

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education Tribal Consortium  
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Sent electronically to [consultation@ihs.gov](mailto:consultation@ihs.gov)

March 19, 2021

Elizabeth A. Fowler, Acting Director  
Indian Health Service  
U.S. Department of Health & Human Services  
5600 Fishers Lane  
Rockville, MD 20857

## **RE: Funds Authorized in the American Rescue Plan Act of 2021**

Dear Acting Director Fowler:

On behalf of the Tribal Self-Governance Advisory Committee (TSGAC), I thank you for the quick consultation efforts of the Indian Health Service (IHS) to receive feedback regarding the American Rescue Plan Act (ARPA) of 2021.

In response to IHS' request for input on the factors it should consider in developing a methodology for allocating the funds authorized in ARPA, the Tribal Self-Governance Advisory Committee (TSGAC) offers recommendations like those we provided during prior coronavirus relief consultations, including:

- Funding allocations should use existing methodologies that rely upon well-known and understood factors, such as user population. Developing a new methodology could delay the transfer of funds and increase the burden on Tribal recipients to provide or verify new data points. For example, we recommend that the IHS distribute the \$600 million for necessary expenses to plan, prepare for, promote, distribute, administer, and track COVID-19 vaccines, the \$1.5 billion for COVID-19 testing, contact tracing, and other related activities and the \$240 million for public health workforce and other related activities based on User Population. The needs for COVID resources to serve individuals for testing, vaccinating and the associated public health workforce is directly proportional to the number of patients served at a location, which equates to User Population.
- Transfer funds through existing compacts, contracts, and funding agreements. Contract and Compact amendments should be streamlined and not impose any additional restrictions or requirements other than those included in the Act. The U.S. Government Accountability Office (GAO) recently reported that the ability for IHS to transfer Coronavirus Relief Funds through existing Self-Determination contracts and Self-Governance compacts allowed the agency to quickly disburse

the funds.<sup>1</sup> We hope IHS will continue this practice for the distribution of ARPA funds.

- Respect Tribal sovereignty by recognizing Tribal government authority to allocate funds in accordance with the Act. The Act identifies the intended purpose and allowable uses for the funds. Agency interpretations that limit allowable uses of the funds hinder Tribal governments' efforts to protect the health and welfare of their citizens and communities.
- Avoid placing additional administrative burdens or reporting requirements on Tribal governments that are not specifically found in the Act.
- IHS should find that Contract Support Costs (CSC) are applicable to these funds. Regardless of the source of direct funding or whether the funds are non-recurring, CSC costs are incurred by Tribal governments and must be paid.

In addition to these general recommendations that apply across the board, TSGAC offers the following input regarding funds identified in the ARPA for specific purposes:

- The Facilities appropriations of \$600 million to construction, maintenance, equipment and related activities should be kept together for allocation allowing for greatest flexibility to address local COVID response needs.
- For the \$140 million targeted for information technology, telehealth infrastructure, and IHS Electronic Health Records, we recommend that the fund be allocated to Tribal programs in its totality using the established Tribal Size Adjustment Methodology which is currently used for distribution of IT tribal shares. Tribal health programs have incurred significant burden in addressing information technology and telehealth during the COVID-19 public health emergency, and funds reserved by the IHS from the CARES Act for these purposes thus far were not made available for Tribal programs.
- Regarding the \$2 billion for lost third-party revenue, we recognize there is not an established formula but we discourage IHS from making Tribal Nations subject to burdensome and time-consuming administrative requirements to obtain or use these funds.

Lastly, I appreciate that IHS clarified during the consultation that the funds authorized are no-year funds, available until expended, and that they are non-

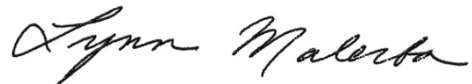
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<sup>1</sup>U.S. GAO, *COVID-19: Urgent Actions Needed to Better Ensure an Effective Federal Response*, GAO-21-191 (Washington, D.C.: Nov. 2020).

recurring. We encourage you to share the results of this and future consultation feedback along with reasoning if the IHS's decision deviates from consensus consultation responses.

Please do not hesitate to contact me at (860) 862-6192 or [lmalerba@moheganmail.com](mailto:lmalerba@moheganmail.com) with any questions or to discuss further. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Malerba".

Chief Lynn Malerba, Mohegan Tribe of Connecticut  
Chairwoman, IHS TSGAC

cc: Jennifer Cooper, Director, Office of Tribal Self-Governance, IHS  
Jay Spaan, Executive Director, Self-Governance Communication and  
Education Tribal Consortium