



SEP 27 2019

Indian Health Service  
Rockville, MD 20857

Dr. Lynn Malerba  
Chairwoman  
Tribal Self-Governance Advisory Committee  
c/o Self-Governance Communication and Education  
P.O. Box 1734  
McAlester, OK 74501

Dear Chairwoman Malerba:

I am responding to your August 28 letter, which summarizes information requests and recommendations to the Indian Health Service (IHS) arising from the Tribal Self-Governance Advisory Committee (TSGAC) meeting held in Washington, D.C., on July 15-16, 2019.

1. **Support establishment of the IHS Negotiations Sub-Workgroup:** In the August 28-dated letter, the TSGAC reported that they established an IHS Negotiations Sub-Workgroup to develop recommendations to improve negotiations for TSGAC consideration and action. The TSGAC requested that the Agency fully support the sub-workgroup and assign current Headquarters technical staff and Agency Lead Negotiators to actively participate in the sub-workgroup discussions.

***IHS Response:*** Thank you for your work to establish an IHS Negotiations Sub-Workgroup. I support your effort, and understand the following IHS Headquarters technical staff and Agency Lead Negotiators have been selected to participate in the IHS Negotiations Sub-Workgroup:

- Ashley Metcalf, Agency Lead Negotiator, Nashville Area IHS;
- Lindsay King, Agency Lead Negotiator, Oklahoma City Area IHS;
- Michelle Begay, Agency Lead Negotiator, Navajo Area IHS;
- Lanie Fox, Director, Office of Tribal Programs, Alaska Area IHS;
- Aaron Lane, Agency Lead Negotiator, Alaska Area IHS;
- Tammy Clay, Program Analyst, Office of Tribal Self-Governance (OTSG), IHS; and
- Anna Johnson, Program Analyst, OTSG, IHS.

2. **Continue Tribal Consultation on the Sanitation Deficiency Systems (SDS) Guide:** In the August 28-dated letter, the TSGAC requested that the Agency continue to engage in meaningful discussion with Tribes regarding outstanding and/or unresolved Tribal comments received during the July to September 2018 Tribal Consultation period. The TSGAC commented that more than one-third of the Tribal comments collected during the previous Tribal Consultation on the SDS Guide remain unresolved due to “statutory requirements and/or longstanding policy direction.”

***IHS Response:*** By letter dated July 2, 2018, I initiated Tribal Consultation on proposed updates to the SDS Guide, which is used to establish the processes by which IHS Areas collect and report the current sanitation deficiencies affecting American Indian and Alaska Native (AI/AN) homes and communities. At the request of Tribes, I extended the comment period through September 14, 2018, to provide additional time for comments. During the comment period, 41 responses were received that included 71 unique comments on the SDS Guide.

On March 20, 2019, the IHS Office of Environmental Health and Engineering (OEHE) met with the IHS Facilities Appropriation Advisory Board (FAAB) in Rockville, Maryland, to discuss the results of the Tribal Consultation and to receive feedback on finalizing the SDS Guide. At the meeting, the OEHE provided the FAAB with a summary of the comments received, and the FAAB requested additional time to review the comments in detail. Following the meeting, two conference calls were held to discuss the comments and proposed responses.

A summary of the comments received during Tribal Consultation and how the IHS incorporated them into the updated SDS Guide can be found under the Links header at <https://www.ihs.gov/dsfc/resources/>. The IHS based these responses on a thorough review of the statutory requirements, program policy, and input from the FAAB. Identifying information was removed from the comments and similar comments were grouped together.

The OEHE plans to issue the updated SDS Guide for use in the 2020 SDS reporting cycle. The updated SDS Guide will be posted under the Documents header at the above-stated link by September 30, 2019. The IHS acknowledges your request, but does not have plans for additional Tribal Consultation on the SDS Guide.

- 3. Promote the use of Tribal Advisory Committees and Workgroups within the Department of Health and Human Services.** In the August 28-dated letter, the TSGAC stated that the intention of Executive Order 13875, “Evaluating and Improving the Utility of Federal Advisory Committees,” is to evaluate, reduce, and limit the number of Federal advisory committees established under the Federal Advisory Committee Act (FACA). The TSGAC requested IHS leadership to assert to the Department that its Tribal advisory committees and workgroups are not established under FACA. Further, the TSGAC requested IHS leadership share with the Department that these committees and workgroups serve critical roles, which include the following: ensuring the Federal Government fulfills the government-to-government relationship, supporting Tribal Consultation, and effecting delivery of programs that serve Tribal Nations.

***IHS Response:*** IHS Tribal advisory committees are established and operate under a separate legal authority, the Unfunded Mandates Reform Act of 1995 (UMRA). We believe the Executive Order does not apply to the IHS, since all of our advisory

committees operate under the UMRA (Intergovernmental exemption to FACA – 2 U.S.C. § 1534(b)). I will share your request, and this concern, with the Department.

- 4. Provide data related to use of the IHS Director’s Emergency Fund, Management Initiatives Fund and Emergency Accreditation Fund.** During the July 15-16 TSGAC meeting, and in TSGAC’s August 28-dated letter, the TSGAC requested additional data and information regarding the distribution of these funds for the past 3 years and any written policy associated with the funding source to help to the TSGAC understand the purpose(s) and use of these funds.

***IHS Response:*** The IHS Director’s Emergency Fund (DEF), Management Initiatives (MI) funds, and accreditation emergency funds (AEF) are part of the “Indian Health Services” (Services) appropriation account and included within the Hospitals and Health Clinics budget line item. Of these three funds, only the AEF is directed by Congress through specific language in annual appropriations, which states: “for costs related to or resulting from accreditation emergencies.” Congress raised concerns about the loss, or potential loss, of Centers for Medicare & Medicaid Services accreditation status at multiple IHS-operated facilities and provided the IHS Director with discretion over these funds to address accreditation emergencies at IHS-operated facilities. The DEF and MI funds are not specifically directed by Congress through annual appropriations; however, the IHS maintains separate internal accounts for managing these funds, which are displayed in the annual IHS budget tables shared with Tribes, commonly referred to as “Table 4s.”

As described in the IHS Headquarters Programs, Services, Functions, and Activities (PSFA) Manual, the DEF is a limited reserve fund for addressing emergencies and disaster relief efforts involving IHS facilities and IHS/Tribal health service delivery. These funds are used for activities appropriately funded from the Services appropriation. These funds are not available for administration, maintenance, construction, or for any other purposes not related to emergencies. The use of MI funds is also described in the PSFA Manual. The PSFA Manual provides a list of ways the IHS expends these funds to meet a range of special and immediate initiatives/obligations, but the list is not exhaustive. At the end of each fiscal year (FY), the IHS prepares a report on DEF and MI funds that is shared with Tribes, which also notes any year-end distributions to Tribes based on the Tribal Size Adjustment formula. Information about FY 2019 expenditures will be available later this calendar year, following the FY closeout.

- 5. Establish a workgroup to assist in development of a formula to project 105(I) lease cost needs.** The TSGAC recommended that the IHS take action soon to form a technical workgroup, leveraging institutional and field knowledge, to assist in the development of a formula to estimate or project 105(I) lease cost needs. The TSGAC recommended that the IHS consider nominees from the TSGAC and Direct Service Tribes Advisory Committee (DSTAC) as members for this technical workgroup.

***IHS Response:*** The IHS is establishing a technical workgroup under the IHS National Tribal Budget Formulation Workgroup to help identify and project potential 105(*l*) lease costs in the future. The technical workgroup will include representatives from the TSGAC, DSTAC, FAAB, and IHS subject matter experts. Letters are being sent to each advisory group requesting a nominee for participation in the technical workgroup. The technical workgroup's findings will be shared during the FY 2020 National Tribal Budget Formulation Work Session in February 2020.

I hope you find this information helpful. If you have any questions, please contact Ms. Jennifer Cooper, Director, OTSG, IHS, by telephone at (301) 443-7821 or by e-mail at [jennifer.cooper@ihs.gov](mailto:jennifer.cooper@ihs.gov). Thank you for your continued support and partnership as we work towards a shared vision for healthy communities and quality health care systems.

Sincerely,



RADM Michael D. Weahkee, MBA, MHSA  
Assistant Surgeon General, U.S. Public Health Service  
Principal Deputy Director