

January 29: USET SPF Alert: IHS Reprograms \$72 M for FY 2019 105(I) Lease Obligations

Dear USET SPF Board of Directors and DC Tribal Reps,

On Wednesday, January 22nd, the Indian Health Service (IHS) Principal Deputy Director Michael Weahkee announced his decision via [Dear Tribal Leader Letter](#) (DTLL) [linked] to reprogram approximately \$72 million within the agency's Fiscal Year (FY) 2019 Services appropriation account to pay for FY 2019 Section 105(I) lease obligations as required under the Indian Self-Determination and Education Assistance Act (ISDEAA). Under its current appropriations, the IHS is legally required to fund 105(I) lease cost agreements from the Services appropriation account.

As you know, Section 105(I) of the ISDEAA requires IHS, at the request of a Tribal Nation or Tribal organization, to enter into a lease for a facility that is owned or leased by the Tribal Nation or Tribal organization that is used for administration or delivery of services under the Act. As a result of *Maniilaq Association v. Burwell*, where the Supreme Court ruled that 105(I) leases must be fully paid by the IHS, the agency is required to make additional funds available for growing 105(I) leasing requests.

In FY 2019, the IHS received 205 proposals, totaling nearly \$101 million, an amount four times higher than in FY 2018. While approximately \$30 million of the FY 2019 Services appropriation account that was allocated to Tribal clinic operational costs was identified as available for 105(I) lease cost agreements, this was insufficient to meet 105(I) lease cost agreement requirements. As a result, the \$72 million will be reprogrammed from multiple lines within the Services account: \$25 million from inflationary increases for Clinical Services, Preventive Health, and Other Services and \$46.7 million from staffing packages as a result of delays in construction.

It is important to note that these dollars are being reprogrammed for FY 2019 from FY 2019 monies. Discussion has not yet begun around any reprogramming that may need to happen for the current fiscal year, FY 2020. For FY 2020, the \$125 million appropriation for 105(I) leases at IHS represents over 50% of the total increase for the agency in FY 2020, an increase that already does not fully account for medical inflation. While the appropriation is likely to mostly avoid a large reprogramming of other lines of the IHS budget, it impacts the IHS budget overall by consuming a majority of new monies.

USET SPF continues to advocate for a separate, indefinite appropriation for 105(I) lease costs, much like Contract Support Costs, in order to avoid impacts to other lines in the BIA, BIE, and IHS budgets. In April 2019, USET SPF provided [comments](#) [linked] to IHS in response to the agency's Tribal consultation seeking short-and long-term options to meet growing 105(I) obligations. We urge IHS to immediately discontinue efforts to reprogram critical funding from within the IHS budget and work with Congress to seek a permanent full funding solution without reducing other line items with the IHS budget.

IHS is currently in the process of establishing a technical subgroup, which will work through the IHS National Tribal Budget Formulation Workgroup, to assist the agency in identifying and projecting future costs related to section 105(I) obligations.

We continue to monitor developments on growing costs for 105(I) leases and will provide updates as they become available.