NCUIH Joins NIHB and 21 Tribal Nations and Native Partner Organizations in Advocating for Tribal Sovereignty Payments for FY 2024

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written by Haley Smith | July 18, 2023

On July 12, 2023, the National Council of Urban Indian Health (NCUIH) joined the National Indian Health Board (NIHB) and 21 Tribal Nations and Native partner organizations in sending a letter to House and Senate leadership regarding the Administration's proposed fiscal year (FY) 2024 Interior, Environment, and Related Agencies Appropriations Bill. In the letter, they state their support for the President's FY 2024 proposal to reclassify Contract Support Costs (CSC) and Section 105(l) Tribal Lease Payments as mandatory appropriations and to increase program administration staff. They also urge Congress to include the proposal in their FY 2024 Interior bill.

Full Letter Text:

Dear Chair Murray, Chair Granger, Vice Chair Collins, and Ranking Member DeLauro:

On behalf of the undersigned Tribal partner organizations and the 574+ sovereign federally recognized American Indian and Alaska Native (AI/AN) Tribal nations we serve, we write in strong support of the President's fiscal year 2024 (FY24) proposal to reclassify Contract Support Costs (CSC) and Section 105(l) Tribal Lease Payments as mandatory appropriations and to increase program administration staff. We respectfully urge you to include the proposal in the FY24 Interior, Environment, and Related Agencies Appropriations Bill (herein "Interior bill").

The Appropriations Committees recognized as far back as 2014 that the mandatory nature of CSC obligations places the appropriators in an "untenable position." As they wrote in the Explanatory Statement that year, "[t]ypically obligations of this nature are addressed through mandatory spending, but in this case since they fall under discretionary spending, they have the potential to impact all other . . . equally important tribal programs." Similarly, appropriators stated in the FY 2021 Explanatory Statement for the Interior bill that 105(l) leases, as confirmed in the Maniilaq cases, appear to create an entitlement to compensation . . . that is typically not funded through discretionary appropriations. Tribal participation in ISDEAA programs has increased rapidly over the past decade, and Congress continues to struggle to meet CSC and Section 105(l) funding obligations through discretionary appropriations. In their Explanatory Statements, the Committees called on the agencies and Congress to find a sustainable solution including mandatory reclassification.

The Fiscal Responsibility Act severely restricted discretionary appropriations for FY24 and FY25. The Act also provided new mandatory appropriations to offset cuts to discretionary appropriations for some agencies, but provided no such relief for the federal government's treaty and trust obligations to Tribal nations. Agencies estimate that Tribal sovereignty payments will increase by almost $392 million (27%) in FY24. Despite this increase, the House and Senate have proposed cuts to the Interior bill by 35 percent and 3 percent, respectively. Deeper cuts elsewhere in the bill to offset Tribal sovereignty payment increases are, thus, inevitable.

Immediately moving these two accounts to mandatory is good risk management for the United States because the amount is already mandatory in nature and there is a mechanism for controlling costs. If the goal or intent is better fiscal management or maintaining annual control over federal spending, then leaving accounts in the discretionary process with standing to sue that would also generate additional administrative or legal costs if any underpayment or delay were to occur is wasteful and misleading, at best, and intentionally reckless, at worst. Since the amount is already mandatory in nature, there is nothing added to the mandatory budget by moving this authority to the mandatory side of the federal ledger. It does not take away any new money or create any new authority. In fact, it would benefit those with a keen fiscal eye because it would properly classify the authority for scoring purposes. Both CSC and Section 105(l) Lease Agreement accounts are necessarily bound by the parameters of the authorizing law and amounts are determined through sophisticated negotiations and calculations between parties with administrative avenues for recourse prior to suit. This means that the amount is determinable each year and can be determined into the future with reliability and accuracy. Further, it means that costs are controlled and defined by the amount of resources provided for HHS and DOI programs, services, functions, or activities in the Interior bill, along with other quantifiable measures like employee pay costs.

There is a better way to manage and score this authority for the American people and that is by providing such sums as may be necessary for these accounts through mandatory spending. Reallocating base funding from discretionary to mandatory funding has a net zero impact on the Federal budget and would not undermine the Fiscal Responsibility Act. Moreover, as mandatory appropriations in the Interior bill, the Appropriations Committees would retain oversight of the programs. The President’s proposal is sound, reasonable, and fair. Our organizations recognize and appreciate your strong leadership and support over the years for Tribal self-determination. For the sake of continuing to improve the federal government’s commitments to meeting its trust and treaty obligations under your leadership, we urge you to include the President’s Tribal sovereignty payments proposal in the FY24 Interior bill.

Full List of Letter Supporters

The full list of supporting Tribal Nations and Native Partner Organizations is as follows:

Tribal Nations:

- Makah Tribe
- Suquamish Tribe

Native Partner Organizations:

- Affiliated Tribes of Northwest Indians
- Alaska Native Health Board
- Albuquerque Area Indian Health Board
- American Indian Higher Education Consortium
- California Rural Indian Health Board
- California Tribal Chairpersons’ Association
- Great Lakes Inter-Tribal Council
- Intertribal Association of Arizona
- Midwest Alliance of Sovereign Tribes
- National American Indian Housing Council
- National Association of Tribal Historic Preservation Officers
- National Congress of American Indians
- National Council of Urban Indian Health

- National Indian Education Association
- National Indian Health Board
- Native American Finance Officers Association
- Northwest Portland Area Indian Health Board
- Rocky Mountain Tribal Leaders Council
- Self-Governance Communication and Education Tribal Consortium
- Southern Plains Tribal Health Board
- United South and Eastern Tribes Sovereignty Protection Fund

FY 2024 Appropriations Background & Update

On March 17, 2023, IHS published their FY 2024 Congressional Justification with the full details of the President's Budget, which included $1.6 billion in proposed mandatory funding for Contract Support Costs, Section 105(l) Leases, and the Special Diabetes Program for Indians.

On May 10, the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies held a hearing to review the President's Budget for the Indian Health Service (IHS) for FY 2024. IHS Director Tso discussed the importance of contract support costs and 105(l) leases as tools for tribal self-governance, and Senators Merkley and Murkowski expressed support for their classification as mandatory funding.

The House Appropriations Subcommittee on Interior, Environment, and Related Agencies recently released its FY 2024 Appropriations bill on July 12, rejecting the Administration's proposal and Tribal requests to make contract support costs and Tribal leases mandatory spending.