes the government-to-government relationship between the United States and each Tribe.
3. Involves the active participation of both Tribal and IHS representatives, including the Office of Tribal Self-Governance (OTSG).

In July 2019, the TSGAC appointed a joint Tribal/Federal Negotiations Sub-group to review this Negotiation Guidance and, based on past experience and expertise, develop recommendations to outline a consistent framework and path toward successful negotiations.

Negotiations are the method of determining and agreeing upon terms and provisions of a Tribe’s compact and Funding Agreement (FA), the documents required to enter the TSGP. Upon execution of the compact and FA, the negotiating Tribe becomes a “self-governance Tribe” and a participant in the TSGP.

Negotiations are a dynamic, evolving, and tribally driven process that requires careful planning and preparation by both parties, including the sharing of precise, up-to-date information, as it is made available. Because each Tribal situation is unique, a Tribe’s successful transition into the TSGP requires focused discussions between the Federal and Tribal negotiation teams about the Tribe’s specific health care concerns and plans.



Planning & Eligibility

Mandatory Planning Phase Components

- Legal and budgetary research.
- Internal Tribal government planning and organizational preparation relating to the administration of health care programs.
- Completion to the satisfaction of the Tribe.

Planning & Cooperative Agreements

- OTSG offers a planning cooperative agreement to Tribes to defray costs for planning.
- Receipt of a cooperative agreement is not a requirement for participation in the Self-Governance Program.

To determine **eligibility**, a Tribe or Tribal Organization must:

1. Complete a Planning Phase.
2. Request participation in the IHS Tribal Self-Governance Program by official Tribal action of each Tribe involved.
3. Demonstrate three (3) years of Financial Stability and Financial Management Capability.



Pre-Negotiations

Upon receipt of TSGP eligibility determination from OTSG, the Tribe shall notify their Agency Lead Negotiator (ALN), at a minimum, in writing regarding its intent to proceed with negotiation.

Consistent with the Guiding Principles, both parties should work towards setting shared goals at the outset of the process. During pre-negotiations the teams review and discuss issues identified during the planning phase.

1. A draft compact and Funding Agreement (FA) are produced, typically by the Tribe and distributed to the ALN.
2. Funding tables and Contract Support Costs (CSC) template can be produced by the Tribe, ALN, or collaboratively.
3. Review and discussion of the draft compact, FA, and funding table .

Pre-negotiation may take the form of a formal meeting or a series of informal meetings or conference calls.

NOTE: THIS CHART IS INTENDED TO PROVIDE A GENERAL OVERVIEW OF THE PROCESS AND DOES NOT ADDRESS EVERY SITUATION.



Negotiations

During final negotiations Tribal and Federal negotiation teams work together to determine and agree on the terms of the Tribe's Compact and FA. The Federal team is led by the Agency Lead Negotiator. The ALN is the only Federal team member with the authority to negotiate on behalf of the IHS Director. Negotiations are an opportunity to mutually review and discuss program, operational policy, and budget issues related to the transfer of PSFAs. All parties will work in good faith to adhere to established timeframes, to transmit and share information within the identified timeframes, to honor, within his or her authority, agreements reached and to prepare all required documents for finalization.

Post-Negotiations

Following the completion of negotiations, there are two critical steps:

Document Processing & Payment

1. Two copies of the Compact and FA are signed by the authorizing Tribal official and submitted to the ALN.
2. Upon receipt of the final package the ALN reviews the documents to ensure they reflect what was agreed to during negotiations, packages and sends to the OTSG Director for review and preparation for signature by the IHS Director .
3. IHS Director, or designee, signs the Compact and the FA.
4. With a signed agreement in place, the payment process may begin.

Tribal Operations

Program Redesign

- Tribes may redesign or consolidate PSFAs and reallocate or redirect funding without IHS approval.

Records

- The Tribe is required to keep and provide records as required by regulations .

Performance Monitoring

- In TSGP, there is no routine performance monitoring



Disputes

Disputes regarding an awarding official's decision relating to a self-determination contract are subject to the provisions of Subpart P of the Title V regulations and section 110 of the Indian Self-Determination and Education Assistance Act, as amended.

For the purpose of section 110 of the Act, the term "contract" includes compact, funding agreements, and construction project agreements entered into under Title V.

Guiding Principles for IHS Tribal Self-Governance Negotiations

In order for negotiations to be successful, each participant must make a commitment to achieving shared goals at the outset of the process. Representatives from the Indian Health Service (IHS), Tribes, and Tribal Organizations jointly developed the following Guiding Principles. The purpose of the Guiding Principles is to create a set of shared principles that negotiation participants exercise throughout the negotiation process. These guiding principles do not alter any statutory or regulatory requirements or remedies. This list is not intended to be exhaustive. Additional principles or unique practices may be jointly agreed to and observed depending on negotiation participant needs, IHS Area capacity, and specific Tribal distinction.

Government-to-Government Relationship – Consistent with the Indian Self-Determination and Education Assistance Act (ISDEAA), negotiations are built on the government-to-government relationship between the Federal government and the Tribe and Tribal organization.

Respect for All Participants and Process – All Tribal and IHS representatives will be prepared and ready to participate in the negotiations through the designated lead Tribal negotiator(s) or the IHS ALN. General framework to guide the process will be jointly agreed upon. Either side may call for a caucus as needed to address issues that may arise during the negotiations.

Access to Information – All parties will disseminate, to the greatest extent practicable, requested information that is necessary for decision making in a timely manner. The lead Tribal negotiator(s) and the ALN will communicate as needed to ensure that documents are tracked and shared with the appropriate parties within the timeframes that are identified during the negotiations.

Communication and Commitment – All parties will communicate in an open and transparent manner and will actively listen and attempt to understand each side’s position. Commitments to fulfill any requests for additional information or follow-up items will be provided in a timely manner, to the greatest extent practicable. Each party will make a good faith effort to honor, within his or her authority, all agreements made during the negotiations.

Collaboration – To the fullest extent possible, the Tribe or Tribal Organization and IHS will work toward a collaborative approach and propose solutions and/or language that will meet the interests of both parties, when possible.

Negotiation Documents

There are at least two key documents produced through TSGP negotiations: a compact and an FA. Both documents are required to participate in the TSGP. They are mutually negotiated agreements which become legally binding and mutually enforceable after both parties sign the documents. Either document can be renegotiated upon request by either party.

Compact – A self-governance compact is a legally binding and mutually enforceable written agreement that affirms the government-to-government relationship between a self-governance Tribe and the United States. The compact is executed before or at the same time as an FA.

Funding Agreement – The FA (1) describes the length of the agreement (whether it will be annual or multi-year); (2) identifies the PSFAs, or portions thereof, that the Tribe will assume; (3) specifies the amount of funding being transferred by IHS; and (4) includes terms required by Federal statute and other terms agreed to by both parties.

A Tribe may choose not to renegotiate its FA, even at the conclusion of its specified term. Funding Agreements remain in effect until a subsequent FA is executed, absent notification from the Tribe that it is withdrawing from the TSGP or retroceding the operation of one or more PSFAs to the IHS, 25 U.S.C. § 5385(e).

Normally, Tribes produce a draft compact and FA, and both negotiating parties use the draft agreements as the basis for discussions. Unlike the ISDEAA Title I Model Contract, there is no model self-governance compact (though the ISDEAA does require some mandatory terms); each compact and FA is drafted to meet the needs of the individual Tribal community. Because every Tribe is different, provisions from one compact or FA may not work in another.

However, copies of another Tribe's existing agreements may be useful for reference. Current self-governance Tribes are often willing to share their documents with other Tribes. Tribes are encouraged to first make their request directly to another Tribe. The OTSG and the ALNs can help to make appropriate referrals to Tribes in the same IHS Area or in similar situations (of a similar size, for example). Tribes may also request copies of existing compacts from the IHS through a Freedom of Information Act (FOIA) request.

Important Terms

Tribal Shares – When a Tribe assumes a PSFA, or portion thereof, the funding associated with that PSFA is called the “Tribal share.” As defined in Title V, “The term ‘Tribal share’ means an Indian Tribe’s portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions,” 25 U.S.C. § 5381(a)(8).

The Headquarters PSFA Manual includes the funding formulas used for distribution of Headquarters Tribal shares. Generally, these formulas fall into two categories: (1) program formula funds based on workload or (2) the Tribal Size Adjustment (TSA) Formula. For those Headquarters programs that are distributed using a program formula (mostly Environmental Health and Engineering), the factors and criteria used for those various formulas are noted throughout the Headquarters PSFA Manual. In general terms, the TSA Formula attributes shares to local programs in proportion to user counts plus a modest sliding scale increment to small Tribes of less than 2,500 users. The IHS adopted the TSA formula in 1996, following Tribal consultation. Shares are proportionately adjusted to include annual budget increases, or any budget decreases specified by Congress.

Residual Amounts – The Residual is the funding associated with inherent Federal functions. Inherent Federal functions are those functions which cannot legally be delegated to Tribes. Though the terms are often used interchangeably, residual refers to the funding associated with inherent Federal functions, not the functions themselves.

In 1995, the IHS rendered a decision regarding the identification of IHS Headquarters residual functions and the associated funding amounts. Since that time, the Headquarters residual amount and associated Headquarters-managed programs have been identified in the Headquarters budget breakdown table. These amounts have been adjusted annually to incorporate pay costs for Federal employees.

Each Area has its own process for identifying the Area residual. The identification of Area-level inherent Federal functions may be the subject of discussion between the Tribe and the Area.

Note: Other funds may be unavailable for Tribal shares due to prior commitments or legislative restrictions, for example, where the law does not provide for Tribal award, the continuation of congressional earmarks, contract obligations, or court orders.

Stable Base Budgets – Section 505(g) of Title V of the ISDEAA provides Tribes with the option for stable base funding: At the option of an Indian Tribe, a FA may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under Section 106(a)) to be transferred to such Indian Tribe, for such period as may be specified in the FA, subject to annual adjustment only to reflect changes in congressional appropriations by sub-activity excluding earmarks. 25 U.S.C. § 5385(g).

The Tribe may specify in its FA that the effective period of the stable base budget will be either longer or shorter than the term of the FA, 42 C.F.R. § 137.124. The regulations also provide additional guidance regarding stable base funding at 42 C.F.R. §§ 137.120-124.

Inclusion of Statutorily Mandated Grants – In addition to Tribal shares, Title V provides that a statutorily mandated grant may be added to the FA after the grant has been awarded, 25 U.S.C. § 5385(b)(2). Grant funds added to an FA will be provided as an annual lump sum advance payment, 42 C.F.R. § 137.65. However, funds from a statutorily mandated grant may not be reallocated and the program may not be redesigned, unless it is permitted under the authorizing statute or the terms and conditions of the grant award, 42 C.F.R. §§ 137.68-69. Statutorily mandated grants may also impose additional reporting requirements, as described in the terms and conditions of the grant award, 42 C.F.R. § 137.70. Tribes and their employees carrying out statutorily mandated grant programs added to an FA are covered by the Federal Tort Claims Act, 42 C.F.R. § 137.72. The Title V regulations governing statutorily mandated grants can be found at 42 C.F.R. §§ 137.60-73.

Retained PSFA – Retained PSFAs and associated Tribal shares means those PSFAs and funds that are available, but which the Self-Governance Tribe elects to leave with the IHS to administer.

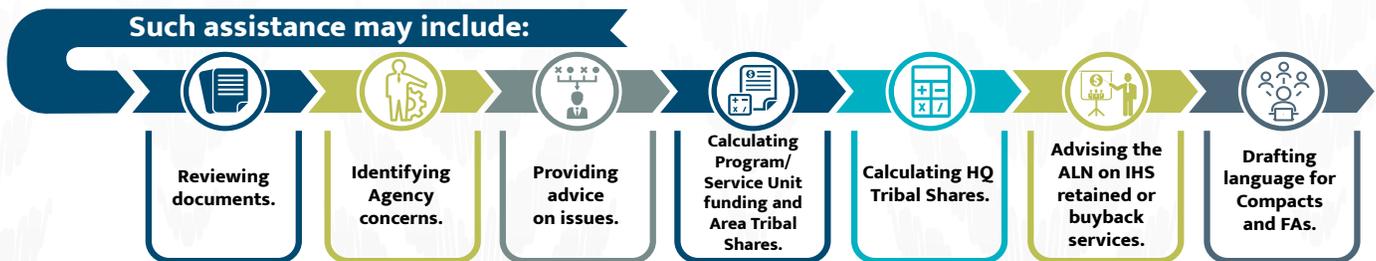
Roles and Responsibilities

TSGP negotiations bring both Tribal and Federal teams to the table under a government-to-government relationship. One of the hallmarks of the TSGP is the collaborative nature of the negotiation process. As noted in the Guiding Principles, in order for negotiations to be successful, each participant must make a commitment to achieving shared goals at the outset of the process. While all participants have a role in the process, the adoption of shared protocols at the outset of negotiations will help guide the negotiation process and provide for a clearer understanding of participants’ respective roles and responsibilities. The following section briefly outlines the roles and responsibilities of the various entities involved throughout the process.

Tribal Governments (Leaders) – A Tribal government selects its representatives for negotiations. The Tribal team may include a Tribal leader from the governing body, a Tribal health director, technical and program staff, legal counsel, and other consultants. Regardless of the composition of the Tribal team, Tribal representatives must have decision making authority to successfully negotiate and agree to the agreements’ provisions.

Agency Lead Negotiators (ALNs) – The IHS Director has delegated authority to the ALNs to represent the IHS Director during negotiations. Only the ALN has the delegated authority to negotiate on behalf of the IHS Director. The ALNs also provide Tribes with self-governance information, assist Tribes in self-governance planning, coordinate meetings between Tribes and the IHS during the negotiation process, and coordinate the Agency’s response to Tribal questions. ALNs work closely with OTSG to ensure application of negotiation principles while balancing unique Area differences and share negotiation best practices across Areas.

The ALN role requires detailed knowledge of IHS, awareness of current policy and practice, and understanding of the rights and authorities available to a Tribe under Title V of the ISDEAA. ALNs perform negotiation duties in addition to other full-time jobs. As necessary, ALNs work closely with OTSG and receive assistance from other Area or Headquarters staff prior to and during negotiations, including staff from the IHS Office of Finance and Accounting (OFA) and the Office of the General Counsel (OGC).



IHS staff must be available to assist ALNs as necessary to increase the speed and accuracy with which ISDEAA agreements are negotiated.

Office of Tribal Self-Governance (OTSG) – The OTSG develops, directs, and implements TSGP policies and procedures authorized under Title V of the ISDEAA and, along with other IHS staff and ALNs, serves as an advocate for self-governance Tribes within the IHS. OTSG is responsible for coordinating with ALNs regarding implementation of Title V consistent with the ISDEAA legislation and regulations. Specifically, OTSG staff includes an Office Director; a Deputy Director; Financial Analysts who process payments to self-governance Tribes, carry out OTSG budget activities, and review audits to determine eligibility; Program Analysts who assist the ALNs in the negotiating and processing of self-governance compacts and FAs; Policy Analysts who develop, review, and comment on policies, procedures, and proposed rulemaking that may affect the TSGP and self-governance Tribes; and administrative staff. All staff members provide advice and recommendations to the OTSG Director and OTSG Deputy Director.

Office of Finance and Accounting (OFA) – The OFA is responsible for the timely preparation of the annual Headquarters financial tables needed for negotiations. Additionally, the OFA provides information to the ALNs, as requested, on issues that may arise during the negotiations. Note: Area Tribal shares tables are produced by the Area finance office or the ALNs.

Office of the General Counsel (OGC) – The OGC is located within the Office of the Secretary, HHS. The OGC's role during self-governance negotiations is to provide legal counsel to the IHS.

Tribal Self-Governance Advisory Committee (TSGAC) – The TSGAC plays no direct role in individual TSGP negotiations. The committee advocates for self-governance Tribes, suggests policy guidance on the implementation of the TSGP, and advises the IHS Director on issues of concern to all self-governance Tribes. The TSGAC consists of tribally elected officials representing a cross section of self-governance Tribes. One delegate and one alternate are nominated by each Area Director to represent the views and issues of the Area's self-governance Tribes. The IHS Director selects the representatives and formally appoints them to the TSGAC. The TSGAC is supported by a technical workgroup comprised of Tribal and Federal representatives. The TSGAC members confer, discuss, and reach consensus on specific self-governance issues and provide verbal and written advice about self-governance issues to the IHS Director and the OTSG Director. As a result of active participation by TSGAC members, the committee advances self-governance objectives within the IHS by providing advice and input before final decisions on policy issues are made.

Determining Eligibility to Enter the IHS TSGP

Title V of the ISDEAA requires that a Tribe or Tribal Organization meet three eligibility criteria to participate in the TSGP, including completion of a planning phase. Specifically, the Tribe or Tribal Organization must:



A Tribe may also choose to authorize another Tribe, an inter-Tribal consortium, or a Tribal Organization to plan for or carry out PSFAs (or portions thereof) on its behalf (*see* 25 U.S.C. § 5381(b)). For additional information on eligibility for the TSGP, please see Section 503 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5383, and the accompanying regulations found at 42 C.F.R. §§ 137.15-26.

Step 1: The Planning Phase

The planning phase shall be conducted to the satisfaction of the Indian Tribe and shall include legal and budgetary research and internal Tribal government planning and organizational preparation relating to the administration of health care programs, *see* 25 U.S.C. § 5383(c)(1)(A). In general, the planning phase helps Tribes to make informed decisions about which PSFAs, or portions thereof, to assume and what organizational changes will be necessary to support the assumption of those PSFAs.

Available information will be shared in a timely manner in order to assist the Tribe in its deliberations and to assist the Tribe in ensuring it has adequate information to make informed decisions. A thorough planning phase helps to identify issues in advance and ensures that the Tribe is prepared for the transfer of IHS PSFAs to the Tribal health program. The ultimate goal of the planning stage is to ensure that the Tribe is aware of the responsibility involved in assuming IHS PSFAs.

During the Planning phase, the IHS is responsible for:

- » Providing descriptions of PSFAs and associated funding at all levels, including funding formulas or methodologies related to determining Tribal shares.
- » Meeting with the Tribe to provide program information and discuss the methods currently used to manage and deliver health care.
- » Responding to Tribal requests for workload and operational data on specific PSFAs.
- » Sharing information related to the use of Intergovernmental Personnel Act (IPAs) assignments to retain civil service and Memorandums of Agreement (MOAs) to retain Commissioned Corps personnel.
- » Identifying the statutes, regulations, and policies that provide authority for administering IHS programs.
- » Providing technical assistance on the IHS budget, Tribal shares, and other topics as needed.

Planning Cooperative Agreement – Planning activities also result in some costs to the Tribe. To help defray these costs, the IHS OTSG offers a Planning Cooperative Agreement for Tribes new to the TSGP and those considering assuming new or expanded PSFAs.

Announcements are made through a Federal Register Notice, the [Grants.gov](http://www.grants.gov) website (<http://www.grants.gov>) and the OTSG website (<http://www.ihs.gov/selfgovernance>). The announcement contains information on the number of agreements available, how to apply, deadlines, requirements, and scoring criteria.

Tribes are not required to receive a Planning Cooperative Agreement to participate in the TSGP. A Tribe or Tribal Organization may use its own resources to meet the planning requirement. It is also important to note that engaging in self-governance planning in no way obligates a Tribe to enter into the TSGP, even if the Tribe has received a Planning Cooperative Agreement. As a result of the planning phase, a Tribe may elect to delay participation or not participate at all.

Step 2: Request Participation in the IHS TSGP

Once the Tribe has completed the planning phase to the Tribe's satisfaction, the Tribe may submit the necessary documents to OTSG to request a review and determination of eligibility to enter the TSGP. The Tribe must request participation in self-governance by submitting to OTSG a Tribal resolution or other official action by the governing body of each Tribe involved.

Step 3: Demonstrate Three Years of Financial Stability and Financial Management Capability

Once OTSG receives the Tribal resolution(s), the OTSG will review the Tribe's most recent three years of financial audits of the Tribe's Self-Determination Contracts or Self-Governance Funding Agreement with any Federal

Agency to assess the demonstration of financial stability and financial management capability. If the Tribe's financial audits demonstrate no uncorrected significant and material audit exceptions, then the OTSG will notify the Tribe by letter that the Tribe is eligible to participate in the IHS TSGP and the Tribe may proceed to negotiate an ISDEAA Title V compact and FA.

IHS Programs, Services, Functions, and Activities (PSFAs) Information

Title V agreements may include any IHS PSFAs, or portions thereof, that are available for Tribal assumption. For Headquarters PSFAs, this information is contained in the Indian Health Services Headquarters Programs, Services, Functions, and Activities Manual (https://www.ihs.gov/sites/selfgovernance/themes/responsive2017/display_objects/documents/2002-PSFA-Manual.pdf). The PSFA Manual was originally published in May 1997 and last revised in June 2002. It identifies all the HQ PSFAs by budget line item. It also identifies which PSFAs are available for Tribal assumption and, if not available, why such funds are restricted.

The PSFA Manual provides valuable guidance as Tribes make their individual decisions on which Headquarters PSFAs to leave with the IHS (known as retained services) and which to assume. Because many programs have changed since the PSFA Manual was last updated, Tribes may want to confer with the relevant program offices regarding the full range of PSFAs currently performed. The ALN can either facilitate a meeting or teleconference with IHS program staff or coordinate written responses to Tribal questions.

Working with program staff can be important to clarify which PSFAs correspond with particular line items so that the Tribe does not inadvertently assume PSFAs it intended to leave as a retained service with the Agency.

At the Area level, Area Tribal shares Tables provide a breakdown of Area office PSFAs. These tables are used as allocation tables for the distribution of Area Tribal shares. At this time, there is not a single format used by each Area Office depicting the Area Tribal shares allocations. Some IHS Areas have developed Area PSFA manuals, which may contain documentation of available PSFAs, identification of inherent Federal functions, and the associated residual funding. If available, Area PSFA Manuals may be obtained by contacting the appropriate ALN.

Negotiation Stages

The TSGP that has four major stages:

1. Planning: Negotiation Cooperative Agreement
2. Pre-Negotiations
3. Negotiations
4. Post-Negotiations

Planning: Negotiation Cooperative Agreement

The development and negotiation of a compact and FA result in some costs to the Tribe. To help defray these costs, the IHS OTSG offers a Negotiation Cooperative Agreement for eligible Tribes new to the TSGP and those considering assuming new or expanded PSFAs. Announcements are made through a Federal Register Notice, the Grants.gov website (<http://www.grants.gov>) and the OTSG website (<http://www.ihs.gov/selfgovernance>). The announcement contains information on the number of agreements available, how to apply, deadlines, requirements, and scoring criteria.

Tribes are not required to receive a Negotiation Cooperative Agreement to participate in the TSGP. A Tribe may use its own resources to develop and negotiate its compact and FA. Tribes that receive Negotiation Cooperative Agreements are not obligated to participate in the TSGP or to assume the new or expanded PSFAs proposed in the Cooperative Agreement application.

Pre-Negotiations

Upon receipt of TSGP eligibility determination from OTSG, the Tribe shall notify their ALN, at a minimum, in writing regarding its intent to proceed with negotiation. If an ALN is not currently designated, the Tribe may provide notification to the OTSG. The notification may include a request for the IHS to provide funding at all IHS levels—Headquarters, Area, Program/Service Unit. Once the ALN has formally acknowledged receipt of the letter, the parties will work toward identifying mutually agreeable dates for an initial pre-negotiation meeting. Consistent with the Guiding Principles, both parties should work towards setting and achieving shared goals at the outset of the process, this should include establishing negotiation timeframes including, at a minimum, an expected conclusion date.

During pre-negotiations, the Tribal and Federal negotiation teams review and discuss the issues identified during the planning phase. During the initial meeting, the Tribe and IHS have an opportunity to establish protocols and a framework to guide the negotiations going forward. These protocols can be tailored to meet the unique needs of each Tribe and IHS Area. The Guiding Principles incorporated in this handbook may be a good starting place to establish this framework.

A draft compact and FA are produced, typically by the Tribe, and distributed to the ALN, OTSG Program Analyst, and OGC. Funding table and a Contract Support Costs (CSC) estimation table, also known as the Annual CSC Calculation (ACC) template, can be produced by the Tribe, ALN, or collaboratively. These draft documents are used as the basis for the pre- and final negotiations. After receiving the proposed documents, the parties thoroughly review the draft documents and may provide comments, recommendations, or edits to the ALN for discussion. Additionally, either party may request additional information that may be necessary to research and further analyze the documents, which may include, but is not limited to, Program/Service Unit funding, Area Tribal shares, and Headquarters Tribal shares. Pre-negotiations provide an opportunity for the Tribe and the IHS to identify and discuss issues directly related to the Tribe's compact, FA, and available IHS funding. Pre-negotiations may take the form of a formal meeting(s), a series of informal meetings or conference calls, or a combination of any of these.

Tribal Shares and Financial Information – In advance of final negotiations, the Tribe should work with IHS to secure the following information (at all IHS levels—Headquarters, Area, Program/Service Unit) in hard copy or electronic format:

- Program Title and Description
- Financial Tables and Information
 - » Recurring Program/Service Unit Base Amount
 - » Area Tribal shares Table
 - » Area Table 4F: Environmental Health and Engineering shares
 - » Payroll projections of Federal staff retained through IPAs or MOAs.
 - » Headquarters Table 1: Congressional Changes to IHS Appropriations
 - » Headquarters Table 2: Breakdown of Appropriation for Allowances to Areas and Through Headquarters (for the year being negotiated)
 - » Headquarters Table 3: Breakdown of Headquarters Allowances, Detailed Headquarters Accounts, and Categories for Tribal shares (This includes the “crosswalk” tables, wherein the previous year’s budget is “cross walked” to the upcoming or new year’s budget, showing details of changes where applicable.)
 - » Headquarters Table 4: The individual Tribal allocation tables by budget activity and detailed Headquarters accounts.
 - » Division of Information Resource Tribal shares Table
 - » Annual CSC Calculation (ACC) Tool template
- Identification of Residual
- Basis for Determining Tribal share (Distribution Formula)
- Any other available information the parties agree is necessary to conduct a comprehensive review of the compact, FA, and Tribal shares

The Tribe may request, through their ALN, subject-matter experts to present at their pre- or final negotiations to discuss the materials, as well as any questions or concerns from the Tribal negotiating team and governing authority. The Tribe may also wish to discuss financial materials that show its estimated funding for the next year, increases that it may receive in the current year and the basis for those increases, or any questions regarding funding amounts that may be lower than the previous year. Other possible issues for discussion include current- or successor-year IHS retained services or buy-backs, the status of requests from the Tribe or IHS, or new policy directives or negotiation issues from the IHS. The Tribe may request a tribal delegation meeting with Headquarters or area leadership to discuss any concerns from the Tribal negotiating team and governing authority.

Negotiations

At final negotiations, Tribal and Federal negotiation teams come together to determine and agree upon the terms and provisions of the Tribe's compact and FA. (Subsequent negotiations may amend either the compact and FA, or only the FA.) Generally, Tribes new to the TSGP prefer face-to-face negotiations, but other alternatives are available (conference calls). If the negotiations are conducted in person, it is suggested that there be at least two rooms so that each party will have privacy should negotiations require a caucus. If the negotiations are conducted via conference calls, it is suggested that there are separate call-in numbers available for respective Tribal/Federal caucuses that may be needed so that each party will have privacy.

The Tribal team may include, but is not limited to, a Tribal leader from the governing body (or a designee), the Tribal health director and technical and program staff, legal counsel, and other consultants. The Federal team is led by the ALN. The ALN is the only member of the Federal team with the authority to negotiate on behalf of the IHS Director. The Federal negotiation team generally includes an OTSG program analyst and member of the OGC, but may also include other IHS staff and subject-matter experts as needed. The ALN may request other IHS staff be available, as necessary, to assist the ALN so that final negotiations may be concluded at the table, particularly the OTSG financial analyst and staff from the OFA or the Office of Environmental Health and Engineering (OEHE). Additional participants should not impact the negotiation schedule. All financial tables and information shared during the pre-negotiation stage should be brought to final negotiation for reference.

These negotiations provide the opportunity for both sides to work together in good faith to enhance each self-governance agreement. Negotiations are an opportunity to mutually review and discuss program, operational policy, and budget issues related to transfer of PSFAs. As issues arise, the Tribal and Federal negotiation teams work through the issues to reach agreement on the final documents. At any time, the Tribal or Federal negotiation team may call a caucus to discuss issues internally. The Tribe or ALN may wish to utilize and document a list of all outstanding issues that need to be resolved and update this list throughout the negotiations as items are addressed and decisions are made on how to proceed on each specific issue.

Prior to the final negotiation or in-person pre-negotiation meetings, the tribe may consider developing a proposed agenda based on unresolved issues or outstanding items requiring lengthier discussions and technical assistance. Development of an agenda will assist both teams in anticipating the time necessary for the negotiation(s) and planning travel accordingly. On the negotiation date(s), both parties should be available the entire day. The parties may want to consider blocking multiple days for face-to-face meetings to allow enough time to complete the negotiation. This also allows a Tribe to request that IHS subject matter experts be available to participate in any portion of the negotiation process to assist in providing technical assistance as needed in developing recommended solutions on issues that may arise.

While Title V of the ISDEAA and the subsequent regulations provide the framework and legal authorities for the IHS TSGP, other policy issues and internal IHS directives and guidance can be the basis for discussion and negotiation between Tribes and the IHS. There are several options available in cases where the Tribes and IHS cannot reach resolution (discussed below under Disputes and Appeals). This handbook does not encourage a particular process or option that an individual Tribal government may wish to pursue in order to address issues

that may arise during the negotiations. It is the right and prerogative of each Tribal government to make the determination on how best to proceed based on the specific circumstances.

The Tribe and IHS both have the option to invite other individuals to observe the negotiation process for the purposes of training and educating participants in the negotiation process. Should either negotiation team plan to invite additional participants, advance notice should be provided to the other party. Participants who are not actively engaged in the negotiation should not hinder the negotiation schedule.

All parties will work in good faith to adhere to established timeframes; to transmit and share information within the identified timeframes; to honor, within his or her authority, agreements reached; and to prepare all required documents for finalization.

A Note Regarding Construction Projects

Title V Construction Projects Agreements are separate from the compact and FA and are subject to an independent proposal and review process by the Headquarters OEHE. Tribes participating in the TSGP may carry out construction projects under Title V if the Tribe agrees to assume all Federal responsibilities under the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., the National Historic Preservation Act, 16 U.S.C. § 470 et seq., and related provisions of law that would apply if the Secretary were to undertake a construction project. Subpart N of the Title V regulations, 42 C.F.R. §§ 137.270-410, provides detailed information regarding the process by which participating self-governance Tribes may agree to undertake construction projects and programs consistent with the ISDEAA.

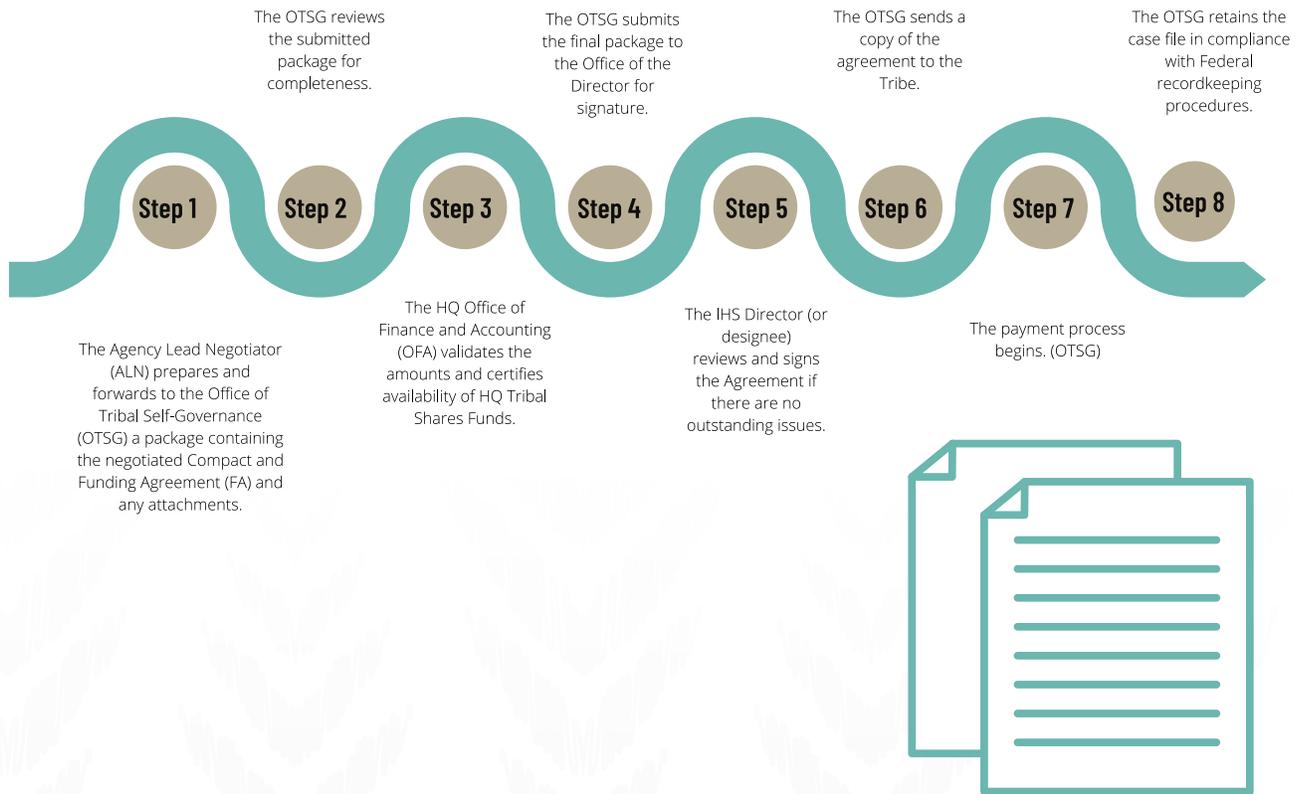
The regulations distinguish between construction projects and ongoing programs that support construction projects. The regulations set forth the process for self-governance Tribes to enter into and administer Title V Construction Project Agreements for construction projects, which may include Tribal shares of related construction programs. Alternatively, self-governance Tribes may assume construction programs (but not projects) using the compact and FA process as described above.

Post-Negotiations

Document Processing and Payment – Historically, after negotiations are complete, two copies of the compact and FA are signed by the authorizing Tribal official and submitted to the ALN. The ALN reviews the final package to ensure each document accurately reflects what was agreed to during negotiations. Once the ALN completes this review, the ALN packages the compact, FA, and all attachments and supporting documents and forwards the package to the OTSG Director.

Upon receipt of the final package sent by the ALN, the OTSG reviews the submitted compact, FA, and any attachments to prepare them for the Director's signature, and the OFA validates the amounts and certifies the availability of Headquarters Tribal shares. The final package is forwarded to the IHS Director (or a designee) for review and signature, provided that no outstanding issues delay or prevent signature. Once the Compact and FA have been signed by both parties, they become legally binding and enforceable agreements.

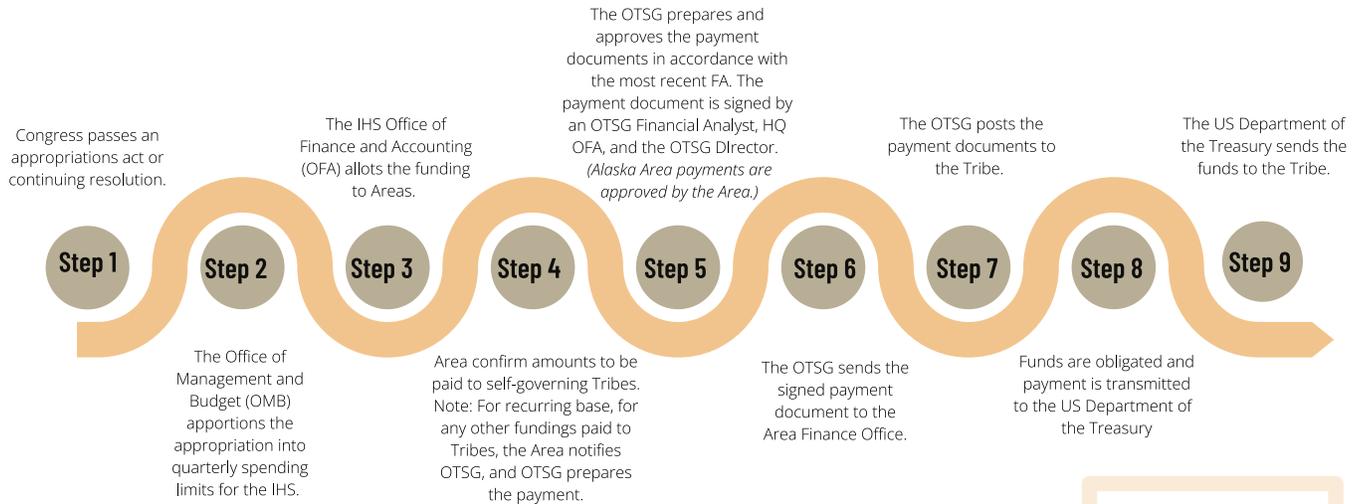
Document Processing



NOTE: THIS CHART IS INTENDED TO PROVIDE A GENERAL OVERVIEW OF THE PROCESS AND DOES NOT ADDRESS EVERY SITUATION.

Payment Processing

A signed Compact and Funding Agreement (FA) must be in place for the payment process to begin.



A signed compact and FA are necessary for the payment process to begin, but signed documents are not all that is necessary. In order for payments to be authorized, (1) Congress must pass an appropriations act or continuing resolution, (2) the Office of Management and Budget (OMB) must apportion the funding among Federal agencies, and (3) the IHS Headquarters OFA must subdivide the funding. Then the OTSG authorizes the payment documents in accordance with the most recent FA. The payment documents are signed by the OTSG financial analyst, OFA, and the OTSG director, and the payment documents are sent to the Area Finance Office and ALN, posted to the OTSG database, and sent to the Tribe. The Area Finance Office obligates the funds and transmits the payment to the US Department of the Treasury. The US Department of the Treasury then sends the funds to the Tribe's financial institution.

Negotiation Process Evaluation – If desired, following the final negotiations, the parties may meet to discuss any issues related to the negotiation process and develop possible improvements to the framework for the subsequent negotiations. Although a negotiation process evaluation is not required, it can be useful for both parties to reflect on the process in total, future opportunities, and areas for improvement. This process can be formal or informal depending on the parties' requests, but should include the ALN and the Tribal Lead negotiator at a minimum.

Tribal Operation of IHS Programs, Services, Functions, and Activities (PSFAs)

Program Redesign – In the TSGP, a Tribe may redesign or consolidate PSFAs and reallocate or redirect funding without IHS approval (in accordance with the ISDEAA). The redesign or consolidation must not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law, 25 U.S.C. § 5386(e) and 42 C.F.R. § 137.185. The IHS encourages the Tribe to negotiate amendments, as appropriate, to the FA consistent with these decisions.

Performance Monitoring – In the TSGP there is no routine performance monitoring.

Health Status Reports –The ISDEAA requires that compacts or FAs include a provision that requires the Tribe to report on health status and services delivery, 25 U.S.C. § 5387(1). These reports may only impose minimal burdens on the Tribe and will be derived from existing data elements currently collected by the Tribe, including patient demographic and workload data. Not less than 60 days prior to the start of negotiations or another mutually agreed upon timeframe, the IHS will propose a list of recommended minimal data elements, along with justification for their inclusion, to be used as a basis for negotiating these requirements, 42 C.F.R. §§ 137.200–207.

While not mandated by law, Tribes are encouraged to participate in national IHS data reporting activities such as the Government Performance Results Act, epidemiological reporting, and surveillance reporting in order to advance Indian health advocacy efforts.

Records – Unless specified otherwise in the compact or FA, the records of the Tribe are not considered Federal records for purposes of the Administrative Procedure Act, 5 U.S.C. § 500, et al. Under the ISDEAA, the Tribe is required to maintain a record-keeping system and, with 30 days advance notice, to provide access to records necessary for the Department to meet its legal recordkeeping requirements under Title 44 of the U.S. Code, §§ 3101–3106, 25 U.S.C. § 5386(d).

Amendments to the Compact and Funding Agreement – are often necessary. Amendments can be initiated by either party at any time. The need for negotiation depends on the nature of the proposed amendment. If desired, the compact and FA can provide procedures for either party to initiate amendments.

How PSFAs May be Returned to the IHS – There are three ways that PSFAs may be returned to the IHS:

1. **Retrocession:** A Tribe may partially or fully return PSFAs (or portions thereof) included in its compact or FA to the IHS, see 25 U.S.C. § 5386(f). The retrocession will become effective:

- Within the timeframe specified in the compact or FA.
- Or the earlier of:
 - » One year after the request to retrocede was submitted.
 - » The date on which the FA expires.
 - » A date mutually agreed upon by the IHS and the Tribe.

2. **Reassumption (Non-Emergency):** Compacts and FAs must include a provision authorizing the Secretary to reassume operation of a PSFA (and the associated funding) in certain circumstances 25 U.S.C. § 5387(a)(2). In order to reassume a PSFA, there must be a specific finding related to that PSFA of either:

- Imminent endangerment of the public health caused by an act or omission of the Tribe and arising out of a failure to carry out the compact or FA, or
- Gross mismanagement with respect to funds transferred to a Tribe by a compact or FA, as determined by the Secretary in consultation with the Inspector General.

The Secretary may not reassume a PSFA unless the Secretary has (1) provided the Tribe with written notice and a hearing on the record, and (2) the Tribe has not taken corrective action to remedy the imminent danger to public health or gross mismanagement.

3. **Reassumption (Emergency):** In rare circumstances, the Secretary may, upon written notification to the Tribe, immediately reassume operation of a PSFA if (1) the Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Tribe, and (2) the endangerment arises out of the Tribe's failure to carry out the compact or FA, see 25 U.S.C. § 5387(a)(2)(C). In that situation, the Secretary must provide the Tribe with a hearing on the record within 10 days of reassumption.

Disputes and Appeals

Final Offer

There may be circumstances in which the Tribe and IHS do not reach mutual resolution on issues during the negotiation process. In those situations, the ISDEAA and its regulations provide a final offer process for resolving, within a specified timeframe, disputes that may develop in negotiation of compacts and FAs, see 25 U.S.C. § 5387(b), 42 C.F.R. §§ 137.130-155.

The written final offer should be submitted either to the ALN during negotiations or to the IHS Director. The final offer must contain a description of the disagreement between the HHS Secretary and the Tribe and the Tribe's final proposal to resolve the disagreement. This document should be clearly identified as a "Final Offer."

The unresolved issues should be clearly identified and separated, if possible, from the full compact, FA, or amendment. Any uncontested portion of the compact, FA, or amendment can then continue through final processing. This diverts unresolved issues into the final offer process, allowing the remaining provisions to go into effect. Tribes should be advised that when the entire compact or FA is submitted as a final offer, it opens the entire document to the final offer process, including those portions not disputed during the negotiation process.

A default 45-day review period begins from the date that the IHS receives the final offer. If the Agency takes no action within the 45-day review period (unless a longer time period was negotiated), the final offer is accepted automatically by operation of law. The Secretary may only reject a Tribe's final offer for one of the following reasons, 25 U.S.C. § 5387(c):

- The amount of funds proposed in the final offer exceeds the applicable funding level to which the Tribe is entitled under the ISDEAA.
- The PSFA that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to a Tribe.
- The Tribe cannot carry out the PSFA in a manner that would not result in significant danger or risk to the public health.
- The Tribe is not eligible to participate in Tribal self-governance under section 503 of the ISDEAA.

To reject a final offer, the Secretary must provide written notice to the Tribe based on the criteria referenced above not more than 45 days after receipt of a final offer (unless a longer time period was negotiated). If the Secretary rejects a final offer, then the Secretary must offer and, if requested by the Tribe, provide additional technical assistance to overcome the stated grounds for rejection.

Appeals

The Tribe is entitled to appeal certain pre-award decisions of the HHS Secretary with (1) an agency hearing on the record, and (2) the right to engage in full discovery relevant to any issue raised in the matter, 42 C.F.R. § 137.146. Appealing a decision by the HHS Secretary does not place a hold on the remainder of the compact, FA, or amendment. Any provision included in the compact or FA that is not in dispute goes into effect, 42 C.F.R. §§ 137.147-48. The Title V regulations describe the process by which a Tribe may appeal certain pre-award decisions made by the HHS Secretary, see 42 C.F.R. §§ 137.415-50). The decisions that a Tribe may appeal using this process are as follows:

- A decision to reject a final offer, or a portion thereof, under Section 507(b) of the ISDEAA.
- A decision to reject a proposed amendment to a compact or FA, or a portion thereof, under Section 507(b) of the ISDEAA.
- A decision to rescind and reassume a compact or FA, in whole or in part, under Section 507(a)(2) of the ISDEAA, except for immediate reassumption under Section 507(a)(2)(C).
- A decision to reject a final construction project proposal, or a portion thereof, under Section 509(b) of the ISDEAA.
- For construction project agreements carried out under section 509 of the ISDEAA, a decision to reject project planning documents, design documents, or proposed amendments submitted by the Tribe under Section 509(f) of the ISDEAA, 42 C.F.R. § 137.415.

Formal Administrative Appeals

Tribes have 30 days to file a formal administrative appeal. Formal administrative appeals are filed with the Interior Board of Indian Appeals (IBIA), see 42 C.F.R. § 137.425. The IBIA has the authority to conduct a hearing on the record, to permit the parties to engage in full discovery, to issue a recommended decision, and to take such action as necessary to ensure the rights specified in 42 C.F.R. § 137.419. Alternatively, at its option, the Tribe has the right to challenge the Secretary's decision in Federal district court pursuant to Section 110 of the ISDEAA, 25 U.S.C. § 5331.

The procedures outlined above do not apply to any other dispute, including, but not limited to the following, see 42 C.F.R. § 137.416:

- Disputes arising under the terms of a compact, Funding Agreement or Construction Project Agreement that has been awarded.
- Disputes arising from immediate reassumption under section 507(a)(2)(C) of the ISDEAA, 25 U.S.C. § 5386(a)(2)(C) and 42 C.F.R. §§ 137.261-62, which are covered under a separate process found in 42 § C.F.R. §§ 137.440-45.

- Other post-award contract disputes, which are covered under the regulations at 25 C.F.R. § 900 et seq., see also 42 C.F.R. § 137.412.
- Denials under the Freedom of Information Act, 5 U.S.C. § 552, which may be appealed under 45 C.F.R. § 5 et seq.
- Decisions relating to the award of grants under section 503(e) of the ISDEAA, 25 U.S.C. § 5383-2(e), which may be appealed under 45 C.F.R. § 5.

Informal Conference

To request an informal conference, the Tribe must file its request with the person whose decision it is appealing within 30 days of the decision. The informal conference must be held within 30 days of the date the request was received, unless the parties agree on another date.

If possible, the informal conference will be held at the Tribe's office. If it is not possible to hold the informal conference at the Tribe's office and it is held more than 50 miles from the Tribe's office, the Secretary must arrange to pay transportation costs and per diem to allow for adequate representation for the Tribe. The informal conference is conducted by a designated representative of the HHS Secretary. Only people who are designated representatives of the Tribe or authorized by the HHS Secretary are allowed to make presentations at the informal conference.

Within 10 days of the informal conference, the person who conducted the conference must prepare and provide to the Tribe a written report summarizing the conference and recommending a decision. If the Tribe is dissatisfied with the recommended decision, it may appeal to the IBIA within 30 days of receiving the report. The Tribe may request an extension of time to file its Notice of Appeal if the Tribe needs more time. If the Tribe does not file a Notice of Appeal within 30 days (or before the expiration of its extension), the recommended decision becomes final.

For additional information on informal conferences please see the regulations at 25 C.F.R. §§ 900.153-59.

Acronyms Found in the IHS TSGP Negotiations Handbook

- ACA-Patient Protection and Affordable Care Act
- ACC-Annual Contract Support Cost Calculation, now known as CSC Negotiation Template
- ALN-Agency Lead Negotiator
- BIA-Bureau of Indian Affairs
- C.F.R.-Code of Federal Regulations
- CSC-Contract Support Costs
- DOI-US Department of the Interior
- FA-Funding Agreement
- FOIA-Freedom of Information Act
- HHS-US Department of Health and Human Services
- HQ-Headquarters
- IBIA-Interior Board of Indian Appeals
- IHCA-Indian Health Care Improvement Act
- IHS-Indian Health Service
- IPA-Intergovernmental Personnel Act Agreement
- ISDEAA-Indian Self-Determination and Education Assistance Act
- MOA-Memorandum of Agreement
- OEHE-Office of Environmental Health and Engineering
- OFA-IHS HQ Office of Finance and Accounting
- OGC-Office of the General Counsel
- OMB-Office of Management and Budget
- OTSG-Office of Tribal Self-Governance
- PSFA-Programs, Services, Functions, and Activities
- PSFA Manual-Indian Health Service Headquarters Programs, Services, Functions, and Activities Manual
- TSA-Tribal Size Adjustment
- TSGAC-Tribal Self-Governance Advisory Committee
- TSGP-Indian Health Service Tribal Self-Governance Program
- U.S.C.-United States Code



Indian Health Service Tribal Self-Governance Program

For more information, please contact:

Indian Health Service – Office of Tribal Self-Governance

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Telephone: (301) 443-7821; Fax: (301) 443-1050

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