

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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Sent via email: Mark.Chambers@Treasury.gov

October 23, 2015

Dr. Elaine Buckberg
Deputy Assistant Secretary for Policy
Office of Economic Policy
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Request for Extension of Transition Relief from the Employer Mandate

Dear Dr. Buckberg:

On behalf of the Tribal Self-Governance Advisory Committee to IHS (TSGAC), I would like to thank you again for your and your staff's participation at the recent TSGAC quarterly meeting in Washington, D.C. We appreciate the opportunity to engage in a discussion on implementation of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA).

On behalf of TSGAC, please accept this letter as a formal request for an extension of transition relief in the application of the employer shared responsibility mandate ("employer mandate") under the Affordable Care Act on Indian Tribes, Tribal Organizations as defined by Section 4(L) of the Indian Self-Determination and Education Assistance Act, and Tribally Owned Entities (collectively referred to as "Tribes").

Further, as we discussed at the recent TSGAC meeting held on October 7, 2015, the TSGAC will be submitting shortly for the Treasury Department's consideration options and recommendations on potential approaches for other forms of permanent administrative relief in the implementation of the employer mandate on Tribes as these requirements pertain to a Tribe's Tribal member employees.¹

As we discussed with you, many Tribes with large governmental commercial operations have always offered their employees health coverage and will continue to do so. But many others, in particular Tribes who employ large numbers of Tribal member employees, have not done so as those employees have a right to access Indian Health Service (IHS) services at no cost to the Tribal employees. Those Tribes are particularly vulnerable to the employer mandate, which will force them to either purchase insurance for Tribal member employees otherwise exempt from the individual mandate, or pay significant penalties to the United States.

Specifically, we are requesting an extension of transition relief in implementation of the following requirements under the employer mandate from January 1, 2015 until at least January 1, 2016 and preferably to January 1, 2017:

¹ For purposes of the transition relief for the employer mandate, we are defining "Tribal members" as persons eligible for an exemption from the penalty for not securing health insurance coverage under Internal Revenue Code (IRC) § 5000A(e)(3) as a member of an Indian Tribe and persons eligible for an exemption from the penalty for not securing health insurance coverage under IRC § 5000A(e)(5) and ACA § 1501, under which ACA § 155.605(g)(6) was established, granting an exemption for American Indians and Alaska Natives who are eligible for services through an Indian health care provider.

- Employer coverage requirements, including any associated mandate to make shared responsibility payments under Internal Revenue Code (Code) section 4980H;
- Employer reporting requirements under Code section 6056; and
- Application of the extension of transition relief to all employees of Tribes.

We are requesting this transition relief for two primary reasons:

- 1) To provide Tribes additional time to seek a permanent remedy to these requirements; and
- 2) To allow Tribes that have not historically provided health insurance coverage to their employees and that currently lack the capacity to offer coverage and/or meet the reporting requirements additional time to get technical assistance and determine how to manage the reduction in funding and services to Tribal members that will be caused by the employer mandate.

For those Tribes that have not historically provided formal health insurance coverage to their employees, as we discussed at the October 7th TSGAC meeting and as was presented in previous correspondence in a joint letter dated June 29, 2015 (attached), the imposition of the employer mandate requirements under the ACA is creating a significant hardship. Specifically, if required to offer comprehensive coverage or make “employer shared responsibility payments” to the federal government, many Tribes will have to reduce current service levels to Tribal members due to the costs of either purchasing coverage or making payments to the Treasury.

Further, for all Tribes, whether they have provided comprehensive health insurance coverage to their employees as a standard business practice or not, having Tribes make payments to the federal government for the health care needs of Tribal members is in direct conflict with the federal government’s trust responsibility to meeting the health care needs of Tribes and their citizens.

Providing Tribes with additional transition relief in implementing the ACA’s employer mandate would build on previous Treasury Department actions pertaining to all or a subset of employers. There are eight forms of transition relief for 2014 and / or 2015 already provided. For example, a one-year delay was provided to all employers with regard to all their employees (from January 1, 2014, to January 1, 2015). An additional one-year extension was provided to mid-size employers with regard to all their employees (from January 1, 2015, to January 1, 2016), eliminating the requirements during the current 2015 coverage year.

We believe that providing the extension of relief requested in this letter will not disadvantage employees of Tribes. Coverage decisions have already been made by Tribes for the 2015 coverage year. Implementation of an extension of transition relief until January 1, 2016 will not impact the actions of Tribal employers for this current coverage year. In addition, an extension of relief to Tribes for an additional one-year period through January 1, 2017, if provided, would enable Tribes to have sufficient time to prepare to implement the current employer mandate or modified requirements that might be established for Tribes.

We are also formally requesting to engage, pursuant to the Department of the Treasury Tribal Consultation Policy, in Tribal consultation on the matters presented in this letter.²

² The Department of the Treasury Tribal consultation policy became effective on September 23, 2015 and replaced the Department’s interim consultation policy.

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We look forward to your continued engagement with us on this matter. And, we appreciate your recognition of the importance of this issue to Tribes and their citizens. If you have any questions, you can reach me at (860) 862-6192; or via email: lmalerba@moheganmail.com. Thank you.

Sincerely,



Chief Lynn Malerba, Mohegan Tribe
Chairwoman, TSGAC

cc: Mr. Robert McSwain, Deputy Director, IHS
P. Benjamin Smith, Director, OTSG, IHS
TSGAC and Technical Workgroup

Enclosure: Joint Tribal Organization letter to The White House dated June 29, 2015.