

Overview of the Indian Self-Determination and Assistance Act and the Indian Health Service Tribal Self-Governance Program

Indian Health Service Compacts and Funding Agreements Training
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Legislative History

1988 - Tribal Self-Governance Demonstration Project (P.L. 100-472)



1992 - Self-Governance Authority Extended to IHS (P.L. 102-573)



2000 - ISDEAA Title V Statute;
2002 - ISDEAA Title V Regulations



1991 - IHS Funded to Perform Feasibility Study (P.L. 102-184)



1994 - Technical Amendments to Title III 301 and 302(a)

Amendments

2010 - ACA & IHCA



Participation in Title I and Title V

Title I:

- 225 contracts and annual funding agreements
- \$900 million transferred through Title I contracts

Title V:

- 84 compacts and 109 funding agreements
- 341 Tribes participating directly or through tribal organizations and intertribal consortia
- Title V agreements transfer \$1.7 billion, approximately one-third of the IHS appropriation.

- Combined, these agreements transfer approximately \$2.5 billion, over half the IHS appropriation.



**Common Features of ISDEAA Agreements:
Not Procurement Contracts**

- In general, Federal contracting and cooperative agreement laws (including the FAR) do not apply to ISDEAA agreements.
- Title I contracts must include the model contract included in the statute, but there are no model agreements in Title V.
 - Title V does specify a small number of mandatory terms.



**Common Features of ISDEAA Agreements:
Funds Provided**

- Tribes can contract for any IHS program, service, function, or activity (or portion thereof) that is not inherently federal or congressionally restricted (earmarked).
- The funding associated with these PSFAs includes:
 1. Funding the Secretary would have otherwise spent, plus
 2. "Contract support costs" which are an amount for the reasonable costs for activities which must be carried out by the contractor to ensure "compliance with the terms of the contract and prudent management."



**Common Features of ISDEAA Agreements:
Funds Provided (continued)**

- Funds may only be reduced in subsequent years pursuant to congressional action or tribal authorization.
- Tribes may supplement their ISDEAA funds to expand services while retaining the benefits of the ISDEAA.
- Any savings due to Tribal operation may be used to provide additional services or be expended to carry out the ISDEAA agreement in the succeeding fiscal year.



ISDEAA Title V Overview

Topic	Discussion
Program Summary	Federally recognized Tribes or Tribal organizations compact with the IHS to assume full funding and control over programs, services, functions or activities (PSFAs), or portions thereof , that the IHS would otherwise provide for Indians because of their status as Indians. 25 U.S.C. § 458aaa-3-4(b)
Eligibility	Eligibility for Title V requires that the Tribe or Tribal organization (1) successfully complete a planning phase , (2) request participation in Self-Governance by Tribal resolution or other official action by the governing body and (3) demonstrate three fiscal years of financial stability and financial management capability . 25 U.S.C. § 458aaa-2; 42 C.F.R. §§ 137.15-23

ISDEAA Title V Overview

Topic	Discussion
Documents Required	(1) A Compact that sets forth the general terms of the nation-to-nation relationship between the Tribe or Tribal organization and the Secretary and (2) an annual or multi-year Funding Agreement (FA) that generally identifies the PSFAs to be performed or administered and describes financial terms and the responsibilities of the Secretary. There is no model Compact , but the ISDEAA does require some mandatory provisions . 25 U.S.C. §§ 458aaa-3-4; 42 C.F.R. §§ 137.30-46

ISDEAA Title V Overview

Topic	Discussion
Process	The Tribe or Tribal organization produces a draft Compact and FA . The IHS Agency Lead Negotiator (ALN) assembles a negotiation team and reviews the draft. Following pre-negotiation discussions, the ALN negotiates with the Tribe or Tribal organization on behalf of the IHS Director. <i>See generally</i> 25 U.S.C. § 458aaa et seq.; 42 C.F.R. § 137.1 et seq.
Appeals	If issues arise on which the parties cannot reach agreement, the Tribe or Tribal organization may submit a Final Offer to the Agency. Within 45 days, the Agency must make a determination on the offer in accordance with the ISDEAA. 25 U.S.C. §§ 458aaa-6(b)-(d); 42 C.F.R. §§ 137.131-150
Redesign and Funding Reallocation	A Tribe or Tribal organization may redesign or consolidate PSFAs and reallocate or redirect funding without IHS approval in accordance with the ISDEAA. 25 U.S.C. §§ 458aaa-4 & 458aaa-5(e); 42 C.F.R. § 137.185

ISDEAA Title V Overview

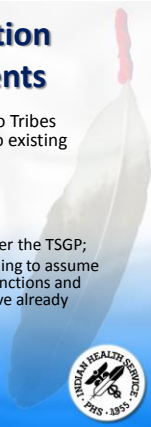
Topic	Discussion
Oversight: Performance Monitoring	No routine monitoring is required.
Mandatory Reporting	Annual single agency audit as required by the Single Agency Audit Act of 1984 and Health Status Reports. 25 U.S.C. §§ 458aaa-5(c) & 458aaa-6(a)(1); 42 C.F.R. §§ 137.165—173 & 137.200—207
Grants	Statutorily-mandated grants may be included. 25 U.S.C. § 458aaa-4(b); 42 C.F.R. §§ 137.75-77

ISDEAA Title V Overview

Topic	Discussion
Retrocession	A Tribe or Tribal organization may choose to partially or fully retrocede to the IHS. 25 U.S.C. § 458aaa-5(f); 42 C.F.R. § 137.185
Reassumption by the IHS	The IHS may reassume operation of a PSFA and its associated funding if there is a specific finding of imminent endangerment of the public health caused by an act or omission of the Tribe or Tribal organization and arising out of a failure to carry out the Compact or FA or a finding of gross mismanagement of the funds transferred by the Compact and FA. 25 U.S.C. § 458aaa-6(a)(2); 42 C.F.R. §§ 137.255-265
Funding Available for Planning and Negotiation Activities	Planning and Negotiation Cooperative Agreements are available.. Tribal Management Grants may not be used for Self-Governance planning or negotiation activities. 25 U.S.C. § 458aaa-2(e); 42 C.F.R. §§137.24-26

Planning and Negotiation Cooperative Agreements

- Cooperative Agreements provide resources to Tribes interested in entering Self-Governance and to existing Tribes interested in expanding their PSFAs.
- Who can apply?
 - Tribes that have not received a CA;
 - Tribes that received a CA but chose not to enter the TSGP;
 - Existing Self-Governance Tribes that are planning to assume and/or expand current Programs, Services, Functions and Activities (PSFAs). This includes Tribes that have already received a CA.






Office of Tribal Self-Governance Key Activities

- Participating in nation-to-nation negotiations of ISDEAA Title V Compacts and Funding Agreements and providing oversight of the Agency Lead Negotiators (ALNs).
- Reviewing eligibility requirements for Tribes to participate in the TSGP and applications for TSGP Planning and Negotiation Cooperative Agreements.
- Providing resources and technical assistance to Tribes and Tribal Organizations for the implementation of Tribal Self-Governance.
- Coordinating Self-Governance Tribal Delegation Meetings for the US Department of Health and Human Services (HHS), IHS Headquarters, and Area senior officials.



OTSG Key Activities (continued)

- Developing and recommending policies, administrative procedures, and guidelines for the IHS TSGP and advising the IHS Director on TSGP actions and activities.
- Supporting the activities of the IHS Director's Tribal Self-Governance Advisory Committee (TSGAC).
- Collaborating with Tribal and Federal partners to address crosscutting issues and processes, including budget formulation; self-determination issues; Tribal shares methodologies; resolution of audit findings; and emergency preparedness, response and security.
- OTSG coordinates meetings or conference calls to acquire or explain program and financial information related to PSFA



Thank you!

Office of Tribal Self-Governance:
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