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Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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VIA E-MAIL
consultation@ihs.gov

May 16, 2018

RADM Michael Weahkee, Acting Director
Indian Health Service
5600 Fishers Lane
Mail Stop: 08E86
Rockville, MD 20857

Re: CSC "97/3" Method Tribal Consultation

Dear Acting Director Weahkee:

On behalf of the Cherokee Nation, we submit the following comments on the agency's proposed revisions to Section 6-3.2E(3) of the Indian Health Service (IHS) Manual addressing contract support cost (CSC) issues (the so-called "97/3 method").

The 2016 policy was developed after years of CSC Workgroup meetings and tribal consultation. Many of the tribal comments received during the consultation process were incorporated into the policy. The policy represented a compromise between the Tribes' views of what the law commands and the agency's competing views at the time. While neither the Agency nor the Tribes found it perfect, both recognized that it respected the differing perspectives on certain key issues, including duplication. Both sides also recognized that trust would be integral to effective implementation. Importantly, both sides also committed in the new Manual to a collaborative process for future changes.

We believe that Tribal Consultation is critically important and are very disappointed in your Dear Tribal Leader letter dated December 21, 2017, which unilaterally rescinds section 6-3.2E(3) of the policy. In March the CSC Workgroup met and developed alternate language which at that time was acceptable to all those present. Your April 13 letter initiating consultation now recommends still further options. After reviewing the options, we recommend that the IHS reinstate the original language agreed to by the Tribes and IHS in October 2016 and the minor changes approved by the Workgroup in March 2018. That language took into account the differing positions of the Agency and Tribes but attempted to strike a compromise that would facilitate continued contracting and compacting.

Your April 13 letter stated "the IHS became aware that section 6-3.2E(3) may not conform in all cases with the statutory authority of the [ISDEAA]." In our most recent meeting during the

Annual Self Governance conference, your colleagues indicated they had encountered one situation where the agency staff believed that the outcome might not conform to statutory authority. One instance simply does not justify changing the entire policy. The agency has ample safeguards to deal with any situation where it believes applying the policy would cause a violation of the law.

The Nation agrees and supports the Workgroup's recommendation and believes it is the only acceptable option. The Workgroup's option responds to IHS's concern about previously negotiated amounts, while otherwise retaining as much of the original policy, and tribal autonomy, as possible.

The Inter-Tribal Council of the Five Civilized Tribes (ITC) held their quarterly meeting April 29 through May 1. The CSC Policy issue was brought before the ITC for discussion by the ITC's Health Committee. These discussions resulted in the development and approval of the enclosed resolution which strongly opposes the IHS proposed alternatives to revise the policy and supports the limited changes recommended by the CSC Workgroup.

Thank you for the opportunity to submit comments on these CSC policy issues and we hope that your actions moving forward respect the government-to-government relationship and grant due consideration for the opinions of Tribes and Tribal organizations.

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Bill John Baker
Principal Chief of the Cherokee Nation

Enclosure

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES

A Resolution Supporting the Indian Health Service Contract Support Workgroup's Recommended Changes to the Contract Support Cost Policy

Resolution No. 18-14



Bill John Baker
Principal Chief

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes (ITC) is an organization that unites the tribal governments of the Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Nations, representing approximately 750,000 Indian people throughout the United States; and



Bill Anoatubby
Governor

WHEREAS, all the ITC tribes operate Indian Health Service (IHS) Title V Self-Governance Compacts and Funding Agreements; and



Gary Ralton
Chief

WHEREAS, the United States Supreme Court affirmed that IHS must provide Tribes Contract Support Costs (CSC) and Congress provides an indefinite appropriation to pay CSC; and



James R. Floyd
Principal Chief

WHEREAS, the IHS published a new CSC Policy in 2016, which states that Policy "changes will only be implemented after Tribal consultation"; and



Greg P. Chilcoat
Chief

WHEREAS, the IHS Acting Director temporarily rescinded section 6-3.2F(3) "Alternative Methods for Calculating Indirect Costs Associated with Recurring Service Unit Shares" on December 21, 2017, which provides Tribes what is known as the "97/3 option" for determining duplication for service unit shares, such action resulting in delays for tribes in active negotiation; and

WHEREAS, the IHS has not adequately illustrated that this methodology is inconsistent with the Indian Self-Determination and Education Assistance Act; and

WHEREAS, despite the lack of data supporting the temporary rescission of the "97/3 option" the CSC Workgroup, a joint Federal/Tribal Workgroup, convened and unanimously recommended a solution to the Acting IHS Director; and

WHEREAS, the Acting IHS Director forwarded the CSC Workgroup recommendation to all Tribal Leaders for Tribal Consultation, but at the same time, forwarded two other alternatives for revising the CSC Policy, not recommended by the CSC Workgroup, that would in effect remove a Tribe's right to choose the option for determining duplication of service unit shares; and

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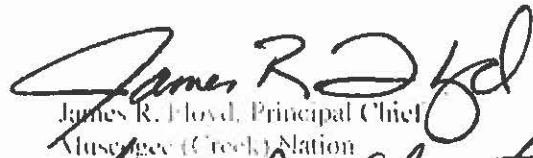
NOW, THEREFORE LET IT BE RESOLVED THAT, the Inter-Tribal Council of the Five Civilized Tribes strongly opposes the IHS-proposed alternatives to revise the CSC Policy.

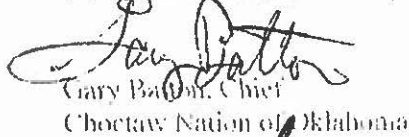
BE IT FURTHER RESOLVED THAT, the Inter-Tribal Council of the Five Civilized Tribes supports the limited changes to section 6 (3.21.15) of the CSC Policy recommended by the IHS CSC Workgroup and urges the Acting IHS Director to implement it immediately upon close of the Tribal Consultation period.

CERTIFICATION

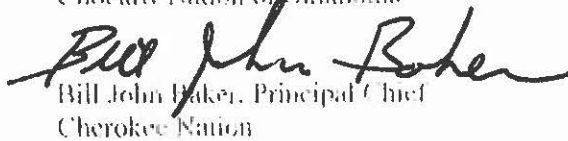
The foregoing resolution was adopted by the Inter-Tribal Council of the Five Civilized Tribes meeting in Catoosa, Oklahoma on this 1st day of May, 2018, by a vote of 21 for 0 against and 0 abstentions.


Bill Anontubby, Governor
The Chickasaw Nation


James R. Floyd, Principal Chief
Muscogee (Creek) Nation


Gary Ballou, Chief
Choctaw Nation of Oklahoma


Greg P. Chilesat, Chief
Seminole Nation of Oklahoma


Bill John Baker, Principal Chief
Cherokee Nation