



National
Congress of
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National Indian
Health Board



Indian Health Service Contract Support Costs Policy Briefing

February 22, 2016

9 am-12 noon EST, Congressional Room

Dial In: 888.244.8150

Conference Code: 2580847

Capital Hilton, 1001 16th St NW

Washington, DC 20036

Purpose: Briefing on the proposed updated Indian Health Service (IHS) Contract Support Costs (CSC) policy and to take questions and comments on the policy, which will be consulted on and implemented in 2016. The updated CSC policy will maintain its purpose of providing uniform and equitable guidance in requesting CSC funds for new and existing awards authorized by the Indian Self-Determination and Education Assistance Act.

Welcome/Purpose

Andrew Joseph, Co-Chair, IHS CSC Workgroup

Chief Lynn Malerba, Chairwoman, Tribal Self-Governance Advisory Committee and IHS CSC Workgroup

Nicolas Barton, Chairman, Direct Service Tribes Advisory Committee

Mary Smith, Deputy Director, Indian Health Service

Caitrin McCarron Shuy, Director of Congressional Relations, National Indian Health Board

Presentation of the IHS Contract Support Cost Policy

Roselyn Tso and Ashley Metcalf, Indian Health Service

Chief Lynn Malerba, Geoffrey Strommer and Lloyd Miller, IHS CSC Workgroup Tribal Representatives

Tribal Leader Discussion

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TRIBAL REPRESENTATIVES**

(Updated December 10, 2015)

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(Updated December 10, 2015)

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Part 6 - Services To Tribal Governments And Organizations
Chapter 3 - Contract Support Costs

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Commented [A1]: Exhibits are an important part of this policy and will be included later

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Version: 2/20/16 – final draft, joint agreement document 3:15pm EST

of Contract Support
Costs in the Indian
Health Service

6-3.1 INTRODUCTION

A. **Purpose.** This Chapter of the Indian Health Manual (Chapter) provides guidance to both Tribal and Agency personnel in the preparation, negotiation, determination, payment, and reconciliation of contract support costs (CSC) funding in support of new, expanded, and/or ongoing Indian Self-Determination and Education Assistance Act (ISDEAA), 25 United States Code (U.S.C.) Section (§) 450 et seq., contracts and compacts. The Chapter provides instructional guidance on the following:

1. determination of amounts of pre-award, startup, direct, and indirect CSC funding;
2. payment of CSC funding to awardees;
3. reconciliation of CSC payments to awardees; and
4. reporting by IHS to all Tribes and to Congress.

These instructions are not regulations establishing program requirements and are issued consistent with 25 Code of Federal Regulations (C.F.R.) § 900.5, which states:

Except as specifically provided in the [ISDEAA], or as specified in subpart J, an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Indian tribe or tribal organization and the Secretary, or otherwise required by law.

The development of this Chapter has involved the active participation of representatives from American Indian and Alaska Native Tribes. The procedures discussed here will be applied to contracts and compacts awarded pursuant to Title I and Title V, respectively, of the ISDEAA, as amended.

B. **Guiding Principles.** This Chapter was drafted in accordance with the following guiding principles:

1. The process should be simple and efficient.
2. The Chapter assumes full funding of CSC.
3. To the maximum extent practicable, the Chapter should align with the Bureau of Indian Affairs' (BIA) CSC policy.
4. The Chapter is designed to assure that the perfect does not become the enemy of the good.
5. The Chapter assures accountability.
6. The Chapter is intended to minimize future litigation.
7. The Chapter avoids putting at risk past CSC settlements.
8. The Chapter assures that post year-end reconciliation will not take several years.

9. The Chapter has been developed and will be implemented in accordance with the government-to-government relationship.
10. The Chapter provided needed certainty for the Agency and Tribes and Tribal organizations.
11. The Chapter has received broad support across Tribes and Tribal organizations.
12. The Chapter is designed to minimize burdens imposed upon Tribes and IHS.
13. The Chapter is designed to assure consistency.
14. The Chapter is designed to assure transparency.
15. The Chapter is designed to assure integrity in the government-to-government relationship.
16. The Chapter has been built on trust amongst the IHS, Tribes, and Tribal organizations.
17. The Chapter will be supplemented with regular training for IHS and Tribal personnel to assure consistency in its application.
18. The Chapter will be reassessed on a regular basis.

C. Supremacy of the ISDEAA.

Nothing in this Chapter is intended to limit an ISDEAA contractor/compactor's right to be paid the full CSC amount under the ISDEAA. If a contractor/compactor believes that it has not been fully paid, it may request additional CSC funding from IHS and, if agreement cannot be reached, must invoke the remedies available in 25 U.S.C. § 450m-1.

Nothing in this Chapter is intended to alter, in any way, IHS's obligations or authority under the ISDEAA. In the event of any apparent conflict, the ISDEAA supersedes this Chapter.

D. Background. All policies and circulars concerning the administration of CSC by IHS have been developed and revised through coordination and consultation with Tribes. The CSC policies and circulars developed and revised to date include:

1. Indian Self-Determination Memorandum No. 92-02, "Contract Support Cost Policy," signed by Dr. Everett Rhodes, February 27, 1992.
2. Indian Health Circular No. 96-04, "Contract Support Costs," signed by Dr. Michael Trujillo, April 12, 1996.
3. Indian Health Circular No. 2000-01, "Contract Support Costs," signed by Dr. Michael Trujillo, January 20, 2000.
4. Indian Health Circular No. 2001-05, "Contract Support Costs," signed by Dr. Michael Trujillo (Michael E. Lincoln. for), July 6, 2001.
5. Indian Health Circular No. 2004-03, "Contract Support Costs," signed by Dr. Charles W. Grim, September 1, 2004.

6. Indian Health Service Manual, Part 6, Chapter 3, "Contract Support Costs," signed by Dr. Charles W. Grim, April 6, 2007.

This version of the Chapter is the successor to the same Chapter implemented on April 6, 2007. The changes in this successor version of the Chapter are provided to streamline and simplify the processes for the determination, payment, and reconciliation of full CSC funding under the ISDEAA. The IHS will continue to reassess the Chapter on a regular basis, and further changes will only be implemented after Tribal consultation. This Chapter replaces and supersedes all previous versions of the CSC policy, including previous versions of this Chapter.

- E. **Policy.** The IHS will provide for a uniform and equitable system of determining, paying, and reconciling CSC funds for new, expanded, and ongoing ISDEAA compacts and contracts and preserve and support each awardee's right to contract/compact under the ISDEAA.

F. **Authorizing Legislation.**

1. Transfer Act, Title 42, U.S.C. § 2001
2. Title I of the ISDEAA
3. Title V of the ISDEAA

G. **Definitions.**

1. **Award.** An agreement authorized under Title I (contract) or Title V (compact) of the ISDEAA, including the associated annual funding agreement (AFA) or funding agreement (FA).
2. **Awardee.** A Tribe or Tribal organization that receives an ISDEAA award as defined above. See also Contractor.
3. **Annual CSC Report to Congress.** Report provided to Congress from the IHS Director pursuant to 25 U.S.C. § 450j-1(c); including "an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted."
4. **Buy-Back Services.** Services contracted by a Tribe but that it "buys back" from IHS and, accordingly, IHS provides pursuant to a full-cost reimbursement agreement with the Tribe. Costs of buy-back services may be included in the direct cost base, depending upon the Tribe's indirect cost (IDC) rate agreement.
5. **Contract Proposal.** A proposal for programs, functions, services, or activities (PFSA or PSFA) that the Secretary, Department of Health and Human

Services (HHS), is authorized to perform, but which a Tribe or Tribal organization is not currently carrying out. The requirements of a Self-Determination contract proposal are found in 25 C.F.R. § 900.8.

6. **Cognizant Agency.** The Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or IDC proposals developed under 25 C.F.R. Part 200 on behalf of all Federal agencies. The cognizant agency for IDC is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see 25 C.F.R. Part 200.
7. **Contract Support Costs Awarded.** Total CSC funding allocated to an awardee.
8. **Contract Support Costs Need or Requirement.** The full amount of CSC funding for new, expanded, and ongoing contracts or compacts, as determined under this Chapter pursuant to 25 U.S.C. § 450j-1(a).¹
9. **Contractor.** A Tribe or Tribal organization that receives an ISDEAA award as defined above. *See also* Awardee.
10. **Direct Cost Base.** The accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute IDC to individual Federal awards. The direct cost base for each year is determined by a negotiation between each Tribe and its cognizant Federal agency.
11. **Direct CSC (DCSC).** Direct program expenses for the operation of the ISDEAA Programs that are the subject of the award, that otherwise meet the definition of CSC in 25 U.S.C. § 450j-1(a).
12. **Exclusions.** Direct expenditures excluded from the direct costs in order to calculate the direct cost base to which the IDC rate is applied. These types of expenditures vary by Tribe and are defined in the IDC rate agreement.
13. **Expanded PSFA.** Expansion of a PSFA through the assumption of additional PSFAs previously operated by IHS, the assumption of programs previously operated under awards to other awardees, the assumption of a new facility (such as

¹IHS and Tribal members of the CSC Workgroup have differing interpretations of what costs are eligible to be paid as CSC under the ISDEAA. IHS believes the plain language of the ISDEAA makes it clear that, to be eligible for CSC funding, a cost and the underlying activity must meet the definition of CSC in 25 U.S.C. § 450j-1(a)(2), which requires (among other things) that the underlying activity is one that IHS does not normally carry on or provided from resources not transferred in the contract. Tribal members of the CSC Workgroup, however, take the position that 25 U.S.C. § 450j-1(a)(3) requires a similar calculation that is calculated by considering funding rather than the underlying activities.

increased staff associated with a joint venture agreement), and increases due to new appropriations (excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund).

14. **Indirect Costs.** Costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved.
15. **Indirect CSC.** Administrative or other expenses related to the overhead incurred by a Tribal contractor in connection with the operation of ISDEAA programs pursuant to the contract and that otherwise meet the definition of CSC in 25 U.S.C. § 450j-1(a)(2)-(3).
16. **Ineligible Funding.** Categories of funding not eligible for inclusion in the calculation of CSC funding because the related activities are not PSFA transferred and funded under 25 U.S.C. § 450j-1(a)(1).
17. **Indian Self-Determination Programs (ISDEAA Programs).** The PSFAs associated with an ISDEAA award that are eligible for CSC funding in accordance with this Chapter.
18. **New PSFA.** ISDEAA Programs that are being assumed by the awardee and transferred by IHS for the first time in the current contract period, including new PSFA available due to new appropriations (excluding general program increases and increases for inflation, pay costs, population growth, and the Indian Health Care Improvement Fund).
19. **Non-Indian Self-Determination Programs.** All awardee-operated programs, exclusive of PSFAs associated with an ISDEAA award, which are not eligible for CSC funding.
20. **Non-Recurring Funds.** Funds that require an annual justification. Some types of non-recurring funds provided for ISDEAA programs are included in the direct cost base.
21. **Ongoing Programs.** All awardee-operated PSFA that were assumed by the Tribe or Tribal organization prior to the current contract period.
22. **Pass-Through Expenditures.** Similar to exclusions in that they may be excluded from the direct cost base to which the IDC rate is typically applied, though such expenditures also may be assigned a lower nominal IDC rate. The IDC rate(s) should be applied to such expenditures, consistent with the IDC rate agreement.
23. **Pre-award Costs.** Costs incurred before the initial year that an award is in effect may be eligible for CSC funding. CSC funding is authorized for pre-award

costs only if they meet the definition in the ISDEAA in 25 U.S.C. § 450j-1(a)(2)-(3), (6), and the Secretary receives a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

24. **Programs, Services, Functions, and Activities.** Those PSFA that are contractible under the ISDEAA, as amended, including those administrative activities that support such PSFA, and that are otherwise contractible, without regard to the organizational level within the HHS that carries out such functions (as authorized under 25 U.S.C. § 450 et seq.).
25. **Reconciliation.** Review by IHS and a Tribe of the Tribe's total CSC requirement and payments made by IHS, including during the course of the contract year and for the purpose of issuing a final contract amendment.
26. **Recurring Funds.** Contract or compact funds that do not require annual justification to the Secretary are recurring funds. Annual increases may be provided through congressional increases or other resource allocation methodologies applicable to the respective funding category of the award.
27. **Retained Services.** Funding which is eligible to be contracted but for which the awardee has chosen not to contract, and thus, for which the IHS has retained associated funding.
28. **Secretarial, or 106(a)(1), Amount.** The amount of funds provided for the PSFA transferred under the award, per 25 U.S.C. § 450j-1(a)(1).
29. **Self-Governance Request.** A self-governance request is any one of the following requests from a Tribe or Tribal organization. A request:
 - a. to enter into the Self-Governance Program for the first time, including Title V; or
 - b. to join an existing Self-Governance compact; or
 - c. to negotiate for new or expanded programs in a subsequent year's compact or FA from a Tribe with an existing self-governance agreement.
30. Service Unit Shares – definition to be included
31. Service Unit Shares – definition to be included
32. **Startup Costs.** Costs incurred on a one-time basis during the initial year that an award is in effect that may be eligible for CSC funding. CSC funding is authorized for startup costs only if the costs meet the definition of CSC in 25 U.S.C. § 450j-1(a)(2)-(3), (5).

33. **Total CSC Shortfall or Overpayment.** The difference between the total CSC requirement and the total CSC paid to the awardee.
34. **Total Health Care Program.** The health care program operated by the Tribe from all resources, including but not limited to IHS, other Federal and State agencies, Tribal contributions, and collections from Medicare, Medicaid, and private insurance.
35. **Tribal Shares.** For the purposes of this Chapter, refers only to an awardee's equitable share of PSFA associated with Area Office or Headquarters resources (including Tribal shares of discretionary IHS grants), notwithstanding the definition of Tribal shares set forth in 25 U.S.C. § 458aaa(a)(8).

6-3.2 DETERMINING CSC AMOUNTS²

Commented [A2]: FOOTNOTE: IHS and Tribe are in discussion on location and final language for footnote is in discussion.

A. **Categories of ISDEAA Funding: Secretarial Amount, Pre-award, Startup, DCSC, and Indirect CSC.**

The ISDEAA, 25 U.S.C. § 450j-1(a)(1)-(3), (5), (6), authorizes funding of an award, including the Secretarial amount and CSC. 25 U.S.C. § 450j-1(a)(1) provides for the Secretarial amount:

The amount of funds provided under the terms of self-determination contracts entered into pursuant to this [Act] shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractible, is operated.

² IHS and Tribal members of the CSC Workgroup have differing interpretations of what costs are eligible to be paid as CSC under the ISDEAA. IHS believes the plain language of the ISDEAA makes it clear that, to be eligible for CSC funding, a cost and the underlying activity must meet the definition of CSC in 25 U.S.C. § 450j-1(a)(2), which requires (among other things) that the underlying activity is one that IHS does not normally carry on or provided from resources not transferred in the contract. Tribal members of the CSC Workgroup, however, take the position that the plain language of the ISDA, including 25 U.S.C. § 450j-1(a)(3), define contract support costs to include both funds required for administrative and other overhead expenses and 'direct' type expenses of program operation, and that in the event the Secretarial amount for a particular function, activity or cost proves to be insufficient in light of a contractor's needs for prudent management of the contract, contract support costs are to be available to supplement such sums. The ISDEAA also requires that "[e]ach provision of the [statute] and each provision of [the] Contract shall be liberally construed for the benefit of the Contractor[.]" § 450(j)(c) (Model Agreement Section 1(a)(2)).

In addition, 25 U.S.C. § 450j-1(a)(2) authorizes CSC funding:

There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

- A. normally are not carried on by the respective Secretary in his [or her] direct operation of the program; or
- B. are provided by the Secretary in support of the contracted program from resources other than those under contract.

The statute further identifies four categories of CSC funding. DCSC and indirect CSC are defined in 25 U.S.C. § 450j-1(a)(3):

(A) The contract support costs that are eligible costs for the purposes of receiving funding under this [Act] shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

- i. direct program expenses for the operation of the Federal program that is the subject of the contract, and
- ii. any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under [25 U.S.C. § 450j-1(a)(1)].

(B) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this [Act], the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

The ISDEAA also defines startup and pre-award costs in 25 U.S.C. § 450j-1(a)(5)-(6):

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary –

(A) to plan, prepare for, and assume operation of the [PFSA] that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

B. Determining CSC Requirements – Statutory Factors that Determine Eligible Costs.

The definition of CSC in 25 U.S.C. § 450j-1(a)(2)-(3), as amended, establishes certain statutory criteria for determining which costs are eligible for any category of CSC funding.

Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an IDC allocation process, usually negotiated by the "cognizant agency" as identified under the applicable Office of Management and Budget (OMB) regulations at 2 C.F.R. Part 200 and the HHS regulations at 45 C.F.R. Part 75. In the case of ISDEAA awards, both the Secretarial amount and CSC funding include funding for both direct and indirect costs.

25 U.S.C. § 450j-1(a)(3) authorizes awardees to be paid CSC funding for eligible costs, whether they are "indirect" in nature (benefitting multiple programs) or additional costs associated with operating a single program, subject to all of the requirements for CSC funding in 25 U.S.C. § 450j-1(a).

IHS and the Tribe will review a CSC request to ensure that all costs are eligible under 25 U.S.C. § 450j-1(a) and to identify duplication, if any, between pre-award, startup, DCSC, and indirect CSC funding.

The procedures outlined in this Chapter are intended to ensure that CSC requirements are accurately identified based on the statutory definition of which costs are eligible for CSC funding, as provided in 25 U.S.C. 450j-1(a)(2)-(3), (5)-(6).

Duplication, if any, between pre-award, startup, DCSC, and indirect CSC funding will be assessed after first considering each cost proposed by the Tribe to determine whether it is eligible for CSC funding under 25 U.S.C. § 450j-1(a). Examples of pre-award, startup, and DCSC are discussed in the standards in Manual Exhibit 6-3-H.

When awardees choose to use sub-awards with Tribes or Tribal organizations (that in all respects meet the requirements to contract directly with the IHS, but choose,

through Tribal resolution, to subcontract to carry out IHS PSFA), to carry out all or part of the PSFA transferred, the eligible costs of the Tribal sub-awardee may also be included in the CSC requirement of the awardee. For CSC on sub-awards, the costs and amounts requested for the sub-awardee will be analyzed and negotiated. Amounts may be considered duplicative to the extent that CSC funding for these costs has already been included in the CSC requirement of the awardee.

C. Startup and Pre-Award Costs.

The amount of CSC funding to be awarded for startup and pre-award costs shall be negotiated consistent with the requirements of 25 U.S.C. § 450j-1(a)(2)-(3), (5)-(6). Depending on the nature of the costs as direct or indirect, the amount of CSC funding also will be negotiated consistent with the guidance below on DCSC and indirect CSC funding. NOTE: Examples of startup and pre-award costs are described in the standards for the review and approval of CSC in Manual Exhibit 6-3-H.

Startup costs for PSFA will only be provided to an awardee on a one-time basis, during the initial 12-month period that the award is in effect. Within 90 days after the end of the initial 12-month period of the agreement, the awardee will certify to IHS that it has fully obligated the startup costs funding on the negotiated startup activities. If the awardee's obligations were less than the negotiated amount, the awardee shall either repay any overpayment or agree with IHS to apply the overpayment to the subsequent year's CSC requirement. If the awardee has obligations for the negotiated startup activities in excess of the amounts funded by IHS, the awardee will provide documentation of these costs and the additional amounts will be subject to negotiation between the parties. No additional startup costs will be justified for that Awardee if the PSFA is subsequently transferred to a sub-awardee.

Pursuant to 25 U.S.C. § 450j-1(a)(6) of the ISDEAA, as amended, notification from awardees for pre-award costs must clearly indicate the nature and extent of the costs to be incurred and such notification must be received by IHS in writing before any of the costs are actually incurred. Tribes must provide a pre-award notice to the appropriate IHS Area Director as soon as they anticipate contracting or compacting a PSFA, and before they incur any of the costs. If such a notice is received by any other IHS Area Office, it should be immediately forwarded to the appropriate IHS Area Director.

The review of pre-award and startup costs by Area Office staff should ensure that the costs meet the CSC requirements in the ISDEAA, 25 U.S.C. § 450j-1(a)(2)-(3), (5)-(6), and there is no duplication of other CSC funding or of any costs funded under a Tribal management grant. See also Manual Exhibit 6-3-H for Sample Pre-Award letters.

D. DCSC.

Direct costs eligible for CSC funding, pursuant to 25 U.S.C. § 450j-1(a)(2)-(3), may be incurred directly by the awardee or by an eligible sub-awardee. DCSC amounts are generally awarded on a recurring basis.

1. Examples of DCSC are described in the standards for the review and approval of CSC in Manual Exhibit 6-3-H. These may include, but are not limited to:
 - a. unemployment taxes on salaries funded in the Secretarial amount;
 - b. workers compensation insurance on salaries funded in the Secretarial amount;
 - c. cost of retirement for converted civil service and United States Public Health Service Commissioned Corps Officer salaries;
 - d. insurance, but only for coverage not included in the IDC pool (or indirect-type-costs budget) and not covered by the Federal Tort Claims Act;
 - e. facility support costs to the extent not already made available;
 - f. training required to maintain certification of direct program personnel to the extent not already made available; and
 - g. any other item of cost that meets the definition of CSC at 25 U.S.C. § 450j-1(a)(2)-(3), but is not included in the awardee's IDC pool (or indirect-type-costs budget) or the 25 U.S.C. § 450j-1(a)(1) amount.
2. Funds for DCSC need not be recalculated each year and will be provided to the awardee on a recurring basis, except for in the following instances:
 - a. If an awardee submits a proposal or request and renegotiates DCSC.
 - b. If a cost that has previously been funded as DCSC is moved to the Tribe's IDC pool (See Section 6-3.2E).
 - c. In the case of a withdrawal as outlined in Section 6-3.3A.
 - d. To add amounts in connection with IPA or MOA employees who have converted after the effective date of the preceding DCSC negotiation. This shall not require a renegotiation of ongoing DCSC amounts.

Renegotiated DCSC requirements become effective for the contract period covered by the DCSC request and are awarded on a recurring basis. IHS will provide technical assistance at the request of the Tribe.

3. Unless a negotiation occurs under the preceding subparagraph, the amount of each awardee's ongoing DCSC need shall be adjusted at the beginning of each contract year by the most recent OMB non-medical inflation rate in order to account for the normal increased DCSC need.³

³ IHS recognizes that tribes have requested the CPI-U medical inflation rate be used and at this time this issue has not been resolved. If IHS determines the CPI-U medical inflation rate can be applied in the future, the change will be implemented automatically.

4. Unless otherwise requested by the awardee, DCSC calculated on new PSFA and expanded PSFA shall not require a recalculation of DCSC on ongoing PSFAs, as long as the additional DCSC is allocable only to the new or expanded PSFA being awarded.

E. Indirect CSC.

Guidelines for the Principles Involved in Negotiating Indirect and Indirect-Type Costs. A plan for the allocation of IDC is required to support the distribution of any IDC related to the awardee's program and the determination of which IDC are eligible for indirect CSC funding. All IDC included in the plan are required to be supported by accounting records that substantiate the propriety of the IDC and establish the costs as either: (a) funded in the Secretarial amount; or (b) eligible for indirect CSC funding. The allocation plan should cover all IDC of the awardee and contain, but not necessarily be limited to, the nature and extent of services provided and their relevance to the awardee's program; the item of expense to be included in the IDC pool; and the methods to be used in distributing costs.

Title 2 C.F.R. Part 200 establishes principles and standards for determining IDC applicable to the awardee and the negotiation of IDC rates with the awardee's cognizant agency. 25 U.S.C. § 450j-1(k) has made modifications to the OMB cost principles otherwise applicable to awardees. Once these principles are applied to identify an awardee's total IDC, the costs must be analyzed to ensure they meet the definition of CSC in 25 U.S.C. § 450j-1(a)(2)-(3). See also the standards for the review and approval of CSC in Manual Exhibit 6-3-H.

In determining the amount of CSC funding required in relation to the awardee's IDC, Areas should review the awardee's cost allocation plan, its associated IDC proposal, its approved IDC negotiation agreement, and the requirements of 25 U.S.C. § 450j-1(a)(2)-(3). The allowable IDC of an eligible sub-awardee may be included in the indirect CSC requirement of the awardee when the sub-awards are excluded from the IDC base of the awardee, or are subject to a pass-through IDC rate. The awardee shall be responsible for providing documentation of these costs to the IHS.

1. **Awardees with Negotiated IDC Rates.** The amount of IDC expected to be incurred by awardees using rates negotiated with the cognizant Federal agency will be estimated annually by applying the most recent negotiated IDC rate(s) to the appropriate direct cost base amount, as discussed below in this paragraph and subject to paragraphs 6-3.2E(3)-(4).

The amount determined as the awardee's CSC requirement will be consistent with the individual awardee's IDC rate agreement and reflect any exclusions required by the IDC rate agreement.

If an awardee's IDC rate is applicable to a fiscal year (FY) that is more than three years old, IHS will not provide IDC associated with the application of that IDC rate. In these cases, the Area will negotiate "indirect-type costs" with the awardee (see paragraph 6-3.2E(2) that follows). The rate applicable to the current FY is considered current, and the rate applicable to the previous FY shall be considered one year old. Thus, for example, in FY2016 a rate agreement for FY2013 is the oldest rate that will be used in calculations.

Based on these principles, IHS will apply the IDC rate to determine a Tribe's IDC need (which shall be adjusted consistent with 25 U.S.C. § 450j-1(a)(2)-(3), as discussed below, to determine the indirect CSC need) as follows:

a. Estimate of Indirect CSC Need and Funding Prior to the Contract Year

In advance of the contract year, IHS and the Tribe will negotiate an estimate of the Tribe's IDC need using the Tribe's most recent (no more than three years old) negotiated IDC rate agreement.

- 1) Total direct costs will be used based on either:
 - a) The eligible funding in the Secretarial amount plus the DCSC funding (or the salaries (or salaries and fringe) for those Tribes that use a salary (or salaries and fringe) base), if the total direct costs of the total health care program reflected in the IDC rate agreement or other documentation of prior-year expenditures demonstrate that amount;⁴ or
 - b) The total direct costs of the total health care program operated by the Tribe, if those costs as reflected in the IDC rate agreement are less than the eligible funding in the Secretarial amount plus the DCSC funding.
- 2) The IDC transferred in the Secretarial amount, negotiated pursuant to 25 U.S.C. § 450j-1(a)(2)-(3) and this Chapter, shall be deducted from the total direct costs determined in (a)(1).
- 3) The pass-through and exclusion amount will be determined consistent with the awardee's IDC rate proposal. This amount will be deducted from the total direct costs determined in (a)(1), less the amount determined in (a)(2), if any, to determine the direct cost base.
- 4) Application of IDC rate: the IDC rate will be applied to the direct cost base determined in paragraphs (a)(1)-(3) to estimate the total amount of IDC applicable to the IHS-funded program.
- 5) The amount identified in (a)(2), if any, shall be deducted from the total IDC amount determined in paragraph (a)(4) to determine the amount of indirect CSC need and funding to be paid.

b. Determination of Final Amount for Indirect CSC Need and Funding

⁴ Based on current data as of the publication of this Chapter, IHS believes that the substantial majority of awardees' total direct costs will be calculated pursuant to this subsection.

After the end of the contract funding period IHS and the Tribe will negotiate the final amount of indirect CSC as follows.

- 1) Total direct costs will be based on the amount negotiated pursuant to paragraph (a)(1) above, without further information being required of the Tribe, except that:
 - a) Increases in eligible funding in the Secretarial amount or DCSC funding awarded during the contract year will be added, to the extent the new total direct costs of the total health care program reflected in the IDC rate agreement or other documentation of prior year expenditures demonstrate that amount;
 - b) The Tribe may propose to increase the amount for:
 - i. Expenditures of prior-year Secretarial funding for which IHS did not pay CSC funding in the year awarded and that the Tribe carried over and expended in the current year; and
 - ii. Increases in expenditures of Secretarial funding above the amount estimated;
 - c) Reductions to the Secretarial amount shall be subtracted.
 - d) Reductions to DCSC, if any, as specified in section 6-3.2D(2) shall be subtracted.
- 2) The IDC transferred in the Secretarial amount, negotiated pursuant to 25 U.S.C. § 450j-1(a)(2)-(3) and this Chapter, shall be deducted from the total direct costs determined in (b)(1).
- 3) Pass-through and exclusion amounts will be based on the amounts negotiated pursuant to paragraph a(3) above, without further information being required of the Tribe, though the Tribe may propose adjustments based on expenditures throughout the year and the amounts may need to be adjusted if the Tribe proposes increases pursuant to paragraph (b)(1).
- 4) Application of IDC rate: the applicable IDC rate – i.e., either the fixed carryforward rate or the final rate applicable to the contract funding year– will be applied to the direct cost base to determine the amount of IDC. If the IDC rate applicable to the contract year is not available within 90 days after the end of the performance period, at the awardee's request IHS shall apply the fixed carryforward rate for the funding year or one year prior, or the final rate for the funding year or two years prior.⁵ The final IDC amount will not be determined until the awardee has received an IDC rate that meets the requirements of this subparagraph.
- 5) The amount, if any, identified pursuant to paragraph (b)(2) shall be deducted from the total IDC amount determined in paragraph (b)(4) to determine the amount of indirect CSC need and any additional funding to be paid.

⁵ For 2014-2017 agreements IHS agrees to a transitional period, in which it will use an IDC rate up to 3 years old.

- 6) Once final reconciliation is complete and both parties agree on the amount of indirect CSC funding, the parties shall enter into a bilateral amendment/modification setting forth the amount as the indirect CSC funding required under the ISDEAA for the award. If any amount is still owed, IHS will make payment according to the payment provisions of the award. If the awardee was overpaid, either: (a) it will reimburse IHS for the overpayment; or (b) IHS will apply the overpayment to the awardee's CSC need in the subsequent year.

2. **Awardees Without Negotiated IDC Rates.** A lump sum amount for "indirect-type costs" may be negotiated with awardees that do not have negotiated IDC agreements with their cognizant agency or that request such a negotiation, even if they have a negotiated rate. This annual lump-sum amount may be calculated by negotiating a fixed amount for "indirect-type costs." Categories of costs often considered "overhead" or "indirect-type" are generally in the categories of:

Management and Administration; Facilities and Facilities Equipment; and General Services and Expenses. More specific examples of indirect and indirect-type costs include but are not necessarily limited to the following:

Management and Administration	Facilities and Facilities Equipment	General Services and Expenses
Governing Body	Building Rent/Lease/Cost Recovery	Insurance and Bonding
Management and Planning	Utilities	Legal Services
Financial Management	Housekeeping/Janitorial	Audit
Personnel Management	Building and Grounds	General Support Services
Property Management	Repairs and Maintenance	Interest
Records Management	Equipment	Depreciation/Use Fees
Data Processing	—	—
Office Services	—	—

As with all IDC, however, the negotiation of indirect-type CSC funding must ensure the amounts are consistent with the definition of CSC in 25 U.S.C. § 450j-1(a)(2)-(3).

Indirect-type costs must be renegotiated not less than once every three years, but they can be renegotiated more frequently at the Tribe's option.

3. **Alternative Methods for Calculating IDC Associated With Recurring Service Unit Shares.** The provisions of this section E(3) shall apply to the negotiation of indirect CSC funding in or after FY 2016 and to the calculation of duplication under 25 U.S.C. § 450j-1(a)(3), when: i) an awardee assumes a new or expanded PFSA or added staff associated with a joint venture (in which case the review is limited to those new or expanded PFSA or those additional staff); ii) an awardee includes new types of costs not previously included in the IDC pool that is associated with IHS programs, resulting in a change of more than 2% in the value of the IDC pool; or iii) an awardee proposes and renegotiates the amount.

Pursuant to the above circumstances, the awardee shall elect the method for determining the amount of IDC associated with the Service Unit shares and the remaining IDC that may be eligible for CSC funding, to identify duplication, if any, pursuant to 25 U.S.C. § 450j-1(a)(3), in one of two options listed below.

- a) **Alternative A.** The awardee and the Area Director or his or her designee shall conduct a case-by-case detailed analysis (Manual Exhibit X-X-X) of Agency Service Unit share expenditures to identify any IDC transferred in the Secretarial amount. The IDC funded in the Service Unit shares will be deducted from the awardee's direct costs and total IDC, not to exceed the amount included for that same cost in the Tribe's IDC pool that would be allocable to IHS under the IDC rate, to avoid duplication under 25 U.S.C. § 450j-1(a)(3) when determining the indirect CSC funding amount as described above in 6-3.2E(1).
- b) **Alternative B.** The awardee and the Area Director or his or her designee will apply the following "split" of total Service Unit shares, the 97/3 method (Manual Exhibit X-X-X):
- i. 97% of the Service Unit shares amounts will be considered as part of the awardee's direct cost base.
 - ii. 3% of the Service Unit shares amounts will be considered as IDC funding.
 - iii. If the 3% percent that is considered IDC funding exceeds the awardee's total negotiated CSC requirements, the awardee shall retain the excess funds for direct costs.

Commented [A3]: IHS and Tribe are still in discussion on terminology

Commented [A4]: IHS and Tribe are still in discussion on terminology

Once these 97/3 amounts are computed, they will be used in accordance with the terms of the IDC rate agreement (or alternative method provided herein) for calculating the CSC requirement. The remaining IDC need associated with the IHS PSFA will be eligible for payment as indirect CSC, as provided in this Chapter and 25 U.S.C. § 450j-1(a)(2)-(3). Manual Exhibit X-XX illustrates how Alternative A (a detailed analysis) is calculated and Manual Exhibit X-X-X illustrates how Alternative B (the 97/3 method) is calculated.

4. **Alternative Methods for Calculating IDC Associated With Tribal Shares.** Pursuant to the above circumstances, if an awardee's contract includes Tribal shares, the awardee shall elect the method for determining the amount of IDC associated with Tribal shares and the remaining IDC that may be eligible for CSC funding, to identify duplication, if any, pursuant to 25 U.S.C. § 450j-1(a)(3), in one of two options listed below.

- a. **Alternative A.** The awardee and the Area Director or his or her designee shall conduct a case-by-case detailed analysis (Manual Exhibit X-X-X) of Agency Tribal share expenditures to identify any IDC transferred in the Secretarial amount. The IDC funded in the Tribal shares will be deducted from the awardee's direct costs and total IDC, not to exceed the amount included for that same cost in the Tribe's IDC pool that would be allocable to IHS under the IDC rate, to avoid duplication under 25 U.S.C. § 450j-1(a)(3) when determining the indirect CSC funding amount as described above in 6-3.2E(1).
- b. **Alternative B.** The awardee and the Area Director or his or her designee will apply the following "split" of total Tribal shares, the 80/20 method (Manual Exhibit 6-3-C):
 - i. 80% of the Tribal shares amounts will be considered as part of the awardee's direct cost base.
 - ii. 20% of the Tribal shares amounts will be considered as IDC funding.
 - iii. If the 20% that is considered IDC funding exceeds the awardee's total negotiated CSC requirements, the awardee shall retain the excess funds for direct costs.

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Once these 80/20 amounts are computed, they will be used in accordance with the terms of the rate agreement (or alternative method provided herein) for calculating the CSC requirement. The remaining IDC need associated with the IHS PSFA will be eligible for payment as indirect CSC, as provided in this Chapter and 25 U.S.C. § 450j-1(a)(2)-(3). Manual Exhibit X-XX illustrates how Alternative A (a detailed analysis) is calculated and Manual Exhibit X-X-X illustrates how Alternative B (the 80/20 method) is calculated.

6-3.3 CSC PAYMENTS

Awards will include payment of the full amount of CSC funding negotiated in accordance with the ISDEAA and section 6-3.2 of this Chapter.

A. **Withdrawal.**

Version: 2/20/16 – final draft, joint agreement document 3:15pm EST

When an awardee withdraws a PSFA from an existing award between the IHS and a second awardee, who has been operating that PSFA on behalf of the first awardee, the existing DCSC is subject to reallocation between the two awardees. The DCSC is directly associated with the direct program funds and should be reallocated proportionately between the awardees on the same basis as the Secretarial amount is reallocated.

Any overpayment of CSC funding to the second awardee must either: i) be returned to IHS for allocation to the first awardee; or ii) offset against the second awardee's CSC need in the subsequent year.

B. Initial Funding Period—New and Expanded Contracts.

All requests for CSC funding associated with new or expanded PSFA that are submitted independently of a contract proposal or a final offer must be reviewed within the time provided by the ISDEAA at 25 U.S.C. §§ 450f(a), 458aaa-6(b).

Negotiated amounts for CSC funding for new and expanded PSFA will be paid along with the award of any 25 U.S.C. § 450j-1(a)(1) funds. This includes pre-award, startup, DCSC, and indirect CSC funding.

If an awardee proposes to start a new or expanded activity for less than a full year, an annual amount for CSC may be determined consistent with the methodologies included in this Chapter; however, DCSC and indirect CSC funding will be pro-rated in the first award period. Startup and pre-award costs will be non-recurring, and the negotiated amount will be paid entirely in the first year of the award period.

C. Ongoing Awards.

Negotiated amounts for DCSC and indirect CSC funding for ongoing awards will be paid along with the initial payment of the 25 U.S.C. § 450j-1(a)(1) funding.

Subsequent payments may be made if a new amount is negotiated during the contract year, e.g., due to updates to the awardee's IDC rate, consistent with the determination of CSC in section 6-3.2.

6-3.4 ROLES AND RESPONSIBILITIES

Awardees and IHS staff have distinct roles and responsibilities in facilitating the determination of Tribal CSC requirements and in the allocation of CSC resources. This section will describe the roles and responsibilities associated with the determination of initial Tribal CSC (new and expanded) requirements; the determination of ongoing CSC requirements; and some of the ancillary CSC activities carried out by the IHS.

A. Overview - New and Expanded CSC Requests. Awardees must provide a detailed CSC request to the Area Director or his or her designee. IHS has developed

sample request letters for that purpose, at the option of the awardee to use to submit their requests (see sample letters in Manual Exhibit 6-3-G and the Annual CSC Calculation (ACC) tool in Manual Exhibit []). The request must include a clear description of the requested CSC funding to be negotiated (as specified at 25 C.F.R. § 900.8) along with supporting justification, the date that the PSFA are to be assumed, and an identification of the Secretarial amount to be transferred. Additionally, the awardee is encouraged to provide a detailed line item Tribal budget for the 25 U.S.C. § 450j-1(a)(1) amount to facilitate CSC negotiations. The Area Director or his or her designee will provide a copy of the proposal to the Headquarters Office of Direct Service and Contracting Tribes (ODSCT) and a copy of the final negotiated request to the IHS Headquarters Office of Finance and Accounting (OFA), and a copy to the Office of Tribal Self-Governance (OTSG) in the case of a Title V compactor.

B. New and Expanded CSC Negotiations. The Area Director or his or her designee (or the Agency Lead Negotiator in the case of a Title V Self-Governance award) has the primary responsibility for negotiating the new and expanded CSC request with the awardee and forwarding the proposal to the Headquarters ODSCT (or OTSG), as well as the final approved request to the Headquarters OFA for funding to be released for payment. If the Area Director or his or her designee and the awardee do not agree on an item(s) of cost, the Area Director or designee shall issue a partial declination of the awardee's contract proposal or final offer in accordance with the ISDEAA and with 25 C.F.R. §§ 900.20-900.33 and 42 C.F.R. §§ 137.140-137.48. The declination or final offer rejection must be issued within the time required by the ISDEAA, as amended, unless the awardee has provided written consent to an extension in accordance with 25 C.F.R. § 900.17 or 42 C.F.R. § 137.135. In the event CSC negotiations are unresolved at the time a program transfer or expansion goes into effect, the finally-determined CSC amounts shall be effective for the entire contract funding period starting from the date of the transfer or expansion.

C. Ongoing Awards.

The Area Director or his or her designee (or the Agency Lead Negotiator in the case of a Title V Self-Governance award) will provide a completed ACC tool during negotiations of successor AFA or FA, in order to assist the parties in determining the amount of CSC funding to be added to the contract. (Consistent with Section 6-3.2.)

D. Other CSC Responsibilities.

- 1. Disputes.** Disputes over CSC should be resolved as either a formal declination or final offer rejection appeal or as a claim under the Contract Disputes Act (CDA), 41 U.S.C. § 7101 et seq. An informal conference (25 C.F.R. § 900.153) or other alternative dispute mechanism (25 C.F.R. § 900.217) may also be useful in resolving disagreements over CSC. When it is unclear whether a dispute should be resolved as a declination or a CDA claim, the Associate Director of Self-

Determination Services, ODSCT, should be contacted for possible referral to the IHS Headquarters Leadership Team.

2. **Pre-Award Declination Appeals.** Declination appeals may arise from a pre-award decision to decline a proposal, in whole or in part; a pre-award decision to decline a proposed amendment to an award; or any of the other reasons cited at 25 C.F.R. § 900.150. Declination appeals are most likely to occur as a result of disagreements over an awardee's new or expanded CSC request (Section 6-3.3B). Declination appeals must be processed pursuant to 25 C.F.R. §§ 900.150-900.177.
3. **Appeals of Rejections of Final Offers.** Final Offer appeals may arise out of a pre-award decision by the IHS to reject, in whole or in part, a Final Offer submitted by a compactor when it is unable to reach agreement with the IHS on the terms of a compact or FA, including funding levels. Final Offer appeals must be processed pursuant to 25 U.S.C. § 458aaa-6(c)(1) and any regulations promulgated thereunder.
4. **Post-Award CDA Claims.** All post-award disputes regarding an awarding official's decision related to an ISDEAA award, including post-award disputes over CSC funding, must be addressed under the CDA. Post-award contract disputes generally occur as a result of the parties' failure to agree concerning the amount of DCSC due (Section 6-3.2D) or the amount of indirect CSC funding due (Section 6-3.2E). Post-award contract disputes must be handled pursuant to the CDA and 25 C.F.R. §§ 900.215-900.230.
5. **Pilot Projects.** The IHS may adopt pilot projects to incorporate innovative approaches to CSC funding issues. The IHS Director may approve these pilot projects without requiring revisions in this Chapter. Pilot projects must be optional for awardees and of limited duration. Upon the completion and evaluation of these projects, this Chapter may be amended following Tribal consultation to incorporate new provisions implementing these projects on a permanent basis.
6. **CSC Budget Projections.** Each Area Director or his or her designee shall survey Tribes and Tribal organizations within that Area to develop accurate projections of CSC need at the end of the second and fourth quarter. This will include identification of the amounts required for any new and expanded projects as well as projections for the total ongoing CSC requirement for the following FY and estimates for the next two FYs. The information will be consolidated by the IHS Headquarters OFA and provided to Tribes and Tribal organizations as expeditiously as possible. The information will also be generated in the "Contract Support Costs Budget Projections (for the appropriate FY)," and submitted to the Director, Headquarters OFA, on or before September 30 of each FY and will be used by the IHS in conjunction with the Agency's budget formulation process.

7. **Common Language.** The IHS may from time to time propose common language for AFA and FA regarding CSC. This common language may be considered as an option for negotiations by the Tribes and IHS negotiators. Tribes and IHS negotiators should be made aware that specific CSC language in contracts, compacts, AFA, and FA is negotiable and cannot be imposed on tribal contractors as a condition of contracting.

6-3.5 CSC REPORTS

- A. **Reporting and Documenting Amounts of CSC Available, Needed, and Requested.** The Area Director or his or her designee shall maintain a historical record of funds negotiated and awarded in each of the categories listed below. Manual Exhibit 6-3-F contains a detailed sample of the database.
 1. Secretarial amount
 2. Pre-award costs
 3. Startup costs
 4. DCSC funding
 5. Indirect CSC funding for those awardees that use an IDC rate
 6. Indirect CSC funding for those awardees that negotiate indirect-type costs
 7. IDC rates
 8. Types of bases
 9. Pass-through/exclusions
 10. Total direct cost base
 11. DCSC requirements (including the unduplicated DCSC requirement associated with sub-awards)
 12. Indirect CSC requirements (including the unduplicated indirect CSC requirement associated with sub-awards)
- B. **Annual CSC Funding Report to Tribes.** Area Directors shall provide a report to the Director, OFA, no later than March 1 of each FY that includes those data elements identified above on a Tribe-by-Tribe basis for the previous FY ending on September 30. Before the report is submitted, the amounts included in the report shall be certified

as accurate by the IHS Area Finance Management Officer (FMO) and the Area Director or his or her designee.

1. A copy of the Area Director's report inclusive of all Area-wide CSC funding information shall be provided by the Area Director or his or her designee to the awardees within that Area no later than January 31. Any corrections or changes to the data resulting from an awardee review must be certified by the Area FMO and a [revised / corrected] final Area Director's report shall be submitted to the IHS Headquarters OFA through the Area Director or his or her designee no later than March 1. A copy of this report shall also be provided by the Area Director or his or her designee to the awardees within that Area no later than May 30.
 2. The IHS Headquarters Director, OFA, shall consolidate all Area reports into the "IHS CSC Funding Report to Tribes." In doing so, the IHS Headquarters Director, OFA, shall, in consultation with the Director, ODSCT, and the Director, OTSG, provide a projection of the full CSC requirement for the current and subsequent FY.
 3. The IHS Headquarters Director, OFA, shall finalize the "IHS CSC Funding Report to Tribes," obtain concurrence from the Director, ODSCT, and the Director, OTSG, and transmit the report to the Director, IHS, for approval no later than April 1.
 4. After the "IHS CSC Funding Report to Tribes" is approved by the Director, IHS, the Headquarters Director, OFA, will provide copies to each Area Director or his or her designee, who shall then be responsible for promptly providing a copy of the IHS CSC Funding Report to Tribes to all awardees compacting or contracting within that Area. The IHS CSC Funding Report shall be furnished to tribes on or before May 30 of the year following the close of the fiscal year that is the subject of the Report.
- C. **Annual CSC Report to Congress.** IHS also has a responsibility pursuant to 25 U.S.C. § 450j-1(c)1-5 to provide a report to Congress on the implementation of the ISDEAA and its administration of CSC, including "an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted."

The Director, IHS or his/her designee shall also provide each Awardee with a copy of the CSC Report to Congress, once that report has been cleared by the Administration for submission to Congress.

Version: 2/20/16 – final draft, joint agreement document 3:15pm EST

Part 6, Chapter 3: Manual Exhibits

Commented [A6]: Exhibits are an important part of the policy – all exhibits will need to be reviewed before the policy can be finalized.

~~(ALL EXHIBITS WILL REQUIRE ADDITIONAL REVIEW AND CORRECTION AFTER
POLICY REVIEW IS SUBSTANTIALLY COMPLETE)~~