



JUL 10 2018

Dear Tribal Leader and Urban Indian Organization Leader:

I am writing to initiate a Tribal Consultation and an Urban Confer on an impending and challenging funding decision that impacts a portion of the Agency's inflation funding increases received in the Indian Health Service (IHS) fiscal year (FY) 2018 appropriation to meet requirements of the Indian Self-Determination and Education Assistance Act (ISDEAA), specifically at 25 U.S.C. § 5324(l).

The ISDEAA at 25 U.S.C. § 5324(l), also referred to as "105(l)," authorizes the IHS to enter into a lease with a Tribe or Tribal Organization for a facility used for administration and delivery of ISDEAA services. As held in *Maniilaq Association v. Burwell*, 170 F. Supp. 3d 243 (D.D.C. 2016), the IHS is required under ISDEAA § 105(l) to enter into a "lease" upon the request of any Tribe or Tribal Organization furnishing a tribally leased or owned facility in support of the programs, services, functions, and activities carried out under its ISDEAA contract or compact. Under the lease, the IHS must compensate the Tribe or Tribal Organization for its reasonable facility expenses. However, the IHS does not have a specific funding source or separate appropriation for this requirement.

Since the IHS receives funds for operational expenses through the lump-sum "Indian Health Services" (Services) appropriation, the entire Services account is legally available and must be used to fund operating costs identified in mandatory ISDEAA leases. The majority of the funds in the Agency's Services account are already allocated through ISDEAA contracts and compacts and designated for specific programs, services, functions, and activities, therefore the emergence of significant new expenses for 105(l) leases provides a funding dilemma.

To date, the IHS has received 55 proposals from Tribes and Tribal Organizations for FY 2018, totaling approximately \$18 million. While we have identified an initial \$5 million that may be used for these leases, the IHS is required to make additional funds available. As we are faced with a difficult funding decision to meet these immediate funding requirements that are expected to grow over time, the IHS is considering use of new unallocated FY 2018 inflation increases to protect existing base funding allocations and minimize the impact to current activities.

There are no perfect solutions within the Agency's control for a sustainable funding source for 105(l) leases. We believe our best option in the short-term is to reprogram a portion of the unallocated FY 2018 inflation increases. This action may be the fairest method to address the immediate funding requirement. It takes funds "off the top" before they have been allocated and incorporated in ISDEAA contracts and compacts. I would like to emphasize that this solution is proposed solely for FY 2018 at this time. Additional Tribal Consultation and an Urban Confer will be scheduled to discuss sustainable options to address or resolve this funding requirement for FY 2019 and beyond.

The IHS must provide Congress with formal notification of any planned reprogramming of funds, but we wanted to share this information with each of you before any formal actions are taken to address this funding need. I welcome your input on this impending decision. Please submit your comments by e-mail or by postal mail to the address below by Friday, July 27, 2018.

Thank you for your support.

Sincerely,

/Michael D. Weahkee/

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

Send input by e-mail to:	<u>consultation@ihs.gov</u> Subject line: FY 2018 Funding Decision Regarding 105(l) Leases
Send input by postal mail to:	RADM Michael D. Weahkee, MBA, MHSA Assistant Surgeon General, U.S. Public Health Service Acting Director Indian Health Service 5600 Fishers Lane Mail Stop: 08E86 Rockville, MD 20857 ATTN: FY 2018 Funding Decision Regarding 105(l) Leases