

T-2197.2

TRIBAL SELF-GOVERNANCE

1996 ANNUAL REPORT TO CONGRESS

SUBMITTED BY THE SECRETARY OF THE INTERIOR

PURSUANT TO SECTION 405 OF PUBLIC LAW 103-413

DECEMBER 23, 1997

COPY

TABLE OF CONTENTS

TRIBAL SELF-GOVERNANCE
1996 ANNUAL REPORT TO CONGRESS

<u>Section</u>	<u>Page</u>
A. Background	1
B. Extent and Interest of Tribal Participation	1
C. Relative Costs and Benefits of Self-Governance ..	5
D. Funds Related to the Provision of Services and Benefits by the Secretary and Funds Transferred to Self-Governance Tribes	6
E. Central Office Funding Formula	9
F. Trust Evaluations	9
G. Waiver Requests	10

COPY

Appendices

A. Tribal Self-Governance Participation Tables

Table 1: Tribes/Tribal Organizations Participating in Tribal Self-Governance in 1996

Table 2: Tribes/Tribal Organizations Selected to Begin Participation in Tribal Self-Governance and Negotiate Compacts and 1997 Annual Funding Agreements

B. OSG Transfer of Funds

Table 1: Amount of FY 1996 Funds Obligated by the OSG and Transferred to Self-Governance Tribes

C. Summary of Results of Trust Evaluations Conducted During FY 1996

D. Suggested Format for Reporting of Tribal Information for the Self-Governance Annual Report on BIA Programs and 1996 Tribal Reports

E. Summary of the 1996 Benefits as Reported by Self-Governance Tribes and Tribal Organizations

F. Summary of Unmet Needs Reported by Self-Governance Tribes and Tribal Organizations

COPY

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS

A. BACKGROUND

On October 25, 1994, the Tribal Self-Governance Act of 1994 (Public Law 103-413) permanently established tribal self-governance. The Act is intended to:

- (1) enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;
- (2) permit each Indian tribe to choose the extent of its participation in self-governance;
- (3) coexist with the provisions of the Indian Self-Determination Act relating to the provision of Indian services by designated federal agencies;
- (4) ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;
- (5) permit an orderly transition from federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and
- (6) provide for an orderly transition through a planned and measurable parallel reduction in the federal bureaucracy.

This 1996 annual report on tribal self-governance is submitted by the Secretary of the Interior to the Congress pursuant to section 405(a) of the Act which states:

"The Secretary shall submit to Congress a written report on January 1 of each year following the date of enactment of this title regarding the administration of this title. The report shall identify the relative costs and benefits of Self-Governance; identify with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members; identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy; include the separate views of the tribes; and include the funding formula for individual tribal shares of Central Office funds, together with the comments of affected tribes."

B. EXTENT AND INTEREST OF TRIBAL PARTICIPATION

~~The Indian Self-Determination and Education Assistance Act of 1974 (Public Law 93-638)~~ ~~was amended~~ authorizes tribes and tribal organizations to operate federal programs under self-determination contracts, grants, cooperative agreements, and self-governance annual funding agreements. Under these

COPY

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

agreements, tribes and tribal organizations assume responsibility for the delivery of program services to tribal members and have flexibility to redesign the programs to meet local needs and priorities.

Tribal self-governance was initiated as a demonstration project in fiscal year (FY) 1991 to provide tribes and tribal organizations with mature self-determination agreements (i.e., contracts which have been operated by tribes and tribal organizations for at least three years with no material weakness) the option of entering into a broader and more flexible self-governance compact and annual funding agreement. Tribes participating in self-governance may combine all component programs within a single compact agreement with the Department of the Interior (DOI) and a single annual funding agreement with each DOI bureau.

The Indian Self-Determination Act Amendments of 1994 (Public Law 103-413) establishes tribal self-governance as a permanent program and authorizes 20 new compacts and annual funding agreements to be negotiated each year. It should be noted that the FY 1997 Omnibus Appropriations Bill (Public Law 104-208) authorizes up to 50 tribes to be selected each year. If each tribe requests, two or more eligible tribes may be treated as a single consortium for the purpose of participating in self-governance.

In FY 1996, members of nearly 89 percent of the 557 federally-recognized tribes received the benefits of a wide-range of federal programs, previously administered by the Bureau of Indian Affairs (BIA), which were now operated under self-determination contracts and grants and self-governance agreements. Table 1 shows the expansion of tribal self-determination since the initiation of the tribal self-governance demonstration project in 1991.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

TABLE 1: Bureau of Indian Affairs Operation of Indian Programs and Construction Accounts (Dollars in Thousands)

Tribal Participation	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
Number of federally recognized tribes	539	541	542	550	554	557
Total Obligations	\$1,505,369	\$1,476,724	\$1,758,802	\$1,632,858	\$1,783,640	\$1,607,186
Number of tribes with contracts and grant agreements	310	388	324	349	353	331
Obligations awarded under self-determination agreements	\$454,339	\$575,144	\$583,403	\$548,450	\$677,199	\$641,515
Number of self-governance agreements	7	17	19	28	29	53
Number of federally recognized tribes covered by self-governance agreements	7	51	53	95	96	180
Obligations awarded under compact agreements	\$27,000	\$49,008	\$60,719	\$123,644	\$131,057	\$157,223

[Note: Some tribes may have received both self-determination and self-governance awards in the same year.]

During fiscal and calendar years 1996, a total of 180 federally recognized tribes and 8 tribal organizations participated in tribal self-governance under 53 compacts and annual funding agreements with BIA, accounting for nearly \$150.3 million in BIA direct appropriations and an additional \$6.9 million in other federal assistance programs administered by the bureau. In addition, two tribes operated under annual funding agreements with the Bureau of Reclamation and one tribal organization operated under an annual funding agreement with the National Park Service. These tribes and tribal organizations are listed in Table 1 of Appendix A.

An additional seven compacts and annual funding agreements covering seventeen tribes and one tribal organization were negotiated allowing them to begin participating in tribal self-governance in fiscal and calendar years 1997. A listing of these tribes and tribal organizations is provided in Table 2 of Appendix A. As of the end of 1996, there were no tribes in the qualified applicant pool for tribal self-governance.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

Chart 1 depicts the number of self-governance tribes participating in self-governance by year. Increases in participation for a particular year are shown to be followed by a year where the level of participation remains relatively constant. Chart 2 shows that since the tribal self-governance demonstration project was initiated in FY 1991, the percentage of tribes participating in tribal self-governance has risen to approximately 32.3% of all federally recognized tribes.

CHART 1 NUMBER OF SELF-GOVERNANCE TRIBES BY YEAR

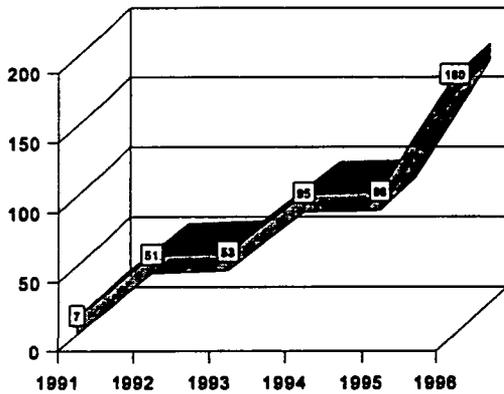


CHART 2. PERCENTAGE OF TRIBES PARTICIPATING IN TRIBAL SELF-GOVERNANCE

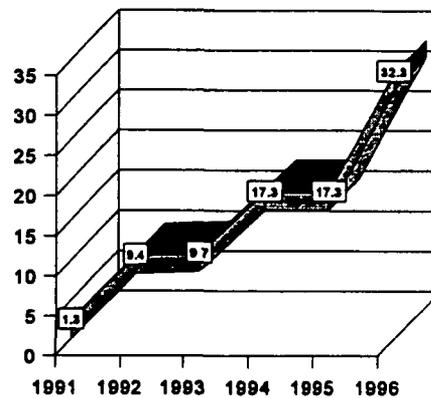


Chart 3 depicts the steady rise in self-governance obligations which has been experienced since the initiation of the tribal self-governance demonstration project in FY 1991. Chart 4 shows that for the same period, self-governance obligations have grown in importance, increasing to approximately 25.5% of title I obligations (i.e., contracting under P.L. 93-638).

CHART 3 SELF-GOVERNANCE OBLIGATIONS BY YEAR (\$ MILLIONS)

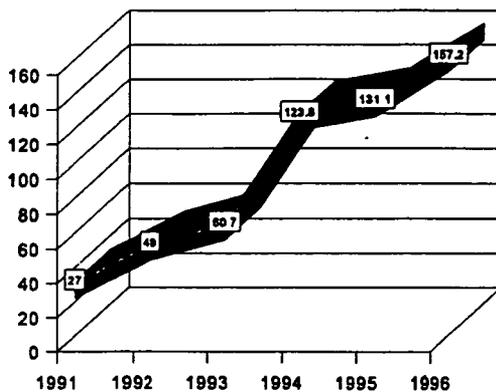
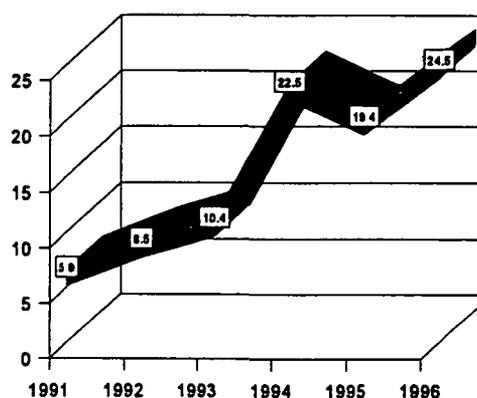


CHART 4 SELF-GOVERNANCE OBLIGATIONS AS A PERCENTAGE OF TITLE I OBLIGATIONS



TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

C. Relative Costs and Benefits of Tribal Self-Governance

(1) For purposes of this report, the relative costs of tribal self-governance are measured by the amount of funds which would not have been expended without the existence of tribal self-governance. This incremental cost for 1996 includes \$1.1 million obligated by the Office of Self-Governance (OSG) to operate the office and \$3.8 million of self-governance grants. It might also include a portion of the additional shares of agency, area, and central office funds transferred to the tribal base of self-governance tribes (above and beyond the amounts which would have been expended under self-determination contracts and grants), and the associated increased cost of contract support. The methodology for deriving this amount for future years is expected to be developed once inherent federal functions and their costs are identified as part of the tribal shares process currently underway.

(2) For purposes of this report, the relative benefits of tribal self-governance are related to the degree to which the efficiency and effectiveness of programs, services, functions and activities were affected by tribal self-governance in 1996. ~~The amount of funds obligated by OSG and transferred to self-governance tribes and tribal organizations in 1996 annual funding agreements was \$157.2 million.~~ These funds were used by self-governance tribes to provide programs, services, functions and activities to tribal citizens.

The National Park Service obligated and transferred \$0.2 million to Kawerak, Inc. as part of a shared Beringian heritage program to provide a more complete record of the Bering Strait Region's inupiat, St. Lawrence Island Yupik and Southern Norton Sound Yupik culture, history, knowledge, and traditions.

The Bureau of Reclamation obligated and transferred \$7.3 million to the Salt River Pima-Maricopa Indian Community to plan, conduct, and administer all Reclamation programs, services, functions, activities, or portions thereof, on the Community's land that are authorized pursuant to section 301(a) of the Colorado River Basin Project Act, Act of September 30, 1968, P.L. 90-537, 82 Stat. 885, as amended, and the Salt River Pima-Maricopa Indian Community Settlement Act of October 1988.

The Bureau of Reclamation also obligated and transferred \$8.5 million to the Gila River Indian Community to plan, conduct, consolidate, and administer Reclamation programs, services, functions, and activities, or portions thereof, related to the Central Arizona Project, Indian Distribution Division, to and on the Gila River Indian Reservation as authorized by section 301(a) of the Colorado River Basin Project Act, Act of September 30, 1968, P.L. 90-537, 82 Stat. 885, as amended.

Without the existence of program performance indicators and unit costs for services, it is not possible to make any quantifiable assessment of program benefits to determine the degree to which the efficiency and effectiveness of programs, services, functions and activities were changed by tribal self-

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

governance. Recognizing this need, the Tribal Self-Governance Negotiated Rulemaking Committee worked with the Office of Self-Governance to develop a draft reporting format which would provide information about how self-governance tribes spent the funds which were transferred to them and the incremental benefits which were generated by their expenditure.

A copy of the suggested format for reporting tribal information for the self-governance annual report on BIA programs is provided in Appendix D. Also included in Appendix D are copies of the reports for 1996 submitted by seventeen tribes and five tribal organizations. These reports represent the separate views of the tribes and were submitted for inclusion in the 1996 Annual Report to Congress. A summary of the 1996 benefits reported by self-governance tribe and tribal organization is provided in Appendix E by tribal program. In addition, many of the reports of the progress self-governance tribes and tribal organizations made in meeting established tribal goals in 1996 were accompanied by statements of progress remaining to be made. These statements are included in the reports contained in Appendix D. A summary of the unmet needs identified by self-governance tribes/tribal organizations is provided in Appendix F.

D. Funds Related to the Provision of Services and Benefits by the Secretary and Funds Transferred to Self-Governance Tribes

The Act requires the Secretary to identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance tribes and their members, and to identify all funds transferred to self-governance tribes. The Bureau of Reclamation obligated \$15.8 million to two tribes and the National Park Service obligated \$0.2 million to one tribal organization. In addition, a total of \$157.2 million of fiscal year 1996 funds were obligated by the OSG and transferred to self-governance tribes. This includes \$150.3 million from BIA OIP and Construction accounts and \$6.9 million from other accounts, including BLM, HHS, and Labor. Table 1 of Appendix B shows the amounts obligated by OSG to each of the tribes/tribal organizations participating in tribal self-governance during 1996.

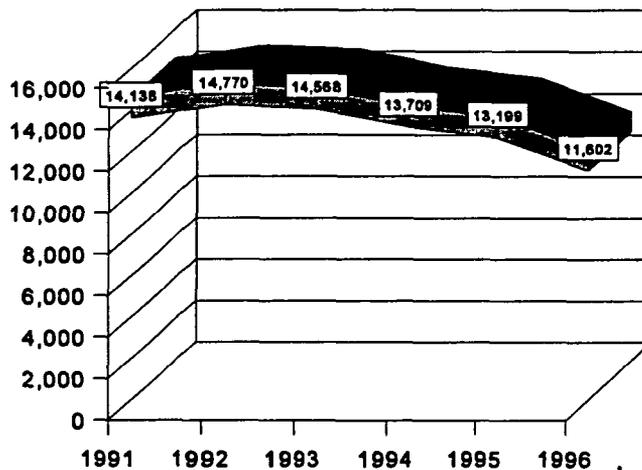
It should be noted that a process to identify tribal shares for BIA programs is currently underway. Information generated from this process will be used in future years to distinguish BIA funds which are available as tribal shares and can be transferred to tribes from funds which must be retained by the bureau to provide programs, functions, services, and activities, which can only be provided by the Secretary. Once tribal shares are identified for all federally-recognized tribes, self-governance negotiations will be used to identify the programs, services, functions, and activities, chosen by each self-governance tribe, and associated funding to be retained by the BIA. Such decisions are documented in annual funding agreements.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

The Act requires the Secretary to identify the corresponding reduction in the federal bureaucracy. However, given initiatives to reinvent the federal bureaucracy and address federal deficit problems, information is not available to determine the degree to which each of these factors contributed in 1996 to reductions in the federal bureaucracy and the corresponding reductions associated with increased participation in tribal self-governance.

Chart 5 indicates total BIA employment since the tribal self-governance demonstration project was initiated in FY 1991. After rising in 1992 to a peak level of 14,770, total BIA employment has steadily declined from 1993 to 1996. By the end of FY 1996, the bureau had a total of 11,602 employees. This figure represents a reduction of 1,597 below the FY 1995 level.

**CHART 5 TOTAL BIA EMPLOYMENT
BY YEAR**



The reduction in 1996 is largely attributable to the transfer of additional school and program operations from the BIA to tribes/tribal organizations under title I contracts and grants and title IV self-governance agreements, as well as the significant reductions in FY 1996 appropriations and rescissions which reduced funding available to support BIA staff. Table 2 shows how BIA full-time equivalent (FTE) employment was reduced from 1995 to 1996. BIA FTE employment at central offices was reduced by 40.1% and at area offices by 31.5%. BIA FTE employment at agency and subagency offices was reduced by 15.2% and at other locations by 3.5%.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

TABLE 2: Changes in BIA FTE Employment from 1995 to 1996

BIA Organization Level	1995	1996	Change	% Change
Central Offices	753	451	- 302	- 40.1%
Area Offices	857	586	- 271	- 31.6%
Agency & Subagency Offices	3,097	2,627	- 470	- 15.2%
Schools & Other Locations	7,268	7,016	- 252	- 3.5%
TOTAL	11,975	10,680	- 1,295	- 10.8%

A portion of the reduction in BIA employment in 1996 is attributable to the \$26.2 million increase in the amount of funds transferred under title IV to self-governance tribes. It should be noted that most of the increase in funding transferred to tribes under title IV had already been transferred under title I in previous years. However, title I obligations to tribes decreased by a greater amount, \$35.7 million. The additional decrease in title I obligations is largely attributable to 1996 BIA budget reductions, which totaled \$138.8 million for OIP and Construction accounts.

Table 3 shows the change in OIP and Construction appropriations from 1995 to 1996. The amounts shown include FY 1995 and FY 1996 rescissions. It is important to note that specific BIA budget activities were targeted by Congress to be reduced by varying percentages. This action was consistent with the overall strategy by Congress of shifting a larger portion of BIA funding away from bureau control and under the control of tribes while at the same time contributing to the reduction of the federal deficit. In comparison to changes in the amount of funding transferred to tribes under title I and title IV, these figures demonstrate that Congressional deficit reduction and targeting of specific BIA budget activities for varying levels of reduction were by far the most significant factors affecting BIA employment.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

TABLE 3: BIA OIP and Construction Appropriations for 1995 and 1996 (Dollars in Thousands)

ACTIVITY	FY 1995	FY 1996	CHANGE	% CHANGE
Tribal Priority Allocations	\$520,846	\$654,152	+ \$133,306	+ 25.6%
Other Recurring Programs	\$700,799	\$493,997	- \$206,802	- 29.5%
Non-Recurring Programs	\$79,527	\$66,221	- \$13,306	- 16.7%
Central Office Operations	\$79,119	\$50,521	- \$28,598	- 36.1%
Area Office Operations	\$53,222	\$36,714	- \$16,508	- 31.0%
Special Programs & Pooled Overhead	\$83,962	\$81,820	- \$2,142	- 2.6%
Construction	\$122,086	\$117,333	- \$4,753	- 3.9%
TOTAL	\$1,639,561	\$1,500,758	- \$138,803	- 8.5%

E. Central Office Funding Formula

Within 90 days after the date of enactment of P.L. 103-413, the Secretary was required to consult with Indian tribes and develop a funding formula to determine the individual tribal share of funds controlled by the BIA central office for inclusion in self-governance compacts. A copy of the report that was sent to Congress on June 2, 1995 was included in the last year's tribal self-governance annual report to Congress, together with comments of affected Indian tribes. It should be noted that the tribal shares process which is currently underway, in addition to agency and area offices, also includes an analysis of the inherent federal functions and associated costs for the central office.

F. Trust Evaluations

Pursuant to the DOI Manual, Part 110, Chapter 11.2D, the Office of American Indian Trust (OAIT) conducted annual trust evaluations as prescribed in self-governance compacts effective for the period of 1995-96. The trust

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

evaluations were initiated in October 1995 and concluded in September 1996. A total of 31 separate tribes, consortia, and signatories to self-governance compacts were visited and nearly 77 evaluations of tribal programs were completed. OAIT concluded that none of the trust assets administered by the tribes/consortia under compacts of self-governance were in imminent jeopardy. Table 1 of Appendix C contains a summary of the results of the trust evaluation conducted during FY 1996.

G. Waiver Requests

The following summarizes the status of written requests received by OSG from self-governance tribes in FY and CY 1996 to waive application of a federal regulation pursuant to an agreement entered into under tribal self-governance:

(1) Land Acquisitions

(a) The Oneida Tribe of Indians of Wisconsin submitted a request in November 1995 to waive the first sentence of 25 CFR Part 151.10 which requires the Secretary upon receipt of a written request to have lands taken in trust to notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The request was approved in January 1996 subject to certain conditions. The tribe was required to inform the political subdivisions that the notification is in lieu of notification of the Secretary, and impact information and comments are to be sent to the BIA superintendent.

(b) The Oneida Tribe of Indians of Wisconsin submitted a request in November 1995 to waive various parts related to real estate operations on its reservation in Wisconsin, including the following: 151.3; 151.3(a)(3); 151.7; 151.9; 151.10; 151.10(d); 151.10(g); 151.10(h); 151.13; 151.14; 150.6; 169; and 54 BIAM Supp. 9, Paragraph 2.3 Sub-Paragraph 7. Acknowledging that the request was made to facilitate the tribe's desire to take land into trust, the tribe was informed in May 1996 that the function of taking land into trust is an inherently federal function. The tribe was also asked whether it plans to submit a different request. No subsequent request has been submitted to date.

(c) The Absentee Shawnee Tribe of Oklahoma submitted a request in September 1996 to waive 25 CFR Part 151.8 which allows a tribe to acquire land in trust on a reservation other than its own only when the tribe having jurisdiction over the reservation consents in writing to the acquisition. The request was denied in November 1996. The tribe was informed that the function of taking land into trust is an inherently federal function and the tribe can not perform the discretionary Secretarial function of taking land into trust status.

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

(2) Leasing and Permitting

(a) The Confederated Salish and Kootenai Tribes of the Flathead Nation submitted a request in September 1996 to waive 25 CFR Part 162.12 which concerns the borrowing of funds based on a leasehold interest. The request was made to remove the provision which restricts the purpose for borrowing capital and replace it with language allowing the lessee, with the approval of the Secretary, to encumber a leasehold interest. Since the submission of the request, tribal circumstances have changed making the request moot.

(3) Law and Order on Indian Reservations

(a) The Choctaw Nation submitted a request in March 1996 to waive 25 CFR Parts 11.201 and 11.202, with an effective date of October 1, 1995. This would permit the Chief, or his designee, to appoint magistrates to and remove them from the CFR Court with the confirmation of the tribal council. The request was denied in May 1996. The tribe was informed that the appointment of magistrates to and removal from CFR Courts is an inherently federal function which can only be conducted by an authorized federal official.

(4) Housing Improvement Program

(a) The Yakutat Tlingit Tribe submitted a request in April 1996 for a one-time waiver of the limit on the amount of a category D HIP grant as contained in 25 CFR Part 256.4 to allow it to issue a grant on an approved category D project in the amount of \$70,000. The request was approved in July 1996 under the authority provided by 25 CFR Part 1.2.

(b) The Mille Lacs Band of Ojibwe Indians submitted a request in May 1996 to waive all HIP regulations as previously defined in 64 BIAM 4.11 and 25 CFR Parts 256.8; 256.4(c)(1)(2)&(3); and 256.4(d)(1)(2)(i)(ii)(3)(4) and (5), and replace them with tribal regulations and guidelines. The band was informed that portions of its replacement regulations conflict with sections of the HIP regulations; limit HIP fund availability to band members; services to all Indians within the service area need to be assured; and it is not permissible for the tribal replacement regulations to waive the statutory requirement to purchase flood insurance. The band submitted revised replacement regulations in August 1996. The suggestion was made in September 1996 to broaden its waiver request to include all of 25 CFR Part 256, except 256.11 and address remaining concerns. A tribal response is still pending.

(c) The Lower Elwha S'Klallam Tribe submitted a request in August 1996 for a one-time waiver of the category D grant limit of \$45,000 contained in 25 CFR Part 256.4. Approval of the request would allow the tribe to

TRIBAL SELF-GOVERNANCE 1996 ANNUAL REPORT TO CONGRESS--12/23/97

enter into a housing construction contract of \$61,930 with the lowest responsive bidder. The request was approved in September 1996 under the authority provided by 25 CFR Part 1.2.

(d) The Chickasaw Nation submitted a request in November 1996 to waive the pay-back provisions of the regulations governing the operations of HIP found at 25 CFR Part 256.4(b) on behalf of a client who is facing hardship. A letter approving the waiver was prepared.

(5) Welfare Assistance

(a) The Yakutat Tlingit Tribe indicated in April 1996 its desire to establish a work experience program and requested that it be allowed to use general assistance administration funds to partially cover the salary of a general assistance eligibility technician. The tribe was informed in May 1997 that it would have to make a change in its general assistance program in accordance with P.L. 104-314. It could then use resulting savings for the purpose of funding the general assistance eligibility technician's salary.