HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES

CONCERNING THE FISCAL YEAR 2026 BUDGET FOR THE INDIAN HEALTH SERVICE AND THE BUREAU OF INDIAN AFFAIRS

Testimony of Lloyd B. Miller, Sonosky Chambers, Sachse, Miller & Monkman LLP
Counsel to the National Tribal Contract Support Cost Coalition

The National Tribal Contract Support Cost Coalition consists of 25 Tribes and inter-tribal organizations located across 13 States, collectively operating over one billion dollars in Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) programs on behalf of over 250 Native American Tribes.[1]

The Coalition was launched in 1996 to press Congress and the agencies to honor the Government's legal obligation to add contract support cost funding to every contract and compact awarded under the Indian Self-Determination and Education Assistance Act (ISDA). During this same period, Tribes across the country sought to enforce this obligation in litigation, eventually leading to two Supreme Court victories cementing the Government's duty to pay contract support costs in full: *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005) and *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182 (2012).[2]

In the wake of the *Cherokee Nation* and *Ramah Navajo* decisions, this Committee adjusted the appropriations process to recognize the mandatory nature of contract support cost reimbursements. And in doing so, the Committee relied on the BIA's and the IHS's reports on the amounts required to fully reimburse the Tribes.

But the amounts IHS reported to Congress were gravely understated. This is because IHS chose to ignore that a significant portion of tribally-contracted health care operations—just like IHS's own health care operations—are funded with third-party collections from Medicare, Medicaid and private insurance. (Indeed, the entire IHS system would collapse today without these essential collections.)

---

[1] The Coalition members are the Alaska Native Tribal Health Consortium (AK), Arctic Slope Native Association (AK), Central Council of Tlingit & Haida Indian Tribes (AK), Cherokee Nation (OK), Chickasaw Nation (OK), Choctaw Nation (OK), Citizen Potawatomi Nation (OK), Confederated Salish and Kootenai Tribes (MT), Copper River Native Association (AK), Forest County Potawatomi Community (WI), Fort Defiance Indian Hospital Board (NM + AZ), Kodiak Area Native Association (AK), Little River Band of Ottawa Indians (MI), Muscogee (Creek) Nation (OK), Pueblo of Zuni (NM), Riverside- San Bernardino County Indian Health (CA), San Carlos Apache Tribe (AZ), Shoshone Bannock Tribes (ID), Shoshone-Paiute Tribes (ID, NV), Southeast Alaska Regional Health Consortium (AK), Spirit Lake Tribe (ND), Tanana Chiefs Conference (AK), Yukon-Kuskokwim Health Corporation (AK), Northwest Portland Area Indian Health Board (43 Tribes in ID, WA, OR), and the Ysleta del Sur Pueblo (TX).

[2] I was counsel for the Tribes in both cases and also argued the *Cherokee Nation* case.

IHS's failure to fully reimburse the Tribes for the cost of operating these contracts, contrary to the mandates of the ISDA led to yet a third round of litigation culminating in last June's tribal victory in *Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024).[3]

Prior to the *San Carlos Apache Tribe* victory, IHS calculated that contract support cost reimbursements to the Tribes required just under $1 billion annually. This calculation only counted the portion of tribal health programs that were funded with annual appropriations. But IHS knew that tribal health programs are also funded with third-party collections, and that those collections account for over 60 percent of many IHS service unit budgets across the country. IHS also knew that, because actual health care operations are more than double what they would be without access to third-party revenues, overhead costs too would more than double if IHS had to honor these contracts in full. In fact, IHS told the Supreme Court that a victory in the case would require "an estimated $800 million to $2 billion in additional contract funding per year."[4]

The Supreme Court in the *San Carlos Apache Tribe* case rejected IHS's narrow view of its contractual obligations under the ISDA. The Court held that the law mandates that contract support costs be reimbursed in full. This means that contract support costs are a mandatory obligation, and their reimbursement is not discretionary.

Mandatory Appropriation

Given the Supreme Court's decisions in the *San Carlos Apache Tribe* and earlier CSC cases, this Committee is now required to allocate the full amount needed for contract support cost reimbursements, between $1.8 billion and $3 billion. (The same is true of leasing payments due under Section 105(*l*) of the ISDA.)

But this is impractical, which is why the only reasonable option is to reclassify all contract support cost (and section 105(*l*) leasing) accounts as mandatory payments. Language to accomplish this result has been shared with this and other Committees in connection with the FY 2025 appropriation. If this reclassification is not enacted in connection with the FY 2025 appropriation, then the National Tribal Contract Support Cost Coalition respectfully requests that the reclassification be enacted as part of the FY 2026 appropriation.

The Reconciliation Process and Difficulties with Current Bill Language

As we have noted in past years, current bill language concerning contract support costs significantly differs between the BIA and IHS. Bill language for the BIA (but not IHS) states that CSC appropriations shall only be "available for obligation" during the current fiscal year, impeding the BIA's ability to access the appropriation to reimburse additional amounts found due after the fiscal year has closed. We respectfully encourage the Committee to modify the BIA language to match the IHS language in this regard.

Similarly, the BIA's practice of recalculating "direct" contract support costs every year

[3] I was counsel for the San Carlos Apache Tribe and presented argument for the Tribe in the *San* Carlos case.

[4] Petitioners' Br. at 18 (filed Jan 4, 2024) (emphasis added).

differs from IHS practice and should be discontinued. Instead, DCSC requirements, once calculated, should simply be adjusted by the Treasury-published non-medical inflation rate. (For IHS, DCSC year-to-year adjustments are made according to the medical inflation rate.)

Conversely, bill language for IHS (but not the BIA) states that unspent funds "shall be applied to contract support costs due" in "subsequent years"—necessitating an additional and complicated process for determining exactly how much is available to cover a future year's CSC obligation. This language may be responsible for the fact that IHS (but not the BIA) has built up a massive post-fiscal year "reconciliation" process that leaves the books open on every tribal contract until audits and indirect cost rate agreements for each year are completed. Many tribal overhead costs therefore go unreimbursed for up to five years, leading to additional tribal claims against IHS.

The IHS reconciliation process is contrary to standard practice for calculating and paying contract support costs. Both agencies calculate and pay contract support costs—mostly indirect costs—based on an indirect cost rate that is no older than 4 years old. This provides flexibility in case audits are late, or—as has been the case for many years—the rate-making agencies are late. Either way, the goal should be to pay contract support costs based upon the best available data, and to then move on to the next year.

IHS's "reconciliation" practice does not facilitate tribal self-determination and self-governance, and each year it costs millions of dollars in man-hours for the agency and the Tribes combined. It also complicates tribal accounting and indirect cost negotiations as adjustments are made years after the books are already closed.

Attached to this testimony is suggested bill language that would make the CSC provisions uniform and eliminate the need for any IHS reconciliation process.

Payment Delays

The BIA and especially the Office of Self-Governance still fail to timely disburse contract funds to contracting and compacting Tribes. Unlike other government contractors, Tribes are left to wait months, even years, before they receive payment. In 2023, we noted that one Region failed to make any CSC payments to its Tribes. Meanwhile, OSG holds back what should be recurring contract payments until late in the fiscal year, then threatens Tribes with no payment if information demanded is not promptly provided.

The agencies sometimes overlook that these are government contracts. Forcing Tribes to file claims in order to be paid is unacceptable.

Remaining Issues

Two other important issues warrant brief comment.

- **Untimely CSC Reporting.** Neither agency is honoring its duty to timely report to Congress on the execution of its contract support cost obligations. *See* 25 U.S.C. § 5325(c). IHS and BIA reports are now years and years behind.

Reporting assures transparency and accountability. It also helps ensure the accuracy of the following year's projected CSC need amount. The Coalition requests that the Committee reinforce the agencies' CSC reporting obligations.

- **IHS replacement of contracts with grants.** The Coalition once again respectfully urges the Committee to direct IHS to cease the practice of awarding certain Indian healthcare funds as competitive grants, instead of simply adding them to existing contracts and compacts. Using the grant mechanism bypasses the ISDA's CSC reimbursement obligation while adding unnecessary grant management costs.

  IHS began requiring grant instruments for two funds shortly after the 2012 Supreme Court decision in *Ramah*. The practice has since expanded to several more activities identified in the annual Appropriations Act. Without CSC reimbursements, Tribes are compelled to reduce grant funds to cover overhead, while also incurring increased overhead costs to comply with special grant management rules. IHS's insistence on control over these funds is unwarranted in the era of Tribal Self-Determination.

  Seven years ago this Committee pressed IHS to return to the pre-2012 practice of transferring all IHS funds to contracting and compacting Tribes through their compacts and contracts. IHS launched, stalled, then relaunched a tribal consultation on the matter, but then let the matter die. IHS picked it up again last year, again heard from Tribes that they preferred to receive these funds from contracts and compacts, and yet again IHS did nothing.

  The Coalition respectfully requests that the Committee add bill language for FY 2026 mandating the transfer of substance abuse, opioid, domestic violence, suicide prevention, and other targeted funds to Tribes though their ISDA contracts and compacts.

Thank you for the opportunity to offer this testimony on behalf of the National Tribal Contract Support Cost Coalition.