

JUN 16 1997

Dear Tribal Leader:

The purpose of this letter is to communicate the policy that the Indian Health Service (IHS) will follow to ensure the timely transfer of functions and supporting funding to a tribe or tribal organization that elects to enter into a self-determination agreement with the IHS. This policy pertains to functions assumed by tribes and tribal organizations from the Headquarters and Area Office levels of the agency (also referred to as "tribal shares"). This policy applies to self-determination contracts and self-governance compacts beginning in fiscal year 1996 and thereafter. Self-governance compacts awarded prior to Fiscal Year 1996 are not subject to this policy.

The policy provides for a maximum timeframe of 24 months to complete the transfer of all functions and resources that the tribe elects to assume. Depending on circumstances, transfer of functions and resources may be completed earlier than the maximum time. The policy allows each tribe and the IHS to negotiate an alternative timeframe under appropriate circumstances.

The policy requires immediate transfer of those functions and resources that are not bound in encumbered obligations. Resources that are tied up in on-duty employees or in binding contracts are considered encumbered because it takes time to downsize and discharge those obligations. Upon identification of any balance of functions and resources as encumbered, the policy requires that the IHS begin action necessary to discharge encumbered obligations and to transfer the balance of resources due within the 24 month period. The membership of this workgroup is provided as an attachment to this letter.

The policy was developed and recommended by the IHS Business Plan Workgroup. This workgroup of tribal, IHS, and urban Indian project representatives has proposed a variety of effective business practices for key segments of IHS operations. The IHS accepted the transfer policy to ensure a definite timeframe for completing transfers to contracts and compacts, and to provide a transition period to downsize IHS operations in a well-organized, efficient manner.

The workgroup studied the legal requirements and prescribed administrative processes the IHS must follow when downsizing staff for functions that are transferred. The workgroup estimated that up to 18 months was necessary to complete a large reduction-in-force (less time is needed for a smaller downsizing action) and to discharge obligations for severance payments to release employees. From this analysis, the schedule for a maximum timeframe was proposed and accepted by the IHS.

Unless a tribe or tribal organization negotiates an alternative schedule, functions and resources shall be transferred to a tribe at not less than the percentages listed below within a timeframe not greater than the timeframe listed below. The schedule assumes that new contracts/compacts propose an effective annual start date of October 1 (the first day of the Federal fiscal year).

Schedule for Transfer of Allocable Tribal Shares

Scheduled Timeframe	Liquid	Encumbered
Immediately	100%	0%
12 months after start date	100%	50%
24 months after start date	100%	100%

I have adopted the Business Plan Workgroup recommendations as policy because I believe they ensure the most expeditious timeframe to accomplish transfers of functions and resources. They also provide a reasonable timeframe for the IHS to accomplish downsizing and ensure protection of funding for tribes that are not a party to a contract or compact.

Further information on this policy and its implementation is available from the IHS Area Office that serves your tribe or tribal organization as is information concerning Headquarters and Area office programs, functions, services and activities.

Sincerely yours,



Michael H. Trujillo, M.D., M.P.H.  
Assistant Surgeon General  
Director

Attachment

DEC 2 1996

Indian Health Service  
Rockville MD 20857

TO: Director

FROM: Co-Chairs  
Indian Health Service Business Plan Workgroup

SUBJECT: Approval of the Tribal Shares Transfer Schedule  
Policy -- ACTION

ISSUE

A policy is needed to establish a time frame for the Indian Health Service (IHS) to transfer resources for Federal programs, functions, services, and activities (PFSA) that self-determination contracts and self-governance compacts elect to perform.

DISCUSSION

Under authority of current self-determination law, Indian tribes may elect to assume responsibilities and receive transfers of resources related to those responsibilities from all levels of the IHS. That portion of resources at IHS Headquarters and Area Offices that a tribe is eligible to receive is labeled a "tribal share."

When a tribe elects to assume responsibility for PFSAs, the IHS must subdivide resources related to the PFSAs and transfer the allocable shares to the tribe. Whether the resource shares are immediately transferable depends on whether the resources are encumbered. Encumbered resources are defined as those portions of PFSA funding that are currently committed as compensation (including employee severance compensation) for on-duty permanent employees or as payment for goods and services in binding contracts. Liquid (unencumbered) resources are defined as the balance of resources for the PFSA that are not encumbered as defined above. If the resources related to the transferred programs/activities are encumbered, the IHS must immediately begin action to free applicable encumbered resources to complete the transfer within the time frame defined in this policy.

The IHS must adhere to legal requirements and prescribed administrative processes that require time to accomplish when downsizing. Attachment #1 explains the actions and time to carry out reductions in force (RIF). This policy provides a reasonable

time frame for the IHS to accomplish downsizing and ensure protection of funding for tribes that are not a party to the contract or compact.

There is currently no uniform IHS policy to ensure timely transfer of responsibilities and resources to contracts and compacts. Tribes are uncertain about when to expect transferred resources and when to assume responsibility for the PFSA. This uncertainty has led to assertions that the IHS is not acting expeditiously to free up encumbered resources for transfer.

#### STATEMENT OF INTENT

The Business Plan Work Group (BPWG) intends that the tribal shares transfer policy:

- ensure a definite time frame to accomplish transfer of 100 percent of tribal shares for PFSA's that the contract/compact elects to perform.
- address timing, not shares formula (this policy does not alter funding formula, amounts calculated by formula, or any funding inequities previously existing among tribes or Areas).
- is necessary considering the additional funds projected for transfer through 1999.
- provide for planning of resource transfers in a timely and business-like fashion, taking into account all tribes potentially affected by any downsizing and funds transfer.
- induce action to begin immediately upon receipt of formal proposals (this policy provides for a maximum time to complete transfers, not a grace period before beginning action).
- be applied fairly and uniformly for all tribes.

#### PROS:

- IHS Headquarters and Area Offices would have a reasonable, but limited period of time, to redesign programs/activities and implement a RIF and/or a deployment effort to free encumbered resources for transfer ~~as~~ tribal shares.
- The Tribal Shares Transfer Policy would establish benchmarks for action on a clearly prescribed schedule. It would reduce confusion and assure tribes of a "certain date" when transfers will be completed.

CONS:

- Some Tribes prefer to have responsibilities and resources transferred immediately.
- The policy with a phased schedule for resource transfer may be challenged.

RECOMMENDATION

The BPWG recommends adoption of a uniform IHS policy that establishes an expeditious, but reasonable, time schedule to accomplish transfer of 100 percent of allocable tribal shares for those PFSA that self-determination contracts and Self-Governance compacts elect to perform.

1. The transfer time schedule shall apply to new Title I and Title III applications for Headquarters and Area Office shares beginning in fiscal year 1996 and in years thereafter.
2. Unless the applicant negotiates an agreement otherwise, IHS Headquarters and Area Offices shall transfer to the applicant not less than the percentages listed below within a time frame not greater than the schedule listed below:

Schedule for Transfer of Allocable Tribal Shares

Scheduled Time Frame	Liquid	Encumbered
Immediately	100%	0%
12 months after start date	100%	50%
24 months after start date	100%	100%

Text version of the above table:

3. Transfer on the effective start date of the contract or compact 100 percent of that portion of an applicant's eligible PFSA shares that are in liquid form. Transfer on or before the start date of the second year a minimum of 50 percent of an applicant's eligible PFSA shares that are encumbered. Transfer the balance of encumbered PFSA shares on or before the start date of the third year.

4. Sequencing: The schedule defined in 2 and 3 assume that new contract/compact applications propose an effective annual start date of October 1 (first day of the Federal fiscal year). If the applicant proposes a start date later in the fiscal year, then the policy applies in the following way.
- Transfer on the effective start date liquid PFSA shares pro rated for the balance of the remaining fiscal year.
  - Transfer encumbered PFSA shares on the schedule defined in 2 and 3 with the time frame beginning on October 1 following the contract/compact start date (this allows the IHS to minimize disruption by sequencing downsizing actions resulting from multiple contracts into one coordinated annual plan). See attachment 2 for proposed schedule.
5. After completing transfer of 100 percent of eligible shares to a Title I contract or Title III compact, the annual amount paid in subsequent years will be determined consistent with the base budget policies that derive from the agreements and process established in the April 26, 1996, letter jointly signed by the Director, IHS, and the National Self-Governance Tribal Caucus.

DECISION

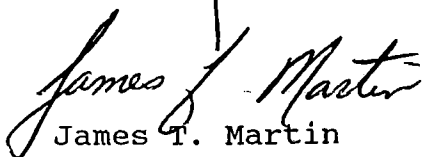
We the co-chairs of the IHS Business Plan Work Group recommend that you approve the tribal shares transfer policy by initialing on the "Approved" line below.

Approved

  MH  

Disapproved \_\_\_\_\_

Date 12/02/96

  
James T. Martin

  
Michel E. Lincoln

Attachments

## Attachment 1

### Estimated Duration for Actions to Implement Reduction in Force / Reduction in Strength

Milestone	Description	Duration of Effort
1. Tribal Notification to IHS of Identified Shares	Tribe notifies IHS of intention to take identified shares of Area and Headquarters.	At Final Negotiation
2. IHS estimates the shares currently encumbered by FTE	IHS Estimates the number of encumbered FTE affected by the shares distribution.	30 to 90 days. This will largely depend on variables identified below
3. IHS Plans Reduction in Force (RIF)	The agency identifies organizational units for reduction, functions to be transferred, consolidated or eliminated.	60 to 120 days. Again this will depend on the variables identified below
4. Identification of specific FTE(s)	FTE(s) are identified by position and grade, competitive areas are defined.	60 to 90 days. Again this will depend on the variables identified below
5. Area IHS prepares application for RIF - RIS authority	Application documents are prepared for RIF - RIS approval	Once preparatory work is completed, 30 to 45 days for proper RIF approval*.
6. Union Notification	The Union is notified of impending RIF, the reasons and rationale for specific actions	This is an unknown. Negotiations may take 2 weeks or longer (see below).
7. Notification of Employees of RIF application	Employees are notified of RIF application. Employees are advised regarding their retirement options, if any, and given severance pay calculations	1 to 2 weeks
8. Application is submitted for Approval	RIF Authority is required before any action may occur.	See # 5 above

9. Retention Register is Complete	Known as the "Retention Register," i.e., categories of employees within a competitive levels and areas are compared for assignment rights, Indian Preference, SCD, Veterans Preference and other criteria.	This should be done concurrent with expected approval of RIF authority.
10. Union Counter proposal Received	Union requests to negotiate on the impact of management implementing the reorganization, aka RIF.	See #6 above
11. RIF Application approved or returned for corrections	No corrections should be needed. Proper staff work is critical at the point or future Appeal filed by employees will succeed	See #5 above
12. RIF Dates identified	60 days Specific Notice required	60 days minimum - may be more (not to exceed 180 days)
13. RIF occurs, Severance paid.	Personnel Actions processed, unemployment and other "out-processing" paperwork is done.	Two weeks
14. Severance pay recovery		
15. Shares available to be paid to tribes.		

**Variables:**

In order for a RIF to be sustained by a third party, it must fall into one of the categories identified in 5 CFR 351 as a "proper" precipitating event. MSPB (Merit Systems Protection Board) has ruled that 638 initiated RIFs actually fall into the category of a reorganization. Once a Tribe invokes its rights under 638 and the scope i.e., dollar amount is identified and the functions the tribe will take are identified, a thorough reorganization plan should be developed. If a Tribe is entitled to less than the equivalent of one encumbered position within a function assumed by the tribe, the agency's reorganization plan should reassigns functions and/or parts of functions that have been fractured as a result of Tribal shares, or otherwise rationally explain the actions taken. The other salient point is that a lot of this is negotiable with existing unions. Unions must be involved at least for Impact bargaining purposes, if not earlier.

Regarding the union negotiations, with a small RIF and no employees losing jobs (reassignments, voluntary retirements, etc), the union may be fairly easy to deal with. In large scale RIFs where unions are losing "market share" and constituents are watching to

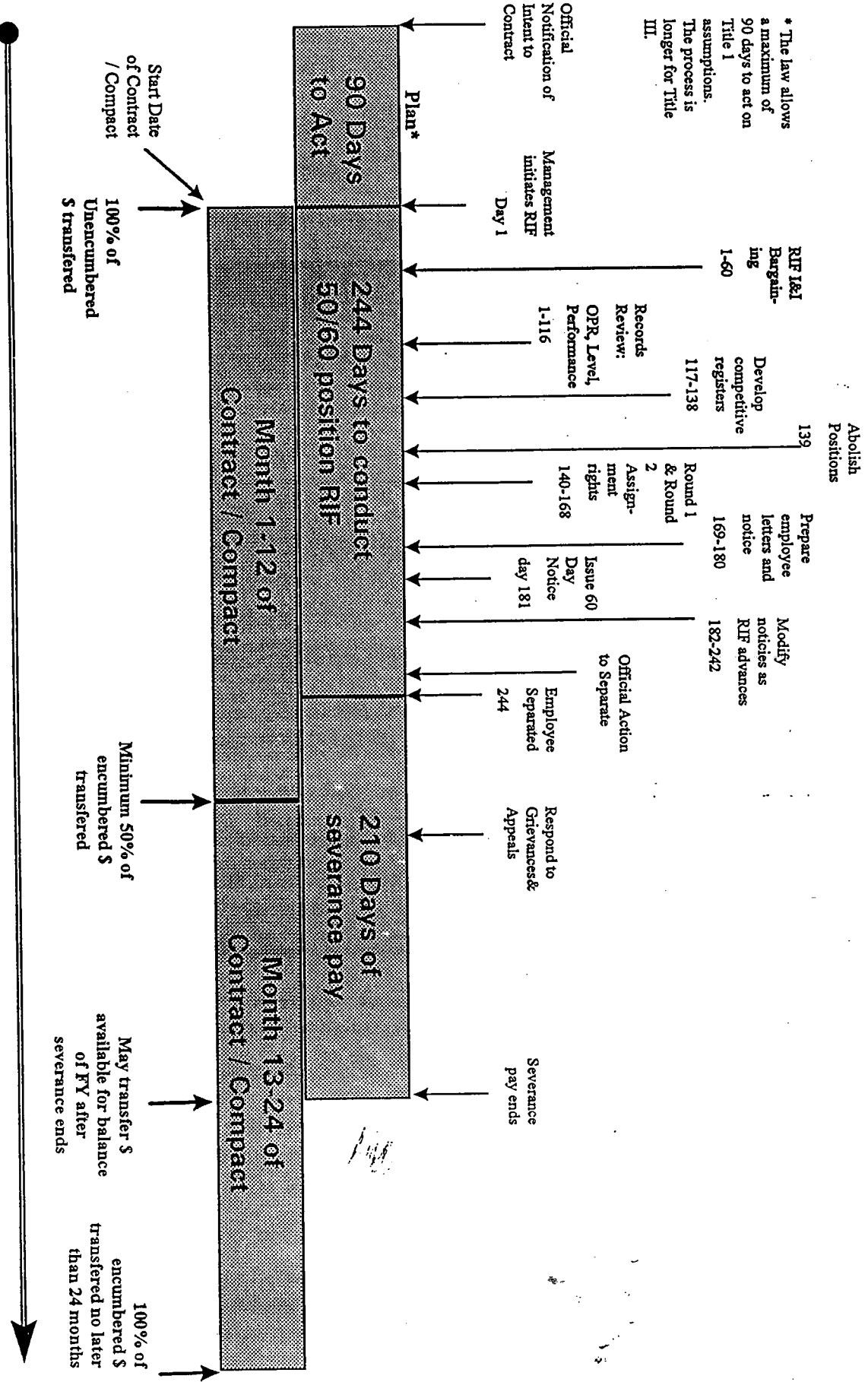


see "how hard they fight for us" the unions may negotiate to impasse and invoke the formal Federal Services Impasse Panel (FSIP). It has authority to direct an Agency to maintain the status quo until it investigates the bargaining impasse and issues a binding ruling. The bottom line is its nearly impossible to quantify how long union bargaining may take.

Costs of 3rd party litigation should be factored into this process. The cost is monetary, time and possible adverse rulings that may include placing employees in vacant positions as a remedy with back pay and interest and attorney fees. The costs associated with RIS would be different than RIF (no retention registers, no assignment rights, no unions). However, in RIS the counterpart to the Civil Service competitive Area is not localized but nationwide.

Another factor associated with RIF are employee priority placement rights and career transition regulations that apply. These effects may best be described as affecting flexibility to recruit and fill a vacant positions.

# Tribal Shares Transfer Time Line



## Attachment 2

### Schedule of Activities

#### Class<sup>5</sup> #1: Actions prior to month 1 of contract/compact

Date	Action	Classes	Start Year Tribes	Contract Year Tribes
March 31	Final Date - Letter of Intent	1	X	
April 1 thru June 30	Negotiations and Meetings	1	X	X
June 30	Final Negotiations - Completed	1	X	
June 30	Final Date - Letter of Intent	1		X
June 30 thru Sept 30	Negotiations and Meetings	1		X
Sept 30	Final Negotiations - Completed	1		X
Oct 1	Compact/Contract - Start Date	1	X	
Oct 1	Class #1 - Begins months 1-12	1	X	X
Jan 1	Compact/Contract - Start Date	1		X
Oct 1 Effective Date	Class #1: 100% of liquid shares and, if available, a % of encumbered shares.	1	X	X

**Note - To participate for a class an applicant should have a compact/contract start date prior to January 2. New applicants should have submitted Letters of Intent by the above dates.**

## Schedule of Activities

**Class #1: Actions in months 1-12 of contract/compact**

**Class #2: Actions prior to month 1 of contract/compact**

Date	Action	Classes	Year Tribes	Calendar Year Tribes
March 31	Final Date - Letter of Intent	1	X	
April 1 thru June 30	Negotiations and Meetings	1 & 2	X	X
June 30	Final Negotiations - Completed	1 & 2	X	
June 30	Final Date - Letter of Intent	2		X
June 30 thru Sept 30	Negotiations and Meetings	1 & 2		X
Sept 30	Final Negotiations - Completed	1 & 2		X
Oct 1	Compact/Contract - Start Date	1 & 2	X	
Oct 1	Class #1 - Begins months 13-24	1	X	X
Oct 1	Class #2 - Begins months 1-12	2	X	X
Jan 1	Compact/Contract - Start Date	1 & 2		X
Oct 1	Class #1: 100% of liquid shares and a minimum of 50% of encumbered shares. Class #2: 100% of liquid shares and, if available, a % of encumbered shares.		X	X

**Note - To participate for a class an applicant should have a compact/contract start date prior to January 2. New applicants should have submitted Letters of Intent by the above dates.**

## Schedule of Activities

**Class #1: Actions in months 12-24 of contract/compact**

**Class #2: Actions in months 1-12 of contract/compact**

**Class #3: Actions prior to month of 1 of contract/compact**

Date	Action	Classes	Year Tribes	Calendar Year Tribes
March 31	Final Date - Letter of Intent	3	X	
April 1 thru June 30	Negotiations and Meetings	1 & 2 & 3	X	X
June 30	Final Negotiations - Completed	1 & 2 & 3	X	
June 30	Final Date - Letter of Intent	3		X
June 30 thru Sept 30	Negotiations and Meetings	1 & 2 & 3		X
Sept 30	Final Negotiations - Completed	1 & 2 & 3		X
Oct 1	Compact/Contract - Start Date	1 & 2 & 3	X	
Oct 1	Class #1 - Begins months 25-36	1	X	X
Oct 1	Class #2 - Begins months 13-24	2	X	X
Oct 1	Class #3 - Begins months 1-12	3	X	X
Jan 1	Compact/Contract - Start Date	1 & 2 & 3		X
Oct 1	Class #1: 100% of liquid shares and a minimum of 100% of encumbered shares. Class #2: 100% of liquid shares and a minimum of 50% of encumbered shares. Class #3: 100% of liquid shares and, if available, a % of encumbered shares.		X	X

**Note - To participate in a class an applicant should have a compact/contract start date prior to January 2. New applicants should have submitted Letters of Intent by the above dates.**

## Appendix A

### Business Plan Work Group Membership

Michel E. Lincoln, Co-Chair (IHS-HQ)  
Yvette Joseph-Fox (NIHB)  
Duane Jeanotte (AD-Billings)  
Luana Reyes (IHS-HQ)  
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Maggie Terrance (St Regis Mohawk Tribe)

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Rae Snyder (USET)  
Doni Wilder (NW Portland AIHB)  
Pearl Baller (Quinault Tribe)  
Lydia Hubbard-Pourier (R/SB Health Prog)  
Richard Mandsager/Terry Clark (ANMC)  
Anna Albert (PIMC)  
Dorothy Dupree (Albuquerque AO)  
Carol Mitzel (Billings AO)

### Support Staff

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