



JAN 22 2020

Dear Tribal Leader and Urban Indian Organization Leader:

I am writing to provide you with my decision on the Indian Health Service (IHS) proposal to reprogram fiscal year (FY) 2019 funds for lease cost agreements with Tribes or Tribal Organizations authorized under section 105(*l*) of the Indian Self-Determination and Education Assistance Act, codified at 25 U.S.C. § 5324(*l*).

The IHS announced this Tribal Consultation and Urban Confer on March 12, 2019, and received a total of 18 written comments. I appreciate the input provided through these written responses. A summary of the comments is provided as an enclosure to this letter. Full written responses from commenters who provided consent have been posted to the IHS Web site at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Letters/Enclosure_DTLL_DUIOLL_105LComments.pdf. In general, commenters acknowledge the challenging funding situation, express dissatisfaction with reprogramming funds, and recommend seeking additional and separate appropriations to meet funding requirements for 105(*l*) lease cost agreements.

Under its current appropriations, the IHS is legally required to fund 105(*l*) lease cost agreements from the IHS's "Indian Health Services" (Services) appropriation account. In FY 2019, the IHS received 205 proposals, totaling nearly \$101 million, an amount four times higher than in FY 2018. Approximately \$30 million of the FY 2019 Services appropriation account that was allocated to Tribal clinic operational costs was identified as available for 105(*l*) lease cost agreements; however, these funds were insufficient to meet 105(*l*) lease cost agreement requirements. As a result, the IHS was required to identify additional funding, which led to the Agency announcement of the Tribal Consultation and Urban Confer to seek your input on the issue.

Tribal Consultation and Urban Confer commenters raised questions about other funding options, such as supplemental appropriations and the Judgment Fund. Funds from these sources were not available to the IHS for this purpose.

- Supplemental appropriations have not been feasible. This form of additional funding requires congressional action and is intended to address unanticipated emergencies, such as natural disasters.
- The Judgment Fund is solely available for court judgments or compromise settlements of lawsuits for which appropriations are not legally available. Since the Services appropriation account is legally available and required to be used for operational costs, such as those included in 105(*l*) lease cost agreements, the Judgment Fund is not available for such costs and the IHS must fund these costs from the Services appropriation account.

Therefore, I decided to provide formal notice to Congress and reprogram approximately \$72 million within the IHS's FY 2019 Services appropriation account to pay for the 105(*I*) lease cost agreements. When we initially notified congressional appropriations committees, we indicated there was a potential to reprogram up to a total of \$85 million, however, actual need as of the end of FY 2019 was below our estimate, resulting in the reprogramming of the lesser amount. The \$72 million reprogramming includes \$25 million from across multiple budget lines that follows the reprogramming allocation from FY 2018, and \$47 million from funds identified for staffing of newly constructed health care facilities, which was available due to construction delays. These construction delays meant the full amount of funds projected for staffing two newly constructed health care facilities was not required in FY 2019. Reprogramming of these funds will not reduce the total final funding levels for these facilities. The amounts identified for reprogramming in FY 2019 are applied to FY 2019 only.

I understand the ongoing concerns raised in the comments about reprogramming funds; nevertheless, the IHS is required to operate within the funding levels provided by Congress each fiscal year. The IHS has worked closely with congressional staff to keep them informed of the increasing number of proposals and the impact these costs are having on your programs and the IHS. In keeping with the IHS's desire to minimize impacts to patient care and existing base budgets, and in alignment with Tribal Consultation and Urban Confer recommendations, funds at IHS Headquarters were considered for reprogramming first.

I appreciate your input to date regarding longer-term solutions. The IHS will continue to Consult with Tribal Leaders, Confer with Urban Indian Organization Leaders, and maintain an ongoing dialogue with Congress, as we work together to identify and discuss long-term solutions. The IHS is implementing the recommendation from the March Tribal Consultation and Urban Confer to establish a technical subgroup, which will work through the IHS National Tribal Budget Formulation Workgroup, and assist the IHS with identifying and projecting future costs related to section 105(*I*). I look forward to the results of this subgroup and ongoing discussion of these and related issues during the FY 2022 IHS National Tribal Budget Formulation Work Session, which will be held on February 13-14, 2020, in the Washington, DC, area.

Thank you for your continued support and partnership with the IHS.

Sincerely,

/Michael D. Weahkee/

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Enclosure