

Replacement of the DPMP - Interim Directive

(DPMP -Default Prevention and Management Policy)

Final

June 22, 2023

Transfer Payments and Advisory Services, CFRDO, ISC

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ACRONYMS

AFOA	Aboriginal Financial Officers Association
CCSP	Collaboration and Continuity of Services Policy
CFRDO	Chief Financial, Results and Delivery Officer
CIRNAC	Crown-Indigenous and Northern Affairs Canada
DPMP	Default Prevention and Management Policy
FMB	First Nations Financial Management Board
ISC	Indigenous Services Canada
RAA	Recipient Appointed Advisor
RM	Recipient Managed

1.0 Effective Date

1.1 This interim directive takes effect June 1, 2023.

2.0 Application

2.1 The Chief Finances, Results and Delivery Officer (CFRDO), Indigenous Services Canada has the authority to issue this interim directive in support of the TBS [Policy on Transfer Payments](#) and [Directive on Transfer Payments](#), to amend or rescind the directive and to approve any exceptions and deviations to the directive that may be sought.

2.2 This directive applies to the Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), (hereafter referred to as “the Departments”) officials managing transfer payment funding agreements between the Department(s) and First Nation governments. This interim directive does not apply to transfer payment funding involving:

- Legislated self-government agreements and funding agreements resulting from federal-provincial accords ; and
- The New Fiscal Relationship (NFR) 10-year Grant funding and other agreements that do not include the DPMP clauses¹.

3.0 Objective

3.1 Effective June 1, 2023, the Default Prevention and Management Policy will no longer be applied to First Nation governments. This Interim Directive replaces the DPMP, as of June 1, 2023, and will remain in effect until the draft in-development replacement policy, the Collaboration and Continuity of Services Policy (the CCSP), is finalized in Q2 of FY23/24.

3.2 Effective June 1, 2023, this interim directive disallows any further application of the first two levels of default established by the DPMP, being Recipient Managed (RM) and Recipient Appointed Adviser (RAA), to First Nation governments.

Replacement of the DPMP, effective June 1, 2023, includes:

- 1) Disallowing any further application of the first two levels of default to First Nations (i.e. RM and RAA)
- 2) Strictly limiting application of the TPFAM level of default to very limited instances where it is evidenced that all other efforts and avenues have been exhausted
- 3) Exiting from default all First Nation currently in RM or RAA.

¹ The “DPMP clauses” refers to the “Remedies on Default” clauses included in the Comprehensive Funding Agreement model which authorizes the Departments to, in the event of default under the funding agreement, take one or more actions including requiring the recipient to seek advisory support acceptable to Canada and/or appointing a Third-Party Funding Agreement Manager (TPFAM).

3.2.1 If the region currently has any Tribal Councils or other Indigenous organizations or institutions that are in the RM or RAA level of default, please contact Transfer Payments and Advisory Services (TPAS) to, on a case by case basis, further discuss exiting from default and applicability of this Interim Directive.

3.3 Although the Third-Party Funding Agreement Management level of default remains, this interim directive requires that any application of TPFAM to First Nation governments must be:

- applied and interpreted through the lens of the Guiding Principles established in the draft in-development version of the CCSP (See **Annex A**); and
- applied only in very limited instances and only where it is evidenced that all efforts and avenues have been exhausted. (See specific criteria in 5.6)

3.4 In addition to disallowing further application of RM and RAA levels of default and significantly limiting application of the Third-Party Funding Agreement

Management level of default, replacement of the DPMP as of June 1, 2023, includes exiting from default any First Nation currently in RM and RAA. For each First Nation currently in the RM or RAA levels of default, regional officials will meet with each First Nation in Q2 of FY23/24 to work with and support them in developing a DPMP Transition Plan to exit them from the DPMP. Guidelines and requirements for these discussions and this work are detailed in “[Replacement of the DPMP – Framework for exiting First Nations from RM and RAA](#)”.

Guiding Principles included in the draft-in-development version of the Collaboration and Continuity of Services Policy (CCSP):

1. Respect for self-determination and autonomy of Indigenous governing bodies
2. Support and Collaboration
3. Respect and support for all accountability relationships
4. Balancing multiple ministerial commitments and obligations
5. Increasingly important roles for Indigenous organizations and institutions
6. Equitable treatment
7. Transparency, due process, and respectful dispute resolution and appeals

See further detail in **Annex A**.

4.0 Context, Plan and Next Steps

4.1 In response to Standing Committee on Indigenous and Northern Affairs’ Report on Default Prevention and Management (May 2017) the Department has committed to replacing the DPMP with a new approach and structure that includes repeal of the existing policy as well as implementation of several significant and inter-related initiatives related to core governance, capacity development, the new fiscal relationship and transfer of service.

4.2 Work on the replacement policy aspect of this new approach and structure has been underway for several years. The working title of the draft in-development replacement policy is the Collaboration and Continuity of Services Policy (CCSP), which establishes a collaborative approach to identifying and mitigating emerging risks related to funding agreement defaults and capacity and limits appointment of an external party by the department to very limited, last resort instances.

- 4.3 In terms of the capacity development support aspect of this new approach and structure, the Professional and Institutional Development Program funds some governance capacity-related projects but is not adequately resourced to meet the needs identified by regional officials to support First Nations with the greatest governance-related capacity needs.
- 4.4 Regional Operations continues to advance its work on Governance Modernization. Short term goals include the reform of Band Support Funding and a new approach to support communities experiencing the greatest governance capacity building challenges. However, new sources of funds to implement changes in these areas will be needed and is not guaranteed.

5.0 Adjustments to the DPMP

5.1 The table below lists the current suite of DPMP and related policies, directives and tools and identifies the nature and extent of adjustments being made by this Interim Directive.

Current Suite of DPMP-related Documents	
DPMP-related Document	Adjustments established by this Interim Directive <i>(Although these documents remain available, , if and as required, for guidance purposes during this interim period, their guidance should be applied and interpreted through the lens of the Guiding Principles set out in the draft CCSP (See Annex A).</i>
Policy and Directive level documents	
1. Default Prevention and Management Policy 200	<ul style="list-style-type: none"> See specific adjustments in this section, Section 5.0.
2. Default Prevention and Management Directive 205	
3. Third Party Funding Agreement Management Directive 210	
DPMP Toolkit	
4. Default Assessment Workbook	<ul style="list-style-type: none"> See specific adjustments in this section, Section 5.0. See also "Replacement of the DPMP – Framework for exiting First Nations from RM and RAA" related to adjusted exit criteria from RM and RAA.
5. Default Assessment Tool (Excel Version)	
6. Management Action Plan Workbook	
7. Guide On How to Select a Recipient-Appointed Advisor	<ul style="list-style-type: none"> No changes at this time. Guidance information only, if and as required.
8. Concerns Related to Funding Agreement Letter (Word Version)	
9. Notice of Default Action Letter (Word Version)	

5.2 In general, this Interim Directive requires Departmental officers to increase their focus on the “Default Prevention” principle and pillar of the current DPMP policy and guidance documents through an increasingly collaborative and capacity-focused approach. This includes:

- 1) Application of the Guiding Principles included in the draft in-development version of the CCSP (See **Annex A**); and

- 2) Continued reliance on each region's existing, but evolving, community-centred/community-in-focus capacity development approach
- 3) Continued reliance on the current, but evolving, capacity development supports and funding available through ISC's Indigenous Governance programs and the Departments' multiple service delivery areas or programs
- 4) Continued reliance on DPMP Reimbursement Funding that is available for FY23/24²;
- 5) Continued and increasing reliance on the governance and financial management supports and services available through the First Nations Financial Management Board (FMB) related to the DPMP and Shared Services pilots³;
- 6) A continued effort and focus by departmental officers on:
 - a) working collaboratively with First Nations to proactively identify emerging risks and challenges related to funding agreement defaults and governance, financial management and/or service delivery capacity so that preventive supports can be activated and deployed at the earliest
 - b) encouraging First Nation's to, on an ongoing basis, develop and maintain capacity development, remediation, action, business continuity or other similar plans that support both compliance with funding agreement terms and conditions and capacity development
 - c) working collaboratively with First Nations, if and as desired by the First Nation, to support them in developing and/or updating these plans
 - d) informal actions when emerging risks/emerging trends are observed related to funding agreement defaults (for example, discussions to understand and/or confirm the situation, the root cause(s) and to encourage the First Nation government to rectify the default)
 - e) encouraging First Nations to increasingly turn to and leverage the advice, guidance and supports available from other First Nation governments and/or Indigenous organizations and institutions; and
 - f) responding, as promptly and completely as possible, to a First Nation's request to support implementation of their capacity development, remediation, action, business continuity or other similar plans, to the extent possible given available departmental resources and authorities and the departmental principle of equitable treatment.

5.3 Although the Department is moving towards an increasingly collaborative and capacity-focused approach, First Nation governments remain responsible and accountable for compliance with the terms and conditions set out in the funding agreement including effective management and use of resources involved, preventing defaults, and remediating and recovering from these defaults in a timely manner when they occur.

² FY23/24 DPMP Reimbursement Funding has already been allocated to regions, and this funding sunsets as of March 31, 2024. Although efforts are in progress as part of Governance Modernization to seek funding through a new proposal to support the most challenged communities, source of funds beyond FY23/24 is uncertain.

³ Please contact the New Fiscal Relationship Secretariat for further information about access to supports from FMB.

5.4 Status quo departmental responsibilities and practices related to monitoring and oversight of compliance to the funding agreement also remain in effect, including monitoring by the department of compliance to the financial and non-financial reporting requirements of funding agreements required by the [Directives on Financial Reporting \(Directive 121\)](#) and [Reporting Management \(Directive 123\)](#). These directives provide for administrative measures or remedies to be applied in the event of non-compliance with reporting requirements, including in certain instances, the withholding of non-essential funding.

5.5 The Recipient Managed (RM) and Recipient Appointed Adviser (RAA) levels of default established in the DPMP will no longer be applied to First Nation governments. Instead, the department's response to emerging risks and challenges related funding agreement defaults will be collaborative and capacity focused. This approach recognizes the reality that lack of funding and other supports for building governance and financial management capacity are too often the root cause for funding agreement defaults. Such challenges are best addressed instead through ongoing collaboration, early remediation and capacity development supports.

5.6 Disallowing any further application of the RM an RAA levels of default to First Nation governments requires an adjustment to the [Default Assessment Tool](#). As at June 1, 2023, the recommended action for an overall Default Assessment Risk Rating of low or medium, as determined by the [Default Assessment Tool](#) will now be:

- Continued collaboration and capacity support
- Encouragement to develop an action plan to address both the root and immediate cause for the identified default(s)
- A request to regularly report to or communicate with the department on progress in implementing the action plan(s) and any related issues or concerns
- Withholding of funds, in accordance with Directives 121 and 123; and
- If and as considered necessary by departmental officers, inviting the First Nation to, by way of amendment, add the action plan and associated reporting requirements to the funding agreement.

5.6 Effective June 1, 2023, the Recipient Managed (RM) and Recipient Appointed Adviser (RAA) level of default will no longer be applied to First Nation governments

Annex B provides a comparison of the recommended default actions in the current version of the [Default Assessment Tool](#) for an overall Default Assessment Risk Rating of low and medium risk versus the recommended default actions established by this Interim Directive.

5.7 The Third Party Funding Agreement Management (TPFAM) level of default will remain during this interim period, however application of requirements and guidance set out in the [DPMP \(2013\)](#), [Default Prevention and Management Directive 205](#) and [Third Party Funding Agreement Management Directive 210](#) are to be interpreted through the lens of the Guiding Principles

included in the in-development draft of the CCSP (See **Annex A**) and, effective June 1, 2023, the Department will limit appointment of a TPFAM to only the following situations and only as a last resort action:

- a) where the First Nation is “not legally able to sign” the funding agreement due to resignations, deaths or governance disputes.
- b) where the First Nation is unable to reach quorum and thus not able to administer the funding agreement; and
- c) where there is an unacceptable risk of service disruption, **and** the First Nation government is no longer collaborating and/or no longer leading mitigation.

5.8 **Annex B** provides a comparison of the recommended default actions in the current version of the [Default Assessment Tool](#) for overall Default Assessment Risk Ratings of high risk versus the recommended default actions established by this Interim Directive. Note, related to (c) above and as illustrated in **Annex B**, in situations where there is an unacceptable risk of service disruption and the First Nation government continues to collaborate and lead mitigation, the Departments’ response is continued collaboration and capacity support.

5.9 The current version of the authority matrix in the [Default Assessment Tool](#) delegates responsibility for recommending appointment of a Third Party Manager to the Regional Transfer Payment Management Committee (TPMC) or equivalent and approval authority to the Program / Regional Director General/Regional Executive Officer. Effective June 1, 2023:

- responsibility for recommending appointment of a Third-Party Manager rests with the Senior Assistant Deputy Minister, Regional Operations (SADM, RO); and
- approval authority rests with a senior level subset of the Departmental Operations Committee.

The intent of this adjustment to delegated authority is to ensure that during this interim period, Third Party Managers are appointed only in the very limited circumstances set out above in 5.6 and only as a last resort action when all collaborative and capacity focused efforts have been exhausted.

Annex C provides an overview of this change to the delegated authority matrix in the [Default Assessment Tool](#).

5.10 If the decision is made to appoint a TPFAM:

- the Departments will continue to collaborate (or attempt to re-establish collaboration) and support capacity development throughout the term of the TPFAM
- the department will be responsible for the costs associated with the TPFAM, not the First Nation government; and
- the TPFAM’s mandate will: (i) be limited to the remediation and recovery of the service delivery area(s) affected; (ii) be for a specified and sufficiently brief duration of time; and

(iii) include enforceable performance objectives (including minimum qualifications for external parties) and an exit strategy at the earliest opportunity.

5.11 For further clarity related to application of this Interim Directive, Annex D illustrates, through several example scenarios, the intended collaborative and capacity-focused response to emerging risk of or actual funding agreement defaults and capacity challenges. These example scenarios are excerpts from the draft-in development version of the CCSP.

6.0 Oversight and Controls

Monitoring of this directive will be undertaken by Transfer Payments Advisory Services (TPAS), CFRDO, ISC.

Monitoring of this directive can be undertaken at any time, upon written notice of 30 calendar days to the Region/Directorate/Sector, when information is provided to the Director, Transfer Payments Advisory Services Unit at the Department(s).

7.0 Consequences

The CFRDO, ISC responsible for investigating and acting when significant compliance or quality issues arise in the application of this interim directive by Departmental officers. Actions undertaken to address such issues may include additional training, updates to tools and guides and/or any other actions or supports deemed appropriate by the Departmental officer's direct report and/or the CFRDOs.

8.0 Enquiries

Enquiries relating to this directive should be addressed to the [Transfer Payments Advisory Services](#), of Indigenous Services Canada (ISC),

ANNEX A – Guiding Principles (Excerpt from draft in-development CCSP)

1. **Respect for self-determination and autonomy of Indigenous governing bodies:** The federal government is guided by the principle that Indigenous nations are self-determining, self-governing, and rightfully aspire to having strong and healthy communities. In this context, application of this policy will respect the diversity of Indigenous cultures, the right of Indigenous peoples to self-determination, and the autonomy of Indigenous governing bodies in advancing their self-determined and community-led plans and priorities.
2. **Support and Collaboration:** The underlying objective of this policy is to support Indigenous governing bodies as they work towards their self-determined goals. This includes effective capacity development support for governance, financial management and all service delivery areas through existing capacity funding streams in the Departments and/or through Indigenous organizations and institutions, other levels of government and non-Indigenous organizations or entities. Application of this policy by the department will always, to the extent possible, be done in collaboration with the Indigenous governing body.
3. **Respect and support for all accountability relationships:** Application of this policy will support, recognize and respect that the primary accountability relationship is between Indigenous governing bodies and their citizens, that a second accountability relationship exists where Indigenous governing bodies and the Government of Canada hold one another mutually accountable for the commitments they make to one another, and that a third accountability relationship operates between the Departments and the Parliament of Canada for the stewardship of funding agreements and related resources and the achievement of program results.
4. **Balancing multiple ministerial commitments and obligations:** Application of this policy will respect the Departments' need to balance multiple ministerial commitments and obligations, including those set out in the *Department of Indigenous Services Act*, for: (a) achieving reconciliation with First Nations, the Métis and the Inuit; (b) ensuring access to services for Indigenous individuals (and governing bodies) that are eligible to receive those services; (c) the gradual transfer of departmental responsibilities to Indigenous organizations; and (d) fulfilling federal government stewardship obligations.
5. **Increasingly important roles for Indigenous organizations and institutions:** Application of this policy will respect that Indigenous organizations and institutions that provide capacity development and related services play increasingly consequential roles in support of community and capacity development. With support from the Departments, these roles will evolve and further increase as ISC responsibilities gradually transfer to First Nations and their institutions and organizations.
6. **Equitable treatment:** Application of this policy will ensure that all Indigenous governing bodies are treated equally and fairly regardless of the nature of their funding relationships with the Departments.
7. **Transparency, due process, and respectful dispute resolution and appeals:** Application of this policy will recognize the importance of transparency and due process. Transparency and due process will also apply in the appointment of an external party, to the process associated with the "exit" (termination of the appointment) of an external party, and in the resolution of disputes and the appeals thereto.

ANNEX B – Adjustment to Default Action Options (DAT vs Interim Directive)

Default Action Options – Default Assessment Tool (DAT) versus Interim DPMP Directive (Effective June 1, 2023)		
Overall Risk Rating (The DAT)	Default Management Options established in	
	The DAT	Interim DPMP Directive
Low Risk	Recipient-Managed Ninety Day Plan/withholding of funds	<ul style="list-style-type: none"> Continued collaboration and capacity support Action Plans encouraged Request to regularly report on progress in implementing and any concerns/issues Withholding of funds, if and as required
Medium Risk	Management Action Plan with or without the engagement of a Recipient Appointed Adviser	<ul style="list-style-type: none"> As above, plus Request to, if and as considered necessary, amend the funding agreement to include the Action Plan and related reporting requirements
High Risk	Third Party Funding Agreement Management – TPFAM (Last Resort)	(a) If related to Governance dispute (ie. no authority with which to contract) <ul style="list-style-type: none"> Continued collaboration and capacity support Initiation of Interim Due Process Approach, may result in recommendation to appoint TPFAM (last resort)
		(b) If related to inability to obtain quorum <ul style="list-style-type: none"> Continued collaboration and capacity support Initiation of Interim Due Process Approach, may result in recommendation to appoint TPFAM (last resort)
		(c) If Unacceptable risk to service delivery and First Nation <u>continues to</u> collaborate and lead mitigation: <ul style="list-style-type: none"> Continued collaboration and capacity support Request to develop and implement an Action Plan and to regularly report on progress in implementing and any concerns/issues Amendment of funding agreement to include the Action Plan and related reporting requirements
		(d) Unacceptable risk to service delivery and First Nation <u>is no longer</u> collaborating and/or no longer leading mitigation: <ul style="list-style-type: none"> Continued collaboration (and/or attempt to re-establish collaboration) and capacity support Initiation of Interim DPMP Due Process Approach, including one last formal request to lead mitigation Due Process may result in recommendation to appoint TPFAM (last resort)

ANNEX C – Delegation of Authority for Default Action (DAT vs Interim Directive)

Delegation of Authority for Acceptance and Recommendation of Default Actions - Default Assessment Tool (DAT) versus Interim DPMP Directive (Effective June 1, 2023)					
The DAT			Interim DPMP Directive		
Principal Default Management Action	Recommended by	Accepted by	Principal Default Management Action <i>(See Full text in Appendix A)</i>	Recommended by	Accepted by
Initiate Recipient Managed (i.e. Ninety Day Plan)	Funding Service Officer(FSO) or equivalent	FSO Manager with notification to Regional Transfer Payment Management Committee(TPMC) or equivalent	<ul style="list-style-type: none"> Collaboration, capacity development and action plan 	Same, unchanged	
Withhold Funds	FSO or equivalent	FSO Manager or equivalent	<ul style="list-style-type: none"> Withhold Funds, if and as required 	Same, unchanged	
Require Management Action Plan (MAP) with or without a Recipient Appointed Adviser	FSO Manager or equivalent	TPMC or equivalent	<ul style="list-style-type: none"> Collaboration, capacity development, action plan and where considered necessary, amendment 	Same, unchanged	
Appoint Third Party Funding Agreement Manager	TPMC or equivalent	Program / Regional Director General/Regional Executive Officer	<ul style="list-style-type: none"> Appoint Third Party Funding Agreement Manager 	SADM, RO	Senior, level subset of the Departmental Operations Committee

Annex D - Collaborative and Capacity-focused Departmental Responses – Example Scenarios

(Except from the draft-in-development Collaboration and Continuity of Services Policy, the CCSP)

Annex D - Collaborative and Capacity-focused Departmental Responses – Example Scenarios

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- (1) Where there are emerging risks related to claims of **gross mismanagement or fraud** related to the funding agreement, the departments will continue to collaborate and support the First Nation government as they address the situation. In instances where the First Nation government is not taking timely and reasonable mitigating actions to protect the community's best interests and/or support departmental stewardship, the Department's Assessment and Investigations Services Branch may be contacted.
- (2) Where the First Nation government has raised concerns related to **extenuating circumstances** in the community (for example a natural disaster or a social, environmental, public health, public safety or other crisis), that are overwhelming their ability to fulfil their obligations under the funding agreement, Departmental officers will continue to collaborate to explore options, take action and, to the extent possible, respond to requests for support related to both immediate concerns and the underlying root cause(s).
- (3) Where there are concerns related to **funding sufficiency**, Departmental officers will work in collaboration with the First Nation's senior officials to explore, understand and as requested, support the First Nation's approach to address the situation, whether it be to:
 - review the appropriateness of funding levels provided by ISC/CIRNAC programs, based on current program costing and resource allocation approaches
 - support, if requested, the First Nation government's efforts to update or reprioritize their capacity development or similar plan.
 - suggest that the First Nation contact the [First Nation Financial Management Board](#) or some other Indigenous organization or institution to seek advice, guidance or support
 - explore the possibility of accessing additional ISC/CIRNAC funding⁴; and/or
 - where required, offer to fund the cost of an "Expert Financial Adviser" for several months to work with the First Nation government to, for example, carry out detailed budget analyses, meet with creditors and/or develop a Debt Management Plan.
- (4) Where the First Nation government's efforts to mitigate emerging or unacceptable risks may be ineffective, and where, in the view of the First Nation government, the underlying cause for ineffective (or no) mitigation is due to:
 - **lack of capacity** to plan, lead and/or undertake the mitigating actions, ISC/CIRNAC will continue to collaborate and support the First Nation government, including, exploring options for addressing both this lack of capacity and mitigating the emerging or unacceptable risk.
 - **funding sufficiency issues**, Departmental officers will, as explained above in (3), work with the First Nation government to address the funding sufficiency issue and, related to the emerging or unacceptable risk(s), continue to collaborate to explore options, take action and to the extent possible, respond to requests for support.
 - **extenuating circumstances** in the community that are overwhelming the First Nation government's ability to mitigate risk, ISC will continue to collaborate to explore options, take action and to the extent possible respond to requests for support to mitigate both the immediate risk and the extenuating circumstance(s).

⁴ However, the availability of such funding would be subject to departmental funding pressures and given the departmental principle of funding equity, the total funding provided would need to reflect the respective program's funding or resource allocation model.