



March 3, 2023

Mr. Chris Anoatubby
Chairman
IHS Tribal Self-Governance Advisory Committee
c/o Self-Governance Communication and Education
314 West 14th Place
Tulsa, OK 74119

Dear Chairman Anoatubby:

First, I want to congratulate you on your position as the newly appointed Chairman of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC). I value our partnership and look forward to our continued collaboration with you and the TSGAC.

I am also writing to thank you and the members of the TSGAC for meeting with me and the IHS staff during the TSGAC's third meeting of 2022, on November 7, in Washington, D.C., and to provide updates and summarize some of the key priorities and concerns from the discussions that occurred during the meeting.

The update that follows addresses nine key issues that were raised during our November 7, 2022, meeting and outlined in your January 26 letter:

1. **TSGAC Strategic Planning Initiative.** In your letter, you shared that the TSGAC appreciates the commitment of the IHS Office of Tribal Self-Governance (OTSG) to partner with the TSGAC in the development of the TSGAC Strategic Plan, and that the TSGAC requests continued support from the IHS.

IHS Response: I look forward to hearing more about the TSGAC Strategic Planning Initiative, and how the IHS might support the TSGAC's strategic planning efforts, and the priorities identified, in the future.

2. **Updating the PSFA Manual.** The TSGAC supports efforts to update the IHS Headquarters Program, Services, Functions, and Activities (PSFA) Manual and requests that the OTSG keep this as a key priority for 2023. The TSGAC also requests updates on the status of this effort in future meetings.

IHS Response: The IHS staff began updating the IHS Headquarters PSFA Manual in 2019. However, due to COVID-19 pandemic-related priorities in 2020 and 2021, the updating of the IHS Headquarters PSFA Manual was temporarily paused, as we addressed these COVID-19 pandemic-related issues. I am asking OTSG to revive the previous efforts to update the IHS Headquarters PSFA Manual in the spring of 2023. We will be looking to

TSGAC for support and recommendations in the near future, and the OTSG will provide you with updates on the status of this effort.

3. **Access to IHS OTSG Funds Management System.** In your January 26 letter, you reported that some TSGAC members are experiencing challenges accessing financial files in the IHS OTSG Funds Management (OTSGFM) system (e.g., receiving “corrupt files” message). The TSGAC requests OTSG examine whether this is a widespread issue or something unique to specific users.

IHS Response: Feedback from users of the OTSGFM indicates that there may be a widespread problem with initially accessing financial files in the system. The OTSG staff are currently working with a contractor to rectify the issue(s). A large percentage of the problematic files have already been corrected by a recent system update, and OTSG is in the process of identifying and updating any files that were not corrected by the update to the OTSGFM regarding this issue. The remaining files will be identified and corrected within the next 30 to 60 days, restoring proper system functions.

4. **Indirect Cost Rates and COVID-19 Funding.** The TSGAC requests that the IHS engage with the Office of Management and Budget (OMB) to discuss the importance of expanding the exception (according to 2 C.F.R. §200.405(b), Allocable costs) beyond the Coronavirus Aid, Relief, and Economic Security Act funds, to include all one-time funding disbursements.

IHS Response: The IHS is aware of Tribal concerns about the impact of one-time funding from COVID-19 funding supplements on indirect cost rates and, consequently, indirect Contract Support Costs. I would like to emphasize that, currently, the IHS permits full indirect cost recovery on almost all funds. The OMB issued guidance to the U.S. Department of Interior’s Interior Business Center to disallow funding received through the U.S. Department of Treasury’s Coronavirus Relief Fund if the program did not permit indirect cost recovery. The OMB has not yet issued guidance on the remaining one-time funds that were provided through COVID-19 supplemental appropriations, including the American Rescue Plan Act, and has not indicated whether it will issue such guidance. The IHS is committed to following up on this issue with the recently appointed OMB Tribal Advisor to relay Tribal concerns and seek additional updates.

On November 25, 2022, the IHS published a letter to Tribal and Urban Indian Organization leaders providing guidance on the expiration of COVID-19 funds. This letter clarifies that COVID-19 funds are obligated by the IHS to a Tribal health program when funding is transferred through an Indian Self-Determination and Education Assistance Act (ISDEAA) Title I Contract or Title V Compact. Once funds are obligated by the IHS to a Tribal health program, the funds remain available until expended by the Tribal health program, so long as they are spent for authorized purposes. The letter is available online at: <https://www.ihs.gov/newsroom/triballeaderletters/2022-letters/>.

In addition, the IHS will issue interim guidance on Coronavirus Response and Relief Supplemental Appropriations Act reporting on funds related to testing. One of the conditions of the funding required Tribal recipients to provide an updated testing plan, report on commitments, obligations, and use of these funds on a quarterly basis. However, the IHS is still working internally to develop a system for reporting and will issue interim guidance to Tribal recipients. The interim guidance is intended to provide insight on what information will be required for reporting purposes, so that Tribal recipients can prepare for reporting through the new system once established. In the meantime, and regardless of the IHS forthcoming processes, the IHS recommends that Tribes consider how they will meet their own statutory obligations related to this funding.

5. **Transferring 105(l) Responsibilities to the Office of Finance and Accounting.** The TSGAC requests that the IHS takes the necessary steps and implement controls to ensure funds are paid in a timely manner, consistent with the Prompt Payment Act.

IHS Response: The IHS acknowledges that the Prompt Payment Act, 39 U.S.C. Section 3901 *et seq.*, applies to the transfer of funds due under a compact or funding agreement authorized pursuant to Title V. The IHS is currently working to further develop our IHS National 105(l) Lease Program, within the IHS Office of Finance and Accounting, to ensure that all necessary controls are in place to comply with the Prompt Payment Act, to the extent it applies to 105(l) leases.

6. **Community Health Aide Program Discussion.** The TSGAC supports immediate implementation of Area Community Health Aide Program Certification Boards (ACB), as some ACBs are ready to certify providers now and cannot wait for the IHS to complete its work on implementing the national Community Health Aide Program (CHAP). As such, the TSGAC requests that the IHS support a change to the first function of the two-part certification process, by authorizing or permitting ACBs to collect data for the purpose of making a provider certification recommendation to the IHS Area Director. The TSGAC recommends that the second function, certification of the provider by the IHS Area Director, should remain an IHS function.

IHS Response: The CHAP is a critical program for the Agency and the Tribes, and it will improve the services provided to patients. The collection and storage of Federal records is not an inherent Federal function. In regards to the CHAP, because the CHAP National Certification Board (NCB) and the ACBs are Federal boards, their records are Federal records, not Tribal records. As Federal records, they must be preserved and protected in accordance with all applicable Federal authorities, including, but not limited to, the Federal Records Act and the Privacy Act.

The IHS is currently engaging in internal discussions to determine how to move the certification process forward. Federal law requires the IHS to operate a CHAP NCB. The IHS CHAP Circular 20-06 dictates that the CHAP NCB be comprised of CHAP ACBs. The CHAP issues, including how the CHAP NCB and ACBs will function together, are front and center for the IHS and we are working diligently to find an immediate but efficacious path

forward, for both Tribes and the Federal Government. Regarding the certification of CHAP providers, the IHS CHAP Circular 20-06 authorizes IHS Area Directors to certify CHAP providers based on recommendations from their ACB. The need for local control and input was anticipated by the IHS in setting up the national CHAP.

Regarding distributing CHAP funds through Title I contracts or Title V compacts, the IHS needs more information and time to examine how any future funds will be distributed. The IHS is currently having internal discussions and will share outcomes on these items in the near future. This is an opportunity for the IHS to be strategic and innovative in how we can implement the IHS national CHAP to meet Tribal needs more effectively and expeditiously.

7. **Funding Tribal Administrative Costs Associated with Sanitation Facilities**

Construction. The TSGAC requests continued discussions with the IHS to find the means to allocate an equitable portion of the Infrastructure, Investment, and Jobs Act (IIJA) funds to Tribal governments. Additionally, the TSGAC encourages the IHS to continue discussions with Congress on the need to provide annual appropriations for Tribal administrative costs. Finally, the TSGAC requests the IHS to provide an update on when all reprogrammed funds will be disbursed to Tribal governments.

IHS Response: The reprogramming of the \$21 million reallocates from the annual appropriation for Sanitation Facilities Construction (SFC) to the facilities and environmental health support budget line, so that the IHS can ensure that there are resources available for Tribes that are choosing to carry out their own projects. The limitation on funding in the IIJA for salaries, expenses, and administration for Federal activities only is unfortunate, as is the three percent cap that is far below what we estimate is needed to complete these projects in a timely way. The IHS continues to discuss and explain the need for those additional resources to Congress in the hopes that they will provide them through the annual appropriation process. The IHS will distribute these funds as expeditiously as possible.

There are 456 SFC Tier 1 projects that have been identified to receive funding through the first round of IIJA. The IHS Area SFC staff and Area Tribes are in the process of completing project documents. The document creation and approval process is expected to be completed by March 1, 2023. Once the project documents are signed, IHS Area staff and Title V Tribes place those projects in the queue for design and construction. The IHS SFC project duration is four years, which is the time from project document approval to construction completion. Currently there are 107 of the 456 SFC Tier 1 projects that are estimated to start construction in fiscal year (FY) 2023, and FY 2022 of the 456 SFC Tier 1 projects in the construction phase.

An important milestone for all proposed projects is the Memorandum of Agreement or Title V Construction Project Agreement approval. As of January 25, 322 projects have signed agreements and funds allowed to the projects, representing roughly 71 percent of the total IIJA funded Tier 1 projects. Total funding for these projects is \$476,634,218, which is roughly 75 percent of the total funding allocated to the IHS Areas for Tier 1 projects.

8. **Expansion of Self-Governance authority to the Department of Health and Human Services Programs.** The TSGAC requests the IHS help to educate its Department of Health and Human Services (HHS) colleagues on the benefits and successes of Self-Governance, and to provide technical advice related to Self-Governance authority to Secretary Xavier Becerra and his team.

IHS Response: I acknowledge the TSGAC's long-standing priority of expanding Self-Governance within HHS. I am committed to providing technical assistance and engaging HHS leadership on this topic, such as utilizing recently published resources from the OTSG. I applaud the TSGAC for working with the OTSG to develop updates to the IHS Tribal Self-Governance Program (TSGP) Negotiations Handbook that serves as a reference guide to negotiating IHS ISDEAA Title V Self-Governance Compacts and Funding Agreements. The OTSG also developed updates to the OTSG brochure that explain more about the IHS TSGP. These resources are located online at: <https://www.ihs.gov/selfgovernance/resources/>. As part of the 2023 IHS Work Plan, the IHS is planning to develop an ISDEAA training for IHS employees, Tribal Leaders, and HHS operating divisions.

9. **Behavioral Health Funding.** The TSGAC requests that the IHS reconsider distributing behavioral health funds through grant mechanisms and encourages the IHS to form a workgroup to identify how the current process is working and how it can be adjusted into a formula-based model for those Tribal governments that wish to receive these funds through Self-Determination and Self-Governance mechanisms.

IHS Response: The IHS strongly supports Tribal Self-Governance and Self-Determination. The IHS Division of Behavioral Health works collaboratively with Tribes, Tribal Organizations, and Urban Indian Organizations to address behavioral health disparities experienced among the American Indian and Alaska Native population. The IHS acknowledges and supports the TSGAC's recommendation to form a workgroup to identify how the current Behavioral Health Funding process is working and to address concerns of Self-Governance Tribes.

I trust this information is 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. Thank you for your ongoing support and partnership as we work towards a shared vision for healthy communities and quality health care systems.

Sincerely,

Roselyn Tso
Director