

**Comments on Draft Contract Support Costs Policy  
Announced by Dear Tribal Leader Letter dated March 22, 2016**

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## Overarching Comments

### General

We generally support the policy but have a handful of suggestions for further improvement.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We commend the effort to update the 2006 NPM-SELFD-1, CSC to ensure payment of CSC is accurate, timely and meets the needs of tribes.

*--Rincon Band of Luiseno Indians*

Congress has declined to delegate any authority to the agency to write regulations on CSC issues [cite omitted]. That said, we appreciate the BIA prioritizing an update to its CSC policy in order to be transparent in how the BIA intends to handle CSC issues in the post-*Ramah* era of full funding. Although the ISDEAA makes it clear that agency manuals and guidelines are not binding on Tribes, we commend the BIA for welcoming input from Tribes on this internal agency policy. BIA's actions reflect a genuine commitment to tribal consultation and respect for the government-to-government relationship.

*--Little River Band of Ottawa Indians*

The proposed new CSC chapter meets the intended goals of (1) explaining how the BIA plans to determine CSC requirements, and (2) providing for the accurate, timely and full payment of those requirements in a manner that is simple and understandable for all readers (including those unfamiliar with CSC issues). The draft generally aligns with long-standing tribal and agency interpretations and practices regarding how CSC should be calculated, and we salute the BIA for not letting the extensive litigation over CSC payments impact the content of the Manual. We agree with the drafters' decision to leave litigation issues to the side and to move forward with a policy that honors the spirit and letter of the ISDA.

*-- Little River Band of Ottawa Indians*

### Process to Develop Policy

We commend BIA for the [collaborative] process it followed developing the draft Policy.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

After an initial round of consultation, IA worked in collaboration with tribes through the CSC workgroup, then sought further tribal input through a 120-day consultation period.

*--Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We understand that the Policy Workgroup functioned in a collegial and efficient manner, [and we commend both the federal and tribal representatives who worked on this important document.]

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

The proposed policy changes were deliberated through the BIA CSC workgroup, allowing for meaningful input and the active engagement of Tribal leadership and representatives in the process. We commend our Federal partners, Tribal leadership and others who worked together on the development of these important amendments.

*--Citizen Potawatomi Nation*

I deeply appreciate the workgroup and tribal leaders working with you to improve this policy. Many of us wanted options of lump sum payments or fixed or set rate for multi-year that you're trying to improve and encourage IBC to improve their ability to negotiate rates. Make it easier for tribes to negotiate rates. Get numbers in so the accuracy of the calculation is easier.

*--Ron Allen, Jamestown S'Klallam (FL session)*

I appreciate the Bureau and tribal workgroup trying your best to address this and simplify this because it has been a collaborative effort. Even though we have a few things we're trying to work out, overall, this is a good policy and one we can live with.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

We are one of the original 10 tribes in contract support. We are extremely appreciative of Mr. McKay's, Sunshine's, and Sherry's assistance and participation in the process.

*--Will Micklin, Eqiaapaayp Band (CA session)*

We appreciate the BIA working with the tribes collaboratively and listening to the tribes in terms of the recommendations that obviously resulted in this draft. So, we just want to say, first of all, thank you for all of that hard work on this.

*--Melanie Fourkiller, Choctaw Nation (FL session)*

## DOI Commitment to Pay 100% of CSC

We celebrate DOI's commitment to pay 100% of the CSC under the Proposed Policy. We also generally support the Department's proposed amendments to the CSC Policy to manifest and implement that commitment.

*--Pueblo of Laguna*

We applaud your commitment to pay 100% of the CSC need and we extend our support for the proposed amendments to the policy. The proposed policy changes were deliberated through the BIA CSC workgroup, allowing for meaningful input and the active engagement of Tribal leadership and representatives in the process. We commend our Federal partners, Tribal leadership and others who worked together on the development of these important amendments.

*--Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

We support the draft policy because it reflects authorization and requirement to fully fund CSC as provided by the ISDEAA. It honors the rates as approved by the Interior Business Center and provides simplified, consistent and alternative calculation methods for CSC.

*--Citizen Potawatomi Nation*

We appreciate the Administration's support for full funding of CSC. Funding of CSC in FY2016 at an indefinite amount helped to ensure that critical programmatic services were not abrogated in order to cover the CSC need.

*--Jamestown S'Klallam Tribe*

The policy accurately reflects authorization and requirements to fully fund CSC as provided by the ISDEAA.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

## Simplified Approach

We appreciate that BIA took to heart Congress's call to simplify and streamline the process of calculating and paying full CSC. [Less than five pages long,] the draft Policy is concise and generally easy to understand [, in stark contrast to the draft CSC Policy developed by the Indian Health Service (IHS)].

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; USET SPF*

We agree with the statement you made in your DTL letter regarding the policy's simplified and streamlined approach to calculating CSC: "The proposed CSC policy follows the direction provided in the FY2014 Appropriations Language... to formulate long-term accounting, budget, and legislative strategies to address the situation... each Department's solution should... consider a standardized approach

that streamlines the contract negotiation process, provides consistent and clear cost categories and ensures efficient and timely cost documentation for the Departments and the Tribes.”

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

The workgroup should be commended for completing a policy draft half the size throughout fewer meetings than the IHS CSC Policy draft.

*--Ysleta del Sur Pueblo*

The BIA policy is about a fifth of the IHS policy and reflects the effort involved with getting to a final draft that meets the goal. And it took half the time. Congratulations. It didn't get super complex like it did on the IHS side. That is fantastic. It is very streamlined and easy to read.

*--Linda Austin, Ysleta del Sur Pueblo*

Often it's more difficult to write something in a more brief or shorter format. IHS took 40 pages and exhibits and you boiled this down and did a good job of covering what needs to be covered. You deserve a lot of credit for that.

*--Rob Demary, North Cheyenne (FL session)*

We applaud IA for attempting to simplify CSC calculation to expedite payment.

*--Rincon Band of Luiseno Indians*

We concur with the Department's approach to simplify and streamline the calculation of CSC.

*--Pueblo of Laguna*

The draft policy achieves much of what Congress intended by way of simplifying and streamlining the process of calculating and paying full CSC. The draft Policy is a condensed, easy to follow outline of the CSC calculation and payment process.

*-- Ysleta del Sur Pueblo*

We applaud BIA for seeking to comply with congressional directions to devise a long-term method that simplifies and streamlines CSC calculations. For instance, the draft Manual includes a number of provisions that reduce administrative burdens on Tribes, so that Tribes can focus more resources on providing services.

*-- Little River Band of Ottawa Indians*

The Policy is understandable, which will make it a useful tool for us, as well as BIA staff. The Policy accurately reflects congressional requirements to full-fund the CSC of contracting Tribes under the ISDEAA. We appreciate that the Policy has simplified calculation methods for the different types of direct CSC, and offers an

alternative calculation for indirect CSC where a Tribe does not have an agreement governing such calculation.

*--Pueblo of Laguna*

Overall, we welcome DOI/BIA's simplified approach to funding each of the four types of contract support costs and appreciate the hard work and accomplishments of the BIA CSC Workgroup.

*--Chugachmiut*

The draft policy is easy to read and understand and, once approved, it will be useful tool for BIA and Tribal staff to use as a guide to ensure full payment of CSC.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

Once approved, the Policy should be useful to both BIA and tribal staff in outlining the process that BIA will use to ensure full and appropriate payment of CSC.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

The policy provides simplified and consistent calculation methods for four types of CSC (pre-award, start-up, direct, and indirect), including an indirect CSC calculation based on a current approved indirect cost rate agreement between a Tribe and its cognizant agency.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

I'd recommend that we figure out a way to explain this to our councils and we get it to the point where they understand what they're required to do. Most of the council, they don't read. You need to get it to the point where the council needs to hold our finance people accountable and what they need to know and don't know. So, if you get a chance to kind of summarize it in a way for the councils to look at it because this is really complicated for some of our councilmen to read. I recommend finding a way to explain it in a way that gives some idea what's happening and what's going to happen.... Does it mean we get more money or less money, is it good or bad for us?

*--Henry Cagey, Lummi Nation (FL session)*

I'm delighted how well BIA is working to keep this updated policy simpler and more straightforward. I remember the days when IHS had a more sophisticated policy and we kept telling you to follow the lead of IHS. Now we're happy with you and mad at IHS. You're making great headway.

*--Ron Allen, Jamestown S'Klallam (FL session)*

We generally support the draft changes proposed in the March 22 letter and are very thankful for the direction that it's heading. We appreciate the effort to

simplify and streamline the process for calculating and paying CSC. We are not appreciative of the IHS process. We prefer the approach BIA is taking.

--Will Micklin, *Eqiaapaayp Band (CA session)*

We appreciate having a streamlined version of the CSC policy.

--Melanie Fourkiller, *Choctaw Nation (FL session)*

## Non-Binding Nature & Tribal Rights under ISDEAA

The courts have confirmed that when it comes to contract support costs, Congress has not delegated to the agency any authority to write regulations or to adopt non-regulatory requirements that are binding upon tribes. *Ramah Navajo School Bd. V. Babbitt*, 87 F.3d 1338, 1349 (D.C.Cir. 1996)(interpreting 25 U.S.C. 450k(a)(1)).

--*Ak-Chin Indian Community; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We note, however that the Policy is not binding on tribes and tribal organizations; it cannot and does not impair any rights conveyed by the ISDEAA.

--*Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

The policy doesn't state clearly enough that it's not binding on tribes. IHS has good language that makes very clear the policy is not binding on tribes. It's not a guideline or regulation. You have a sentence, but it could be elaborated on.

--Lloyd Miller, *Sonosky Chambers (FL session)*

We commend that the policy makes plain that it is not binding on tribes and tribal organizations to the extent it would impair any rights under the ISDEAA. That being made plain the policy is very helpful to Tribes.

--Will Micklin, *Eqiaapaayp Band (CA session)*

## Liberal Construction

The policy does not diminish or extinguish any rights Tribes have under ISDEAA. In light of this, we recommend that the introductory sections of the Manual should clearly state that the Act, and every compact, contract and funding agreement shall be construed liberally in favor of the Tribes.

--*Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

We note that the Policy should clearly state that every provision of the Act and of every contract, compact, and funding agreement entered into under the Act must be construed liberally in favor of tribes [Tribal Nations]. While this is already a requirement of every ISDA contract (see 25 U.S.C. 450(I)(c), sec. 1(a)(2)), it is sufficiently important [--indeed, critical] – that it should be restated in the Policy [Manual].

*--Ak-Chin Indian Community; Inupiat Community of the Arctic Slope; Nez Perce; Port Gamble S’Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF; Little River Band of Ottawa Indians*

As the Supreme Court has held, this provision [construed liberally in favor of tribes] means that the Government “must demonstrate that its reading [of the ISDA] is clearly required by the statutory language.

*-- Inupiat Community of the Arctic Slope; Jamestown S’Klallam Tribe; Nez Perce; Port Gamble S’Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF; Little River Band of Ottawa Indians*

The IAM should state that compacts, contracts, and funding agreements shall be liberally construed in favor of the Tribes. Neither congressional direction under the FY 2014 Appropriations Language, nor the Policy, diminish or extinguish any existing rights of Tribes under ISDEAA, which has been liberally construed in favor of Tribes.

*--Pueblo of Laguna*

The policy doesn’t contain the statement from the statute that all provisions of the Act and contracts are to be liberally construed in favor of tribes. That’s an important principal. It was the deciding principal in the *Ramah* case, so it would be helpful to add that to the front policy portion – maybe in the purpose portion.

*--Lloyd Miller, Sonosky Chambers (FL session)*

We commend that the policy plainly says it is construed liberally in favor of tribes; that is a distinction that is oftentimes these days lost in federal regulation and policy.

*--Will Micklin, Eqiaapaayp Band (CA session)*

The policy must be liberally construed to favor tribes because we’re being narrowed down in so many ways in self-governance and self-determination by other entities and pressures that we have to make the most of what we have. Until we change that, it’s going to be ever more important we make the most efficient use of this program.

*--Will Micklin, Eqiaapaayp Band (CA session)*

## **Definitions (Section 5)**

Is the definition page also to define acronyms? Acronyms and appendices are helpful.

*--Mervin Hess, Bishop Paiute Tribe (FL session)*

## **Pre-Award and Startup Costs (Sections 6 & 7)**

The Policy should state clearly the process for negotiating pre-award and startup costs. In the past, agreements negotiated at the regional level have been overturned in the BIA central office by individuals lacking any on-the-ground experience in such matters. The Policy should clearly delegate the negotiation of these costs to regional and field personnel.

*--Ak-Chin Indian Community; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF; Little River Band of Ottawa Indians*

The Manual should state clearly the process for negotiating pre-award and associated start-up costs and the Manual should delegate the negotiation of these costs to regional and field personnel.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Pueblo of Laguna*

Examples of allowable pre-award and startup costs should be included in the Manual for reference purposes. Tribes should be given the opportunity to provide input on this list.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

Include examples of allowable pre-award and start-up costs in the Manual for reference purposes.

*--Pueblo of Laguna*

We are pleased to see that BIA now acknowledges that requests for pre-award and startup costs are subject to ISDA declination procedures. But, the pre-award and startup costs provisions reference an attachment of examples that was drafted by the agency without tribal input. BIA should allow tribes to provide input on this list. As currently drafted, the list is extremely narrow and fails to provide meaningful guidance for tribes [Tribal Nations and organizations].

*--Ak-Chin Indian Community; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF; Little River Band of Ottawa Indians*

In regards to pre-award and startup costs, it says OIS will make a determination and provide a letter as to whether they will be awarded. Is that final or can a tribe dispute the determination? [Answered: Yes, you can appeal].

--Rachel Arviso, Navajo Nation (NM session)

Can the tribe submit both pre-award costs and startup costs for one program? [Answered: yes, but they're different because pre-award is before you even start the contract, when you talk about the planning process, and everything. Those costs have to be preapproved before you spend the money. With startup costs you have to come in later and provide documentation for expended startup costs ].

--Rachel Arviso, Navajo Nation (NM session)

Will it be in the handbook about being able to appeal and submitting both pre-award and startup costs?

--Rachel Arviso, Navajo Nation (NM session)

Previously, when you had pools, there was pre-award funding and timelines established when the funding was available. Is that going to be consistent now with the new policy, and a lot of time the tribes don't know how much pre-award funding is available. [Answered} Although we're not calling them pool 1 funding, there still is the ISD fund with its own string of accounting.... See pp. 51-53 of transcript for full response].

--Rachel Arviso, Navajo Nation (NM session)

Add examples of allowable pre-award and startup costs in the body of the manual and provide tribes the opportunity to provide input on this list, which would be more meaningful guidance for tribes.

--Will Micklin, Eqiaapaayp Band (CA session)

We recommend that in Section 6 (Pre-Award CSC) and Section 7 (Startup CSC) of the Policy, the declination letter to the requester be changed to read from "...within 90 days of the Secretary's receipt of the request" to "...within 90 days of the Tribe's or tribal organization's date of request."

-- Susanville Indian Rancheria

There are quite a few dates. I think the people involved with the process understand the dates, but usually they don't happen. I see where you have the 90-day response time but there's no reflection of what happens if the tribe isn't notified in 90 days. Is it automatically approved? Explain more. We don't get our mail in a quick timeframe. I would suggest explaining what happens if the tribe doesn't get a response from the Secretary.

--Mervin Hess, Bishop Paiute Tribe (FL session)

Have a time flow-chart for timeframe at annual budget meetings. The majority of Native people are visionary and it's good to have a timeframe set up.

Maybe in a flow chart or a critical path chart to where you could see and know what timeframes the government and tribes are committing themselves to.

--Mervin Hess, Bishop Paiute Tribe (FL session)

## Direct Contract Support Costs (Section 8)

### Who Budgets the Salary Cost

The Policy formalizes BIA's practice of calculating DCSC need as 15% of the "current budgeted salary cost of IA 106(a)(1) programs, excluding fringe." This language is vague [not clear, budgeted by whom, IA or the Tribe?]. In many cases, BIA will not be able to point to any agency program budget at the time the program was transferred to a tribe. And even if BIA could identify such a budget, tribes have the authority under the ISDEAA to reallocate funds, and they may well spend more of their program funding on salaries than BIA would have. We recommend that "current budgeted salary cost of IA 106(a)(1) programs" be revised to read "current tribally budgeted salary costs for IA programs transferred in the 106(a)(1) amount."

--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF

We urge you to revise the language that reads "current budgeted salary costs of Indian Affairs 106(a)(1) programs" to "current Tribally budgeted salary costs for IA programs transferred in the 106(a)(1) amount" and delete the terms "excluding fringe" because salaries by definition do not include fringe.

-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation

### 15% of Budgeted Salary Costs

We urge BIA to increase DCSC funding to the levels necessary to meet actual tribal expenses. Like other employers, tribes have been hit hard by rising expenses, including but not limited to increasing employee health insurance premiums. To our knowledge, BIA has never articulated a rationale for maintaining a 15% DCSC ration other than saying that it would be too expensive to provide more DCSC funding to tribes. Given that the law requires CSC to be fully funded from an indefinite appropriation, however, that rationale is unconvincing in the face of demonstrable rising costs.

--Ak-Chin Indian Community

We urge IA to reconsider Tribes' proposal to raise DCSC from 15% to 18% of salaries. Like other employees, Tribes have been hit hard by rising health insurance premiums, among other necessary costs. DCSC includes that only fringe benefits (in

excess of fringe amounts transferred in the 106(a)(1) amount) but also significant costs like facilities support costs (rent, leases, security, maintenance), training, and communications. IA has never articulated a rationale for rejecting the 18% proposal, other than saying it would be too expensive. But now that CSC are to be fully funded from an indefinite appropriation, that rationale is not convincing in the face of demonstrable rising costs that an increase to 18% would help cover.

*-- Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We urge you to raise the DCSC rate from 15% to 18% of salaries. The rising costs of health insurance premiums and other associated costs have drastically impacted Tribes and now that CSC is to be fully funded from an indefinite appropriation, an increase of 18% does not seem like an unreasonable request.

*--Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

Raise the Direct CSC rate for salaries from 15% to 18%. The increase would address the rising costs of health insurance premiums that has been, and is, impacting the Pueblo, which would alleviate the need to begin negotiations on that point.

*--Pueblo of Laguna*

We ask you to consider raising the Direct CSC rate of 15% to reflect the rising costs of wages and the corresponding increase in employment taxes and health insurance. In California, the minimum wage will be \$15 per hour by 2021 and many federal agencies within the state currently provide employees a locality increase in salary to account for the high cost of living, particularly housing. The Rincon Band competes to attract local, skilled professionals to operate and manage its ISDEAA programs. We believe the Direct CSC rate of 15% is too low and suggest you consider raising it to 30%.

*--Rincon Band of Luiseno Indians*

Health insurance is included in fringe. The health insurance premiums for tribal employers, like the federal government, has been skyrocketing in the last 10 years. If you look at a federal employee fringe benefit rate at Interior it's about 40% and health insurance is included in that. For a tribe like Red Lake, it's about 40% too. I'm talking about the direct employees in that direct contract support at 15% of salaries for a decade cannot possibly address the skyrocketing health insurance premiums we as an employer have to pay. If you look in other parts of BIA's and DOI's budgets, where there is rising health insurance premiums, BIA gets to budget new money to cover the employer's share, but tribes are excluded. This is a fundamental inequity and there has to be a solution. If we could have gone from 15% to 18% under direct contract support, that could have helped, but when we have such an unfairness, we have to find a solution.

*--Dave Connors, Red Lake Band of Chippewa Indians (FL session); Corrine Garza, Tlingit Haida (FL session)*

BIA adopted a flat percentage calculation for DCSD, which significantly decreases the likelihood of disputes over that calculation. While we support tribal recommendations to raise that percentage to 18%, rather than the current 15% calculation, we strongly support the employment of a percentage of payroll approach to the calculation of DCSC requirements.

*-- Little River Band of Ottawa Indians*

BIA should raise the flat percentage for DCSC from 15% of salaries to 18% of salaries. Tribes have advocated for this raise for years, explaining the 15% amount does not cover the full cost of additional direct program expenses necessary to prudently operate these programs. Now that the CSC appropriation has been put into a separate account and is indefinite, budget issues should not prevent the agency from providing full CSC funding.

*-- Little River Band of Ottawa Indians*

In addition, Tribal Priority Allocation (TPA) funds are not tied to inflation and as a result, Tribes have reduced purchasing power towards BIA programs than they did in the late 1990's (the last time any major adjustments were made to TPA funds). Subsequently, Tribes are resorting to use of tribal money to fund these unmet IA program needs, including salaries. 18% of BIA program salaries is not an unreasonable request.

*-- Susanville Indian Rancheria*

I think it's a good approach to select the flat 15% of salaries. That is intended to capture the amount of fringe benefits tribes are required to pay that the BIA doesn't pay when it operates programs. This captures that tribal costs are higher and it's a good way to address it, but your own policy identifies all these other direct CSC tribes have. You would be hard pressed to squeeze all of them into the 15% budget. So the fact that your policy allows 15% and does not allow further negotiation or expands the 15% to include these other costs is a serious deficiency and needs to be addressed before it goes final.

*--Rob Demary, North Cheyenne (FL session)*

Tribes had asked for 18%. That's a better rate if you're not going to offer the option of negotiating specific amounts of direct CSCs. The 15% has simplified the process greatly, but there were a few tribes that think negotiating may be the better route for, and 18% was a compromise to capture that. So I ask you to reconsider that.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

Specific comments we have on direct CSC, is the 15% of current budgeted salary costs of 106(a)(1) programs excluding fringe. It's not clear who does the

budgeting in this. We recommend it read “current tribally budgeted salary costs for IA programs transferred in 106(a)(1) amount.”

--Will Micklin, *Eqiaapaayp Band (CA session)*

We urge IA to consider tribes’ proposal to raise direct CSC from 15% to 18% of salaries. We’ve been hit hard by eligible items under direct, including health insurance programs and other necessary costs, and the rise to 18% would reflect the current cost burden on tribes.

--Will Micklin, *Eqiaapaayp Band (CA session)*

We are aware that tribes have advocated for changing the 15% of salaries to 18% of salaries. We support that.

--Melanie Fourkiller, *Choctaw Nation (FL session)*

### “Excluding Fringe”

We further recommend deleting the phrase “excluding fringe.” Salaries, by definition, do not include fringe benefits, so the phrase is unnecessary. More importantly, it could be read by BIA awarding officials to mean that fringe costs are to be subtracted from salaries before multiplying by 15%. (In fact, at least one IA representative did read it that way during a Workgroup session). That has never been BIA’s practice, and it makes no sense. Striking the phrase will make the provision more clear and concise.

--*Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S’Klallam Tribe; Nez Perce; Port Gamble S’Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We recommend deleting the phrase “excluding fringe.”

--Will Micklin, *Eqiaapaayp Band (CA session)*

### Negotiation of Direct CSC

Acknowledge Tribes’ option to negotiate a lump sum for full direct CSC in a given year. The agency is already negotiating a lump sum for indirect type costs so surely there is no reason why the same cannot be extended to direct CSC.

-- *Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

Permit Tribes to negotiate for lump-sum distribution of Direct CSC.

--*Pueblo of Laguna*

BIA’s reasons for refusing to negotiate—that the agency lacks the personnel and expertise—are not convincing. If BIA can negotiate a lump sum for indirect-type costs, as the draft policy requires, there is no reason the agency cannot also

negotiate a lump such for DCSC as well. IHS faces similar staffing constraints, and its draft CSC policy includes the right to renegotiate DCSC at any time. In light of the statutory requirement to pay full CSC, BIA must make sure it has staff trained to negotiate and determine DCSC requirements for tribes that do not wish to rely on the default 15%-of-salaries (or 18%-of-salaries) rule.

*--Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

The Bureau needs to ensure that it has sufficient staff that are trained and available to negotiate rates with Tribes who choose not to rely on the default of 15% salaries rule.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

The Manual should provide Tribes with more flexibility. For instance, if a Tribe wishes to negotiate an amount for DCSC, BIA should allow that Tribe to do so, especially given the mandate to fully fund CSC. Although we understand BIA is concerned with the administrative burden associated with such negotiations, the BIA could develop a template, as IHS has done, that would make these negotiations easier.

*-- Little River Band of Ottawa Indians*

We recognize that there are other things that should be eligible for direct contract support costs that should be negotiated between tribes and BIA. We would like the Manual to reflect that there is an opportunity for negotiation of other types of eligible costs.

*--Melanie Fourkiller, Choctaw Nation (FL session)*

### **Examples of Direct CSC that can be Negotiated**

We also recommend the Manual itself include examples of direct CSC that can be negotiated. While we understand such examples may be included in an attachment, we believe this particular information is sufficiently important to be included in the Manual itself.

*--Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

Include in the Manual examples of direct CSC that can be negotiated.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

The Policy acknowledges [should acknowledge] tribes' option to negotiate a lump sum for full DCSC funding in any given year. The ISDEAA requires full payment of DCSC, and if a tribe or tribal organization believes that 15% of salaries is not sufficient, they have the right to negotiate a higher amount.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S’Klallam Tribe; Nez Perce; Port Gamble S’Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

Include examples in the Policy of direct costs that are subject to negotiation.  
*--Pueblo of Laguna*

The Manual should include examples of direct CSC that can be negotiated. While we understand such examples may be included in an attachment, this is key information which should be in the Manual itself.

*--Little River Band of Ottawa Indians*

Maybe the Handbook could outline some examples of eligible costs for direct contract support costs.

*--Melanie Fourkiller, Choctaw Nation (FL session)*

There should be examples of direct CSCs that can be negotiated. That would be helpful especially for tribal staff to adequately negotiate. And the policy should acknowledge tribes’ option to negotiate a lump sum for a full CSC funding in any given year.

*--Will Micklin, Eqiiaapaayp Band (CA session)*

## **Indirect CSC (Section 9)**

### **Calculation Methods, Generally**

The policy offers alternative calculation methods for indirect CSC when a Tribe does not have a formal indirect cost rate agreement or has an expired indirect cost rate agreement over four years old.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

BIA has honored its historic practice of accepting indirect cost rates up to four years old. This acknowledges the fact that the rate-making process can be slow and rates may be delayed for reasons wholly outside a Tribe’s control.

*-- Little River Band of Ottawa Indians*

We also commend the BIA for adopting provisions recognizing the differences in administrative capacity between small and large Tribes, such as the simplified methodology to calculate indirect CSC for Tribes that do not meet the single audit threshold.

*-- Little River Band of Ottawa Indians*

I’m so thankful you’re honoring the IDC rates. It means a lot.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

On the ISD, where the decisions on a request for new funds (start-up funds, pre-award funds) are being made, at the local or regional or headquarters level, we need clarification on.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

We worked out at 6% for IDC. We have a current IDC rate for the Federal Highway Administration's funding.

*--Lucinda Shije, Pueblo of Zio (NM session)*

### **"If the tribe does not initiate..."**

We support the Policy's provision allowing calculation of indirect costs using the current year's rate or, if there is no current rate, the most recent rate for the previous three years. We also agree that tribes with no recent rate should negotiate lump sums for indirect type costs. However, the Policy goes on to say that "if the tribe does not initiate any of these options, IA will not pay the tribe any indirect CSC." We [strongly] believe that this provision violates the ISDEAA, which requires payment of CSC regardless of whether a tribe initiates options set forth in an agency policy manual and specifically directs that the Secretary "shall add" such amounts to every contract. 25 U.S.C. 450j-1(g). Rather than purporting to allow the BIA to avoid payments that it is statutorily obligated to make, the Policy should require that, when a tribe does not have an indirect contract support costs rate that is less than 3 years old, BIA pay indirect costs either based upon the prior year's amount or on the de minimis rate of 10% adopted in the OMB Supercircular.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We do not believe the policy should permit IA to withhold payment of indirect CSC if a tribe does not opt for a negotiated lump-sum amount or recover costs using the Simplified Method. We believe the policy should adopt a minimum rate of 10% or higher to establish a floor for Indirect CSC because every tribal government operating ISDEAA programs incurs indirect costs that need to be reimbursed.

*--Rincon Band of Luiseno Indians*

The policy states that if a Tribe does not initiate any of the options for calculating indirect CSC for a given year, then BIA will not pay the Tribe indirect CSC for that year. This is contrary to the ISDA's mandate that the agency must pay a Tribe's full CSC need. [cite omitted] The BIA's duty to add CSC to each contract is not contingent on first receiving a tribal request. Therefore, we recommend this provision be omitted or revised, so that if a Tribe does not initiate any of the stated options, the BIA will be directed to work with that Tribe to find an acceptable means

to calculate the Tribe's indirect CSC requirement. We understand the difficulty BIA faces in this situation, but BIA cannot abrogate its statutory duty to add full CSC to every contract simply because the Tribe did not initiate a process. At a minimum (and pending receipt of additional information), the BIA should consider either paying a Tribe based on the previous year's amount, or paying a Tribe at the 10% de minimis indirect rate described in the OMB circular at 2 CFR 200.414(f).

-- *Little River Band of Ottawa Indians*

Section 9 talks about the fact that some tribes don't have rates and if they haven't negotiated indirect-like costs, then BIA is not going to give the tribes anything. That's an oversight. BIA is failing to fulfill its responsibility under the Act to fund CSC if it does not give a tribe anything. Under the new OMB Super Circular, there is a de minimis rate for when you don't have information. BIA should at least give those tribes 10% de minimis rate so you've protected yourselves by giving them something. You'll avoid litigation and injunctions against distribution of CSC.

--*Rob Demary, North Cheyenne (FL session)*

In the absence of viable rate or lump sum negotiation, the Bureau should pay indirect costs based upon the prior year's amount or based on the de Minimis rate of 10% adopted in the OMB Supercircular.

-- *Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

If a tribe doesn't have a four-year rate, hasn't negotiated, then the default should be 10% de minimis of indirect costs. BIA is required to pay something and the de minimis seems to be 10%.

--*Rhonda Butcher, Citizen Potawatomi (OK session)*

### **Simplified Method**

Where we're looking at the change to allow DOI to negotiate a lump-sum amount for indirect type costs using the simplified method of 30% of the 106(a)(1) amount – I know that would not apply for tribes that have to meet the single audit rule, but how did you come up with the 30% -- what's that based on, or what factors did you consider to arrive at 30% being a reasonable level for the simplified method? [Answered: There are a lot of tribes contracting for an amount that's so small it doesn't make it worthwhile for them to expend the time and money to negotiate an indirect cost rate. This is an alternative for them. We had been allowing 30% in Alaska for small tribes in practice].

--*Majel Russell, Fort Peck Tribes (CA session)*

Is there a relationship between the 30% amount and the actual functions for the indirect cost rate? There are a lot of big tribes that are very poor and have a hard time negotiating indirect cost rates. If you consider a lump-sum amount, it's going to become a fairness issue for all tribes across the board, because the 30% flat rate is attractive when you're looking at a large, poor tribe that would have difficulty

even coming close to that in negotiation. How does the 30% relate to the actual functions of the purposes of an indirect cost rate? [Answered: Does not ally to tribes that meet the threshold for a single audit. If the tribe does meet the single audit threshold, they must negotiate, and if they don't get 30%, that's just how it works out, but there are very few tribes in California below the 30% threshold that meet the single-audit requirement.]

*--Majel Russell, Fort Peck Tribes (CA session)*

If it were less than 30%, it would be difficult even to hire a single part-time person or have really any effect on the community. We have six of those communities that compact directly and we act as the organization that provides their services through Central Council. It's a contracting process where those monies transit through Central Council. So, I understand the concern on 30%, but when you're below the single-audit rate, it would be unmeaningful [sic] to subject them to the cost of negotiation or reduce the amount they now obtain. They're such de minimis amounts. So I think it's a reasonable policy that allows these very small remote communities to exercise their self-determination rights where it would otherwise be impractical.

*--Will Micklin, Eqiiaapaayp Band (CA session)*

Small tribes make a very good case for why the 30% is reasonable and viable. I'm thinking about how that concept might be utilized on a broader basis and if it is worth considering... this is a radical idea, but if you could look at the actual sizes of contracts, number of contracts a tribe has and look at reasonable ranges for an indirect cost rate, rather than have this intense negotiation process that is often burdensome for tribes. Tribes are somewhat intimidated by that. They end up hiring contractors that can be expensive and feel like at the end of the day they received the short end of the stick. It would be helpful to have ranges that are appropriate. IDC rates for certain sizes of contracts based on certain factors that would take a lot of that mystique out of the negotiation.

*--Majel Russell, Fort Peck Tribes (CA session)*

## Other IDC Comments

You categorized CSC and then indirect costs. You also identify facilities as a CSC category and have accounting, purchase, and HR under IDC. Where does information technology services fit in? We regard the actual consensuals to provide administrative services, including tribal government to be facilitated by HR, and management commissions or informational technology. Where does that fit in? [Answer: Tribes have their choice of any program expenditures of how they want to apply it, either to a particular program or indirect. Indirect basically is a function of service across the board. HR affects everybody so it's usually an indirect. IT would usually also affect everybody so that could be indirect. If you have IT services strictly serving a particular program, then you could charge to that program rather

than the indirect pool. But it's up to each Tribe to negotiate with the Interior Business Center once you submit your proposal].

*--Daniel Honahni, Hopi Tribe (NM Session)*

On indirect, it's always an issue of receiving the indirect cost rates on time. And, if so, then you can use the right rate to pay indirect costs. We agree that Tribes with no current rate should negotiate lump-sum amounts for indirect type costs. The policy says that if the tribe does not initiate any of these programs, IA will not pay the tribe for any indirect CSC. This provision is incorrect and violates ISDEAA, which requires payment of CSC regardless of whether the tribe initiates. The policy should require payment of indirect costs based on either the prior year's amount, based on the de minimis 10%, adopted in the OMB budget circular.

*--Will Micklin, Eqiaapaayp Band (CA session)*

The language in Section 9 is ambiguous. The third paragraph says "if the tribe has no approved IDC rate or has an approved IDC rate over four years old, BIA or OSG will negotiate with the tribe a lump sum amount for indirect type costs or the tribe can recover its total CSC need using the simplified method if applicable." When you jump down to the negotiated lump-sum amount, that's when they're putting the single-audit threshold requirement to using the negotiated lump-sum amount. On the simplified method, they're taking that off and saying if you don't meet the single-audit threshold. So it would be helpful if we had some type of chart so we know our options when we're analyzing the best approach for our CSC. For example, if we have less than the 133 threshold, are we going to have the ability to choose an option for lump-sum versus a simplified, similar to what's happening in the paragraph before those two clarifications on the single audit? If we have greater than the 133, are we going to have three different options or using an indirect cost IDC, indirect contract, the lump sum and the simplified. What are our true choices? The language is ambiguous and we want to be clear on what our choices are so we can choose the best option.

*--Tami Mars, Picayune Rancheria (CA session)*

While these presentations are going on, it might be helpful to provide resources to tribes on how the process works to negotiate an IDC rate... how you get the templates, the website. What do we look at when we consider negotiating the IDC. Make the process of working with the IBC more user-friendly and make the resources available to the tribes so it's understandable.

*--Majel Russell, Fort Peck Tribes (CA session)*

## **Overpayment (Section 10)**

The Policy correctly includes a process for tribes to question overpayment determinations and show that they have not, in fact, been overpaid. Once the determination is final, however, the Policy requires tribes to repay the overage,

which may often result in inefficiencies (for small overpayments) or hardships (for large overpayments). We believe that tribes should have the option to have the overpaid amount applied as an offset in the following year, as the draft IHS CSC policy does.

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

We suggest that a sentence be added to Section 10 along these lines: "The Tribe may elect to either repay the overpaid amount or have BIA apply it as an offset to the following year's CSC requirement."

*--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

Tribes should be given the option to have any overpaid amounts applied as an offset in the following year.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

The Workgroup was told that IA lacks the authority to apply an offset, but was provided no legal analysis supporting this conclusion, which is contrary to that reached by IHS.... The offset option would save both Tribes and IA a lot of paperwork processing and responding to bills of collection—often for trifling [small] amounts.

*--Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

The Manual should not demand repayment from Tribes for overpayment. Instead, any FY 2016 overpayments should be accounted for as a credit in the FY 2017 payment process. This approach would better comply with the mandate to simplify CSC and reduce administrative burdens on both Tribes and the agency. It is also practical: there will be little time for BIA to enact a new policy, adopt the related Handbook, reconcile and account for any 2016 overpayments, and request repayment from Tribes, all before the end of the Fiscal Year.

*-- Little River Band of Ottawa Indians*

BIA should improve its current CSC payment practices. Feared overpayments to some Tribes is not a sound reason to withhold or delay payments to all Tribes. We are informed that the Office of Self-Governance is currently paying Tribes only 80% of CSC funds due to concerns of overpayments it made in prior

years. OSG's poor accounting records are no excuse for punishing Tribes that need timely CSC payments to maintain program delivery.

-- *Little River Band of Ottawa Indians*

We had this situation occur where we had an overpayment that was 3/10 of 1% of our CSC. It required us to process the check, cut it, and send it to the federal government. Then, there's the process on your side to get it re-deposited to Treasury, re-obligated, etc. This was a small amount of money - \$3,800. I urge you to revisit whether overpayments can be applied to future CSC need in the next year and offset the payment. IHS included the option.

--*Melanie Fourkiller, Choctaw Nation (FL session)*

What about the indirect costs carried forward that now a lot of tribes have, and those proposals are due July 1, and you're not going to know if you have an overpayment until the end of December, or even after that. So it will be a complicated reconciliation if you're going to have to submit a reimbursement after the indirect costs proposal went in. So we have to do a reconciliation on a reconciliation.

--*Corrine Garza, Tlingit Haida (FL session)*

The policy says an overpayment is determined at the end of the tribe's FY without regard to later issuance of a different indirect cost rate for that period – which makes sense. So, if 2015 is over, and it's May 2016 when your report to Congress is due. If a 2015 requirement was based on the 2013 rate at the front end, you still use the 2013 rate at the back end. At the front end, the 2014 CSC was probably calculated based on what people that they were going to get in the Funding Agreements, but maybe there was a congressional increase in funding and they're entitled to more contract support, so that'll come out in the end. It's a bit of a timing problem – you won't finish your report until May, you'll be certifying March, April, as accurate. Meanwhile, your FY16 money has to go out the door. The statute says "amounts obligated... but not expended by a tribe for CSC for the current fiscal year shall be applied to CSC... for subsequent fiscal years" with an "s". So you could take the 2015 overpayment you figure out in May 2016 and apply it to 2017. Like a fix with a carry forward. You bump it over to next year and that is an elegant solution that won't be a big headache.

--*Lloyd Miller, Sonosky Chambers (FL session)*

How can OSG be making so many overpayments? All you have to do is check the passes and exclusions to avoid overpayments. How to fix it. Should someone other than OSG be taking care of the CSC calculation process? Where is the expertise in the Agency?

--*Lloyd Miller, Sonosky Chambers (FL session)*

In defense of OSG, it is a great struggle to them that goes back to reports. If they're not getting the data, they won't know overpayments are happening. It's important to get the information but BIA is caught between a rock and a hard place

in terms of asking tribes for data on budgets and pass through and at the same time having responsibility to accurately pay the right amount of CSC. It's a management issue. I don't know what year the overpayments are incurring or have been incurred, but BIA has the ability to adjust subsequent payments and should not be making successive overpayments. I hope that you're getting that under control.

*--Rob Demary, North Cheyenne (FL session)*

With regard to overpayment, you can imagine that with the growth of Self-Governance there will be internal growth. Has BIA diminished the numbers of staff as it was intended? Perhaps the answer is that a portion of BIA's personnel budget should be going to OSG so adequate OSG staff can ensure overpayment is not made.

*--Miles Reader, Kawerak Inc. (FL session)*

I got a bill from OSG due in 10 days that caused a lot of stress. OSG said Budget wouldn't give them money. You owe me millions and then send me a bill for \$3,814. We eventually paid it but the process is not right – you have to be able to take it out of the next cycle instead of sending it to a tribe. I won't pay next time.

*--Mickey Peercy, Choctaw Nation of Oklahoma (FL Session)*

In reference to the procedure that's currently in place for a bill or collection, is that particular process for overpayments used on anything else right now for BIA? It would be a great idea to allow Tribes the option for how to handle an overpayment. Just like in personal life, there's a lot of options available versus it just being one thing you have to do.

*--Palmer Mosley, Chickasaw Nation (OK session)*

My understanding was that the overpayments would not go to Treasury, but there would be some mechanism to put it back in the allocation pool, We want to make sure that's dealt with so the funds don't get lost to the agency. We also want to make sure it didn't have a negative impact on the tribe's IDC rate and the negotiation process. Every tribe is in a unique situation so they should have options as to getting a check back or getting it taken out of their next payment.

*--Vickey Hanvey (OK session)*

Clarify if the procedure allows for the tribe to pay back the overpayment that current year or to recoup it the following year at their option. It could be a cash flow issue for the tribe. Small amounts, they may want to pay back but large amounts they may need to prepare financially for. Allow the tribe to agree to have the overpayment subtracted from the next year.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

We're familiar with IHS's approach and now, unfortunately, it seems like a priority of the workgroup to address this issue and, for various reasons, as a self-governance tribe, we may have funding that we don't use in a particular year. It seems like double jeopardy – the rate is – you know, as we go through our indirect cost rate and we're negotiating our 2016 rate through the business center, so we'll

be current before the end of our fiscal year. If that money reverts back, when we do spend those carryover dollars in our self-governance program, because we have the ability to reprogram them as well as we're meeting our PSFAs, then when do we get that back? That's our main concern. It seems like we're going to be exchanging checks back and forth. I don't want to belabor it, but I'm assuming the workgroup is fully aware of the situation and how we're going to address it, and when we do spend that money, we're not going to get any new contract support. How does that help figure into the calculation when it's a double jeopardy for the tribe in our rate.

*--Robert Palmer, Taos Pueblo (NM Session)*

Overpayments should be offset the following year.

*--Rachel Arviso, Navajo Nation (NM session)*

We support you taking the overpayment out of the next appropriation versus having a bill of collection. We do not agree with the matching to actual costs in any given year because tribes have the ability to move those funds and use them in the next fiscal year. [Answered: Overpayment is separate from the provision in the appropriation language].

*--Robert Palmer, Taos Pueblo (NM session)*

It's correct that the policy for tribes to question overpayment determinations and show they have not, in fact, been overpaid. Once there is a determination, however the policy requires tribes to repay the overage, which can result in inefficiencies and hardships. We recommend tribes be given the option to have the overpaid amount applied as an offset in the following year, as in the IHS policy.

*--Will Micklin, Eqiiaapaayp Band (CA session)*

We have a question on the status of the Financial Management Collection Procedures Handbook that refers to whether or not there would be bills of collection tribes would be susceptible to. We are unclear whether IA lacks the authority to apply an offset as has been discussed and are looking at legal analysis to support that conclusion. We recommend adding a sentence to Section 10 that would say the tribe may elect to either repay the overpaid amount or have IA apply it as an offset in the following year's CSC requirement. That would be a savings of time and efficiency on both sides.

*--Will Micklin, Eqiiaapaayp Band (CA session)*

## **Underpayment or Other Adjustments (Section 11)**

The Policy wisely seeks to avoid a lengthy reconciliation process at the end of the year. The applicable direct cost rate at the end of the year determines the final indirect cost requirement, and no adjustments will be made if the contract year's rate is approved after the end of the year. The Purpose of this provision is to facilitate timely close-out of the fiscal year, rather than keeping it open for months or even years. In most cases this benefits both the Tribe and IA, but in cases where

the Tribe expects the new rate to be higher, the benefit of early close-out might be outweighed by the expected boost in indirect cost funding. Often a Tribe's newer rate is imminent and the Tribe is simply waiting for updated rate documentation from Interior Business Center (IBC). Tribes should not be forced to accept CSC payments based on older rates simply because IBC is sometimes slow to issue rate agreements. It should therefore be up to the Tribe whether to close out with the FY 2015 rate in place on September 30, 2016 or wait for the FY 2016 rate to be approved. We suggest that this tribal option be incorporated into Section 11.

*-- Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

Tribes should not be forced to accept CSC based on older rates because IBS is often slow to issue current rate agreements. Therefore, it should be left up to the Tribe whether to close out with the FY2015 rate in place on September 30, 2016 or wait for the FY2016 rate to be approved.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

The policy should provide some flexibility to the year-end closeout process by offering each Tribe the option to close out contract amounts due right at the end of the FY or to leave the calculation open until the Tribe receives a current (or more recent) rate. Often a Tribe's newer rate is imminent and the Tribe is simply waiting for updated rate documentation from the IBC. Tribes should not be forced to accept CSC payments based on older rates simply because IBC is sometimes slow at issuing rate documents.

*--Little River Band of Ottawa Indians*

We are pleased that BIA chose to adopt a swift year-end closeout process that allows Tribes to close the books in a timely fashion and completes the CSC calculation shortly after the close of the contract year. The IHS proposal charts an entirely different path that contemplates both an initial negotiation of a CSC estimate and a later reconciliation process that may take a year or two, and possibly more, to complete. In contrast, the BIA approach is simple and contemplates revising the CSC calculation only if warranted.

*-- Little River Band of Ottawa Indians*

Section 11 talks about utilizing an indirect cost rate. Whatever rate is in effect at the end of the FY is what you're going to use. I don't fault that approach but there are tribes who are doing their best to get rates established and not necessarily through their own fault, the IBC is taking an extraordinary amount of time to finalize some rates. So if a tribe doesn't have its rate by year end, but that rate is subsequently approved and goes up, the tribe will want to collect the increase. There should be a consideration of that.

*--Rob Demary, North Cheyenne (FL session)*

The policy needs to be structured so it's clear that, at some point in time, if a rate hasn't been adjusted, then it defaults back to the previous rate that was approved. Until it gets adjusted for a new rate, that's the rate. There has to be incentive for tribes to get their rates negotiated, done and updated.

*--Ron Allen, Jamestown S'Klallam (FL session)*

On adjustments, we don't think tribes should be forced to accept CSC payments based on older rates simply because IBC is slow to issue rate agreements. It should be up to the tribe whether to close out the rate in place or wait for a rate to be approved. That option should be in Section 11 of the policy.

*--Will Micklin, Eqiaapaayp Band (CA session)*

## **Annual Report to Congress (Section 12)**

[We appreciate] the Policy continues existing timelines for the annual CSC report to Congress, and establishes a process in which tribes will have the opportunity to comment on that report before it is finalized. Following the new IHS proposal on this topic, we recommend that BIA also publish a separate CSC report for Tribes, with this separate report released to Tribes even if the formal report to Congress is delayed.

*--Ak-Chin Indian Community; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF; Little River Band of Ottawa Indians*

Develop a CSC Report for Tribes that can be released to Tribes even if the formal report to Congress is delayed.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation; Pueblo of Laguna*

Section 12 requires a report to Congress. That's a valuable source of information for Congress to make its decisions, but tribes also need that information to make decisions about contract support and better advise you. There should be a companion report to tribes if your report doesn't get distributed to Congress. This might be one of the few instances where IHS adopted something superior. Add a separate report to tribes that can be provided in a timely manner regardless of what hang-ups may delay a report to Congress.

*--Rob Demary, North Cheyenne (FL session)*

For Question 7 "The changing the statutory date could hinder the CSC fund request, therefore internal deadlines have been established to meet the statutory deadlines." Does that mean the local agency awarding officer is responsible for working with the contract programs and establishing that deadline and making sure they meet the deadline? [Answered: We're referring to ISDEAA which says we have

to submit CSC report to Congress no later than May 15, so we worked backwards from that for regions to gather information from tribes].

--Daniel Honahni, Hopi Tribe (NM Session)

## Handbook

### Details Being Put in Handbook

The downside to this brevity, is that the Policy is vague in some respects, with many of the details of CSC Policy implementation relegated to a Handbook.

-- Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe ; Ysleta del Sur Pueblo; USET SPF

I did not see in the Handbook a section on technical assistance to tribes, and that's a very important requirement on the Agency. There is a place for types of direct contract support costs, but facility costs, liability insurance, etc. should be included.

--Lloyd Miller, Sonosky Chambers (FL session)

The handbook, templates, methodologies, descriptions, examples are very important. The devil is often in the details. This is of great interest to tribes. I do not understand when you say it will be attached to the policy but not incorporated in the policy. We need to understand if it is part of the policy, and if so and it's subject to the 90-day review then it needs to get out quickly for consultation.

--Rob Demary, North Cheyenne (FL session)

We understand BIA is developing a Handbook that includes definitions, examples, templates, and other materials and that BIA has not included in ongoing consultation because it does not consider the Handbook part of the Policy. We disagree with this view, particularly in light of the *Ramah* litigation. Even if the Handbook were properly considered separate from the Policy, BIA should employ the same collaborative process with the Handbook that it did with the Policy. The Workgroup should be deeply involved in drafting and editing the Handbook, and BIA should also seek broader tribal review and comment, preferably through a formal consultation process.

--Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF

We are concerned that the handbook is not part of the policy. We don't believe that's correct. The official Wildlife Service Native American Policy revision is in the handbook, so by other bureaus under the department the handbook is part of a policy.

--Will Micklin, *Eqiaapaayp Band (CA session)*

## Handbook Development Process

The Bureau should employ the same collaborative process in the editing and drafting of the Handbook that it did with the CSC Policy and the Workgroup should be engaged in the process. The Bureau should also consult with Tribes regarding proposed amendments to the Handbook.

-- *Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Citizen Potawatomi Nation*

We understand there are a number of technical requirements for a chapter in the IAM. BIA explained this includes the need for brevity and to address only policy determinations, while omitting statutory citations, definitions, and additional otherwise helpful information. Given the limitations in the Manual, the CSC Workgroup also developed a Handbook that provides much greater detail on key policy provisions, and includes background documents, definitions, examples, and other useful information. It is essential that the Handbook undergo the same formal consultation underway with the Manual, including publication in the Federal Register.

-- *Little River Band of Ottawa Indians*

BIA should swiftly release its Handbook and related attachments for full tribal consultation. This is not only required by controlling Secretarial policies, it is also required by the terms of the Court Order approving the Third Partial Settlement Agreement in the *Ramah* case.

-- *Little River Band of Ottawa Indians*

The Agency hasn't put out for comment any portion of the Handbook and I understand the rationale but there's a lot being listed for the Handbook and our examples of pre-award and start-up costs are something Tribes are keenly interested in. I appreciate the Agency wouldn't want to discuss when the *Shoshone-Bannock* and *Puyallup* cases are going on, but they are over. It would be helpful to have tribal input on that part of the Handbook. Hopefully the workgroup would be involved in the process for determining elements of pre-award costs, elements of start-up costs, definitions, and process.

--Lloyd Miller, Sonosky Chambers (FL session)

I don't want to mess up a good process, but the *Ramah* order that requires a 90-day notification may apply to the Handbook. If so, you want to get underway quickly so the 90-day period can run before the administration is over.

--Lloyd Miller, Sonosky Chambers (FL session)

We want involvement of tribal folks on the workgroup in development of the Handbook and tribal consultation to make sure where the rubber meets the road is in the Handbook and that it reflects what we'd like to see happen in the field.

--*Melanie Fourkiller, Choctaw Nation (FL session)*

## Handbook Availability

Once the Policy and Handbook have been finalized and implemented, both documents must be readily available to tribal leaders and staff. Although the Indian Affairs Manual primarily governs internal BIA operations, several of the Handbook sections are meant to be used by tribes (for example, the templates for requesting pre-award and startup costs). Others may be useful to both BIA and tribal staff; such as the templates for CSC needs calculations. Both the Policy and the Handbook should be easily accessible on the BIA website and not just [buried] in the IAM.

--*Ak-Chin Indian Community; Cher-Ae Heights Indian Community of the Trinidad Rancheria; Inupiat Community of the Arctic Slope; Jamestown S'Klallam Tribe; Nez Perce; Port Gamble S'Klallam Tribe; Samish Indian Nation; Susanville Indian Rancheria; Yurok Tribe; Ysleta del Sur Pueblo; USET SPF*

Once finalized, the CSC Policy and Handbook should be posted on the IA website and otherwise made easily accessible to Tribes and their staff.

-- *Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

Post the finalized Policy and Handbook on the BIA website for easy access.

--*Pueblo of Laguna*

## Need for Training

While it is undeniable that strides have been made to standardize a CSC calculation process that engages tribal participation in a more meaningful and active manner, there is much more work needed on the calculation tool(s) to ensure alignment with the Indian Self-Determination Act followed by a battery of training to ensure consistency and transparency.

-- *Ysleta del Sur Pueblo*

Once tribal consultation has been completed for both the new chapter and the Handbook, BIA must also provide training for BIA negotiators and for tribal staff to ensure everyone understands how the policy will be implemented. Training will ensure a fair and consistent application across regions and help minimize future disputes.

--*Little River Band of Ottawa Indians*

Some concern still exists as to whether tribes will fully understand the technical advantages of a select few tribal and federal contributors who have

worked intimately in the contract support cost field. Accurate calculation tools such as the Handbook that accompanies the policy draft and training will be even more critical.

*--Ysleta del Sur Pueblo*

Transfer this information to a level beyond a small group having a good understanding and formulate a solid training plan. Hopefully it's not only for formulating and disseminating the handbook without having peer to peer. I highly recommend that get incorporated and the Workgroup assist in how to do that.

*--Linda Austin, Ysleta del Sur Pueblo*

## Appropriations Language

We are thankful that this burdensome language has been removed from both the House and Senate FY 2017 appropriations language. In order to properly address the FY 2016 appropriations language, Indian Affairs should implement the proviso—if it continues beyond FY 2016—by adopting a presumption that any unexpended CSC carried into the next year will be required in that next year to support program funding also carried forward. Unless IA has evidence otherwise, IA should presume no net effect on CSC requirements for the two years and no need to apply any offset.

*-- Susanville Indian Rancheria*

My solution to the FY16 appropriations language is to make sure that Congress is killing it from the 2017 bill that they're pulling together, then you just ignore it for this year.

*--Dave Connors, Red Lake Band of Chippewa Indians (FL session)*

The FY2016 appropriations language is cumbersome and leaves us in the awkward position of what to do. I strongly support Option 2 [BIA assumes any FY2016 CSC money not spent in FY2016 by the tribe, BIA assumes the tribe didn't spend because the tribe didn't spend the associated program funding, the 106(a)(1) amount, and BIA will assume the FY2016 CSC funds will be spent when the FY2016 program funding is spent, so BIA does not have to take any action in FY2017 to withhold FY2017 CSC funds that would otherwise be disbursed to the tribe]. This would capture the vast majority of situations and would be most appropriate.

*--Rhonda Butcher, Citizen Potawatomi (OK session)*

My question is regarding carryover [in the appropriations language], you-all are having trouble with the wording. For me, it's carryover because you cannot use it because direct contract support was not used, and they have a carryover, or is that you actually were not able to charge it back there? [Answered: appropriations language says that if the Tribe didn't spend all its contract support funds for a fiscal year, BIA should deduct that amount from the next fiscal year distribution to the Tribe].

*--Jeanne Collins, Picuris Pueblo (NM session)*

I disagree with the rationale for the appropriations language because when you have a contract, they are multi-year, so your annual allocation is determined on your scope of work and the budget you submit. So, if you don't spend your first year allocation, that should carry forward. Say you have a contract pending and have to bid around, that's time consuming. A lot of issues can be toward the government itself, because fiscal years are different. IHS had a lot of prior year carryovers because funds were not spent but I don't think BIA should do that.

*--Rachel Arviso, Navajo Nation (NM session)*

I don't agree with the proposed idea of the contract support dollars being taken back if not utilized. We applied for the power to use. Simply because there are circumstances that some tribes encounter – for example, Hopi has a space/facility problem. We know that while we were taking over numerous programs on a contract basis, we have a problem in terms of placement of our staff. Tribes shouldn't be penalized for any funding, or have it taken away.

*--Daniel Honahni, Hopi Tribe (NM session)*

I object to that language [contract support dollars being taken back if not utilized] because we have received funding and have been audited. It's hard for us to spend the money when it's received late, and for it to be taken back, and we're being penalized for something beyond our control.

*--Gary Pyne, Picuris Pueblo (NM session)*

Another issue is the housing improvement program. We do not receive funding until July, and sometimes as late as September, when half the year has gone by the weather may prevent construction from starting until the following year. Also, at the same time, the Tribe is closing their financial books, so there are periods of closure where you can't process the expenditure documents. It is not good for tribes to be penalized that way.

*--Rachel Arviso, Navajo Nation (NM session)*

Because the appropriations language doesn't seem to be always the same, does that mean this consultation is perpetual? [Answered: No, the appropriations language is different but CSC are calculated based on program functions, services and activities the Tribe contracts for – so that's the same regardless of the appropriations language. The appropriations language just throws in a new little variable every now and then.]

*--Daniel Honahni, Hopi Tribe (NM Session)*

The [appropriation language] says that if the tribe does not obligate the funds in the current fiscal year, you're going to recoup them from the tribe somehow. It's almost June and our tribe still does not have its indirect costs paid to us. Are we to break the law then and expend funds that have not yet been received

by the Tribe? Because for us to spend money we haven't received yet, not knowing full well that we're going to, puts us in a Cat-22 situation.

--Walter Gray, *Guidiville Band of Pomo Indians (CA session)*

I was with the tribes that went to Senate Appropriations Committee for hearings and Chairman Calvert was in favor of removing the proviso and said Congress feels they were misled by agencies to put this proviso in the appropriations language.

--Bradie Miranda, *Pechanga (CA session)*

The language in the appropriations – it is not fair for tribes to be subject to that when we do not get our funding at the beginning of the year. If it's piecemeal, with a continuing resolution or any other method, then it's difficult for us – it's not fair to us to expend money we do not have – or we can't expend money we don't have and then take it away because we didn't do it, because the federal government did not provide us the funds they were supposed to. And we would have a difficult time preparing our indirect cost rate proposal if that's still open – we can't do our proposal on time which makes everything else delayed. That language should be removed. And we feel that the Bureau should not apply it because we are not getting our funds in a timely fashion and it's not fair for everybody. Ignore the language.

--James Mackay, *Susanville Rancheria (CA session)*

I have an idea for BIA in implementing the proviso – adopt an assumption that if a tribe doesn't spend any CSC in the year in which they were paid, it's because they carried over the associated program money that the CSC would support for administration, thereby there's nothing to pay back, because CSC would be used in the following year to support the carried-over program money. If for some reason you knew that wasn't the case, then you'd make the tribe pay it back, but usually you would just ignore it.

--Steve Osborne, *Hobbs, Straus (CA session)*

We agree the 2016 appropriations language could be contradictory to the purpose of providing CSC and it would be burdensome for a tribe to determine exactly where they're at on expenditures by the end of that fiscal year. Often the audits are delayed in getting done, so we think that would result in unfairness and tribes are not prepared to work with this proviso and maintain the benefits of the contract. We have to think harder before we can come up with the suggested options, but the language should be removed and we oppose it. 2017 should not have this type of proviso.

--Majel Russell, *Fort Peck Tribes (CA session)*

## Future Funding

The annual ISDEAA accounting provided to Congress documents year-over-year budget shortfalls in CSC. This imposes great fiscal difficulty on tribes, as federal contractors, to administer programs that meet the needs of our communities. The failure of the U.S. to adequately fund CSC is inconsistent with the ISDEAA as well as the U.S.'s trust obligation owed to Indian tribes. We understand these structural deficiencies are not within the control of IA and regret that under the current congressional climate disfavoring sequester-level discretionary spending caps, CSC funding shortfalls are likely to continue.

*--Rincon Band of Luiseno Indians*

The Tribe maintains that indefinite appropriation of CSC funding must be made mandatory and permanent. We thus support the Administration's proposal to move CSC funding to a mandatory funding basis, although we would like it to begin in FY2017 rather than FY2018. Should CSC funding not be made mandatory in FY2017, we otherwise are supportive of the President's request for an appropriation of "such sum as may be necessary."

*--Jamestown S'Klallam Tribe*

We urge BIA to continue to make every effort to distribute dollars to Indian Country via ISDEAA compacts and contracts, regardless of whether funds are recurring, including in cases where BIA is passing through funding via interagency agreement. While we understand the desire, both within the Agency and as directed by Congress, to ensure CSC calculations are accurate and predictable, we note the Agency's support for expanding self-governance. We and many others in Indian Country envision a future in which all federal dollars are contractable and compactable. We urge the Agency to continue to stand with us in advancing policies in support of this vision.

*--USET SPF*

## **Payment of Increases in CSC Need**

The policy should set out that increases in CSC need are paid when identified. For example, should additional program funding be distributed during the year, the associated CSC should also be paid at that time. Another example is due to adjustments for increased IDC rates that may be received during the year. Tribes should not be required to wait to year-end to be paid CSC that is due and owing, potentially disrupting their cash flow. Finally, Tribes, whether contracting under Title I or Self-Governance, should be treated at least as favorably as the other with regard to prompt CSC payments.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma; Jamestown S'Klallam Tribe; Citizen Potawatomi Nation*

Distribute increases in CSC at the same time as distribution of increases in program funding occurring mid-year.

*--Pueblo of Laguna*

## Internal Payment Process for CSC

The internal payment system is not working well when it comes to timely payment of CSC. There are times when Tribes are still waiting to receive their CSC payment eight months into the fiscal year. Steps need to be taken to implement a more efficient payment system. Tribes should not have to use their own limited funds to cover these contractual obligations or be forced to diminish or cease the delivery of programs and services because they do not receive CSC in a timely manner.

*-- Jamestown S'Klallam Tribe*

Assure prompt payment of CSC.

*--Pueblo of Laguna*

Will BIA change its payment process in any way compared to how it's currently being handled?

*--Linda Austin, Ysleta del Sur Pueblo*

## Next Steps

We urge you to reconvene the CSC workgroup once the consultation period closes to finalize this policy as quickly as possible. In addition, we suggest the same simplified and streamlined approach be applied when you finalize the handbook that will accompany the policy and Tribal representatives look forward to working with you to develop the handbook.

*-- Self-Governance Advisory Committee; Absentee Shawnee Tribe of Oklahoma*

Upon close of the comment period, we urge a reconvening of the CSCS workgroup to finalize the Policy as soon as convenient. BIA should collaborate with Tribes in edits and amendments to the Handbook.

*--Pueblo of Laguna*

When will the policy be finalized? Before the administration?

*--Palmer Mosley, Chickasaw Nation (OK session)*

## Miscellaneous

The Draft Policy is silent on an area that is of considerable consequence and benefit to sub-recipient tribes. We recommend the addition of language to clarify and systematize DOI's authority to fund both direct and indirect contract support dollars to eligible sub-recipient tribes. Doing so will provide much needed guidance

to DOI/BIA and tribal personnel in the negotiation and reconciliation of contract support dollars for eligible tribal sub-awardees/sub-recipients. The HIS's Draft CSC Policy contains such language on pages 12, 13, 14, 19, and 20, all of which clearly states its understanding of its authority to fund CSC dollars when a request is made by an awardee/recipient on behalf of eligible sub-awardee/sub-recipients. We strongly recommend that DOI/BIA insert similar language into its Draft Policy.

*--Chugachmiut*

If there is a, is there a possibility of an interagency switch so that we could take you and Sunshine into the IHS side and move other people... is that something that could be? What do you think? We have attorneys.

*--Mickey Peercy, Choctaw Nation of Oklahoma (FL Session)*

We can IPA you to IHS to help us figure this out with IHS.

*--Henry Cagey, Lummi Nation (FL session)*

Clarify the role of the workgroup in the policy if you're going to have one. We want to find a place that allows us to direct our questions – do we come to the Advisory Committee, the Self-Governing people, the Workgroup or do we start with you folks?

*--Henry Cagey, Lummi Nation (FL session)*

We want the ability to examine our colleges and our schools. If we change policies of contract support, we want our schools included. We have jurisdiction over schools and colleges and want the U.S. to recognize they need as much support and attention as you're giving Tribes. They're part of us and they are struggling to meet the needs of our kids. Indian schools are way behind what non-Indian schools are getting. Find a way to include our education system, rather than leaving it up to the lawyers.

*--Henry Cagey, Lummi Nation (FL session)*

Maybe this policy could be a template for those other non-BIA programs under Interior covering your pre-award costs, start-up costs, direct CSC and administrative costs. Why create a separate policy? Eventually that's going to come into discussions when you negotiate with non-BIA programs.

*--Michael Chavarria, Governor for Santa Clara Pueblo (FL session)*

The policy does not have a provision for pilot projects or alternative methodologies that might be proposed by tribes. Consider that because sometimes tribes develop novel approaches to things that might not be ready for primetime as far as policy revisions, but should be investigated and implemented on a trial basis. Offer pilot projects or alternatives on a short term basis.

*--Rob Demary, North Cheyenne (FL session)*

As OSG expands, this number will be a moving target. OMB and Congress will want to know the basis for the certainty. The fact is this is a cost that should be recovered legitimately by tribes as we're growing and taking over federal functions.

*--Ron Allen, Jamestown S'Klallam (FL session)*

My comments relate to boarding schools and funding for facilities in Eastern Oklahoma. Our office was created by Choctaw, Chickasaw, Creek, and Cherokee Nations and contracted the facilities management function out of the Muskogee office in 1997. Over the years, the direct BIA funding dwindled and disappeared. WE replaced that with an agreement with OFMC in Albuquerque to add 12% to each backlog or work order. Recently, we were advised that 12% isn't possible, so we're broke – we are still expected to provide the same service for the school but can't recover costs. Can these types of CSC be used to support a facilities management office with four tribes, or would it have to be one tribe?

*--Mike Segroves, Choctaw Nation (OK session)*

A contract is a contract, so why do you want to change the payment as part of the initial contract?

*--Daniel Honahni, Hopi Tribe (NM Session)*

I'm curious about your updates to the CSC policy category. How does the CSC policy move to the manual, stabilize this particular process with legislative authority? [Answered: permanent policies should be in the Indian Affairs Manual].

*--Daniel Honahni, Hopi Tribe (NM Session)*

The question of entitlement, so that there's an indefinite appropriation for CSC and indirect. It seems we are now subject to a pejorative view of what "entitlement" means, as if you're asking for something that others don't get and are therefore a greedy person. Entitlement is right by title. Title is a statute/legislation. ISDEAA is a right established by title, by statute. So concerns that the policy would cause greater sums to be appropriated to tribes as a result and there's not enough money to fund it is an incorrect conclusion. Under ISDEAA, if there's money due, it's due. We put ourselves in a bad light when we talk about entitlements that way.

*--Will Micklin, Eqiaapaayp Band (CA session)*

Many of the programs and grants coming out of IA have limitations, restrictions and exclusions of CSC. We recently got a DEMD grant from IEED and there is specific exclusions that the award is not subject to CSC. There are instances where you are eligible but they narrow your eligibility for things like that using existing funds to offset or contribute to those award. And when a tribe is set up as a self-governance tribe, and we cross-obligate funds for different purposes, we contribute enterprise or general funds that leverage federal dollars, it's difficult to take on awards, programs, or grants, that excluded CSC because we are set up to use that to the greatest extent possible and all of our dollars are obligated. Those restrictions are problematic for us and limit our ability to fully utilize the Indian programs intended by Congress. That should be limited because they're pervasive

now in federal awards. S286 in Congress now underscores that this is a problem. These are simple improvements to self-governance and yet there's tremendous opposition from nontribal entities, Congressmen, and elsewhere that have an uneducated or pejorative view of what self-governance and self-determination is, and it reflects a mood that is very disturbing.

*--Will Micklin, Eqiaapaayp Band (CA session)*

### **Appendix A: List of Commenters who Submitted Written Comments**

1. Absentee Shawnee Tribe of Oklahoma
2. Ak-Chin Indian Community
3. Cher-Ae Heights Indian Community of the Trinidad Rancheria
4. Chugachmiut
5. Citizen Potawatomi Nation
6. Inupiat Community of the Arctic Slope
7. Jamestown S'Klallam Tribe
8. Little River Band of Ottawa Indians
9. Nez Perce
10. Port Gamble S'Klallam Tribe
11. Pueblo of Laguna
12. Rincon Band of Luiseno Indians
13. Samish Indian Nation
14. Self-Governance Advisory Committee
15. Susanville Indian Rancheria
16. USET Sovereignty Protection Fund, Inc. (USET SPF)
17. Ysleta del Sur Pueblo
18. Yurok Tribe

### **Appendix B: List of Tribal Consultation Sessions**

- April 27, 2016 – Lake Buena Vista, FL (Held at the 2016 Annual Tribal Self-Governance Consultation Conference)
- May 17, 2016 – Albuquerque, NM
- May 19, 2016 – San Francisco, CA
- June 10, 2016 – Oklahoma City, OK