

CONTRACT SUPPORT COSTS

Summary of Issue:

For decades the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) underpaid the amount of contract support costs (CSC) due to Tribes and Tribal organizations that contract to operate IHS clinics and hospitals and BIA law enforcement, realty, housing and other government programs under the Indian Self-Determination and Education Assistance Act (ISDEAA). The result has been severe offsetting reductions in patient care and in other essential governmental services for the most underserved populations in America—American Indians and Alaska Natives—who already receive fewer health services than even federal prisoners. The compounding impact of Tribal contract underpayments on the quality and quantity of health care services available in Indian Country, as well as on the effectiveness of security, educational, housing and infrastructure initiatives across Indian country, has led to considerable litigation.

In June 2012 the Supreme Court—for the second time—held the government liable for these contract underpayments. The Court's ruling came in a Tribal lawsuit against the BIA, Salazar v. Ramah Navajo School Board, and it built upon an earlier, unanimous Supreme Court decision in a Tribal lawsuit against IHS, Cherokee v. Leavitt, decided in 2005. After the Ramah decision, the Supreme Court and Federal Circuit extended the ruling to IHS in a case known as Arctic Slope Native Association v. Sebelius.

Securing full funding for Contract Support Costs has long been a top priority of Self-Governance Tribes. Though the Administration committed to fully funding CSC in FY 2014 and has done the same for FY 2015, the remaining challenges fall into two main categories: (1) obtain fair compensation for all past CSC shortfalls; and (2) work with the Administration and Congress to secure long-term solutions moving forward, including establishing full CSC funding on a mandatory basis.

Objective/Goals:

1. Obtain fair compensation for all past CSC shortfalls

Both the BIA and the IHS acknowledge liability for CSC shortfalls in years past, as they must under the Supreme Court's decisions in Cherokee and Ramah. However, settlement of claims for past CSC underpayments is still not complete. Both the BIA and the IHS must continue to work to achieve fair and speedy settlement of all claims.

The BIA. On the BIA side, settlement is being pursued through the Ramah class action. Attorneys and financial experts for both sides are working to come to an agreement on a settlement figure and how to allocate it. Direct participation by Self-Governance Tribes in the settlement discussions is limited by the nature of the class action representation and the confidentiality of the settlement negotiations. Nonetheless, the Tribes have the right to be heard by the Administration, just as Tribes voiced their concerns with the slow pace of the Cobell litigation. The Supreme Court has spoken, and it is time to wind up what is already a 25 year old case.

The IHS. CSC claims against the IHS are not being handled as a class action, but must be pursued individually by each tribal contractor. Some of these claims, especially claims for later claim years, are still in the first stage of the claims process established under the Contract Disputes Act and are pending before an agency contracting officer who is advised by agency attorneys. Others have been

appealed to the Civilian Board of Contract Appeals (where they are defended by IHS attorneys) or to federal courts (where they are handled by the Department of Justice).

This spring, IHS posted an update on the settlement of past-year claims. According to IHS, as of May 22, 2015,

- 1,249 settlement offers on claims had been extended; and
- 947 claims had been settled, for a total value of approximately \$705.5 million.

While this represents significant progress,¹ many more claims remain unresolved. The IHS has insisted on using a "costs incurred" model to calculate the amount of damages owed, while Tribes have insisted that the annual shortfall reports submitted to Congress are the appropriate starting point for determining damages. Nevertheless, over the past two years the IHS has established a pattern of extending mostly fair and reasonable settlement offers, in most cases in a timely manner. The IHS's progress is commendable, as the settlement process got off to a rocky start. The IHS should be urged to continue its efforts to fairly and quickly settle all outstanding CSC claims as Tribes continue to file their more recent claim years.

Although the Ramah and Arctic Slope decisions confirm the government's liability for past CSC shortfalls, the lack of an approved class action against IHS and the need to file individual IHS claims has left older claims vulnerable to a statute of limitations defense. Recognizing the inequity of denying Tribal recoveries on a technicality, both the House and the Senate have in the past introduced bills that would essentially waive the statute of limitations on certain CSC claims, including S. 2389 and H.R. 4031 in the 112th Congress and S. 385 in the 113th Congress. To date, no such bill has been passed into law, and courts have split on whether equitable tolling of the statute of limitations should apply.

2. *Work with the Administration and Congress to secure long-term solutions moving forward, including establishing full CSC funding on a mandatory basis*

As the Ramah decision affirms, the ISDEAA requires full payment of CSC. If Congress does not appropriate enough to fully pay every Tribal contractor or compactor its full requirement, those with shortfalls are authorized by law to pursue claims and recover damages, which are then paid from the Permanent and Indefinite Judgment Fund. Initially, after the Ramah decision, the Administration proposed to cap CSC payments at the individual contractor level in the FY 2014 appropriations act, to try to prevent tribal contractors from recovering unpaid amounts in the courts. Tribes came out overwhelmingly against that proposal, however, and Congress rejected it. Congress removed the longstanding total CSC spending "caps," and the Administration committed to fully funding CSC in FY 2014. However, the amount set aside by IHS for CSC based on its estimate of need early in the fiscal year proved insufficient, and full funding required a last-minute reprogramming of \$25.1 million, much of it from direct services. In FY 2015, Congress again declined to cap CSC payments and expressed its intent, in the Managers' Statement accompanying the bill, to provide sufficient funding to fully fund CSC as well as repay funds that were reprogrammed to cover the FY 2014 IHS

¹ For comparison, IHS reported in a letter to Senator Begich dated April 24, 2014, that 105 settlements had been accepted for a total of \$273,000,000.

need. As long as CSC is funded from the agencies' lump sum appropriations and is not capped, however, the need for reprogramming will remain a possibility.

When Congress rejected the Administration's proposal in the FY 2014 Consolidated Appropriations Act, it directed the agencies to consult with tribes and to work with Congress and the Office of Management and Budget to come up with a long-term solution to CSC funding. Congress directed the agencies to develop and submit a consultation plan within 120 days of enactment of the Consolidated Appropriations Act, and both agencies conducted consultations as outlined in those plans in 2014. Over the course of the consultation broad consensus developed among tribes and tribal organizations that the long-term solution must involve a permanent assurance of full funding for CSC, which must not be paid for by cuts to Indian programs. To that end, tribes have proposed legislation to establish CSC as a permanent, indefinite appropriation like other legal entitlements. NIHB, NCAI and a number of regional health boards have adopted resolutions in support of this approach.

Following consultation, the Administration came out with its own proposal to move CSC to a mandatory appropriation. In the President's FY 2016 Budget, the Administration proposed to make CSC appropriations for both IHS and DOI mandatory, but only for three years starting in FY 2017. The proposal also included a set aside of "up to 2%" of the amounts appropriated for CSC to be used for "administrative capacity and program management." Tribes across the country have submitted comments on this proposal, both directly to the agencies and in testimony for congressional hearings. Tribes overwhelmingly support the concept of moving CSC to a mandatory appropriation, but they have generally preferred a permanent provision and have generally opposed the 2% set-aside for program administration. That said, Tribes are now working collaboratively with Congress and the Administration to secure a mandatory appropriation, whether it be permanent or short-term to start.

So far, the reaction from Congress has been that that the creation of new mandatory funding is disfavored and would be politically quite difficult. For FY 2016, Congressional staff proposed an alternative approach, which was reflected in the Senate appropriations bill. That approach would create separate accounts for BIA and IHS CSC within the discretionary budget, and would appropriate an indefinite amount—"such sums as may be necessary"—in order to fund the full amount of CSC need. This approach, while not permanent, would address the two primary goals of mandatory funding—protection of program funding and full funding of CSC—and would provide a good precedent for a later indefinite mandatory appropriation. Unfortunately, it appears that Congress will fail to enact a FY 2016 budget before the start of the fiscal year, so a continuing resolution maintaining the current funding levels is likely for at least part of FY 2016.

As IHS and BIA work with Congress to craft long-term solutions, including proposed legislative language or revisions to their CSC policies, they must ensure a transparent process that makes use of tribal as well as agency expertise. Any proposed solutions must be fully vetted by the agencies' respective CSC Workgroups. For example, the IHS CSC Workgroup proved instrumental in helping IHS develop an efficient payout process to implement the full-funding policy in FY 2014. Finally, IHS should release CSC distribution data for fiscal years 2012 and 2013 that it has so far refused to share with Tribes, even though the statutory due dates for submission of this information to Congress have long passed. Representative Young's bill, H.R. 5092, would have required the CSC shortfall (or "deficiency") reports to be available to the public on May 1 of each year.

The following documents are attached for your reference:

- May 22, 2015 “Dear Tribal Leader” letter from IHS re: past-year CSC claims, FY 2014 and 2015 payment and reconciliation activities, the President's FY 2016 mandatory funding proposal, and other CSC updates;
- Draft legislative language to implement a permanent mandatory CSC appropriation (2 proposals)
- House and Senate appropriations bills CSC language for FY 2016

Strategy & Actions:

1. *Obtain fair compensation for all past CSC shortfalls in a fair and expedient manner.*

Implement this objective through the following measures:

- Closely monitor Ramah class action settlement negotiations and urge the Administration to expedite the settlement process.
- Urge the Administration to continue to streamline the process to settle all outstanding IHS claims as soon as possible, in a fair and consistent manner.
- Support legislation to waive the statute of limitations as to certain CSC claims and give Tribes the opportunity to make their cases on the merits.
- Demand that IHS and BIA provide detailed and written quarterly reports to the Secretaries and to the Tribes setting forth the progress they are making on CSC settlements.

2. *Work with the Administration and Congress to secure long-term solutions moving forward, including establishing full CSC funding on a mandatory basis.* Implement this objective through the following measures:

- Show support for the Administration's proposal to create a mandatory appropriation for CSC, and if feasible support modifying and expanding the proposal to create a permanent, indefinite CSC appropriation rather than a capped, three-year appropriation.
- In the meantime, support the FY 2016 Senate appropriations bill approach to create separate accounts for BIA and IHS CSC and to appropriate to those accounts such sums as may be necessary to fully fund CSC.
- Demand that Tribes be involved and consulted as the Administration works with Congress toward a long-term solution for CSC funding.
- Resist agency attempts to codify the IHS's "costs incurred" approach to determining CSC need through appropriations or language.
- Resist agency attempts to unilaterally declare certain programs or services ineligible for contract support, as IHS has tried to do with the MSPI and DVPI programs.
- Demand that all agency proposals concerning adjustments to CSC practices and procedures be fully deliberated through each agency's Contract Support Cost Work Group.
- Demand that IHS share 2012 and 2013 CSC shortfall data with all Tribes so that Tribes and the CSCWG can validate IHS's data calculations. Without access to this data, Tribes cannot know whether the information IHS provides to Congress is accurate and Tribal efforts to advocate in Congress are hindered.



MAY 22 2015

Dear Tribal Leader:

I am writing to provide an update on Contract Support Costs (CSC). The Indian Health Service (IHS) continues to make CSC a priority. This letter is intended to provide an update on the following areas related to CSC: 1) status of resolving past year claims for unpaid CSC; 2) fiscal years (FY) 2014 and 2015 CSC payment and reconciliation activities; 3) implementation of an Annual CSC Calculation (ACC) Estimation Tool; 4) negotiation of direct CSC; 5) the FY 2016 President's Budget proposal to make CSC a mandatory appropriation beginning in FY 2017; and 6) IHS CSC Workgroup activities.

Status of Resolving Past Year Claims for Unpaid CSC

IHS continues to make progress on resolving past year claims presented under the Contract Disputes Act for unpaid CSC. As of May 8, IHS has extended settlement offers on 1,249 claims and has settled 947 claims in the amount of approximately \$705.5 million. IHS remains focused on resolving the remaining claims, with a goal of extending offers on all claims received by January 1, 2015, by the end of the calendar year. The continued success of our efforts to resolve past claims is due in part to the working relationship with Tribes. Please direct any questions regarding the status of your claim to your IHS Area Director. In addition, you may ask your attorney to contact the Office of the General Counsel.

FY 2014 CSC Payment and Reconciliation Activities

The FY 2014 Consolidated Appropriations Act did not specify a limit on the total funds available for payment of CSC; therefore, IHS's goal is to pay full CSC, as defined by the Indian Self-Determination and Education Assistance Act (ISDEAA), for FY 2014. To ensure the Agency met its goal to pay full CSC need in FY 2014, IHS developed a more detailed and consistent reconciliation process to fully fund the estimated CSC need and to account for the variables that can change the estimated CSC need throughout the year. For FY 2014, IHS reconciled and paid CSC in April, September, and December 2014 and April 2015. IHS has worked to improve communication with each Tribe to ensure that IHS and Tribes use the most current data necessary to accurately estimate each Tribe's full CSC need.

The following are the steps used for data and funding reconciliation:

- IHS reviews and updates CSC data on a monthly basis, with a primary focus on updating any changes in the variables that can change the CSC estimated need (i.e., paid funding amount, changes in the Tribe's indirect cost rate, and changes in pass-throughs and exclusions associated with the Tribe's indirect cost rate).
- Based on the monthly data reconciliation findings, the IHS initiates a payment reconciliation.

- IHS notifies Tribes when there are changes in the estimated CSC need based on the best available data, using an Annual CSC Calculation (ACC) Estimation Tool described below.
- IHS will work with the Tribe to modify a Tribe's Title I annual funding agreement (AFA) or amend a Tribe's Title V funding agreement (FA) to pay any additional CSC need.
- In cases where a Tribe has received a CSC overpayment, the IHS will work with the Tribe to recover the overpayment funds and modify the Tribe's Title I AFA or amend the Tribe's Title V FA to update full estimated CSC amounts in the ISDEAA agreement with the IHS.

IHS interprets the ISDEAA to authorize CSC funding for those actual costs that Tribes incur that meet the definition of CSC as described in the ISDEAA at 25 U.S.C. § 450j-1(a). IHS relies, in part, on the Tribe's final audited costs and, in most cases, the applicable indirect cost rate negotiated with Tribes' cognizant federal agencies. To accurately calculate a Tribe's full estimated CSC need, the IHS also reviews costs for reasonableness and duplication. For example, for FY 2014, if the Tribe chose to use an indirect cost rate to estimate its CSC need, IHS expects that the final costs could be determined in FY 2016 once the Tribe receives its FY 2014 indirect cost rate, or later. Therefore, FY 2014 CSC reconciliation will be open until final costs are determined.

FY 2015 CSC Payment and Reconciliation Activities

Similar to FY 2014 payment and reconciliation activities, the IHS is in the process of completing its first FY 2015 reconciliation. We expect to make payments to Tribes no later than May 30, 2015. Payments will be based on: funds paid to date; a Tribe's most current indirect cost rate, where applicable; and applicable pass-through and exclusions as negotiated by the Tribe in the Tribe's negotiated indirect cost rate agreement. In addition, the IHS will assess the reasonableness of costs and duplication, consistent with the ISDEAA and the IHS CSC Policy. IHS will modify Title I AFAs or amend Title V FAs for any additional payments based on reconciled data used to estimate full CSC.

Implementation of an Annual CSC Calculation (ACC) Estimation Tool

In January 2015, IHS implemented the ACC Estimation Tool, which will be used by IHS to assure that full estimated CSC need is calculated in a consistent manner using the best and most current information. The ACC Estimation tool supports a transparent means to calculate each Tribe's full estimated CSC need at any given time. IHS intends to share a completed ACC Estimation tool in advance of CSC negotiations to support full and open discussion. The IHS looks forward to sharing the ACC Estimation tool at IHS Area Tribal meetings and providing additional training on the information necessary to estimate CSC need. Please contact your Area Director for information related to upcoming trainings in your Area.

Negotiation of Direct CSC

When a Tribe negotiates and enters into a contractual agreement with the IHS under the ISDEAA, the Tribe receives the amount of funding the Secretary would have otherwise provided for the operation of the program, function, service, or activity (PFSA) or portion thereof, typically referred to as the “Secretarial amount.” The ISDEAA authorizes an additional amount for CSC, which consists of the reasonable costs for activities which must be carried out by the Tribe or Tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which are activities not normally carried out by IHS in its direct operation of the programs, or are provided by the Secretary in support of the contracted program from resources other than those under the contract. Eligible CSC includes the costs of reimbursing each Tribal contractor for the reasonable and allowable costs for direct program expenses and additional administrative expenses related to the overhead incurred by the Tribal contractor in connection with the operation of the PFSA pursuant to the contract, except that CSC cannot be duplicative; i.e., CSC cannot be paid for activities that are already funded in the amount transferred by the Secretary.

The majority of direct CSC need typically consists of fringe costs that are not already funded as part of the Secretarial amount. In the IHS CSC Policy, fringe costs are a group of five items, including Federal Insurance Contributions Act (FICA); life, health, and disability insurance; retirement; workers’ compensation insurance; and unemployment insurance. In accordance with the IHS CSC Policy, IHS has historically agreed, as to this group of fringe benefit costs, to total the amounts already provided in the Secretarial amount for FICA, retirement, and life, health and disability insurance, and compare these amounts to the reasonable and necessary fringe benefit costs of the Tribe (which also include additional costs for workers’ compensation and unemployment insurance) for the transferred PFSA. Consistent with IHS CSC Policy, the IHS calculates direct CSC utilizing the most current actual cost data. In FY 2014, IHS reviewed data across the Agency to determine the fringe costs for the three items already provided to a Tribe in its Secretarial amount, as required by the IHS CSC Policy. For FY 2015 direct CSC negotiations, IHS will use the Agency’s final actual fringe costs for those three items for FY 2014, to determine those costs already transferred to a Tribe in its Secretarial amount. IHS will consider proposals for other eligible direct CSC costs as detailed in the IHS CSC Policy.

Consistent with the IHS CSC Policy, the IHS applies the Office of Management and Budget (OMB) non-medical inflation rate to a Tribe’s estimated direct CSC need each year that the Tribe chooses not to renegotiate its need. To simplify this process, the IHS will apply the final OMB non-medical inflation rate from the previous year to the previous year’s negotiated direct CSC need to arrive at the current year estimated need. For example, the final rate for FY 2014, 1.6%, will be applied to arrive at the updated direct CSC need for FY 2015.

The FY 2016 President's Budget Proposal to make CSC a Mandatory Appropriation

On February 9, IHS announced Tribal Consultation to invite input on the FY 2016 President's Budget proposal to make CSC funding mandatory starting with the FY 2017 appropriation. The proposal seeks to reclassify CSC as mandatory funding, rather than discretionary funding. The proposal has four components:

- 1) A three-year mandatory appropriation, which provides a specific amount for each year to fully fund CSC;
- 2) No-year funding that allows funding to be available to IHS to carry over in future years;
- 3) New CSC estimates will be provided as a part of the reauthorization process every three years; and;
- 4) In addition to the current amount, up to 2% of CSC totals can be used for administrative capacity and program management.

IHS has received a number of responses from Tribes with overwhelming support for the proposal to reclassify CSC as mandatory funding. IHS will continue to provide updates regarding the status of the mandatory funding proposal at national and regional listening sessions. For additional information on how the proposal will interact with the discretionary caps and how it is scored under the Statutory Pay-As-You-Go Act of 2010 (PAYGO), IHS defers to OMB.

IHS CSC Workgroup Activities

The IHS CSC Workgroup continues to hold face-to-face meetings and telephone or video conference calls. A majority of the Workgroup's focus is discussion of options that would simplify and streamline the work to negotiate full CSC need. The CSC Workgroup played an instrumental role in the development of the ACC Estimation Tool. I appreciate the valuable work of the CSC Workgroup and will continue to share their recommendations and outcomes.

We appreciate your input and remain committed to work with Tribes on solutions to this very important issue. Thank you for your ongoing support and partnership, which has been critical in achieving progress on CSC-related issues. We welcome your comments, suggestions, and recommendations on any of the topics in this update. Please send your input to consultation@ihs.gov.

Sincerely,

/Robert G. McSwain/

Robert G. McSwain
Acting Director

OPTIONS FOR IMPLEMENTING MANDATORY CONTRACT SUPPORT COST APPROPRIATION VIA H.R. 2 ('DOC FIX' BILL)

Note: The mandatory funding options below are designed to fit in the 'Doc Fix' SGR bill (H.R. 2). They create a permanent, indefinite appropriation. If the CBO score for such an appropriation is too high, they could be modified to reflect the Administration's capped, three-year proposal.

Option 1 [using a Fund]:

SEC. ____ . CONTRACT SUPPORT COSTS.

Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. § 254b *et seq.*), as amended, is further amended by adding at the end the following section:

“SEC. ____ . CONTRACT SUPPORT COSTS.

“(a) PURPOSE.—It is the purpose of this section to establish a Contract Support Cost Fund (referred to in this section as the “CSC Fund”) to be administered by the Secretary of the Department of Health and Human Services and the Secretary of the Interior, to be used for the purposes of making payments required by Subsections 106(a)(2), (3), and (5) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1(a)(2), (3), and (5)) to Indian tribes and tribal organizations for contract support costs arising out of self-determination or self-governance contracts, grants, compacts, or annual funding agreements entered into pursuant to that Act.

“(b) FUNDING—For the purpose of making payments under this section, there is appropriated to the CSC Fund, out of any monies in the Treasury not otherwise appropriated, such amounts as may be necessary.”

Option 2 [without using a Fund]:

SEC. ____ . CONTRACT SUPPORT COSTS.

Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. § 254b *et seq.*), as amended, is further amended by adding at the end the following:

“SEC. ____ . CONTRACT SUPPORT COSTS.

“(a) PURPOSE.— (a) It is the purpose of this section to provide for payments by the Secretary of Health and Human Services and the Secretary of the Interior, as required by subsections 106(a)(2), (3), and (5) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1(a)(2), (3), and (5)), to Indian tribes and tribal organizations for contract support costs arising out of self-determination or self-governance contracts, grants, compacts, or annual funding agreements entered into pursuant to that Act.

“(b) FUNDING—For the purpose of making payments under this section, there is appropriated, out of any monies in the Treasury not otherwise appropriated, such amounts as may be necessary.”

OPTIONS FOR IMPLEMENTING MANDATORY CONTRACT SUPPORT COST APPROPRIATION VIA APPROPRIATIONS ACT PROVISION

Option 1 (permanent):

“(a) For the purpose of making payments to Indian tribes and tribal organizations under subsections 106(a)(2), (3), and (5) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1(a)(2), (3), and (5)), there is appropriated, out of any monies in the Treasury not otherwise appropriated, such amounts as may be necessary.”

Option 2 (three years):

Note: this option reflects the Administration's proposal and assumes that FY 2016 CSC will be fully funded from the agencies' discretionary appropriations at the proposed amounts.

“(a) For the purpose of making payments to Indian tribes and tribal organizations under subsections 106(a)(2), (3), and (5) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1(a)(2), (3), and (5)), there is appropriated, out of any monies in the Treasury not otherwise appropriated, \$1,107,000 for fiscal year 2017, \$1,247,000 for fiscal year 2018, and \$1,438,000 for fiscal year 2019. Amounts appropriated pursuant to this paragraph shall remain available until expended.”

Contract Support Costs (CSC) Quoted Language from the Pending
FY 2016 House and Senate Appropriations Bills and Reports
June 19, 2015

Indian Health Service

House Bill, HR 2822, p. 92:

Provided further, That \$717,970,000 shall be for payments to Indian tribes and tribal organizations for contract support costs associated with contracts, grants, self-governance compacts, or annual funding agreements between the Indian Health Service and an Indian tribe or tribal organization pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) prior to or during fiscal year 2016, and shall remain available until expended."

House Appropriations Committee Report, H. Rpt. 114-170, p. 76:

Contract Support Costs.- The recommendation includes \$717,970,000 as requested for full funding of estimated contract support costs. Bill language has been added making these funds available until expended and protecting against the use of other appropriations to meet unanticipated shortfalls. The Service is directed to work with Tribes and tribal organizations to ensure that budget estimates continue to be as accurate as possible.

Senate Bill (CSC is its own account):

For payments to tribes and tribal organizations for contract support costs associated with Indian Self-Determination and Education Assistance Act agreements with the Indian Health Service for fiscal year 2016, such sums as may be necessary: *Provided*, that amounts obligated but not expended by a tribe or tribal organization for contract support cost for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years: *Provided further*, that, notwithstanding any other provision of law, no amounts made available under this heading shall be available for transfer to another budget account.

Senate Appropriations Committee Report:

The Committee has included new language establishing an indefinite appropriation for contract support costs estimated to be \$717,970,000, which is an increase of \$55,000,000 above the fiscal year 2015 level. The budget request proposed to fund this program within the "Indian Health Services" account. Under this heading the Committee has provided the full amount of the request for contract support costs. By virtue of the indefinite appropriation, additional funds may be provided by the agency if its budget estimate proves to be lower than necessary to meet the legal obligation to pay the full amount due to tribes. This account is solely for the purposes of paying contract support costs and no transfer from this account are permitted for other purposes.

Bureau of Indian Affairs

House Bill, HR 2822, p. 28 (is under Operation of Indian Programs):

Provided further, That \$272,000,000 shall be for payments to Indian tribes and tribal organization for contract support costs associated with contracts, grants, self-governance compacts, or annual funding agreements between the Bureau and an Indian tribe or tribal organization pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et. seq.) prior to or during fiscal year 2016, and shall remain available until expanded.

House Appropriations Committee Report, H. Rpt. 114-170, p. 37:

Contract Support Costs.- The recommendation includes \$272,000,000 as requested for full funding of estimated contract support costs. Bill language has been added making these funds available until expanded and protecting against the use of other appropriations to meet unanticipated shortfalls. The Bureau is directed to work with Tribes and tribal organizations to ensure that budget estimates continue to be as accurate as possible.

Senate Bill (CSC its own account):

For payments to tribes and tribal organizations for contract support costs associated with Indian Self-Determination and Education Assistance Act agreements with the Bureau of Indian Affairs for fiscal year 2016, such sums as may be necessary, which shall be available for obligation through September 30, 2017: *Provided*, that amounts obligated but not expended by a tribe or tribal organization for contract support cost for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years: *Provided further*, that, notwithstanding any other provision of law, no amounts made available under this heading shall be available for transfer to another budget account.

Senate Appropriations Committee Report:

Contract Support Costs.- The Committee has included new language establishing an indefinite appropriation for contract support costs estimated to be \$277,000,000, which is an increase of \$26,000,000 above the fiscal year 2015 level. The budget request proposed to fund these costs within the "Operation of Indian Programs" account through Contract Support and the Indian Self-Determination fund budget lines. Under the Committee's new budget structure, the full amount tribes are entitled to will be paid and other programs will not be reduced in cases where the agency may have underestimated these payments when submitting its budget. Additional funds may be provided by the agency if its budget estimate proves to be lower than necessary to meet the legal obligation to pay the full amount due to tribes, but this account is solely for the purposes of paying contract support costs and no transfer from this account are permitted for other purposes. Similar to the President's requests for calculating contract support costs, this provision also applies to new and expanded Indian Self-Determination and Education Assistance Act agreements funded through the Indian Self-Determination Fund activity.

From the OMB Letter on the House Interior Appropriations Bill

The Subcommittee bill also contains problematic language related to tribal Contract Support Costs (CSC) for BIA and IHS. Specifically, the bill contains a limitation on funding for CSC that could perpetuate the funding issues described in the Supreme Court's *Salazar v. Ramah Navajo Chapter* decision. The Congress should pursue a longterm solution for CSC appropriations, providing an increase in funding in FY 2016 as part of a transition to a new three-year mandatory funding stream in FY 2017, as proposed in the President's Budget.