



September 10, 2024

Dear Tribal Leader:

In follow-up to my June 13 letter, I am writing to initiate Tribal Consultation to seek and obtain your recommendations on funding methodologies for the payment of eligible Contract Support Costs (CSC) incurred by Tribes and Tribal Organizations (T/TOs) related to expenditures of program income (also known as third-party reimbursements) to further the purposes of the T/TOs respective Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts.

Over the past 60 days, the Contract Support Cost Advisory Group (CSCAG), made up of Federal and Tribal members met three times, to discuss needed changes to the existing funding methodology to address the calculation of CSC on expenditures of program income. The CSCAG's charge includes providing advice and recommendations on the Indian Health Service (IHS) CSC policy, as well as identifying priorities and issues for improvement.

The principles that have been agreed upon by CSCAG members are to take an approach with the broadest applicability, which aligns as much as feasible with the current CSC policy. During this timeframe, CSCAG members identified a few areas of agreement, as well as a few areas for additional discussion. Overall, there remains a considerable amount of work to be accomplished by the CSCAG and IHS staff to implement a modified methodology.

The IHS is requesting input from all Tribal Leaders, as the implementation of a modified methodology to negotiate and pay CSC on expenditures of program income can have broad budgetary implications for Tribes that receive direct services, as well as compacting and contracting Tribes.

During this Tribal Consultation, we plan to convene three in-person Consultation sessions and two virtual Consultation sessions to allow multiple opportunities to provide feedback on the Agency's proposals to calculate CSC related to expenditures of program income. Details about the Consultation sessions are provided on the following pages.

Throughout the CSCAG's discussions, there were a few recurring topics of particular interest to this Tribal Consultation. The IHS invites your recommendations and feedback broadly on the expansion of the CSC policy, as well as the necessary changes required to implement CSC calculations on expenditures of program income.

Due to the variability of how T/TOs collect program income expenditure data, the IHS is seeking your recommendations on how to estimate initial amounts, as well as reconcile CSC annually.

1. The CSCAG recommended that CSC related to program income expenditures in the upcoming year may initially be calculated based on program income expenditures in the most recently completed year. What documentation would you recommend be used to verify program income expenditures?
 - a. If the Negotiated Indirect Cost Rate Agreement does not clearly show program income expenditures, can you recommend other forms of verification that could be used?
 - b. Even if verified, are program income expenditures from a prior year a reliable number to use to estimate expenditures for a future year? If possible, please provide an estimate on how much variability in program income expenditures is typical.
2. Tribes and the IHS serve non-beneficiaries at varying levels and degrees. Some may expand services to a broader range of non-beneficiaries under a “Section 813” resolution, 25 U.S.C. 1680c(c). The CSCAG’s Tribal Representatives also recommended that program income expended on services to non-beneficiaries not be accounted for, in part due to overly burdensome data collection. The CSCAG’s Federal Representatives noted, because the law requires full-cost recovery for those services, there would be no CSC need generated related to non-beneficiary expenditures (in other words, those services should be self-sustaining).
 - a. We are asking for your recommendations on what documentation T/TOs suggest is reliable to indicate how program income is being spent as it relates to providing services to non-beneficiaries that will ensure that T/TOs are not reimbursed twice for providing those services, since full-cost recovery is necessary in these instances?
3. The CSCAG’s Tribal Representatives proposed that the negotiations process allow for certification of expenditures of program income. For your review and comment, I have included a draft of the *IHS Contract Support Costs Certification of Estimated Program Income Expenditures* form as an Enclosure to this letter. The IHS could potentially use this draft form in ISDEAA negotiations between T/TOs and the IHS to establish the estimate of CSC need and funding prior to the contract year. During negotiations and closeout based on responses to the certification, additional documentation may be requested from the T/TOs.
4. The CSCAG’s Federal Representatives noted that compensation received from third-party payors may currently reimburse some costs that might also be proposed for CSC reimbursement. The CSCAG’s Tribal Representatives indicated that they did not believe this issue needs to be addressed. We are asking for your recommendations on what documentation the IHS can use to ensure the program expenditure has not already been fully reimbursed, and there is, in fact, a CSC need.

The IHS will post the registration links listed below on the IHS Event Calendar and the Contract Support Costs web page. Please make plans to join us in at least one Tribal Consultation session in September.

TRIBAL CONSULTATION No. 1 – Virtual

Date: Wednesday, September 25, 2024

Time: 1:00 p.m. – 5:00 p.m. ET

Registration Link: <https://ihs-gov.zoomgov.com/meeting/register/vJltfu2przsvGsK-JQ9Bipc7H9pztxczTRg>

TRIBAL CONSULTATION No. 2 – In-Person

Date: Thursday, September 26, 2024

Time: 9:30 a.m. – 12:30 p.m. CST

Registration Link: <https://www.surveymonkey.com/r/IHSCSCNO2>

Location: Dallas, Texas

TRIBAL CONSULTATION No. 3 – In-Person

Date: Tuesday, October 1, 2024

Time: 9:30 a.m. – 12:30 p.m. EST

Registration Link: <https://www.surveymonkey.com/r/IHSCSCN03>

Location: Washington, DC

TRIBAL CONSULTATION No. 4 – In-Person

Date: Thursday October 3, 2024

Time: 9:30 a.m. – 12:30 p.m. PST

Registration Link: <https://www.surveymonkey.com/r/IHSCSCNO4>

Location: Seattle, Washington

TRIBAL CONSULTATION No. 5 – Virtual

Date: Wednesday, October 9, 2024

Time: 1:00 p.m. – 5:00 p.m. EST

Registration Link: https://ihs-gov.zoomgov.com/meeting/register/vJIsfuGhrD8qGEQt9eaMaK3qJC-jlEsZU_c

Please email your written comments and recommendations for this Tribal Consultation to consultation@ihs.gov. Use the **SUBJECT LINE: CSC Methodology for Program Income**. The deadline for transmitting written comments for this Tribal Consultation is **Friday, October 11, 2024**.

This letter also provides an update on the Agency's ongoing efforts that the IHS has taken to implement the United States Supreme Court's decision in *Becerra v. San Carlos Apache Tribe* (*Becerra*). One immediate action we have taken is evaluating past Agency decisions that may be impacted by this decision. As a result, staff from IHS Area Offices are currently contacting you to negotiate amounts for eligible CSC that were incurred related to expenditures of

fiscal year 2021 Lost Reimbursement Funds authorized by the American Rescue Plan Act (ARPA) Supplement that were previously deemed ineligible for CSC.

In addition, prior to the Court's ruling in *Becerra*, the IHS denied numerous claims for CSC presented under the Contract Disputes Act (CDA) in accordance with the Agency's understanding of its obligations under controlling law at that time. Since the Court's decision provided a new framework for fulfilling the IHS's legal obligations as they relate to third-party expenditures, the IHS has been reviewing decision letters that denied program income CDA claims (claims) issued within the past 12 months that T/TOs have not yet appealed to the Civilian Board of Contract Appeals or in Federal district court. Where appropriate, the IHS will issue targeted letters withdrawing many of these denied decisions, so that the claims can stay at the awarding official level, and the IHS and T/TOs can discuss and review these claims in accordance with the *Becerra* decision. These withdrawal letters may include a request that you provide supplemental documentation, or otherwise identify documentation that the IHS intends to rely on during its consideration of the claims.

Please look for such withdrawal letters closer to any identified appeal deadline. If you have questions about your specific circumstances and claims, you may contact your awarding official directly, or send your concerns by email to IHSCDAClaims@ihs.gov. The IHS is confident that this positive step represents a good faith effort that demonstrates our willingness to work cooperatively with you to resolve claims presented to the Agency. We believe this approach will provide an opportunity for the parties to resolve these disputes expeditiously.

I look forward to engaging with you throughout this process to modify the current methodology as we work to achieve mutually beneficial outcomes and provide additional resources to Tribal communities. If you have any questions on the Tribal Consultation on CSC for Program Income, or the Agency's approach to implementation, please contact Ms. Johnnita Tsabetsaye, Director, Contract Support Costs, Office of Direct Service and Contracting Tribes, IHS, by email at johnnita.tsabetsaye@ihs.gov. Thank you for your valuable input, partnership, and ongoing support.

Sincerely,

Roselyn Tso
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Roselyn Tso -S
Date: 2024.09.10
10:46:45 -04'00'

Roselyn Tso
Director

Enclosure: DRAFT FORM– *IHS Contract Support Costs Certification of Estimated Program Income Expenditures*