

## IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Sent via E-Mail [Denise.Turk@ihs.gov](mailto:Denise.Turk@ihs.gov) ; Original Sent USPS

June 9, 2015

Mr. Robert G. McSwain, Acting Director  
Indian Health Service  
U.S. Department of Health and Human Services  
Suite 440, The Reyes Building  
801 Thompson Avenue  
Rockville, MD 20852-1627

Re: May 22, 2015 *Dear Tribal Leader Letter* Regarding Payment of Employee Settlements

Dear Mr. McSwain:

I write on behalf of the Tribal Self-Governance Advisory Committee (TSGAC) in response to your Dear Tribal Leader Letter (DTLL) of May 22, 2015 describing a settlement between the Indian Health Service (IHS) and employee unions over the lack of appropriate payment of overtime compensation. You estimate in your letter that a total of \$80 million will be required; \$20 million in administrative and legal fees and \$60 million in settlement payments to employees. It further states that the \$20 million will be reprogrammed from the Facilities Account and the remaining \$60 million will be "borne by the Service Units based upon salary obligations where the claims arose." Since these claims have been known to the IHS for some time, we were surprised to learn of this without any prior notice in a TSGAC meeting or Executive Session.

Although the TSGAC supports the notion that all employees should be fully compensated for work performed, we have many concerns about payment of this settlement out of existing operating funds. The \$20 million that is proposed to be reprogrammed from the Facilities Account would presumably have been available to fund the next facilities on the IHS priority listing. As we are all aware, the facilities construction and staffing efforts of the agency are many decades away from meeting the needs at the current rate of funding. The remaining \$60 million directly impacts the delivery of health care services at the local level. The DTLL seems to characterize these payments as simply payments of overtime, or local operational costs. We do not agree with that characterization, but rather view these payments as settlement of cases alleging mismanagement of employee compensation by the IHS. It is simply unacceptable for the IHS to cut funding available for health care services to pay for settling a lawsuit of any kind. The Tribes consistently took the same position regarding settlement of Contract Support Cost claims by the IHS.

We are also concerned about how the decisions for this settlement of Fiscal Years 2008-2013 will affect future actions to accurately pay overtime. For instance, your DTLL states that the IHS is "working to address the management of overtime work performed by IHS employees." This indicates to us that the management solutions have not been fully implemented, which may mean future overtime claims by employees. A precedent set here will likely be repeated for any future employee settlements. We are also mindful that the IHS should incorporate these additional staffing needs and associated costs into the budget formulation process.

For the current settlement described in the DTLL, and for any future settlements, the TSGAC strongly urges the IHS to reject the flawed plan to cut health care services and consider one or both of these alternatives:

- 1) **Request a supplemental appropriation for the settlements.** Agencies that frequently deal with settlements, such as the Bureau of Indian Affairs, routinely include settlement of claims as a separate item in their budget request. Congress funds these settlements as a separate line item without affecting the budgets that provide direct services to American Indians/Alaska Natives; and,
- 2) **Seek legislative authority to access the Judgment Fund managed by the Department of Treasury to pay this settlement.** This would protect agency funds for the payment of other staffing packages and for the provision of health care.

In closing, given the Tribal concerns and input on this matter, we request you immediately suspend any action that would reduce resources that provide health care services, including facilities, to Indian Country. We request that you rather consider these and any other alternatives available to you to appropriately pay these claims without reducing care to the AI/AN citizens we both serve. We look forward to discussing this further with you at our next TSGAC Meeting, July 21-22, 2015 at the Embassy Suites Washington D.C. - Convention Center. In the meantime, do not hesitate to contact me at if you have any questions at (860)862-6192; or via email: [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com).

Sincerely,



Chief Lynn Malerba  
Mohegan Tribe of Connecticut  
Chairwoman, IHS TSGAC

cc: P. Benjamin Smith, Director, Office of Tribal Self-Governance  
TSGAC Members and Technical Workgroup