

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education

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## Memorandum

TO : TSGAC and Technical Workgroup Members

FROM : Chief Lynn Malerba and Mickey Peercy

RE : IHS Acting Director Call on Settlements for Overtime Wages to Civilian Employees

DATE : May 27, 2015

The Indian Health Service (IHS) Acting Director, Robert McSwain, held a call today to “inform” Indian Country about the agency settlements for overtime wages to civilian workers totaling \$80 million. Even though Mr. McSwain was unable to share all of the details about the settlements, there was reason for alarm when he indicated that **the settlements would not be paid out of the “judgement fund”**.

Per Mr. McSwain settlements with three major unions for overtime wages, taxes and social security of employees in Federally-operated hospitals and clinics, consisting of some twenty thousand claimants from 2008-2013, will result in an \$80 million dollar settlement. IHS will pay \$60 million (\$9 million from prior year funding and \$50-51 million from prior year 3<sup>rd</sup> party health insurance collections) and an additional \$20 million in administrative and [union] attorney fees, which will be reprogrammed from the 2015 Facilities Account. The settlement is for current and past union members whether they are paying dues or not. It is expected that the average claimant will receive \$33 thousand dollars. The settlement does not include wages for Commissioned Corp employees. McSwain states in his May 22, 2015 Dear Tribal Leader Letter that the “...costs will be borne by the Service Units based upon salary obligations where the claims arose.”

Mr. McSwain indicated that the union has not provided IHS with a listing of all claimants, so IHS is only working with estimates at this time. As for how IHS will pay these settlements, McSwain indicated that they will review the accounts and see what funds have not been used in the past. It is difficult to imagine, however, that IHS still has funds remaining from 2008.

In an effort to prevent this incident in the future, IHS is launching web-based training for service units, currently scheduled to begin in August or September 2015 to verify time and attendance of claimants. In addition the agency is conducting a review of policies and procedures.

TSGAC leadership expressed their outrage and urged others on the call to express their disapproval of the agency's lack of transparency about the settlement. They also expressed concern that the administrative and legal costs were excessive at \$20 million. Mr. McSwain empathized with leadership, but expressed that IHS reviewed alternatives and found this settlement to be best for the agency. He also explained that the union attorney fees were an agreement included in the settlement.

For more information from Acting Director McSwain please review the [Dear Tribal Leader Letter \(DTLL\) here](#).

Despite the update and the written DTLL, there are several questions that remain unanswered, including:

1. How will this effect current programs and the IHS budget?
2. How will this effect full funding contract support costs (CSC) as well as the Administration's proposal to fund CSC in 2017-2018?
3. How does this effect staffing for Joint Venture Construction Projects?
4. When did these claims originate versus when were they filed?
5. Why was this never discussed in Executive Session with TSGAC?
6. How was the "class action" opened up in Indian Country? How many areas are included in this claim?

TSGAC is hosting a planning and update call on Thursday, May 28, 2015 at 2:00 EST. Please join the call for additional discussion to respond to this recent announcement. Call information for the call is below:

Call in: 1-888-537-7715  
Passcode: 43706923