

IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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Electronically Submitted to consultation@ihs.gov

April 30, 2019

RADM Michael D. Weahkee, MBA, MHSA
Assistant Surgeon General, U.S. Public Health Service
Principal Deputy Director
Indian Health Service
U.S. Department of Health and Human Services
5600 Fishers Lane
Rockville, MD 20857

**RE: Comments and Recommendations for Funding Indian Self-Determination
Education and Assistance Act 105(l) Leases**

Dear RADM Weahkee:

On behalf of the Indian Health Service's (IHS) Tribal Self-Governance Advisory Committee (TSGAC), I write to provide a response to your March 12, 2019 "Dear Tribal Leader and Urban Indian Organization Leader Letter" about funding 105(l) lease requirements. During the Self-Governance Annual Consultation Conference and the recent TSGAC meeting, we discussed the Committee's growing concern associated with IHS's requirement to fund leases under section 105(l) of the Indian Self-Determination and Education Assistance Act (ISDEAA) and the actions taken to fund Fiscal Year (FY) 2018 lease expenses.¹

TSGAC is concerned that last year's practice of reprogramming funds from other IHS accounts or funding intended for inflation costs or other purposes erodes the base budgets of Tribes. This deprives Tribes and IHS operated programs of badly needed resources to meet the health care needs of American Indian and Alaska Native (AI/AN) patients. A better solution is needed to address this ongoing and growing concern. Therefore, I propose the following recommendations:

(1) Request supplemental appropriations for FY 2019 105(l) leases.

A better solution than reprogramming would be to seek a supplemental appropriation from Congress. Appropriators are aware that recent litigation has created an unforeseen and significant new cost, and that IHS needs a bridge to a permanent, long-term solution. Since the magnitude of these costs, even in FY 2019, are difficult to predict, TSGAC recommends that IHS acknowledge this fact in its supplemental appropriation request to Congress, so appropriators may provide such sums as may be necessary for obligation through the end of FY 2019.

(2) Find other sources of funding for FY 2019 105(l) leases.

TSGAC is still unclear if the action taken in FY2018 adheres to ISDEAA's requirement to pass all congressional increases through ISDEAA agreements. Therefore, TSGAC recommends that most, if not all, of the funding comes from the Headquarters administrative funds rather than Tribal shares. In the past, IHS has held Tribes harmless when faced with a deficit of even

¹ 25 U.S.C. § 5324(l).

greater magnitude. In FY 2014, faced with a projected contract support cost shortfall of \$48 million, IHS proposed that “half of the reprogramming would be accomplished with Headquarters funds and half would be accomplished with Area funds.” Ultimately, IHS had to reprogram \$25.1 million, with approximately 80% of that from Headquarters in order to minimize impacts on Direct Service Tribes and Tribal providers. IHS should exhaust all other funds to avoid reductions in direct health care service funds.

(3) Convene a technical workgroup to create a methodology to estimate 105(I) funding needs.

Since the level of need to fund 105(I) is extremely difficult to predict, TSGAC believes a technical workgroup should be established under a standing IHS committee or workgroup to develop a policy to assist the Agency to estimate its on-going 105(I) funding needs. This workgroup should have representation from each IHS Area, TSGAC, the Facilities Appropriations Advisory Board, and the Direct Service and Contracting Tribes Advisory Committee. TSGAC has already identified two potential representatives for this workgroup and is ready to submit those nominations upon your announcement to establish the technical workgroup.

(4) Request a separate and indefinite appropriation specifically for 105(I) Leases.

This recommendation is intended to discourage any discussions and considerations to re-program current IHS funding which would be unacceptable to Tribes. We expect the IHS and Congress to honor the trust responsibility and protect the IHS appropriation in order to fund current services and program increases. The best solution to resolve these issues is for the IHS to pursue a separate and indefinite appropriation for 105(I) lease payments similar to the appropriation for Contract Support Cost (CSC) payments for ISDEAA agreements. An indefinite appropriation would save IHS and Congress from the impossible task of identifying specific amounts needed in a given year to fully fund 105(I) leases.

As the past two years have shown, predicting the activity of hundreds of Tribes and Tribal organizations is simply not feasible, and will result in more painful reprogramming. Section 105(I) lease costs share much in common with CSCs: the legal mandate to pay in full, the difficulty in projecting the full need, and their central role in health program administration. A separate, indefinite appropriation for 105(I) leases is just as much a Federal obligation to pay under the ISDEAA as is CSC.

This issue is very important to the TSGAC. If you have any questions about our comments and recommendations to fund 105(I) leases, please feel free to contact me at: lmalerba@mohegantribe.com. Thank you.

Sincerely,



Marilynn “Lynn” Malerba
Chief, Mohegan Tribe
Chairwoman TSGAC

cc: Jennifer Cooper, Director, Office of Tribal Self-Governance, IHS
TSGAC and Technical Workgroup Members