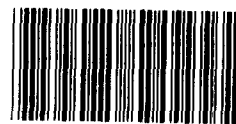


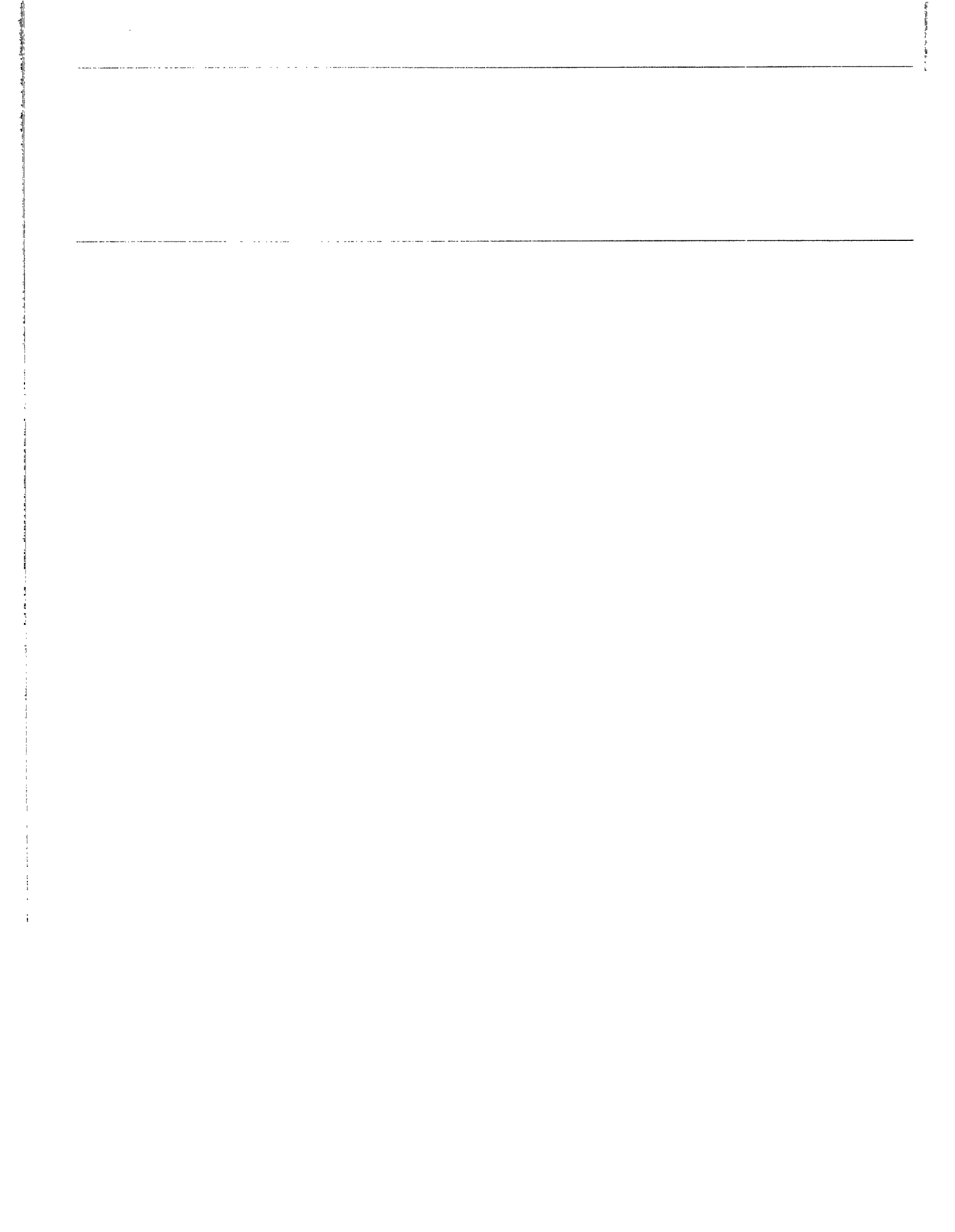
February 1991

INDIAN PROGRAMS

Tribal Influence in Formulating Budget Priorities Is Limited



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United States
General Accounting Office
Washington, D.C. 20548

**Resources, Community, and
Economic Development Division**

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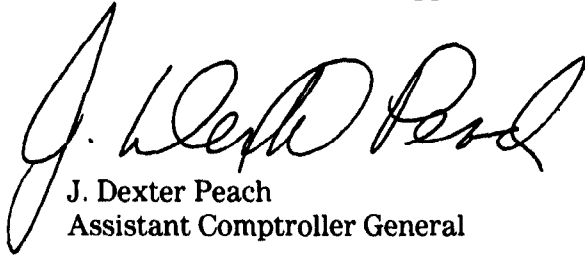
February 7, 1991

The Honorable Daniel K. Inouye, Chairman
The Honorable John McCain, Vice-Chairman
The Honorable Quentin N. Burdick
The Honorable Kent Conrad
Select Committee on Indian Affairs
United States Senate

In response to your June 1, 1989, letter and subsequent discussions with your offices, this report provides the results of our review of the Bureau of Indian Affairs' Indian Priority System budget formulation process. The report discusses the evolution of the Indian Priority System process, its current implementation, and the extent to which tribes influence the budgeting for selected Bureau of Indian Affairs' programs through the process. We are making a recommendation to improve the way in which the process is implemented.

We are sending copies of this report to the Secretary of the Interior; the Assistant Secretary for Indian Affairs, Bureau of Indian Affairs; the Director, Office of Management and Budget; and interested congressional offices.

This work was performed under the general direction of James Duffus III, Director, Natural Resources Management Issues, who may be reached at (202) 275-7756. Other major contributors are listed in appendix I.



J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

In recent years controversy has arisen concerning the determination of funding and program priorities under the Indian Priority System (IPS) budget formulation process. One of the main purposes of the process is to increase Indian self-determination by giving tribes more say in using some appropriated moneys for programs benefitting them. As requested by the Senate Select Committee on Indian Affairs, GAO examined (1) the portion of the Department of the Interior's Bureau of Indian Affairs (BIA) budget subject to the IPS process; (2) the development and current implementation of the process; and (3) the level of tribal involvement in the process and the extent of tribal influence in setting budget priorities for IPS funds. GAO also discusses certain overriding issues raised by tribes regarding budgeting for and implementing federal Indian programs.

Background

In the early 1970s BIA implemented a budget formulation process designed to give Indian tribes a substantial role in setting priorities among programs and their levels of funding. Following passage of the Indian Self-Determination and Education Assistance Act of 1975, BIA characterized its budget formulation process—now referred to as the IPS process—as a means of fulfilling the Congress' commitment to effective and meaningful participation by Indian tribes in planning, conducting, and administering Indian programs.

Under the IPS process, BIA area and agency offices, in conjunction with Indian tribes, are to develop proposed budgets for selected programs under the Operation of Indian Programs budget component. This process generally involves BIA's Central Office providing the area and agency offices and tribes with base budget amounts. The BIA offices and the tribes then identify program priorities and associated funding levels within the base amounts. Their input is consolidated into BIA's annual budget.

Programs subject to the IPS process include some that Indian tribes have contracted with BIA to plan, conduct, and administer under section 102 of the 1975 act. The levels of funding for these contracted programs are generally established at the time of contract negotiations between the tribes and BIA and are included in the tribes' annual base budget amounts. Although contracting is separate from the IPS process, during the IPS process the tribes may identify their preferences for changing the priority and funding levels for all IPS programs.

Results in Brief

Initially, funds subject to the IPS process represented over 50 percent of BIA's annual Operation of Indian Programs budget. However, in the 1980s the portion of BIA's budget subject to the process decreased significantly from earlier levels. These funding changes occurred during the same period as changes in BIA's guidance for implementing the IPS process. In GAO's view, BIA's current implementation guidance leaves unclear what role tribes are to play. Current guidance focuses on affording tribes an "opportunity" to participate in IPS program budget formulation. In contrast, BIA's IPS guidance and procedures used in 1978 suggested a more substantial role for tribes in shaping IPS program budgets.

The level of tribal participation in the IPS process for 4 recent years differed for the five tribes GAO reviewed. When tribes participated, tribal and BIA officials concurred that, from among all programs subject to the IPS process, tribes contributed the most to the budget formulation for programs that they contracted with BIA pursuant to the Indian self-determination act. Tribes were unable, however, to influence the budget formulation for BIA area office-administered IPS programs or certain BIA agency office-administered IPS programs.

In addition to concerns about having a limited impact on the IPS portion of the BIA budget, tribes expressed a number of overall budgetary concerns. Key concerns were the inadequacy of the federal budget for Indian programs and the inability of tribes to affect budget decisions for programs involving BIA-identified trust responsibilities.

Principal Findings

The IPS Portion of BIA's Budget

BIA's budget has averaged about \$1 billion annually over the past 10 years. The Operation of Indian Programs budget component represents the major share of this budget—averaging about \$850 million a year during this period. About 30 percent of this amount, or an average of \$275 million annually, was subject to the IPS process. IPS funds ranged from \$227 million in fiscal year 1982 to \$333 million in fiscal year 1987.

Tribal Role in IPS Uncertain

BIA officials with whom GAO talked could not explain why BIA's current guidance provides tribes with a lesser role than earlier guidance in setting IPS process priorities and funding levels. While the process is generally being carried out consistent with BIA's current guidance, tribal officials believe their involvement in the process is inconsequential. Also, tribal levels of participation in the IPS process varied over the 4-year period reviewed by GAO. For example, changes in two tribes' leadership and political upheaval on the reservation curtailed or prevented participation in some years.

Tribal Influence in Budgeting Decisions Was Limited

According to tribal and BIA agency officials, tribes exercised the greatest degree of control over budget formulation and the subsequent use of funds for those IPS programs that the tribes were administering through contracts with BIA. Between 19 percent and 79 percent of the individual fiscal year 1989 IPS budgets for the tribes GAO visited represented funding associated with contracted programs. This wide variance indicates that the five tribes have differed in their desire to contract with BIA for programs BIA is authorized to administer for the benefit of Indians.

With regard to the budget formulation for IPS programs that the tribes had not elected to contract, the tribes did not appear to have much effect on the budget formulation. In particular, at the area office level neither the tribes nor BIA agency officials were involved in the budget formulation for about 14 percent of the IPS budget, which represented programs that BIA area offices administer. Further, at the agency level, regardless of tribal preferences, BIA agency offices determined budget amounts for their overall office executive direction and administrative services—an IPS-designated program.

Tribal Concerns

Tribal officials told GAO that they were unable to significantly affect budgeting decisions for IPS programs. A more overriding concern was that the level of federal funding is inadequate for tribal needs. Tribes expressed particular concern about their lack of participation in formulating budgets for IPS funds retained by BIA area offices and their lack of success in influencing the budgets for BIA agency office executive direction and administrative services. BIA officials told GAO that budgeting for some IPS programs, including agency office executive direction and administrative services, was based on BIA's need to fulfill its trust responsibilities—the responsibilities BIA fulfills as trustee of Indian lands, natural resources, and other assets.

Recommendation to the Secretary of the Interior

GAO recommends that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to clarify the purpose of the IPS process and the nature of tribal involvement expected in carrying out the process, and communicate such clarification to the tribes. In clarifying the process, the Assistant Secretary should address the tribes' concerns about the programs subject to the process, such as the retention of funds by area and agency offices for executive direction and administrative services.

Agency Comments

While not commenting directly on GAO's recommendation, BIA expressed the belief that declining funding levels, which impair its ability to meet tribal requests for increased services, are a major cause of tribal discontent with the IPS process. BIA also stated its belief that GAO's report reflects a basic misunderstanding of the IPS process and how it works. GAO's report discusses in some detail tribal concerns about overall funding levels. GAO's report also discusses the extent to which tribes are unclear as to the purpose being served by the IPS process, the nature of tribal involvement expected by BIA, and the results to be achieved. BIA's comments are contained in appendix I.

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Abbreviations

BIA	Bureau of Indian Affairs
ED&A	Executive Direction and Administrative Services
GAO	General Accounting Office
IPS	Indian Priority System
OIP	Operation of Indian Programs

Introduction

The Bureau of Indian Affairs (BIA), Department of the Interior, is the primary federal agency charged with carrying out the government's relationship with, and responsibilities toward, 507 federally recognized tribes with about 950,000 enrolled members. In addition to being a trustee for Indian lands, BIA provides services to tribes in such areas as education, economic development, natural resource management, infrastructure (roads, housing, construction), law enforcement, and social services.

Background

BIA has a three-tier organizational structure: a Central Office, area offices, and agency offices. The Central Office is responsible for general policy, program management, and oversight on a national level. Twelve area offices, each managed by an area director, report to the Central Office. Area offices provide technical assistance and oversight for programs operated within their respective geographical boundaries. Under the authority of the area offices, BIA has 83 agency offices nationwide, each managed by an agency superintendent. These offices are primarily responsible for working with tribes on a daily basis. An agency office may be responsible for one or more tribes; agency offices are classified, or referred to, as single-tribe or multi-tribe agencies.

The BIA Budget and Tribal Participation

The BIA budget, as submitted annually to the Congress, is divided into various programs/activities, the most significant of which, in terms of funding, is BIA's Operation of Indian Programs (OIP). Beginning with the fiscal year 1973 budget, tribes were involved in developing a portion of the OIP budget through the Indian Priority System (IPS) budget formulation process. This process was characterized by BIA in 1976 as one of two principal methods for pursuing Indian self-determination through greater self-government; to that end, it was to provide an opportunity for tribes to set priorities among programs and determine funding for them.¹ The other means for furthering Indian self-determination—authorizing tribes to contract with BIA to perform program services—

¹BIA initially referred to this process as "band analysis," but it is now called the Indian Priority System. For consistency throughout this report, we refer to the process as the IPS process and programs budgeted through its use as IPS programs.

was provided for in the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638).² In this act, as amended,³ the Congress declared

its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

In general, the IPS process calls for BIA to first identify specific programs and an overall budget amount to be made available to carry them out as an initial step in its overall annual budget formulation process. BIA agencies, in consultation with the tribes, are then asked to set priorities among those programs and identify the share of the available funding to be devoted to each program. BIA then aggregates this input for inclusion in its annual budget submission.

Objectives, Scope, and Methodology

In a June 1989 letter, the Chairman, Vice-Chairman, and two members of the Senate Select Committee on Indian Affairs stated that the IPS budget process had been the subject of much controversy in recent years and asked that we review BIA's implementation of the process. In an August 31, 1989, letter to the Chairman and in subsequent discussions with the Committee office, we agreed to provide the Committee with information on total BIA funding, particularly that portion of BIA's budget subject to the IPS budget formulation process; the development and implementation of the IPS process; and the level of tribal involvement and the extent to which tribes exercise influence in setting IPS budget priorities. In addition, we agreed to provide information on (1) the extent to which tribes contract with BIA to carry out programs and (2) any concerns the tribes have regarding the IPS process.

On February 8, 1990, we briefed Committee staff members on the preliminary results of our work. At that time, the staff asked that, as part of our first objective, we clarify the extent to which IPS funds are used by BIA area and agency offices for those offices' operations.

²Through BIA's contracting policy, tribes can apply for a contract with BIA to plan, conduct, and administer all or parts of programs which BIA is authorized to administer for the benefit of Indians.

³Indian Self-Determination and Education Assistance Act Amendments of 1988, P.L. 100-472.

Our work examining overall BIA budget levels, as well as the IPS portion, was based on aggregated budget and accounting data obtained from BIA's Central Office and from BIA's National Technical Support Center in Albuquerque, New Mexico; we did not independently verify those data. We also reviewed prior reports or studies that discussed the BIA budget process.⁴ In addition, we reviewed an April 1989 BIA report on the IPS process that discussed substantive issues raised by tribes and BIA officials in 11 of the 12 BIA areas.⁵

To identify BIA's IPS procedures and how the IPS process was carried out at the tribal level, we reviewed applicable legislation, appropriate BIA manuals, and annual budget formulation guidelines developed by BIA. We also reviewed relevant documents and interviewed officials at five tribes and their corresponding BIA area and agency offices.

The five tribes included in our review were Turtle Mountain Chippewa, Taos Pueblo, Northern Cheyenne, Seminole Tribe of Florida, and Pascua Yaqui. We selected this judgmental sample of tribes considering such factors as tribal population, geographic location of the tribe, whether the tribe was under a BIA single- or multi-tribe agency office, and interest expressed by the Committee. On the basis of the selection of tribes, we also visited the following BIA area and agency offices: Aberdeen Area (South Dakota) and Turtle Mountain Agency (North Dakota), Albuquerque Area and Northern Pueblos Agency (both in New Mexico), Billings Area and Northern Cheyenne Agency (both in Montana), Eastern Area (Virginia) and Seminole Agency (Florida), and Phoenix Area and Salt River Agency (both in Arizona).⁶

At each location we interviewed officials involved in the budget process as well as program managers. We focused on the budget formulation and execution process for fiscal year 1989 but also obtained information covering budget formulation for fiscal years 1987 through 1992 when

⁴Key reports were (1) Report on Federal Administration and Structure of Indian Affairs, Final Report to the American Indian Policy Review Commission, Philip S. Deloria, et al. (Washington, D.C.: Government Printing Office, 1976) and (2) Tribal Participation in the Bureau of Indian Affairs Budget System Should Be Increased (GAO/CED-78-62, Feb. 15, 1978).

⁵Indian Priority System (IPS) Review Team Report, U.S. Department of Interior, Office of the Secretary (Washington, D.C.: Apr. 5, 1989). This report was submitted by BIA in response to P.L. 100-472, Indian Self-Determination and Education Assistance Act Amendments of 1988. It included comments from teams comprised of tribal and BIA area and agency office officials in 11 of the 12 areas. The Navajo area did not submit a response.

⁶Programs for two of the tribes selected are administered by multi-tribe agencies. Specifically, Salt River Agency Office administers programs for three tribes, including Pascua Yaqui, and the Northern Pueblos Agency for eight tribes, including Taos Pueblo.

available. We gathered information for a number of years to show funding trends and to determine whether and how implementation of the IPS process varied from year to year.

We performed this work from October 1989 through June 1990 in accordance with generally accepted government auditing standards.

IPS and Its Relationship to BIA Budgeting for Indian Programs

The IPS budget formulation process provides a means for Indian tribes to become involved in the development of a portion of BIA's annual budget. Our review showed that the portion of BIA's budget subject to the IPS process decreased between fiscal years 1978 and 1990. In addition, BIA area and agency offices use a portion of IPS funds for overall executive direction and administration. Further, the combination of BIA programs subject to the IPS process has varied over the years; in recent years the major portion of the IPS budget has been devoted to tribal services such as law enforcement, social services, and adult vocational training.

How the IPS Process Is Carried Out

BIA instituted the IPS process to involve tribes in the formulation of BIA's annual budgets. The process begins approximately 18 months prior to the fiscal year for which the budget is being developed. At that time BIA's Central Office provides BIA area and agency offices and tribes with initial budget funding amounts for those programs subject to the IPS process. These initial "base amounts" are categorized by IPS program and are set at the level of funding contained in the prior year's budget request to the President. The initial IPS base amounts are classified as either "area direct operations" or "area field operations" funds for area offices and as "tribe/agency" funds at the agency offices.

The way in which a tribe is provided initial base funding amounts varies depending on whether the tribe's respective BIA agency is a single-tribe or multi-tribe agency. Single-tribe agencies receive consolidated base amounts that include funds for programs administered by both the BIA agency office and the tribe. Multi-tribe agencies receive consolidated base amounts or separate tribe and agency base amounts. For tribes that receive separate base amounts, the amount generally corresponds to the funding for the programs that the tribes contract from BIA.

After initial base amounts have been provided, BIA agency offices, together with tribes, rank IPS programs by order of importance and designate funding amounts for each program assuming four different potential funding levels. For fiscal year 1989 the funding levels represented 80, 90, 100, and 110 percent of the initial base funding amounts. A collective determination of program priorities and funding amounts generally results from meetings between BIA agency and tribal representatives.

Once a determination is made for the tribe/agency budget, it is forwarded to the respective BIA area office. The area office, which also develops a proposed budget for its IPS programs, submits the area office

budget and all tribe/agency budgets within the area to the BIA Central Office. Subsequently, about 4 to 6 months after the process begins, BIA area and agency offices and tribes are provided "target" budget figures from the Central Office. These target amounts are the anticipated IPS program funding levels prior to the Office of Management and Budget's review of BIA's budget request. Following congressional appropriations, area and agency offices receive actual funding allocations.

IPS Funding and Programs

The portion of BIA's budget subject to IPS has varied since the late 1970s. The largest amount of funds subject to IPS, \$495 million, occurred in fiscal year 1979. Programs removed from IPS, particularly BIA's Indian schools program, account for the sharp decline in IPS funds between fiscal years 1979 and 1980. Since that time, although there have been changes regarding which programs are subject to the IPS process, the level of funding subject to IPS has been more stable, ranging between about \$227 million and \$333 million and averaging about \$275 million annually, or about 30 percent of OIP funds.

As stated in chapter 1, the portion of BIA's budget subject to the IPS process is contained in BIA's OIP budget component. Table 2.1 shows the amounts of congressional funding provided to BIA, the portion of those funds devoted to the OIP, and that portion of the OIP subject to the IPS process.

Chapter 2
IPS and Its Relationship to BIA Budgeting for
Indian Programs

Table 2.1: BIA Funding and Amounts Subject to the IPS Process

Dollars in millions (rounded)

Fiscal year	Total BIA funding	OIP funding	Funds subject to IPS^a	Percent of OIP
1978	\$898	\$725	\$406	56
1979	1,031	790	495	63
1980	994	804	279	35
1981	1,098	838	250	30
1982	970	829	227	27
1983	1,150	954	256	27
1984	958	857	274	32
1985	1,019	904	253	28
1986	996	883	260	29
1987	1,036	939	333	36
1988	1,071	971	315	32
1989	1,123	1,026	281	27
1990 ^b	1,356	1,021	295	29

^aAmounts shown for fiscal years 1978-80 and 1987-90 include BIA area office direct operations IPS funds. Amounts shown for fiscal years 1981-86 include only funds categorized by BIA as tribe/agency funding and do not include area office direct operations funds. In addition, IPS funding data for fiscal years 1978-80 were derived from appropriations hearings documents; data for fiscal years 1981-90 were provided by BIA.

^bThe data for fiscal year 1990 represent initial BIA appropriations.

As indicated earlier, BIA administers IPS funds at both its area and agency offices and uses those funds to carry out a number of BIA programs. In addition to direct program services to tribes, IPS funds also are used for a portion of BIA area and agency office operations expenses. These expenses include salary costs for BIA area office directors, agency superintendents, and administrative staff, as well as costs for general administrative functions, such as property management and accounting. The expenses are collectively referred to as executive direction and administrative services (ED&A). According to BIA Central Office officials, the BIA Central Office uses no IPS funds.

Table 2.2 shows the distribution of IPS funds between BIA area and agency offices for fiscal years 1987-90. The table also shows the amount of IPS funds devoted to ED&A at these respective offices.

**Chapter 2
IPS and Its Relationship to BIA Budgeting for
Indian Programs**

Table 2.2: Distribution of IPS Funds

Dollars in millions (rounded)

Fiscal year	Total IPS funds	Navajo area office ^a		Other BIA area offices		Other BIA agency offices	
		Total	ED&A	Total	ED&A	Total ^b	ED&A
1987	\$333	\$45	\$4	\$34	\$13	\$254	\$17
1988	315	42	4	36	14	237	17
1989	281	35	5	34	13	212	18
1990	295	36	5	40	16	219	19

^aIPS funding for the BIA Navajo area office and the five tribe/agency locations within the Navajo area have been shown separately because most IPS programs administered by agency offices in the other 11 BIA areas are administered by the Navajo area office. Total IPS funds allocated to the Navajo area office for fiscal years 1987-90 were \$30 million, \$26 million, \$26 million, and \$27 million, respectively. For the agencies in the Navajo area, total IPS funding for fiscal years 1987-90 was \$15 million, \$16 million, \$9 million, and \$9 million, respectively.

^bThis column represents the funds distributed to BIA agency offices, or the total tribe/agency funds for each year.

As reflected in table 2.2, BIA area offices (excluding the Navajo area office) have administered an average of about \$36 million annually in IPS funds, or about 14 percent of the total. Of the area office IPS funds, about 39 percent, on average, has been used to fund ED&A. In addition, an average of about 8 percent of IPS funds allocated to the BIA tribe/agency level (excluding Navajo) was devoted to agency office ED&A activities.

With respect to the types of programs associated with IPS funding, table 2.3 shows that portion of IPS funds associated with major BIA programs for fiscal years 1987-90.

Table 2.3: IPS Funds Categorized by Program Areas

Dollars in millions (rounded)

Program area	Fiscal year			
	1987	1988	1989	1990
Education	\$36	\$33	\$32	\$32
Tribal Services ^a	132	125	129	135
Economic Development	28	28	4	4
Natural Resources	72	65	53	57
Trust Responsibilities	31	28	27	28
General Administration ^b	34	36	36	39
Total	\$333	\$315	\$281	\$295

^aPrior to fiscal year 1990, the program was referred to as Indian Services.

^bIncludes ED&A

As shown in table 2.3, the largest portion of IPS funds has been devoted to tribal services. Major program activities under the tribal services area include law enforcement, social services, adult vocational training, and aid to tribal governments. The major decrease in funding under the economic development area from fiscal year 1988 to fiscal year 1989 primarily resulted from BIA's decision to exclude road maintenance from the activities subject to the IPS process.

Programs Subject to IPS Have Changed

Since the fiscal year 1978 budget formulation, the combination of programs subject to IPS has varied. The identification of programs subject to the IPS process primarily results from BIA decisions although, in some instances, programs have been removed from the IPS process pursuant to legislative guidance.

Between 1977 and early 1980, BIA removed two programs, Indian Schools and Facilities, from IPS. BIA's rationale for removing Indian Schools was to comply with formula requirements of the Education Amendments of 1978 (P.L. 95-561); Facilities was removed to ensure adequate maintenance of federal facilities. Schools took about \$200 million out of the IPS process; Facilities about \$60 million. During this same period, other programs, such as Law Enforcement, Scholarships, and Tribal Courts, were included in the IPS process.

Since early 1980, six programs have been removed from the IPS process. Two programs, Indian Action Teams and the Housing Improvement Program, were removed pursuant to legislative guidance contained in congressional reports accompanying BIA appropriations bills. A third program, Roads Maintenance, was removed by BIA on the basis of the findings of a Department of the Interior Inspector General report.¹

BIA removed a fourth program, its Financial Trust Services program, in fiscal year 1988 because of uncertainties surrounding the implementation of a new contract with a private sector financial institution to provide trust fund accounting services. BIA noted in its fiscal year 1988 budget submission to the Office of Management and Budget that a portion of these funds may be returned to the Indian Priority System for

¹Road Maintenance Program, Bureau of Indian Affairs, U.S. Department of the Interior, Office of Inspector General (Washington, D.C.: Dec. 8, 1987). On the basis of the finding that roads on Indian reservations were not effectively and economically maintained, which resulted in the potential waste of government funds, the report recommended, among other things, that BIA remove its road maintenance program from IPS. BIA agreed with the recommendation.

tribal decisions on funding/staffing levels once the contract for trust fund accounting services is "firmly in place."

BIA provided us no specific explanations for having removed its General Community Development and Business Enterprise Development programs from the IPS process in fiscal year 1982. A BIA official informed us, however, that a former BIA official, in fiscal year 1982 budget hearings, commented that BIA had exhausted its opportunities in the business enterprise program area.

In addition to the inclusion or exclusion of programs over the years, some programs have been represented differently in different years. For example, in fiscal year 1978 BIA listed forestry as one IPS program; in fiscal year 1990 forestry was five discrete IPS programs. Similarly, wild-life and parks was listed as one program in fiscal year 1978 and as seven discrete programs in fiscal year 1990.

Changes to the programs subject to the IPS process have been made by the BIA Central Office on the basis of administrative decisions or legislative directives, as noted above. Such decisions are not subject to appeal by the BIA area or agency offices or the tribes. BIA area and agency office officials indicated that the Central Office had often provided no advance notification to the area and agency offices or to tribes regarding changes to the IPS listing. However, we were told by a Central Office official that notification of an IPS program change for the fiscal year 1991 budget was provided to tribes in January 1989.

Limited Tribal Influence Over BIA Budget Formulation

The IPS process appears to result in limited tribal influence over BIA's annual IPS budget development, and tribal officials believe that their involvement in the process is inconsequential. We found that initial BIA guidance for carrying out the IPS process emphasized that IPS program budgets were to reflect, to the greatest extent possible, tribal priorities. However, current BIA guidance and procedures for implementing the process are directed at ensuring that IPS program budgets meet BIA administrative and program requirements while considering tribal priorities. Our review also showed that the extent to which tribes have participated in the IPS process varied.

With regard to tribal influence, tribes contributed to the budget formulation for those IPS programs they had elected to contract with BIA. Tribes differed in the extent to which they pursued contracting—contracted IPS programs represented between 19 percent and 79 percent of BIA's fiscal year 1989 funds subject to the IPS process for the tribes we reviewed. On the other hand, we found that BIA made budgeting decisions for certain IPS funds retained by the area and agency offices, for the most part, without tribal participation.

Initial and Current Guidance Reflect a Differing Emphasis on Tribal Involvement

The process for involving tribes in formulating BIA's budget dates back to the early 1970s. Our comparison of initial BIA guidance and procedures with current guidance and procedures shows a change in expected outcome associated with tribal involvement in the process.

Tribal participation in developing BIA's annual budgets began with the formulation of BIA's fiscal year 1973 budget. Formal BIA guidance for tribes' participation in BIA's fiscal year 1978 budget formulation (the earliest procedures we could identify) characterized the IPS process as a tool by which (1) Indian priorities among BIA-funded programs could be reflected and (2) Indian leaders could change BIA programs to meet their needs and desires. In addition, informal BIA guidance for the fiscal year 1979 budget formulation process stated that BIA was "obligated" to facilitate, in every way possible, effective tribal involvement in the budget process. Current IPS budget formulation guidance focuses on BIA area and agency officials' ensuring that budgets fulfill essential federal program requirements while considering tribal program funding priorities at the local level. BIA officials we talked with could not explain why the IPS guidance had changed.

Table 3.1 highlights the key aspects of BIA's 1978 guidance and current guidance for involving tribes in the budget formulation process. As indicated in the table, the emphasis of BIA's earlier guidance appeared to be on allowing tribes to set program priorities and funding among programs according to tribal preferences. Current guidance, however, seems to emphasize developing agency budgets that meet BIA's understanding of its federal administrative and program requirements, which are generally associated with trust responsibilities.

Table 3.1: Key Aspects of BIA's Guidance for Involving Tribes in Budget Formulation

1978 guidance	Current guidance
The IPS process is a tool to feed Indian priorities into the BIA budget, and to enable subsequent distribution of appropriated funds according to these priorities.	The process is a way to provide an opportunity for tribes to participate in developing the BIA budget at the local agency office level.
Specific aspects of guidance:	
Tribes indicate total funding need outside of constrained base funding.	Tribes do not indicate total funding need.
Tribes' budgets remains part of the official record regardless of revisions that might occur during the review process.	Tribes are not required to prepare a separate document detailing priorities; rather, a combined tribe/agency budget is prepared and retained. Agency superintendent notes differences between tribe and agency in a report to the area director.
BIA is obligated to facilitate effective tribal involvement in process.	No indication that BIA must facilitate effective tribal involvement; rather, agency superintendents "request" tribal participation.
Emphasis on area and agency offices finalizing their budgets, to greatest extent possible, according to tribal priorities. Only the "unavoidable minimum amount" required to carry out BIA activities required by trust responsibility is essential.	Emphasis on area and agency budgets first ensuring resources for essential personnel and federal administrative and program functions when considering tribal priorities.

Tribal Involvement Varied

Our review of the implementation of BIA's current guidance at five tribes and their respective BIA area and agency offices showed that, in general, current IPS guidance was being followed. However, the level of tribal participation varied from one year to the next and also varied depending on the tribe's relationship with BIA. For example, we found that the opportunity for participation in formulating budgets for certain activities was sometimes limited in multi-tribe agency settings.

Four of the five tribes' participation in the IPS process differed significantly in the development of IPS budgets for fiscal years 1989-92. Tribal and BIA officials stated that, for two tribes, changes in tribal leadership

and political upheaval on the reservation curtailed and even prevented tribal participation in the development of the budget for some of those years. In addition, two of the five tribes attended IPS formulation meetings with the BIA agency office in some of the years, but they either did not attend or did not actively participate in other years. Representatives from two tribes stated that they now intend to participate more actively than they have in the past.

We also found that the opportunity for tribal involvement differed in single- as compared to multi-tribe agency offices. In the three single-tribe agencies we reviewed, tribes were generally given an opportunity to review and comment on the funding levels and priorities proposed by the BIA agency office for tribal programs carried out by the agency office. The tribes in the two multi-tribe agencies, however, were not always given an opportunity to participate in or review funding levels and program priorities established by the agency office for programs it operated.

Limited Tribal Influence in Budget Formulation

Although BIA identifies a specific portion of its budget as IPS funds, tribes were limited in their ability to set priorities among all IPS programs and thus influence the levels of IPS funding for specific programs. We found that tribe and agency office officials concurred that tribes contributed to the budget formulation for those IPS programs that are contracted to the tribes. However, we also found that BIA area offices formulate the budget for a portion of IPS funds without participation by either BIA agencies or tribes. In addition, a further portion of the IPS budget, while included in tribe/agency IPS base funding amounts, is generally determined by the BIA agency office. Overall, tribal officials' comments on the IPS process reflect their belief that participation in the process is, for the most part, inconsequential.

Some Tribal Influence Over Budgeting for Contracted Programs

As stated in chapter 1, the Congress provided for tribes to contract with BIA to plan, conduct, and administer BIA programs (referred to as "638 contracts") as a means to further the goal of Indian self-determination. Tribes may contract with BIA to carry out BIA programs or services directed to tribes, whether or not the activity is subject to the IPS budget formulation process.

According to tribal and BIA agency officials, tribes exercised the greatest degree of control over budget formulation and the subsequent use of

funds for those IPS programs that the tribes administer through 638 contracts. The contracting process is separate from the annual IPS process; levels of funding for the contracted programs are generally negotiated between the tribes and the BIA agency offices at the time of contract negotiations. Subsequently, contracted IPS program funding levels are included in the tribes' annual IPS base budget amounts. During the IPS process, tribes may identify their preferences for changing the priority and funding levels for all IPS programs.

Table 3.2 shows fiscal year 1989 funding levels associated with IPS programs contracted by the five tribes we visited. These data indicate that contracted activities represented from 19 percent to 79 percent of the individual tribe/agency IPS budgets. This variance indicates that the five tribes have differed in their desire to contract with BIA to plan, conduct, and administer programs that BIA is authorized to administer for the benefit of Indians. Nationally, we noted that about \$126 million, or about 50 percent, of the fiscal year 1989 tribe/agency IPS budgets represented contracted IPS programs.

Table 3.2: Fiscal Year 1989 IPS Funds Contracted by Tribes

Dollars in thousands (rounded)			
Agency	Tribe/agency budget	Dollar amount of 638 contracts	Percent contracted
Single-tribe			
Northern Cheyenne	\$2,354	\$951	40
Seminole	1,348	1,060	79
Turtle Mountain	3,242 ^a	631	19
Multi-tribe			
Northern Pueblos	3,251 ^b	1,793	55
Salt River	2,659 ^c	2,023	76

^aIncludes IPS funds for the Trenton, North Dakota, location of the Turtle Mountain Chippewa.

^bIncludes the agency office and eight tribes. In fiscal year 1989 the Taos Pueblo had IPS contracts totaling \$422,150, or about 24 percent of the total agencywide IPS contracts and 13 percent of the tribe/agency base budget.

^cIncludes the agency office and three tribes. In fiscal year 1989 the Pascua Yaqui tribe had IPS contracts totaling \$597,700, or about 30 percent of the total agencywide IPS contracts and 22 percent of the tribe/agency base budget.

Some IPS Funds Are Not Subject to Tribal Input

With respect to the budgets for all five BIA area offices we visited, tribal and BIA officials told us that neither the tribes nor BIA agency offices are involved in developing BIA area office IPS budgets. Table 3.3 shows the amount of IPS funds included in the fiscal year 1989 budget for each of

**Chapter 3
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the area offices we reviewed. The table shows that of the total IPS funds available areawide, area offices retained between 9.4 percent and 18 percent for area office operations, averaging about 13 percent. Of these IPS funds retained, between one-third and one-half were budgeted for area office ED&A services.

**Table 3.3: Area Office Fiscal Year 1989
IPS Funds**

Dollars in millions

Location	Areawide IPS funds	IPS funds retained by area	Percent retained by area office
Aberdeen	\$33.7	\$3.5	10.4
Albuquerque	23.4	4.2	18.0
Billings	18.7	2.8	15.0
Eastern	12.8	1.2	9.4
Phoenix	40.0	4.8	12.0

Table 3.4 depicts the total fiscal year 1989 IPS initial budget amounts for the tribes and BIA agencies we visited. As this table shows, between about 8 percent and 12 percent of the total agency IPS budget was allocated to BIA agency office ED&A. At each agency visited, we found that agency officials, consistent with BIA policy guidance, ensured that ED&A services were budgeted at the level they believed adequate, regardless of the tribe's priority ranking or funding suggestions. According to BIA agency officials, decisions regarding funding levels for agency ED&A are based on BIA's view that these activities fulfill BIA trust responsibilities to Indian tribes and must be adequately funded.

**Table 3.4: Tribe/Agency Fiscal Year 1989
IPS Funds**

Dollars in thousands (rounded)

Agency	Tribe/agency budget	ED&A funds	ED&A percent of budget
Single-tribe			
Northern Cheyenne	\$2,354	\$180	8
Seminole	1,348	168	12
Turtle Mountain	3,242 ^a	294	9
Multi-tribe			
Northern Pueblos	3,251 ^b	305	9
Salt River	2,659 ^c	211	8

^aIncludes IPS funds for the Trenton, North Dakota, location of the Turtle Mountain Chippewa.

^bIncludes the agency office and eight tribes. The fiscal year 1989 IPS budget for the Taos Pueblo was \$394,500. The agency office IPS budget was about \$1,587,000, including all the ED&A funds.

^cIncludes the agency office and three tribes. The fiscal year 1989 IPS budget for the Pascua Yaqui tribe was \$738,500. The agency office IPS budget was about \$367,000, including all the ED&A funds.

**Tribes See Their IPS
Involvement as
Inconsequential**

In our discussions with tribal officials, many expressed the view that their involvement in and input into BIA's budget formulation through the IPS process was of little consequence. Tribal and BIA officials identified limited IPS funds, changes in the programs subject to the IPS process, unsuccessful attempts to appeal BIA budget decisions, and frequent changes in tribal leadership as factors constraining the tribes' efforts to influence decisions on the formulation of BIA's annual budget.

Some BIA agency and tribal officials indicated that the number of dollars available for priority-setting by the tribes (funds associated with the IPS budget) is severely limited. As a consequence, tribes have limited flexibility in setting program priorities and funding levels in the IPS process. In some instances, the limited flexibility resulting from funding levels discourages tribes from modifying the amount of funding devoted to individual programs. In the tribes' view, funding modifications may result in the loss of necessary programs or in the funding of programs below minimal requirements.

Tribal and BIA agency officials also reported that changes in those programs subject to the IPS process, including a reduction in the total number of programs, have, over the years, reduced tribes' confidence in the process. These officials reported that BIA's designation of programs as subject to the IPS process has changed over time and appears to have resulted from what they characterized as political or BIA administrative decisions.

As part of the IPS process, tribes may appeal budget formulation decisions reached at the BIA agency or area offices. Such an appeal provides an additional opportunity for tribes to influence budget formulation decisions. With respect to the tribes' use of the IPS appeal process as a means to affect the budget formulation decisions, BIA officials told us that 10 appeal actions were filed during a 4-year period (budget formulations for fiscal years 1988-91) by tribes within the geographical boundaries covered by the five BIA area offices we visited. All were decided in favor of the BIA agency office, including those actions representing cases that were further appealed by the tribes to the BIA Central Office.

Concerning changes in tribal leadership, BIA and tribal officials said that membership in tribal councils or governments can change as frequently as yearly. Thus, familiarity with the IPS process and experience in participating in the process are often lost as a result of tribal elections.

These losses, according to tribal officials, limit the tribes' ability to effectively participate in the IPS process.

Conclusions

In 1976 BIA characterized the IPS process as a means to pursue Indian self-determination and provide an opportunity for tribes to set priorities among programs and determine funding for them. In its 1978 procedures and guidance, BIA described the process as a budget formulation mechanism to obtain tribal funding and program priorities for a portion of BIA's budget. At that time, BIA emphasized finalizing its area and agency budgets, to the greatest extent possible, according to tribal priorities.

BIA currently characterizes the process as a way to provide an opportunity for tribes to participate in developing BIA's budget at the local level. We found that tribes are concerned about their general inability to influence program and funding decisions through participation in the process. We believe that the tribes' current concern, particularly in the context of the earlier procedures and the goals set forth in the Indian self-determination act, raises questions about the purpose being served by the process and what the tribes' expectations should be regarding their involvement.

We also found that budgeting decisions for certain IPS funds (those retained by area offices and those used at the agency level for executive direction and administrative services) were made by BIA, for the most part, without tribal participation. We believe this situation increases tribes' uncertainty about their role and the purpose being served by their involvement in the IPS process.

Recommendation to the Secretary of the Interior

We recommend that the Secretary of the Interior direct the Assistant Secretary for Indian Affairs to clarify the purpose of the Indian Priority System budget formulation process and the nature of tribal involvement desired in carrying out the process and communicate such clarification to BIA area and agency offices and Indian tribes. In clarifying the process, the Assistant Secretary should address the concerns expressed by tribes relating to the programs subject to the process, such as the retention of funds by area and agency offices for executive direction and administrative services.

Agency Comments and Our Evaluation

BIA believes that our report reflects a basic misunderstanding of the IPS process and how it works. Although it did not comment specifically on our recommendation, BIA raised concerns about (1) our discussion of the allocation of IPS program funding between its area offices and tribe/agency operations, (2) our use of IPS "informal" guidance developed in the early years of the process to determine the extent of tribal participation in the budget formulation process, and (3) the impression left by our report that funding for ED&A is excessive.

Our report generally focuses on the extent of tribal involvement in the formulation of BIA's annual budget. Clearly, BIA established the IPS process to provide the vehicle for such involvement. As noted in chapter 1, BIA characterized its budget formulation process, when established, as a means of pursuing Indian self-determination and of providing an opportunity for tribes to set priorities among programs and determine funding for them. BIA's guidance for formulating its fiscal year 1978 budget also stressed the IPS process as a way to "feed" Indian priorities into the budget. Further, table 3.1 shows specific differences between guidance provided to BIA staff doing current budget formulations and Central Office guidance for fiscal year 1978 budget formulation issued in a memorandum signed by the Commissioner of Indian Affairs (now the Assistant Secretary for Indian Affairs).

We recognize, and our report demonstrates, that current IPS guidance and the implementation of the process do not stress achieving tribal involvement in the budget formulation for selected activities; rather, they are directed at ensuring that essential federal program requirements are fulfilled while considering tribal program funding priorities. However, on the basis of the comments and concerns expressed by tribal officials about the IPS process, we believe that tribes are unclear as to the purpose being served by the process and the result that is expected from their involvement in the process. It is also unclear to us what purpose is being served by the IPS process and what BIA's expectations are concerning the nature of tribal involvement and the results to be achieved from that involvement. In our opinion, this uncertainty exists, to a large degree, because of the apparent change in the focus of IPS from its initial implementation to the present.

With regard to our discussions concerning IPS program funding, we presented BIA data on the activities receiving IPS funds at BIA's area and tribe/agency offices, including funding for ED&A. We did not assess the appropriateness of IPS funding levels. Rather, we determined what

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portion of total IPS funding was being administered by the BIA area offices and what portion of IPS funding was being devoted to ED&A.

Controversy Over IPS Reflects More Fundamental Funding and Programmatic Issues

In our discussions with BIA and tribal officials concerning BIA's implementation of IPS, two fundamental issues consistently surfaced and appear to permeate tribal concerns about BIA budgeting for Indian programs. Foremost is the view of BIA and tribal officials that funding needs far exceed the amount of federal assistance provided to tribes. The second issue relates to the effect that BIA's decisions regarding its trust and legal responsibilities have on tribes' abilities to influence program priorities and funding decisions. These issues were also raised in BIA's 1989 report to the Congress on the IPS budget formulation process and were identified in the 1976 report to the American Indian Policy Review Commission as factors that conflict with the goal of Indian self-determination. According to the Indian Policy Review Commission report, both issues are viewed as constraining the tribes' ability to fully participate in planning programs and services.

Federal Assistance and Tribal Needs

Tribal and BIA officials at the locations we visited, and the responses contained in the 1989 BIA report to the Congress, consistently mentioned inadequate funding as a serious limitation on the overall administration of Indian programs, as well as a constraint on tribes' efforts to establish program priorities and funding through the IPS process. Many tribal and BIA officials reported that funding often does not meet minimum program needs.

Consistent data reflecting the funding needs of tribes we visited were generally unavailable. As discussed in chapter 3, initial BIA procedures for implementing the IPS process provided for tribes to identify their funding needs when providing input to BIA on the tribes' program and funding priorities. However, this aspect of the IPS process is no longer included in BIA's current procedures.

In discussing funding limitations, BIA agency and tribal officials stated that limited funding has resulted in inadequate program services and has discouraged tribes from applying for contracts to administer BIA programs. At four tribes, for example, tribal and BIA officials told us that the law enforcement program was underfunded. The BIA agency provided law enforcement at three of these locations, and the tribe contracted this activity at the fourth. Documents prepared by BIA and tribal officials indicated that additional funding, mainly for salaries, was critically needed. According to these documents, the number of law enforcement officers at one location is the same as the number authorized in 1978, while the tribe's population has quadrupled. At another location, the law enforcement program, including requirements for a detention

facility, needed 14 additional positions in fiscal year 1991 to perform program operations.

With regard to the issue of funding and its effect on tribal contracting, tribal and BIA officials stated that, because of inadequate funding, tribes were discouraged from contracting additional programs. Officials from two tribes told us they had considered contracting various programs but had decided not to because of funding shortages. For example, one tribe had intended to contract the forestry program but, when tribal officials became aware of the limited funding available, they no longer considered contracting a viable option. We also were told that tribes had retroceded (given back) or were planning to retrocede contracts to BIA during a contract year when, according to tribal officials, funding shortages prevented them from providing services for the remainder of the contract term.

BIA Trust Responsibilities Affect Program Budgeting and Contracting Decisions

BIA generally characterizes the nature of its trust responsibilities as having evolved over the past decades. From an overall perspective BIA, in June 1990 congressional hearings, stated that its trust relationship with Indian tribes involved the fulfillment of its solemn duties and responsibilities as trustee of Indian lands, natural resources, and other assets. In discussions about the IPS process, BIA and tribal officials told us that amounts budgeted for some IPS programs reflected BIA decisions regarding minimum funding levels needed to fulfill its trust and legal responsibilities rather than tribal priorities for the use of IPS funds. In addition, officials told us that in some instances tribes have not been permitted to contract programs that BIA considers to be trust responsibilities.

Trust Responsibilities Limit Tribal Influence in the IPS Process

For each tribe we visited, we asked BIA and tribal officials for their views regarding what changes in the IPS process, if any, were warranted. While some suggestions were offered, BIA and tribal officials often cited the federal government's trust responsibilities as a factor limiting effective tribal involvement in the IPS process. BIA and tribal officials told us that tribes have little, if any, influence during the IPS budget formulation process on determining funding levels for trust-related programs. ED&A expenses were frequently identified as being funded at BIA-determined levels, regardless of tribal preferences, because BIA viewed these activities as trust-related responsibilities.

A number of BIA officials stated that they considered the ED&A programs to be trust responsibilities although BIA does not specifically define them as such. Further, BIA documents indicate that the determination of funding for ED&A programs is done under specific direction from the Assistant Secretary for Indian Affairs. Thus, tribal funding preferences are subordinated to BIA's determination of funding needs.

Aside from ED&A, one agency superintendent stated that agency superintendents "are mandated" to ensure that funding levels for the "trust responsibility" programs, which include such programs as realty, are adequate. The effect of BIA's efforts to carry out its trust responsibilities on budget formulation decisions was discussed in our 1978 report on tribal involvement in BIA's budget process. In that report we noted that

BIA's trust responsibilities and other essential services permeate all of its budgeting activities and many of its programs. However, funds relating to these trust responsibilities and services could not be readily identified. Therefore, the amount of funds actually available to the tribes to change the mix of programs and funding priorities was not known.

Trust Responsibilities and Their Impact on Tribal Contracting

Tribal contracting, according to the 1975 Indian self-determination act as amended, is one means by which tribes may attain self-determination. Section 102 of that act directs the Secretary of the Interior, at the request of any Indian tribe, to enter into a contract unless he or she finds, among other things, that adequate protection of trust resources is not assured. We found that BIA's interpretation of its trust responsibilities sometimes constrains the ability of tribes to contract programs.¹

In hearings related to BIA's fiscal year 1979 budget request, BIA stated that, to the extent that contracting does not violate trust responsibilities, tribal proposals for contracts are approved. However, one BIA official with whom we met stated that there is no clear policy on the relationship between trust responsibilities and the ability of tribes to contract programs.

With regard to tribal opportunities for contracting BIA programs, area and agency office officials in one location stated that the area office declines contracts mainly on the grounds that trust responsibilities are involved. However, these officials also said there was no clear definition of BIA's trust responsibilities. BIA officials at this particular location

¹We did not assess the basis for BIA's contracting decisions in light of section 102 because such an assessment was beyond the scope of our work.

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Controversy Over IPS Reflects More
Fundamental Funding and
Programmatic Issues

denied the tribe's request to contract the administrative officer position at the BIA agency office, partially on the basis that this position involves administering trust responsibilities for BIA.

Tribal officials at another location indicated that trust responsibilities preclude them from contracting the entire BIA realty program, although the tribe contracts certain realty program activities. According to tribal officials, BIA also told the tribe that it cannot contract for BIA's agency office ED&A services because they involve trust responsibilities. Likewise, an agency official said that the tribe had been unable to contract the fire-suppression program because it involved trust responsibilities.

Comments From the Bureau of Indian Affairs

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior



OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 07 1990

Mr. James Duffus III
Director, Natural Resources
Management Issues
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

This responds to your request for the Department's comments on the draft report entitled Indian Programs: Tribal Influence in Formulating Budget Priorities is Limited (GAO/RCED-91-20). We believe that a major cause of tribal discontent with the Indian Priority System (IPS) stems from overall funding levels for the programs budgeted through the IPS. The level of funding in constant dollars for all activities within the Operation of Indian Programs account declined by approximately \$200 million between fiscal years 1980 and 1990. This, coupled with a doubling of the service population over the last 20 years, has impaired the ability of the Bureau of Indian Affairs to meet requests for increased services.

See comment 1.

We have other more specific comments on the report, which follow. Most of our concerns stem from a basic misunderstanding of the IPS and how it works.

See comment 2.

Area Direct Operations vs. Tribe/Agency Operations

The report makes no distinction between Area Direct Operations and Tribe/Agency Operations, combining the two under the heading of the Indian Priority System. As a consequence, the inference from the report is that area offices retain funds intended for agency operations. While the Indian Priority System computer software is used to aggregate both Area Direct Operations and Tribe/Agency funds at a national level for budget submissions, the base funds and the priority setting are segregated. Further, the budget submissions of the Bureau of Indian Affairs clearly display the Area Direct portion under Area Office Operations while the Tribe/Agency funds are shown under Tribe/Agency Operations. Enclosure 1 provides a breakdown of the IPS funds between Area Direct and Tribe/Agency operations for fiscal years 1987-1990. We believe that making the distinction in the report would provide a great deal more clarity and dispel the inference that somehow the area offices are taking funds meant for the agencies.

See comment 3.

See comment 2.

The funds for area office operations are available for prioritization by the Area Director for the operation of the area office. The budget justifications state that changes in Area Office Operations are based on priorities of the area office. It is not reasonable to suggest, for example, that the Phoenix Area Director should have to obtain agreement from over 40 different tribes on the staffing and funding levels for the numerous programs and functions which are the responsibility of the area office.

See comment 2.

See comment 4.

Determination of Tribal Involvement

The report relies on memoranda and "informal guidance" provided by the Bureau in earlier years to determine the extent of tribal participation in the budget formulation process. As you have discovered the tribe/agency budget formulation occurs at the agency level. Drawing conclusions based solely on written material emanating from the Central Office as to how the process worked ten or 15 years ago is unwarranted.

The report notes that the earlier guidance was directed more to tribal involvement while current direction, as contained in the Bureau of Indian Affairs Manual, is directed to BIA agency and area personnel. Prior to the issuance of 41 BIAM, Supplement 1 in March 1988 there was no formal Bureau guidance. As the Bureau manuals are directed to Bureau employees only, it is appropriate that such guidance be directed to those federal employees with responsibilities associated with budget formulation. Furthermore, an opinion issued by the Solicitor for the Department of the Interior on October 1, 1990, (Enclosure 2) states on page 4 that one of the functions which cannot be contracted to tribes and which must be conducted by federal employees is the "...formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views...." Thus, it is entirely appropriate that formal Bureau guidance on budget formulation be directed at those who are responsible for carrying out these duties.

Executive Direction and Administrative Services

In a number of instances the report states that the tribes have very little influence over the requests for executive direction and administrative services. The Bureau has made a concerted effort in recent years to improve the accuracy of its budget submissions. Part of "truth in budgeting," is an effort to display the actual costs of executive direction and administrative services. There is an impression among some tribes that if these functions were zeroed out at the agency level, the Bureau would find money from some other source of money to support these functions. There is no other source.

See comment 2.

Appropriations for tribe/agency executive direction in fiscal year 1990 totaled \$8,127,000. This provides an average of \$97,915 for each of 83 agency offices. Most agency superintendents are grade GM-14 and they are assisted by a GS-5 secretary. Assuming an average salary of \$57,000 for the superintendent and \$19,000 for the secretary, and average benefits of 20 percent, salary and benefit costs run an average of \$91,200, leaving a grand total of approximately \$6,000 annually for training, travel, office supplies, materials, and equipment. The report does a great disservice to the federal budget process by leaving the impression that this is somehow excessive.

See comment 5.

With respect to area offices, the report states that between 37 and 51 percent of the funds retained for area operations were budgeted for area office executive direction and administrative services. First, as noted previously, these funds are not "retained" by the area offices from what would otherwise be available at the agency level; they are budgeted and justified at the area level. Secondly, the report gives the erroneous impression that between one-third and one-half of the budget is spent for executive direction and

Appendix I
Comments From the Bureau of Indian Affairs

administrative services by comparing this funding only to that available for area direct operations.

Area Directors are not only responsible for managing programs which are funded through the IPS, but also the rest of the BIA programs whether funded in the Operation of Indian Programs account, the Construction account, or allocated to the BIA from other agencies such as the Department of Transportation or the Bureau of Land Management. In addition, administrative support functions such as accounting, personnel, property, and contracting provide support services to all programs, not just those budgeted through the IPS. For example, in FY 1990 annual appropriations, permanent appropriations and trust funds amounted to \$1.8 billion. Of this amount, \$31.3 million (1.7 percent) was provided for area direct operations and \$264 million (14.7 percent) was provided for tribe/agency operations. Enclosure 3 provides information on the total appropriated funds and selected reimburseable and allocated accounts that were distributed to each area office in fiscal year 1990 and provides a more accurate depiction of the percentage of the total funds which are used for executive direction and administrative services by the areas. As this data shows, the percentage of the total funds distributed to the area offices which is used for executive direction and administrative services ranges from eight-tenths of one percent (.8%) to 3.8 percent rather than the 37-51 percent figures cited in the GAO report.


See comment 5.

See comment 2.

See comment 6.

We are deeply concerned that there exists a great deal of misunderstanding regarding the Indian Priority System and that rather than being instructive, the draft report further distorts the issue by assuming that something in the Indian Self-Determination and Education Assistance Act relieves Bureau management of its responsibilities associated with the formulation of the President's budget and by selective use of budget figures which ignores more than two-thirds of the funds which are administered by the Bureau.

Sincerely,


Assistant Secretary - Indian Affairs

See comment 7.

Enclosures

**Appendix I
Comments From the Bureau of Indian Affairs**

Enclosure 1

20-Nov-90

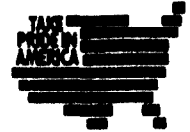
BIA - TRIBE/AGENCY & AREA OFFICE DIRECT FUNDING HISTORY (FY87-FY90)

IPS LC	PROGRAM TITLE	FY 1987		FY 1988		FY 1989		FY 1990	
		Area Direct	Tribe/ Agency	Area Direct	Tribe/ Agency	Area Direct	Tribe/ Agency	Area Direct	Tribe/ Agency
01	Scholarships		\$31,229,000		\$28,770,000		\$28,476,000		27,635,000
02	Adult Education		3,556,000		3,141,000		3,138,000		3,167,000
03	T.C.C.Collages		1,200,000		918,000		932,000		904,000
09	*EDUCATION*	0	35,985,000	0	32,829,000	0	32,546,000	0	31,706,000
15	Adult Voc.Trng.	130,100	19,789,000	207,000	18,839,000	230,000	17,712,000	169,000	17,407,000
16	Empl.Asst(D.E.)	119,000	3,973,000	47,000	2,932,000		2,787,000		2,951,000
17	Community Svcs	202,100	856,000	273,900	2,003,000	254,000	1,570,000	140,000	1,572,000
18	Comm.Fire Prot.		1,019,000		890,000		1,141,000		1,125,000
20	Tribal Courts		9,944,000		9,256,000		9,568,000		10,384,000
21	Aid Tribal Govt	1,147,400	13,703,000	1,305,800	15,009,000	1,231,000	17,297,000	1,286,000	19,613,000
23	Social Services	972,300	21,978,000	1,127,000	17,602,000	1,114,000	18,899,000	1,180,000	24,156,000
24	Law Enforcement	438,200	46,964,000	518,700	46,937,000	521,000	48,697,000	579,000	50,312,000
26	S.Deter.--T&TA	753,900	2,559,000	536,900	3,108,000	536,000	2,555,000	488,000	2,157,000
	S.Deter.--Grants		7,761,000		3,000,000		3,000,000		0
	Tr.Des.Budget Init.		--N/A--		1,000,000		1,200,000		1,184,000
	New Tribes		227,000		0		0		0
	Chitimahe		--N/A--		200,000		386,000		122,000
29	*TRIBAL SVCS.*	3,763,000	128,775,000	4,016,300	120,776,000	3,886,000	124,812,000	3,862,000	130,983,000
32	Credit/Financing	964,300	3,734,000	906,100	4,002,000	917,000	3,523,000	926,000	3,494,000
	Road Maintenance	48,900	22,845,000		23,713,000		--NON-BAND--		--NON-BAND--
39	*ECONOMIC DEV*	1,013,200	26,579,000	906,100	27,715,000	917,000	3,523,000	926,000	3,494,000
41	Nat. Resources	274,100	1,075,000	591,700	1,554,000	421,000	1,403,000	720,000	1,423,000
42	Agriculture	1,148,100	20,467,000	1,112,200	20,180,000	1,147,000	20,212,000	1,224,000	19,349,000
43	Agric.Extension		733,000		448,000		473,000		452,000
52	Forestry	1,923,900	24,187,000	1,381,000	20,842,000	1,102,000	20,345,000	1,191,000	22,125,000
50	Water Resources		1,557,000		1,266,000		1,108,000		2,159,000
57	Wildlife and Parks		19,240,000		16,451,000		5,246,000	152,000	6,602,000
58	Minerals and Mining		1,765,000		1,633,000		1,520,000		1,613,000
59	*NAT.RESOURCES*	3,346,100	69,024,000	3,084,900	62,374,000	2,670,000	50,307,000	3,287,000	53,723,000
61	Trust Svcs., Gen.	583,600	264,000	613,200	373,000	721,000	393,000	649,000	392,000
62	Environ. Qual. Svc.		643,000		692,000		656,000		652,000
63	Oth.Rights Protect.	462,900	4,388,000	391,800	3,533,000	364,000	3,155,000	349,000	2,988,000
64	R.Estate Appraisals	65,900	3,587,000	55,000	3,645,000	55,000	3,311,000	54,000	3,435,000
	Oth.Real Estate Svc	1,953,100	15,257,000	1,931,800	16,621,000	2,107,000	15,980,000	3,010,000	16,139,000
65	Financial Trust Svcs.		3,688,000		--NON-BAND--		--NON-BAND--		--NON-BAND--
69	*TRUST RESPONSIB.*	3,065,500	27,827,000	2,991,800	24,864,000	3,247,000	23,495,000	4,402,000	23,606,000
71	Executive Direction	1,876,200	7,727,000	1,931,900	7,624,000	1,884,000	7,869,000	2,118,000	8,127,000
72	Administrative Svcs	13,060,700	10,894,000	14,209,900	11,538,000	13,982,000	11,757,000	16,550,000	12,184,000
	ADP Services								
73	Safety Management	163,300	277,000	125,100	224,000	65,000	217,000	140,000	243,000
79	*GEN. ADMIN.*	15,100,200	18,898,000	16,266,900	19,386,000	15,931,000	19,843,000	18,808,000	20,554,000
99	** GRAND TOTALS **	\$26,288,000	\$307,088,000	\$27,266,000	\$287,944,000	\$26,651,000	\$254,526,000	\$31,265,000	\$264,066,000

Enclosure 2



United States Department of the Interior



OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

DOJ - 1 1990

In reply, please address to:
Main Interior, Room 6456

BIA-IA.1051

Memorandum

To: Deputy to the Assistant Secretary - Indian Affairs
(Operations)

From: Associate Solicitor, Division of Indian Affairs

Subject: Contractability of Executive Direction (Element 71)
Administrative Services (Element 72) and Education and
Training - General (Element 10) under Pub. L.
93-638

This is in response to your memorandum dated January 25, 1990, requesting an opinion as to whether Executive Direction (Element 71), Administrative Services (Element 72) and Education and Training - General (Element 10) are contractable to tribal organizations under Section 102 of Title I of Pub. L. 93-638, the Indian Self-Determination Act, 25 U.S.C. § 450f (the Act).

Executive Direction (Element 71) is defined in 42 BIAM Supplement No. 2 (Accounts Handbook) as "[a] program function to provide line (as differentiated from staff) direction of Bureau operations at the several organizational levels, and related functions in the Office of the Commissioner." It includes "[p]ersonal services and other costs to carry on the activities of personnel specifically assigned . . . to the positions of Commissioner, Deputy Commissioner, Area Director, Deputy Area Director, and Agency Superintendent; clerical or secretarial positions immediately serving those positions; and immediate Assistants to the Commissioner, Deputy Commissioner, or Area Director."¹ A similar, although not identical, definition of Executive Direction is found in yearly budget justifications for the Bureau of Indian Affairs. See, for instance, Budget Justifications, F.Y. 1990, Bureau of Indian Affairs, pp. 200-202, and 221, where the purpose of Executive Direction is "[t]o provide planning, direction, and line management leadership for the development and implementation of policy initiatives and programs undertaken by the bureau to ensure achievement of its

¹ It also includes certain other components, mostly related to Central Office operations, such as legislative development, information services, program review, and Equal Employment Opportunity.

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mission, goals, and objectives." It is further provided that "[t]his program covers the operation of the immediate office and staff of the line managers at central office and area office levels of the bureau.² The line managers and their staff provide for organizational leadership and coordination to ensure that all program levels are effectively integrated to achieve the overall mission of the bureau. Basic activities include decision-making, direction, policy formulation and review, tribal consultation, public relations, representation of the bureau to other governmental agencies and private sector organizations, and overall management of assigned resources."

Administrative Services (Element 72) is defined in 42 BIAM Supplement No. 2 (Accounts Handbook) as "[a] program function to provide general administrative support for all Bureau programs at the Central Office, Area Office, and Agency levels." It includes "those administrative services that cannot be readily identified directly with a particular program area or function (element series or element) and that are commonly funded on a clearing account basis." It includes personal services and other costs of Central Office and Area Office units providing staff services and support in the areas of property, procurement, contracting, personnel and financial management. See also, Budget Justifications, F.Y. 1990, Bureau of Indian Affairs, pp. 203-208, where the purpose of Administrative Services is "[t]o provide policies and support in the areas of property, procurement, contracting, personnel and financial management to all the bureau's program service delivery systems." It is further stated that "[t]he function serves as an equal partner with the program functions to accomplish the mission of the bureau, ensuring that those administrative services necessary for program operations are adequately provided. At the same time, it provides the foundation for the control and accountability of resources used to achieve its mission. These dual roles must be carefully balanced to ensure that one does not dominate the other and to ensure that the total system operates effectively for the benefit of the bureau's clientele."

Education and Training - General (Element 10) is defined in 42 BIAM Supplement No. 2 (Accounts Handbook) as "a program function of the Bureau to provide educational opportunities for eligible Indians. . . ." It includes activities of the Central Office or Area Office units having over-all direction of the program area, but may include activities at some Agencies and 'Locations.'" A more precise definition of Element 10 is found in yearly budget justifications for the BIA where it is described as technical support and program supervision for post-secondary education programs; peripheral dormitories; off-reservation boarding schools; tribal contract schools; federal title programs; elementary and secondary programs; higher education and adult education programs; exceptional education programs; student

² Executive Direction also includes the immediate office of the superintendent. See F.Y. 1990 Budget Justifications at p. 221.

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support services; and bilingual programs. Program management and direction responsibilities of field operations include line direction to and supervision over the operation of all bureau education programs within their jurisdictions. See, for instance, Budget Justifications, F.Y. 1990, Bureau of Indian Affairs, pp. 38-39.

The Departmental Manual of the Department of the Interior describes Area and Post Secondary Education Operations as being under the direction and supervision of an Assistant Director which plans develops, administers, monitors and evaluates all Indian education program policies, standards, procedures, and feedback system related to area, post-secondary, off-reservation boarding schools, and peripheral dormitories educational programs.

Section 102 of the Indian Self-Determination Act, 25 U.S.C. § 450f, directs the Secretary of the Interior, upon the request of any Indian tribe, to enter into contracts with a tribal organization to plan, conduct, and administer programs or portions thereof: 1) provided for in the Johnson-O'Malley Act, 25 U.S.C. §§ 452-457; 2) which the Secretary is authorized to administer for the benefit of Indians under the Snyder Act, 25 U.S.C. § 13, or any Act subsequent thereto; 3) which he administers for the benefit of Indians for which appropriations are made to agencies other than Interior; and 4) which he administers for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of the Interior within which it is performed.

As indicated in the above paragraph, the Indian Self-Determination Act provides for the contracting of certain federal programs. However, the planning, conduct, and administration of programs or portions of programs which an Indian tribe has the right to conduct under a contract entered into under Section 102 of the Act does not relieve the Secretary of his overall obligation to manage Indian Affairs under 25 U.S.C § 2, nor does it permit him to delegate to private parties certain functions and responsibilities which are vested in him by law, and which, therefore, must be carried out by federal officials. These functions and responsibilities are non-contractable and include, but may not be limited to, the following:

- (1) Allocation and obligation of federal funds and determining amounts of expenditures;
- (2) administration of federal personnel laws for federal employees;
- (3) administration of federal contracting and grant laws, including monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;
- (4) conducting administrative hearings and deciding administrative appeals;

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- (5) determination of the Secretary's views and recommendations concerning administrative appeals or litigation and representation of the Secretary in administrative appeals and litigation;
- (6) issuance of federal regulations and policies as well as any document published in the Federal Register;
- (7) reporting to the Congress and the President;
- (8) formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and
- (9) non-delegable statutory duties of the Secretary relating to trust resources.

Executive Direction, Administrative Services, Education and Training - General, Elements 71, 72, and 10 respectively, as defined in the BIAM and the BIA's yearly budget justifications, are program functions which clearly include non-contractable functions and responsibilities listed in items 1 through 9 above. As such, they are not properly the subject of a Pub. L. 93-638 contract. However, there may be portions of the Executive Direction, Administrative Services, and Education and Training - General programs which may be contractable, as long as such portions do not include any non-contractable functions, including the ones listed above. The broad definitions of these programs in the BIAM and the BIA's budget justifications do not permit us to determine which portions, if any, of these programs may be contractable under the Act. It is for the BIA to make such a determination, and also to determine whether it is feasible for these programs to be divided so as to permit a tribal organization to enter into a self-determination contract for the contractable portions, if any, of Executive Direction or Administrative Services, or Education and Training - General.


William G. Lavell

³ It is apparent that as more and more programs are contracted to tribes and tribal organizations, the scope and magnitude of the Executive Direction, Administrative Services, and Education and Training - General program functions at the area and agency levels should proportionally diminish, thereby permitting funds previously allocated for these programs to be shifted to Pub. L. 93-638 contracts.

**Appendix I
Comments From the Bureau of Indian Affairs**

Enclosure 3

19-Nov-90	U.S. Department of the Interior Bureau of Indian Affairs FY 1990 Fund Distribution by Appropriation and Area Office											
	Aberdeen	Anadarko	Billings	Juneau	Minneapolis	Muskogee	Phoenix	Sacramento	Albuquerque	Navajo	Portland	Eastern
Operation of Indian Programs												
Direct Appropriations	128,895,797	27,920,506	44,843,110	37,489,432	48,313,999	30,597,799	111,469,063	15,157,646	63,412,243	221,398,404	118,046,309	41,529,375
Reimbursable programs	17,537,564	661,166	1,214,400	0	3,703,000	467,300	10,869,244	0	6,187,389	33,815,318	3,266,784	5,609,721
Administration												
Executive Direction	198,500	119,400	117,400	148,000	108,600	115,500	202,500	125,500	441,200	213,000	266,400	169,700
Administrative Services	1,753,000	1,166,200	1,039,700	2,196,500	1,032,700	550,900	2,625,142	603,500	1,929,350	2,649,000	1,522,393	700,300
Construction	12,694,100	2,392,700	8,291,694	3,303,535	3,922,331	2,847,000	20,330,788	4,550,000	15,412,832	15,262,100	13,189,682	5,545,282
Miscellaneous Payments to Indians	528,000	0	370,000	15,300,000	513,000	0	36,076,180	42,395,428	19,500,000	0	77,250,000	0
Highway Trust Fund	8,074,000	1,323,000	6,277,200	3,729,000	3,043,000	5,458,000	12,579,000	1,317,000	5,221,200	18,970,000	6,551,600	1,907,000
Fire Suppression	1,257,246	117,500	1,806,028	361,729	997,301	181,360	5,984,037	1,476,310	2,938,590	1,017,503	6,111,481	500,517
Total, Funds Distributed	170,938,207	33,700,472	63,959,532	62,528,196	61,633,931	40,217,859	200,135,954	65,625,384	115,042,804	293,325,325	226,204,649	55,961,895
Percentage Executive Direction and Administrative Services represents of total distributed:	1.1%	3.8%	1.8%	3.7%	1.9%	1.7%	1.4%	1.1%	2.1%	1.0%	0.8%	1.6%

The following are GAO's comments on the Bureau of Indian Affairs' letter dated December 7, 1990.

GAO Comments

1. BIA points out that tribal discontent with IPS stems from overall funding levels for the programs budgeted through the IPS. In chapter 4 we discuss tribal concerns with the overall level of program funding.
2. Our evaluation of this comment is provided at the end of chapter 3.
3. We did not revise the report in response to this comment. In chapters 2 and 3 we discuss that portion of IPS program funding for area direct operations as well as IPS funding for tribe/agency operations.
4. We did not revise the report in response to this comment. The earlier guidance we refer to was prepared and issued under the signature of the Commissioner of Indian Affairs and distributed to BIA area offices as guidance in formulating BIA's fiscal year 1978 budget.
5. We revised the report in chapter 3 to clarify that one-third to one-half of the area office IPS budget amounts retained for use at the area office were devoted to executive direction and administrative services. We do not believe our statement is inconsistent with the figures BIA provided in its comments.
6. We did not revise the report in response to this comment. Our report examined tribal involvement in the IPS portion of the budget, which is clearly shown in relationship to total BIA funding in table 2.1.
7. We have included the enclosures to BIA's comments in our report. They represent additional factual material which BIA refers to in its comments.

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