

National Indian Health Board



January 26, 2022

Ms. Elizabeth Fowler
Acting Deputy Director
Indian Health Service
U.S. Department of Health and Human Services
5600 Fishers Lane
Rockville, MD 20857

Sent via email: consultation@ihs.gov, elizabeth.fowler@ihs.gov; benjamin.smith@ihs.gov

Re: American Rescue Plan Act, Infrastructure Investment and Jobs Act, and Build Back Better Act Funding Allocations

Dear Ms. Fowler,

On behalf of the National Indian Health Board (NIHB),¹ please accept our comments regarding the allocation of \$210 million in additional funding to the Indian Health Service (IHS) from the American Rescue Plan Act of 2021 (ARPA), \$3.5 billion appropriated to IHS in the Infrastructure Investment and Jobs Act (IIJA), and \$2.35 billion currently under consideration by Congress in the Build Back Better Act (BBBA). We appreciate these historic investments into public health systems and infrastructure in Indian Country. In order to achieve appropriate and effective distribution of these funds, we affirm that IHS must work *with* Tribes to develop equitable and efficient distribution models, provide technical assistance to get projects shovel-ready, and allow flexibility for Tribes to use these funds in a way that best serves their needs.

I. American Rescue Plan Act

We greatly appreciate the funding to enhance public health capacity in Indian Country. Investment into our Peoples' public health systems is long overdue and the impact of this pandemic on Indian Country has glaringly highlighted this reality. We must work together to acquire necessary resources and support public health capacity building in Indian Country.

Eliminate the Use of Competitive Grants

During Tribal consultation on these funding sources, Tribal leaders consistently asked that funding is not distributed through competitive grant processes. First, a competitive process is fundamentally contrary to the Trust responsibility for AI/AN health owed to *all* Tribes. Tribes should not be forced to compete against one another for these funds. Second, the competitive grant

¹ Established in 1972, the National Indian Health Board (NIHB) is an inter-Tribal organization that advocates on behalf of Tribal governments for the provision of quality health care to all American Indians and Alaska Natives (AI/ANs). Whether Tribes operate their entire health care program through contracts or compacts with IHS under Public Law 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA) or continue to also rely on IHS for delivery of some, or even most, of their health care, the NIHB is their advocate.

process is inefficient and results in an unnecessary administrative burden on Tribes and IHS. Furthermore, this practice fails to result in equitable distribution of these funds. Smaller Tribes often do not have access to grant writers and other resources needed to secure grants. This disparity in resources is only exacerbated in emergency situations like the COVID-19 pandemic, which has led to severe understaffing. This creates a situation where struggling Tribes, which may have the highest needs, have the most difficulty in writing and securing grants. Being left out of grant programs then further exacerbates inequities.

Tribal leaders suggested a variety of approaches for IHS to equitably allocate these funds. Among them, IHS might consider Tribes' request for a pro-rata distribution across the 12 IHS Areas using the Tribal shares methodology and direct the Area Directors to consult with each of their respective Area Tribes about the priority and use of these funds. Further, Area allocations based on population and health status indicators can ensure the distribution process is fair. Tribes have established similar formulas for distributing funding in other programs.

We urge IHS to avoid the damaging cycle of competitive grants and instead allocate funding based on formulas. This will ensure all Tribes receive equitable funding and can avoid the administrative burden inherent in the competitive grant process. NIHB also urges IHS to use a formula that is thoroughly vetted through Tribal consultation so that all Tribes have a meaningful opportunity to provide guidance and feedback. **While Tribes have an urgent need to receive this funding as soon as possible, a balance must be struck between getting this money out *now and* developing an equitable formula that best serves Tribal nations and provides for the communities with the most need.**

Efficient Funding Distribution

Once a methodology is adopted, we urge IHS to distribute these funds to Indian Country expediently, first by efficiently distributing notices of funding opportunities. Tribes need to know what funding is coming and how it can be used so Tribes can plan programmatic activities. Tribes have pressing needs this funding can address. **The agency should commit to timely distribution of these funds to maximize effectiveness.**

Funding for School Nurses

While we appreciate the four-year investment to provide nursing support to 181 Bureau of Indian Education (BIE) schools throughout the nation, the plan should be adjusted. RNs are in short supply in many Tribal communities, so IHS should reconsider the credentials necessary to fulfill this role. RNs could be better utilized in Indian Country in inpatient and outpatient clinics, for example.

Furthermore, Alaska does not have any BIE schools, so IHS should have a parallel plan for Alaska to address the same needs for immunizations, vaccinations, COVID testing, and other student health concerns for AI/AN communities. IHS could provide a portion of this funding to be apportioned to Alaska for these activities being performed in the BIE schools throughout the lower 48 and allow maximum flexibility to the Tribes, as each region throughout Alaska faces its own unique barriers to recruitment and retainment of medical staff.

Flexibility and Tribal Control

Tribal nations need control over projects to build their public health capacity. Congress acknowledged Tribal sovereignty when it allocated ARPA funding in a way that provides flexibility to Tribes, and IHS must honor this intent and ensure that Tribes can use funding as they see fit. Tribal leaders know the needs of their nations and what needs to be done to tailor the use of funds for the well-being of their citizens. Requiring the Tribes to seek approval from IHS for projects often leads to undue delays. The agency must take a hands-off approach to the uses of this funding and minimize reporting requirements. Tribes should be granted flexibility to direct the funding where it is needed within their communities.

Accountability

IHS must be transparent with Indian Country about where this funding is going and how much each Area is receiving. Tribes in every Area deserve to know if they are being equitably funded, and Indian Country more broadly needs to know where potential shortcomings may be in order to inform own advocacy efforts. IHS must provide a comprehensive list of where this funding has gone and where it is going on a regular basis – minimally, it needs to be publicly reported quarterly.

Technical Assistance and Full Information

In addition to general transparency for funding allocations and distributions, NIHB encourages IHS to provide full and complete information to Tribes. In the past, some Tribes have received COVID relief funding without clear guidance on allowable expenses. In some cases, Tribes were not provided information about the source of the funding, and this contributed to an environment of confusion and uncertainty which made it difficult to administer the funds. NIHB also encourages IHS to ensure it provides timely technical assistance (TA) to Tribes. Tribes may struggle initially in their efforts to ramp up programming and need maximum flexibility to bring programs online.

Loan Repayment

We appreciate the decision by Congress to fund additional loan repayment awards to help address our critical provider shortages. This funding should be distributed equitably and with a formula that prioritizes the regions with the largest provider shortages.

We commend IHS for adding dental therapists as a health profession eligible for loan repayment. However, **we recommend that all Community Health Aide Program (CHAP) providers—not just dental therapists—be added as eligible health professions for the 437-scholarship program, in addition to an eligible category for loan repayment.** CHAP providers are frontline workers in many Tribal communities and will be more important across the IHS system as the CHAP is nationalized as a program. With this additional funding, we also hope IHS will expand loan repayment to health and public health fields that provide services beyond *direct* health care delivery.

Core Surveillance and Epidemiology

This funding is critical for strengthening Tribes' ability to collect and analyze data. To further support this work, we need more information on who will provide these core surveillance and epidemiological activities (including TA, training, and non-monetary support or resources). It would also be helpful to know whether IHS or CDC (or a combination) will be administering this funding. In addition, we would like IHS to let us know what data IHS is currently collecting and providing to Tribes about COVID-19.

II. Infrastructure Investment and Jobs Act

We appreciate that IHS has engaged in multiple Tribal consultations for a better understanding of both the sanitation program and the Infrastructure Investment and Jobs Act (IIJA) funding. Lack of available sanitation facilities and infrastructure in Indian Country is a longstanding inequity that has been detrimental to health, especially during COVID-19. IHS should prioritize funding to those in greatest need and help to alleviate barriers to success.

During Tribal consultation, IHS confirmed that it was possible that new projects could be added to the existing project list. Congress should be informed, in a timely manner, regarding changes to the project list so all deficiencies can continue to be addressed. **We recommend that IHS and Tribes work together to develop a timelier process for identifying delays, determining what action is needed, and keeping both Tribes and Congress informed about progress.**

To be most effective, the implementation should be carried out in coordination with Tribal nations. **We recommend that the IHS hold additional Tribal consultations before the required annual spending plan is determined.**

Interagency Coordination

We encourage IHS to engage in strong, cohesive, unified collaboration across federal agencies involved in these infrastructure projects. To succeed in appropriately managing this funding and successfully completing these projects, agencies must coordinate their efforts in Indian Country.

IHS informed the Tribes that there were 466 Tier 1 projects with \$98 million in ineligible costs. These ineligible costs may be covered by other agencies, such as the Environmental Protection Agency (EPA), but may take years to coordinate and finally receive payment. We urge IHS to provide leadership, collaborate early and often with the other agencies. During Tribal consultations, IHS officials informed Tribes that interagency meetings had not yet occurred. **We recommend that IHS coordinate such interagency action and keep both the Tribes and Congress updated on the progress. We believe that the January 31, 2022 meeting of the White House Council on Native American Affairs would be a good venue through which this interagency work can be expedited.**

Tier 1 and Tier 2 projects in any given year should not be passed over if they do not have matching contributions to cover ineligible costs or if they are facing construction supply chain or labor shortages. The funding should stay with that project for as long as needed and IHS should work with those communities and projects to address contribution issues.

Technical Assistance and Administrative Cost

The construction, design, and planning of these sanitation facilities require extensive development and expertise. Tribes may need Technical Assistance (TA) as such can help Tribes move forward with projects and successfully complete them. TA will be especially important for getting Tier 2 and Tier 3 projects ready to go.

However, the costs for that TA should not come from the construction dollars, but instead from the administrative costs. The IIJA anticipates such costs by providing 3 percent of the funding (or \$21 million) each year be attributable to administrative costs. This level is capped to ensure that

the maximum amount possible could be used for construction purposes. Using the construction funding for TA would only serve to reduce the amount available for construction and, with rising construction costs and inflation, would reduce the amount of construction possible for later projects, such as in years 4 and 5. Consequently, the funding should be used for as much construction as possible and use the 3 percent administrative costs portion for TA. **If additional funding beyond the 3 percent set-aside for administrative costs is needed for TA or other administrative costs, we urge IHS to seek other appropriations to cover such additional costs.**

We hope the agency has a plan for providing, obtaining, or securing TA for Tribes and that the Office of Environmental Health and Engineering (OEHE) has sufficient staffing to provide this TA. When planning such services, the agency should consult meaningfully and regularly with Tribes. This must also be done early in the process to make sure the process works best for Tribal nations. More generally, we want to make sure that IHS is working to increase agency capacity to support use of these funds in a sustainable way that supports the work of the Tribes.

Balance Investment in All Tiers

Since Congress has authorized this funding to remain available until expended, IHS should work with Tribes to achieve these goals through all means at its disposal. IHS should be tracking the priorities and updating Indian Country of its progress so that Tribes can plan their own projects around IHS timelines.

We would appreciate IHS balancing investment in shovel-ready and not shovel-ready projects to ensure that the Tier 3 projects are also progressing. There are various underlying inequities across the tiers and there has been a previous focus on “economically feasible” solutions and this has influenced which projects have had adequate planning and design work done to make it into Tier 1. Solely prioritizing the Tier 1 projects will further perpetuate these inequities and IHS’ focus on only the short-term and short-sighted solutions. IHS should also support self-governance compacts and contracts for sanitation programs and make sure area offices have the requisite resources and support to get Tier 2 and Tier 3 projects ready. ‘Economically Infeasible’ projects should also be prioritized with this funding.

Make Plans for Climate Readiness

As reiterated by Tribal leaders in consultation, IHS should use this opportunity to make meaningful plans for climate readiness. Many Tribes already face severe consequences of climate change. This funding must ensure infrastructure improvements account for the long-term needs of Tribal nations and the ever-evolving impact of climate change in Indian Country.

III. Build Back Better Act

We appreciate that the pending Build Back Better Act includes funding to address the 1993 Health Care Facilities Construction Priority List, maintenance and improvement projects, behavioral health services, facilities improvements, environmental health support activities, Urban Indian Organization construction, the small ambulatory program, and Tribal epidemiology centers (TECs).

No Further Reductions

This bill has not yet been passed and the numbers are not yet final. According to IHS Congressional testimony, the total facilities construction costs currently needed are approximately \$21 billion. The Administration and Congress should work with Tribes to determine appropriate additional funding levels to address the many inequities in the Indian health care system. **We urge that there be no further reductions to these numbers in the final legislation passed by Congress and signed into law and encourage IHS to convey this message to Congress when technical input is requested of the Agency. We recommend that more funding be included in the final measure to support Indian health care.**

No Competitive Grants

Our earlier comments remain relevant for BBBA as well. **This funding should not use competitive grants for distribution.** IHS must be prepared with a distribution model as soon as this funding becomes available to Tribal nations. Indian Country needs this money, without delay, to move forward with important projects for our communities.

IV. Additional Tribal Consultation

Consultation should be ongoing through the implementation of each of these sources of funding, and throughout the entirety of project development and execution. Concerns will inevitably arise throughout the length of these projects, and IHS should remain open to considering all Tribal voices and input on the process of implementing these funds.

Conclusion

This Administration has continually demonstrated its commitment to Tribal nations and to improving health care for AI/AN peoples across this nation, and this commitment and the realization of our shared goals can always be better implemented through continued Tribal consultation. We appreciate the work that IHS continues to do on behalf of our Peoples, and we are grateful for your careful consideration of NIHB's comments as outlined above.

Yours in Health,



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