Toward a New Approach to Aboriginal Self-Government Fiscal Arrangements in Canada

Discussion Paper

Treaties and Aboriginal Government
Aboriginal Affairs and Northern Development Canada

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OVERVIEW & CONTEXT

“...the vast majority of transfers received from the other two orders of government should be devoted as much as possible to supporting actual services, rather than to the high costs of constantly negotiating and renegotiating annual financial agreements. Formula funding such as that found in the fiscal arrangements for the territorial governments is based on a set of indicators and is usually reviewed every five years. This allows for better planning and greater predictability and autonomy.”


In 2010, Aboriginal Affairs and Northern Development Canada (AANDC) announced that it intended to develop a new approach to fiscal relations with self-governing Aboriginal communities in Canada. The new approach would be more transparent, fair and efficient, while taking account of the differing circumstances of Aboriginal communities. AANDC also committed that officials would engage in policy discussions with representatives of Aboriginal governments and negotiating groups and representatives of provinces and territories about these issues and proposals before seeking internal approval to adopt a new approach.

This initiative – termed “fiscal harmonization” – is intended to apply to fiscal relationships with First Nation and Inuit communities that have negotiated sectoral or comprehensive self-government agreements either on a stand-alone basis or as part of a modern treaty (in this paper, these are referred to as “Aboriginal governments”).

As a fundamental starting point for the development of this new approach Canada has reiterated that it will honour and comply with existing treaties and self-government agreements. Federal officials will meet with signatories of existing agreements and explore with them how Canada’s new fiscal approach might affect or inform future fiscal arrangements as these evolve over time.

Canada has also emphasized that during the development of the new approach, treaty and self-government negotiations will continue. Federal negotiators will seek to ensure that agreements are compatible with the new approach.

Initial engagement sessions were held early in 2011, in seven cities across Canada. Meetings began in Vancouver and Toronto in March followed by Quebec City, Halifax, Yellowknife, Saskatoon and Whitehorse in May and
June. There was broad participation across the country with over 160 participants from outside AANDC representing seventeen Aboriginal governments, over fifty negotiating groups, six provinces and two territories.

That first round of engagement focused on a discussion of issues of concern with existing approaches and the principles that should guide the development of Aboriginal self-government fiscal arrangements. Many of the concerns raised by representatives of Aboriginal groups during the initial engagement sessions have been taken into account throughout the development of this discussion paper.

This paper sets out a proposal for a new approach to fiscal arrangements with Aboriginal governments in Canada, as follows:

- the balance of the Overview & Context section provides brief descriptions of self-government and fiscal arrangements in Canada, as well as principles to guide the design of a new approach;
- the Engagement section briefly summarizes feedback heard in the first round of engagement meetings held in the Spring of 2011; and
- the New Approach section sets out key elements of the proposal.

**Self-Government in Canada**

The Government of Canada recognizes the inherent right of self-government as an existing right within the scope of section 35 of the Constitution Act, 1982. The inherent right of self-government may also be expressed in treaties. The federal policy on implementation of the inherent right focuses on reaching practical arrangements within the Canadian constitutional framework that recognize the authority of Aboriginal governments in areas that are internal to their communities and integral to their culture, languages and institutions, and with respect to their special relationship to their lands and resources.

Self-government entails a restructuring of how Aboriginal people and the federal and provincial or territorial governments relate to one another. Treaties and self-government agreements are intended to provide the foundation for ongoing and stable intergovernmental relations.

Canada has been negotiating self-government arrangements with Aboriginal communities (with the participation of the provinces and territories) since
Since the 1980s, self-government agreements and treaties have been implemented with about 20 First Nation and Inuit communities. Canada is also currently in ongoing negotiations of treaties and self-government agreements with well over 100 First Nations and Inuit communities across the country.

### Self-Government in Canada

<table>
<thead>
<tr>
<th>Aboriginal Group</th>
<th>Type</th>
<th>Location</th>
<th>Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sechelt Indian Band</td>
<td>Legislated (Stand-alone)</td>
<td>BC</td>
<td>1986</td>
</tr>
<tr>
<td>Champagne &amp; Aishihik First Nations</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1995</td>
</tr>
<tr>
<td>First Nation of Nacho Nyak Dun</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1995</td>
</tr>
<tr>
<td>Teslin Tlingit Council</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1995</td>
</tr>
<tr>
<td>Vuntut Gwitchin First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1995</td>
</tr>
<tr>
<td>Little Salmon/Carmacks First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1997</td>
</tr>
<tr>
<td>Selkirk First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1997</td>
</tr>
<tr>
<td>Mik’maq Education</td>
<td>Sectoral SGA (Education)</td>
<td>Nova Scotia</td>
<td>1997</td>
</tr>
<tr>
<td>Tr’ondëk Hwëch’In First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>1998</td>
</tr>
<tr>
<td>Nisga’a</td>
<td>Treaty</td>
<td>BC</td>
<td>2000</td>
</tr>
<tr>
<td>Ta’an Kwäch’än Council</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>2002</td>
</tr>
<tr>
<td>Westbank First Nation</td>
<td>SGA (Stand-alone)</td>
<td>BC</td>
<td>2003</td>
</tr>
<tr>
<td>Kluane First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>2004</td>
</tr>
<tr>
<td>Tlicho</td>
<td>Treaty</td>
<td>NWT</td>
<td>2003</td>
</tr>
<tr>
<td>Kwanlin Dün First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>2005</td>
</tr>
<tr>
<td>Carcross/Tagish First Nation</td>
<td>SGA (with Comprehensive Claim)</td>
<td>Yukon</td>
<td>2006</td>
</tr>
<tr>
<td>Nunatsiavut (Labrador Inuit)</td>
<td>Treaty</td>
<td>Labrador</td>
<td>2005</td>
</tr>
<tr>
<td>Tsawwassen First Nation</td>
<td>Treaty</td>
<td>BC</td>
<td>2009</td>
</tr>
<tr>
<td>Maa-nulth First Nations</td>
<td>Treaty</td>
<td>BC</td>
<td>2011</td>
</tr>
</tbody>
</table>

**SGA = Self-Government Agreement**

### The Challenges Facing Aboriginal Communities

Aboriginal communities can face significant challenges, which may include, among others:

**Geographic circumstance** – Many Aboriginal communities are situated in remote locations, where access to employment and economic opportunities and government services can be difficult, and the costs of providing certain services can be much higher.

**Small populations** – The population of Aboriginal communities is relatively small, many with only a few hundred residents, some far fewer; serving small populations often poses higher costs due to reduced economies of scale.
Socio-economic conditions – A disproportionate number of Aboriginal communities suffer from high unemployment, lower educational attainment and poor health outcomes; these socio-economic challenges increase the workload and costs for governments and make it difficult for Aboriginal communities to mobilize the human resource skills required to ensure the provision of many public services.

Overlapping government responsibilities – Different levels of government, including the local, provincial or territorial, and federal governments often have overlapping roles in providing services for Aboriginal community members, resulting in some diffusion of responsibility.

Limited fiscal capacity and high fiscal need – Aboriginal communities typically have a limited ability to raise revenues (fiscal capacity) and yet face higher demand for social services and higher costs of delivering those services given their smaller scale and remoteness (fiscal need).

Federal-Provincial & Federal-Territorial Fiscal Arrangements

The design of a new approach to fiscal relations with Aboriginal governments can be informed by considering how Canada has structured similar fiscal relationships with provincial and territorial governments.

Fiscal arrangements between Canada and the provinces and between Canada and the territories involve a set of programs which are each established through transparent formulas of general application to all provinces and/or territories. Fiscal transfers provided to provinces include Equalization, Canada Health Transfer (CHT), and the Canada Social Transfer (CST), and fiscal transfers to territories are provided through the Territorial Formula Financing (TFF) program as well as the CHT and CST.

These fiscal arrangements share some common features:

- the amounts payable to any given jurisdiction are calculated annually by explicit rules (formulas) that are set out in legislation and regulations;
- the formulas apply in general to all provinces or all territories under respective frameworks;
- the fiscal arrangements are reviewed and renewed periodically (i.e., normally every five years); and
• the fiscal arrangements (Equalization and TFF) take into account the
capacity of each provincial and territorial government to finance its
program expenditures from its own revenue sources.

Current Approach to Self-Government Fiscal Arrangements

The approach to fiscal arrangements with self-governing communities has
evolved over time. Essentially, the current approach is bilateral (or
trilateral\(^1\)) with the Parties to each self-government agreement or treaty
periodically negotiating fiscal side-agreements that are unique to each
Aboriginal government. These fiscal side-agreements set out:

• the programs and services (which may include treaty
  implementation) for which the Aboriginal government assumes
  responsibility;
• reporting and accountability provisions;
• the gross funding amount associated with those programs and
  services; and
• A formal consideration of the own source revenue capacity of the
  Aboriginal government to contribute towards the gross funding
  amount.

The net federal fiscal transfer is the result of the gross funding amount
minus the own source revenue contribution of the Aboriginal government as
calculated pursuant to the fiscal agreements.

A key difference then between federal-provincial/federal-territorial and
status quo federal-Aboriginal fiscal arrangements is that the latter rely on
separate, bilateral (or trilateral) renewal negotiations – each agreement
negotiated separately – rather than a common framework addressing fiscal
arrangements for all.

Issues with the Current Approach to Fiscal Arrangements

After two decades of self-government and growing experience with the
current approach, federal officials have recognized a number of pressing
issues related to negotiating the first and subsequent fiscal agreements:

\(^1\) Agreements may be trilateral where a province or territory is also a party.
**Negotiation time and cost** – Fiscal negotiations can be time-consuming and expensive, often requiring protracted and contentious discussions. At times, the resources devoted to negotiating a deal are disproportionately high compared to the dollar amounts at stake.

**Varying terms** – Current arrangements may be driven by specific negotiating contexts, with key terms, conditions and funding amounts varying by agreements across Canada and over time as mandates and policies evolve. The end result can be inconsistent treatment of Aboriginal communities or a lack of clarity, which can inhibit direct comparison.

**Risk & inflexibility** - Aboriginal communities – especially those with small populations – can face heightened fiscal risk if local service needs change substantially between renewals. The current approach sets a fixed “block” amount which is not directly responsive to changes in program workload.

**Lack of clarity / loss of information** – The current approach to how block funds are established and adjusted can obscure the underlying basis on which funding was provided, leading to future disputes over which program elements have been funded (and to what levels) and which have not.

**Timing of fiscal negotiations** – Under the current approach, the details of fiscal arrangements, including funding levels and terms and conditions, are not clearly set out until later stages of treaty and self-government negotiations. Aboriginal negotiating groups (and community members) contemplating a treaty or a self-government agreement would benefit from having greater clarity on such an essential element early in the negotiation process.

**Principles for Fiscal Arrangements**

In the earlier stages of developing this new policy approach, federal officials focused on the question of what underlying principles should guide the design of fiscal arrangements. The following sets a list of principles identified and discussed in the first round of engagement meetings.

Each of these principles speaks to key concepts most relevant in fiscal matters. The specific meaning of each principle in practice may be a matter of perspective. Different principles may be in conflict from time to time, and tradeoffs will be required. For example, where circumstances create fiscal pressures for the federal government, affordability considerations may assume a high priority.
The fiscal relationship between the governments should reflect the following principles and, where required, strike a reasonable balance among them:

**Fairness and consistency** – Fiscal arrangements should treat Aboriginal governments in reasonably comparable fiscal circumstances in a reasonably consistent manner.

**Comparability** – Citizens of self-governing Aboriginal communities should have access to reasonably comparable programs and services as other Canadians in comparable circumstances.

**Transparency** – Fiscal arrangements should be managed openly and transparently, with funding policies and methods set out clearly.

**Accountability** – Fiscal arrangements should provide clarity of roles and responsibilities, promote sound public administration, and ensure appropriate public reporting standards are met by all governments.

**Shared responsibility** – Aboriginal, federal and provincial/territorial governments share an interest in, and responsibility for, supporting Aboriginal governments and citizens.

**Manageability** – The fiscal arrangement must be manageable and designed to support efficient and effective administration by both the Aboriginal government and the federal government.

**Flexibility and responsiveness** – The arrangements should provide flexibility to accommodate changes over time and be reasonably responsive to changing circumstances and fiscal needs of each Aboriginal community.

**Predictability and stability** – Adjustments to fiscal transfer payments over time should be relatively stable and avoid generating large year-over-year swings in funding, and the policy and related institutional arrangements upon which they are based should also promote stability.

**Policy neutrality** – Fiscal arrangements should not create incentives that distort policy choices for governments.

**Affordability** – The costs of managing the implementation of fiscal arrangements must be affordable.

**Legislative authority** – Arrangements must respect the authority of legislatures in the appropriation of funds.
ENGAGEMENT – FEEDBACK FROM FIRST ROUND MEETINGS

The first round of meetings in the engagement process was held in the Spring of 2011. Representatives of the federal government, Aboriginal governments and negotiating groups, and of the provinces and territories, met to discuss the existing approach to fiscal arrangements under self-government, and the key principles that need to be balanced in any new approach to fiscal arrangements.

The meetings provided an opportunity for a productive exchange of views. Aboriginal participants expressed a variety of concerns and criticisms, all of which reflect the importance of fiscal arrangements to the success of their communities under self-government.

There was general support for most of the principles set out in the federal document, along with suggestions for additional principles that better reflect the interests of Aboriginal groups. While a wide variety of issues and perspectives were raised at the meetings, some key themes emerged:

- Participants made clear the importance of fiscal matters.
- Overall, there was little dispute concerning the challenges facing Aboriginal communities as laid out in the Issues & Principles discussion paper, but there was a desire to see more direct linkages between the issues outlined and Canada’s principles.
- Although there was general agreement with many of the principles, there were differing views on how to define them (e.g., comparability to whom/what).
- There was strong criticism of federal funding and own source revenue (OSR) policies and federal officials were urged to increase funding and decrease OSR offsets.
- Additional principles were proposed to better reflect Aboriginal community interests (e.g., adequacy of funding).
- There were concerns that some principles would conflict with others and worries some would dominate (e.g., affordability and legislative authority would trump other principles).

2 The Round 1 Engagement Summary is available at http://www.aadnc-aandc.gc.ca/eng/1328197978269
3 The Issues and Principles document is available at http://www.aadnc-aandc.gc.ca/eng/1328631622465
There were concerns regarding a national approach and that one formula wouldn't adequately address the unique circumstances of different Aboriginal communities.

Existing signatories emphasized that Canada must honour existing agreements but were also interested in fixing problems with the status quo.

Negotiating groups expressed interest in hearing the views of existing signatories and their actual experiences with fiscal matters under self-government.

Concerns were expressed about whether the views of Aboriginal groups would be truly reflected in the policy development. That said, there was an interest expressed by most groups to engage in second round discussions and to provide feedback in the development of the policy.

ABORIGINAL GROUP PERSPECTIVES

<table>
<thead>
<tr>
<th>PROs – Positive &amp; Supportive Views</th>
<th>CONs – Criticisms and Concerns</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Status Quo</strong></td>
<td><strong>Fiscal Harmonization</strong></td>
</tr>
<tr>
<td>Separate fiscal renewal negotiation with individual Aboriginal governments</td>
<td>Single national policy framework for all Aboriginal governments with fiscal formula and advisory process/ forum</td>
</tr>
<tr>
<td>✓ Fiscal negotiations with Canada may lead to agreements which suit an Aboriginal group’s unique circumstances well</td>
<td>✓ Funding arrangements should be fair and consistent, transparent, comparable and accountable</td>
</tr>
<tr>
<td>✓ Fiscal negotiations give Aboriginal government opportunity to directly discuss fiscal issues with Canada</td>
<td>✓ Reduced time and resources required to renew fiscal agreements</td>
</tr>
<tr>
<td>✓ Current fiscal renewal process is expensive and time-consuming</td>
<td>✓ Formula design that enables easy addition of program funding when a government assumes additional responsibilities</td>
</tr>
<tr>
<td>✓ Highly critical of Canada’s policies – funding inadequate and OSR offset excessive</td>
<td>✓ Advisory process/ forum that allows periodic review and discussion of fiscal policies and arrangements</td>
</tr>
<tr>
<td>✓ Uncertainty about the level of funding in subsequent fiscal agreements</td>
<td>✓ A national approach may not be able to completely address the different circumstances between Aboriginal groups</td>
</tr>
<tr>
<td>✓ Block funding adjustments not responsive to changes in circumstances</td>
<td>✓ New approach does not promise funding enhancements or changes to OSR policy</td>
</tr>
<tr>
<td>✓ Bargaining power varies considerably between Aboriginal governments</td>
<td>✓ New funding approach would remain tied to Indian Act funding</td>
</tr>
<tr>
<td></td>
<td>✓ Special terms negotiated in existing fiscal chapters might come under pressure</td>
</tr>
</tbody>
</table>
A NEW APPROACH

From the perspective of AANDC, fiscal relations with Aboriginal governments should be managed under a national framework in a manner more consistent with the approaches employed in fiscal arrangements between Canada and the provinces, and Canada and the territories.

To adopt such a framework, and address the issues and principles set out above, AANDC proposes a new approach that includes:

- a formula-based funding model to calculate the level of federal transfers provided to support Aboriginal government programs, taking into account each Aboriginal government’s ability to contribute to funding of these programs from its own revenues;
- an advisory process or forum for representatives from Aboriginal governments, provinces, territories and Canada to meet collectively and discuss the fiscal arrangements;
- a public document outlining the federal policy framework and clearly articulating the parameters for Canada’s financial support of self-governing Aboriginal groups,
- measures to ensure that the differing circumstances of Aboriginal groups are taken into account in implementing these arrangements; and
- provisions to ensure that Aboriginal governments meet the appropriate accountability and public reporting standards.

This initiative is meant to provide an improved framework to address fiscal arrangements and related funding policy issues; it does not envisage any change to overall funding levels.

Formula financing

The central concept of the new approach is the use of a transparent formula to calculate the fiscal transfer provided by Canada to the Aboriginal government. Under the current negotiated approach, federal negotiators undertake internal analysis to determine an appropriate financial mandate to bring to the negotiation table. Those calculations are kept confidential by
federal officials because in negotiation processes, the parties commonly keep their mandate confidential and reveal their positions through offers and counter-offers.

What is new about the transparent, formula-based approach that Canada contemplates here is not that funding levels are calculated according to federal policies (given that this is already the case), but that these calculations are made transparent, and the policy rationale and calculation methods are set out clearly.

The transparency of the proposed formula-based approach is thus a fundamental difference and defining feature of the new approach. Aboriginal government officials will be able to determine what their fiscal transfer will be, and understand how funding levels for other Aboriginal governments were established. Indeed, groups contemplating whether to begin self-government negotiations would be able to relatively easily calculate what their fiscal transfer might be under these arrangements.

**Filling the gap** – The underlying rationale of the formula is that it should fill the gap between an Aboriginal government’s revenue capacity (ability to fund from its own financial resources) and its expenditure requirements (funds required to meet spending responsibilities):

\[
\text{Federal Fiscal Transfer} = \text{Aboriginal government expenditure base} - \text{Contribution from Aboriginal government OSR}
\]

The formula to calculate the federal fiscal transfer thus has two main parts: (1) **expenditure side** – the calculation of an expenditure base or expenditure reference level, and (2) **revenue side** – the calculation of funding to be contributed by the Aboriginal government from own source revenues and the federal fiscal transfer. The federal fiscal transfer is calculated as the government expenditure base\(^4\) net of the Aboriginal government’s own source revenue contribution and paid as a grant from Canada to the Aboriginal government.

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\(^4\) The issue of how the expenditure base is determined is a central policy issue in intergovernmental fiscal arrangements, and undoubtedly the subject of ongoing debate and discussion between the supporting and receiving governments. Having a formula does not end the debate, but it does provide a clearer basis on which to assess and compare funding terms and a better platform to discuss potential changes.
Formula elements

It is anticipated that the formula would include all funding elements in support of all regular, ongoing government activities associated with the responsibilities assumed by the Aboriginal government. These include programs and services, governance activities and treaty implementation activities, and take into account the Aboriginal government’s own source revenue capacity. These are essentially the same as the ongoing elements of funding provided in fiscal agreements today.

The elements of the formula are set out in the table below.

<table>
<thead>
<tr>
<th>FISCAL FORMULA ELEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE SUM OF:</td>
</tr>
<tr>
<td>Governance funding (A)</td>
</tr>
<tr>
<td>Programs &amp; services funding (B)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>Treaty implementation funding (C)</td>
</tr>
<tr>
<td>NET OF:</td>
</tr>
<tr>
<td>Own source revenue contribution (D)</td>
</tr>
<tr>
<td>EQUALS =</td>
</tr>
<tr>
<td>TOTAL ANNUAL GRANT (A + B + C – D)</td>
</tr>
</tbody>
</table>

The formula would necessarily be modular, so that it can be applied differentially where the self-government context varies for each Aboriginal government. That is, depending on whether it is a comprehensive treaty (including land claim elements), stand-alone self-government, or a sectoral arrangement, the elements of the formula that apply will differ. In particular, in the case of sectoral self-government, only the formula elements
that apply to the particular jurisdiction (e.g., education) and an own source revenue element would be included in the formula calculation.

**Governance** - A governance funding formula should attempt to ensure that Aboriginal governments have access to stable and predictable funding levels that will enable them to maintain a level of core governance capacity (e.g., legislative and executive decision making and general government administrative services) comparable to other similarly sized communities in Canada, as well as a reasonable amount of funding for fulfilling the incremental responsibilities and activities that are somewhat unique to the Aboriginal self-government context (i.e., not typical for non-Aboriginal governments of similar size in similar circumstances).

For example, Aboriginal governments may be responsible for managing policy issues in areas such as education and social development, addressing regulatory enforcement matters (e.g. Environmental Health Officer inspections of solid waste and sewage facilities, Fire and Occupational Health and Safety inspections of public buildings etc.) and for providing access to an independent appeal mechanism in accordance with their self-government arrangements.

Various factors may have an influence on these costs and should be considered in the approach to designing a new governance formula. These factors may include, among others:

- **Fixed versus variable costs** – the formula should ensure a minimum capacity to address the fixed costs of governance but also respond to variable costs that may be influenced by community size (i.e., number of Status Indians /members living within the jurisdictional boundary of the Aboriginal government).

- **Scope and degree of program and service responsibilities** – the formula will need to reflect and respond to the complexity and scope of the self-government arrangement’s responsibilities. The formula would need to address differing capacity and needs among Aboriginal governments, some of which may only be taking on responsibilities within a single sector while others may be responsible for programs and services within multiple jurisdictions.

- **Complexity of government structure** – The formula will need to be scalable to reflect size and complexity of governments and their structures. The formula should take account of whether the Aboriginal government is comprised of a single community or a larger aggregation, and whether it is a public model of government.
Programs and services - Formulas that define the funding provided for the range of programs and services may include the broad range of programs that may be transferred to the Aboriginal government, including, for example, education, social development, health, etc. It is anticipated that an initial version of the formula would reflect existing funding authorities for these programs; however, any evolution in these areas (such as the First Nation Land Management Initiative and education funding under the BC First Nation Education initiative) would likely be incorporated directly into the formula.

The new formula-based approach is expected to be a national framework with some regional variations. For a number of programs, the most relevant point of reference will be the provincial/territorial program, such as education. To the degree that the federal funding formula is designed to match or emulate the provincial or territorial funding, there may be variations across the country for specific aspects of those funding elements.

Implementation – Some key elements of funding provided to support the ongoing implementation activities, arising from obligations of the treaty or land claim, may be included as elements of the formula funding.

Own source revenue capacity – As noted above, fiscal arrangements should take into account the capacity of the recipient government to finance its program expenditures from its own revenue sources. Consistent with this, Canada employs a gap filling approach to self-government fiscal arrangements, whereby federal fiscal transfers supplement own source revenues raised by Aboriginal governments. The inclusion of an own source revenue offset in the funding formula is key to ensuring that a number of principles are addressed, in particular, shared responsibility, comparability, and accountability.

Canada believes that the funding and provision of programs for Aboriginal people is a shared responsibility of the federal, provincial/territorial and Aboriginal governments and that reliance upon federal transfers is expected to decrease over time as the capacity to raise own source revenues grows, leading to greater self-sufficiency on the part of the Aboriginal community.

Consideration of own source revenue capacity promotes fairness and consistency by providing relatively greater financial support to communities that have a lower capacity to raise revenues. This ensures that funding is allocated to where the need is greatest. Furthermore, accountability is enhanced as Aboriginal governments report directly to their citizens on the sources and uses of funds in the delivery of their programs.
It is anticipated that the current approach to measuring own source revenue would be incorporated into the first generation of the formula, with any future changes made in the course of the periodic review of the formula.

**Formula operation**

There are different options for how regularly the formula would be calculated, including:

- **Annual calculation** - The formula could be calculated annually based on the most current data that reflect the actual fiscal circumstances of each Aboriginal community, and thus would be more responsive to service demand or workload changes that may occur year to year; or

- **Periodic calculation** – The formula could be calculated for an initial year and then adjusted over the 5+ year period according to general adjusters for price and population change. Periodic calculations would maintain year-over-year predictability in funding during an agreement period at the cost of potentially large and destabilizing "rebasing" adjustments upon renewal.

Under the annual calculation option, there is no general adjuster or escalator applied to a block. Instead, the formula would change more dynamically, directly measuring actual changes in key drivers (e.g., nominal roll which measures numbers of children enrolled in school), and have price adjustment built directly into monetary elements of the formula.

This is another important feature of a formula approach – it may be designed to be flexible enough to match variations in the fiscal circumstances (workload, demand for services) and so transfers would better respond to the expenditure requirements of the government over time. There is a trade-off, however, between responsiveness and stability, thus it may be preferable to design the formula to ensure year-to-year changes are smoothed to avoid sudden funding changes.

The adoption of a formula approach will place special attention on the need for good data on Aboriginal governments and communities. A formula will require reliable data so that all parties can be assured as to the validity of results. In particular, reliable population and other volume data (e.g., school aged children) will be critical. Cooperation between the federal and Aboriginal governments will also be key – the responsiveness of the formula to actual conditions will rest on the sharing of good quality data.
There are three types of data that would be included in the formula:

- **Federal policy parameters** are those numbers set by the federal government and applied consistently in all calculations in the formula – these are essentially the same at any one time for all.

- **Aboriginal community data** are the key input variables that describe the circumstances of each separate Aboriginal community, such as population, remoteness, etc.

- **External reference data** are those numbers employed in the formula but calculated or otherwise defined by another source, in particular, a province or territory (e.g., provincial education block rates), or Statistics Canada (e.g., a price index).

It is anticipated that the formula should be reviewed and renewed periodically. The formulas employed for the Equalization and Territorial Formula Financing programs are set to expire periodically (normally every 5 years, as set out in legislation and regulations governing both arrangements). This forces a resetting of the formula, which provides the opportunity to review elements and consider changes to better reflect evolving circumstances. The formula could thus have a set term after which it would need to be reviewed and renewed, with elements refreshed or revised (a likely term would be five years).

The construction of a first generation formula will largely be based on existing underlying federal funding policies that are used in the determination of the various elements of current fiscal agreements. Over time, elements of the initial formula would be updated or modified to reflect changes in federal funding policy. Modification of formula elements should take into account characteristics of sound formula design:

- **Logic** – there should be a clear link between the underlying policy rationale and the math of the formula;

- **Simplicity** – calculations should be simple and straightforward enough to aid transparency and comprehension, while incorporating enough detail to reflect the different circumstances of each recipient government; and

- **Reliability** – the formula should be based on the sound data that is available in a suitable timeframe to support responsiveness.
Advisory process/forum

In Canada and elsewhere, intergovernmental forums facilitate dialogue between different levels of government and encourage information exchange. In the case of federal-provincial and federal-territorial fiscal arrangements, intergovernmental forums review Canada’s Equalization and Territorial Formula Financing programs on a regular basis, with a more focused review every five years to discuss the renewal and potential revisions to the formula. Technical committees may meet periodically, and exchange information and comments on a continuing basis on all technical aspects of fiscal arrangements.

Aboriginal governments – and those negotiating toward self-government – have a stake in how fiscal arrangements are designed. Currently there is no established aggregate process or forum for Aboriginal governments or negotiating groups to engage Canada in discussions about fiscal arrangements, policies or issues. Through fiscal renewals and implementation committees, each Aboriginal government may raise issues and press for changes to federal funding policies. Resolution of these issues on a case-by-case basis, however, is time-consuming and inequitable.

To enable effective dialogue between participants in these new fiscal arrangements, AANDC envisages the establishment of an advisory process or forum. The forum would be comprised of representatives of Aboriginal governments and Canada. Aboriginal groups in the process of negotiating a treaty or self-government agreement, as well as provincial and territorial governments\(^5\) could be invited to send observers.

Membership would grow as more self-government agreements are implemented. For future signatories, participation in the forum would be an automatic part of self-government. For existing Aboriginal governments (those whose treaty or self-government agreement pre-dates this new approach), it might be necessary to confirm that group’s participation through some form of agreement. A forum would not replace the need for separate implementation committees nor duplicate their functions, but would provide the opportunity to discuss fiscal matters collectively.

The advisory process or forum contemplated here would provide a mechanism for Aboriginal governments to meet with Canada to discuss

\(^5\) The role of each province or territory in the forum could depend on whether that government is a party to the self-government agreement or treaty or has committed to participate in fiscal arrangements for Aboriginal governments (possibly confirmed through a cost-sharing understanding).
fiscal relations matters, including the application of formula financing. Policy discussions would thus be held together at the aggregated forum rather than separately with individual Aboriginal governments.

The advisory process or forum would likely have two key functions:

- **Provide advice on operation of fiscal arrangements** – during the course of regular meetings, discussion could focus on operation of fiscal arrangements.

- **Discuss periodic reviews of arrangements and in particular formula elements** – prior to expiry (every 5+ years) of the formula, the forum could focus on discussions of the review.

There would most likely be one national forum or process, with the ability to set up subsidiary processes to discuss issues of a technical or regional nature. The national forum could meet annually and provide an opportunity for a high level dialogue, to test ideas and to discuss potential changes to policy terms.

**Policy framework**

As an initial step in implementing a new approach, Canada would set out a public policy statement on fiscal arrangements with Aboriginal governments:

- the policy objectives of fiscal arrangements and the principles that guide the policy;

- the scope and application of the policy to different types of agreements (e.g., comprehensive versus sectoral self-government agreements);

- the structure and content of fiscal arrangements (i.e., provisions in fiscal chapters, fiscal side agreements, etc.);

- the operation of the formula – both the expenditure and revenue sides (e.g., methods and timing of calculation, data requirements, validation and review of formula calculation, etc.);

- the authority and nature of associated technical documentation of the formula;

- the roles and responsibilities of governments, including accountabilities and public reporting requirements;
• the process of reviewing and updating the policy and the formula; and
• the terms of reference, structure and membership of the advisory process or forum.

A key issue in designing a framework is whether the resulting arrangements provide the necessary measure of stability and predictability. Arrangements ought to be established in such a way that gives Aboriginal governments and their citizens’ confidence that they will continue over the long term.

**Accountability & reporting**

Effective accountability provisions are central to any system of fiscal arrangements between governments. These must ensure that:

• the assignment of roles and responsibilities between governments is clearly established;

• there are no significant gaps or overlaps in program responsibilities that undermine the provision of services; and

• the appropriate government reports on its respective areas of responsibility.

For accountability to be effective, governments involved in fiscal arrangements, as well as their citizens, should have ready access to the necessary information for their assessment and review. It is anticipated that under the new approach, governments will provide a higher level of transparency, including the following accountability provisions which Canada and Aboriginal governments adhere to:

• Aboriginal governments will need to publicly disclose how they plan to spend their financial resources (i.e. budget), how these resources were spent (i.e. audited financial statements) and what outcomes they achieved as a result (i.e., results-based performance report). Being consistent with the public reporting practice of other level of governments in a similar size, these reports should be readily accessible to their own citizens as well as other Canadians (e.g., through the Internet, hard copy material, etc.).

• Canada will annually publish a national report on the fiscal funding formula, the amount of government funding provided to each
Aboriginal government and the results based on pre-determined performance indicators.

The pursuit of transparency and full disclosure must be reconciled with the need to limit and reduce excessive reports and reporting requirements. Public reporting should be understood as fundamentally a matter of accountability, transparency and disclosure that is expected of all governments in Canada, and less a matter of reporting to the federal government.

Differing circumstances

It is a distinguishing characteristic of Aboriginal governments (to a significantly greater degree than provinces or territories) that circumstances may vary substantially from one government context to another. The range of functions they exercise, their population size, their remoteness and their socio-economic conditions can be profoundly different. It is thus critical to ensure that the particular design of formula arrangements can address the unique position of each Aboriginal community and its government. There can clearly be no “one-size-fits-all” such as a simple per-capita formula.

The formula itself should directly account for key factors such as remoteness that can impact the cost of delivering certain services. At the same time, where the size and circumstance of the Aboriginal community make it unworkable to assume a particular set of program delivery responsibilities, it will be important to ensure that there can be alternative program delivery options involving the federal government, province or territory, or other Aboriginal governments or agencies.

Therefore, Canada will seek to ensure that the new formula approach supports the ability for tailoring the set of government responsibilities and fiscal transfers to the differing circumstances of each Aboriginal government.
### EXAMPLE OF FORMULA APPLICATION

#### Fiscal Formula Elements

<table>
<thead>
<tr>
<th></th>
<th>Sectoral Self-Government (Education example)</th>
<th>Stand-Alone Self-Government (Most programs example)</th>
<th>Comprehensive Treaty with Self-Government (All programs example)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EXPENDITURE NEED</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General Government</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Education</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Social Development</td>
<td>○</td>
<td>○</td>
<td>●</td>
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<tr>
<td>Health</td>
<td>○</td>
<td>○</td>
<td>●</td>
</tr>
<tr>
<td>Land Management</td>
<td>○</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Other Programs</td>
<td>○</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Treaty Implementation</td>
<td>NA</td>
<td>NA</td>
<td>●</td>
</tr>
<tr>
<td><strong>REVENUE CAPACITY</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Own Source Revenue Offset</td>
<td>●</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

- ● Included in calculation
- ○ Not included in calculation, program delivery responsibility rests with other entity
- ○ Included in calculation, modified to reflect partial program responsibilities

### Approaches in treaty and self-government negotiations

Under the current approach, the fiscal relationship between the Aboriginal government, Canada and the respective provincial or territorial government (as applicable) is set out in each separate treaty or self-government agreement fiscal chapter, which acts as an ongoing framework to guide the relationship. Under fiscal harmonization, the intent is to establish a national framework upon which the fiscal arrangements for each Aboriginal government would be based.

Therefore, the approach federal negotiators would seek in treaty and self-government negotiation will be substantially altered. The requirement of the parties to periodically renegotiate fiscal arrangements will be largely rendered moot, at least in terms of the levels of funding, as future fiscal arrangements will be implemented and renewed through the new national approach as set out above. The language describing the fiscal relationship between the parties sought by federal negotiators in treaties and self-government agreements will also be changed to reflect this new approach.

The treaty/self-government agreement language required to reflect the parties’ concurrence on ongoing fiscal arrangements is yet to be developed, and will depend on the final design of the system proposed here.
Caution should be taken when enshrining any elements of the fiscal ‘architecture’ in a final agreement, as this may impede the evolution necessary in such matters. Fiscal relationships need to evolve and adapt to changing circumstances.

While the formula will be used to determine the amount of funding, some form of agreement will still be required to confirm the Aboriginal government’s acceptance of that funding and the associated responsibilities related to the delivery of programs and services. Such agreements might not be time limited, but instead ‘evergreen’, with the ability to make amendments and add or delete programs over time.

Administrative issues

The effective implementation of a formula-based approach will require some changes to administration of fiscal arrangements, in particular, to address issues such as who is responsible for (a) data gathering, (b) formula calculation, and (c) making payments.

The availability of standardized, accurate, timely and verifiable data from all Aboriginal communities is necessary for a successful formula system. Various options can be considered. Data could be collected directly by AANDC, or another organization could be utilized for the purpose of acquiring and verifying valid statistics. The co-operation of Aboriginal governments in providing the required information would also be required.
This paper outlines a proposal developed by AANDC for a new approach to Aboriginal self-government fiscal arrangements. Its aim is to facilitate a productive discussion of the proposal at a second round of engagement meetings with Aboriginal governments and negotiation groups planned for March 2012. While the proposal has been initially developed by AANDC, it is important that all those who have a stake in its design can voice their views through participation in the engagement process.

In addition to the opportunity to provide comments directly in the second round meetings, representatives of Aboriginal governments and negotiating groups, and of provinces and territories, are welcome to provide further comments or input in the form of a written submission sent to tagfp@aandc-aadnc.gc.ca by April 30, 2012.

Before further steps can be taken to implement changes such as those contemplated here, there will need to be a review within the federal government and approval of the key decisions required. Once that process is completed, AANDC officials will communicate the outcome to those who have participated in the process and outline next steps in further development and implementation.

Following the approval of a new approach, it is anticipated that federal officials would seek to continue the dialogue with Aboriginal governments and the most advanced negotiating groups on further design issues.

Canada has reiterated that it intends to honour existing agreements. Federal officials recognize the need to meet with existing signatories whose self-government agreement or treaty is based on negotiating renewals to discuss any new approach in the context of the terms of existing commitments between the parties.
## SUMMARY

<table>
<thead>
<tr>
<th>PRINCIPLES</th>
<th>Status Quo</th>
<th>Fiscal Harmonization</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Separate fiscal renewal negotiation with individual Aboriginal governments</td>
<td>Single national policy framework with fiscal formula and advisory process/forum for all Aboriginal governments</td>
</tr>
</tbody>
</table>
| **Fairness & consistency** | × separate negotiations lead to variations, different expiries         | ✓ all treated consistently under federal policy / formula  
✓ periodic review can lead to changes to formula that apply to all equally |
| **Comparability**   | × difficult to ensure equitable or comparable treatment                      | ✓ formula enhances ability to make comparisons |
| **Transparency**    | × negotiating policies and mandates are confidential  
× block funding approach obscures separate funding elements  
× fiscal agreements difficult to assess                       | ✓ federal fiscal policy statement made public  
✓ explicit formula makes funding rationale clear and transparent to all |
| **Accountability**  | × program funding lumped together creates a lack of clarity re. programs transferred & funded | ✓ standardized accountability approach  
✓ explicit formula can enhance accountability through clarity |
| **Shared responsibility** | ✓ Aboriginal government OSR contribution set out in OSRAs            | ✓ Aboriginal government OSR contribution set out in formula |
| **Manageability**   | × multiple negotiations impose increasing burden and challenge for Canada and other parties | ✓ national framework improves manageability and reduces negotiation burden |
| **Flexibility & responsiveness** | × Block funds set in first year, grow at fixed rates until renewal | ✓ if formula calculated annually, can account for actual changes in fiscal workload and avoid large funding shocks at renewal |
| **Predictability & stability** | ✓ Commitment to negotiate set out in treaty, self-government agreement | ✓ Funding approach set out in public policy framework |
| **Policy neutrality** | - Limited impact                         | - Limited impact                                                           |
| **Affordability**   | - federal affordability ensured through mandates                        | - federal affordability ensured through formula design |
| **Legislative authority** | - legislative authority respected through terms of agreements         | - legislative authority respected through policy provisions |
APPENDIX A:
FISCAL ARRANGEMENTS WITH PROVINCES & TERRITORIES

The Government of Canada provides significant financial support to provincial and territorial governments on an ongoing basis to assist them in the provision of programs and services. There are four main transfer programs: the Canada Health Transfer (CHT), the Canada Social Transfer (CST), Equalization and Territorial Formula Financing (TFF).

The CHT and CST are federal transfers which support specific policy areas such as health care, post-secondary education, social assistance and social services, early childhood development and child care.

The Equalization and TFF programs provide unconditional transfers to the provinces and territories. Equalization enables less prosperous provincial governments to provide their residents with public services that are reasonably comparable to those in other provinces, at reasonably comparable levels of taxation. TFF provides territorial governments with funding to support public services, in recognition of the higher cost of providing programs and services in the north.

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6 This section contains excerpts from the Finance Canada website.