

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**ALTHOUGH IHS ALLOCATED COVID-19  
TESTING FUNDS TO MEET COMMUNITY  
NEEDS, IT DID NOT ENSURE THAT THE  
FUNDS WERE ALWAYS USED IN  
ACCORDANCE WITH  
FEDERAL REQUIREMENTS**

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# *Office of Inspector General*

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The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

## Report in Brief

Date: July 2023

Report No. A-07-20-04123

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**



### Why OIG Did This Audit

American Indians and Alaska Natives have long experienced health disparities and a lower life expectancy compared to other Americans and have experienced disproportionately high rates of COVID-19 infection and mortality during the pandemic. The Indian Health Service (IHS) allocated funds for COVID-19 tests (testing funds) appropriated in two bills to IHS Direct, Tribal, and Urban Indian Organization (UIO) programs. This audit is part of OIG's oversight of COVID-19 response and recovery efforts.

Our objective was to determine whether IHS ensured that COVID-19 testing funds were allocated to meet community needs and were used by IHS Direct, Tribal, and UIO programs for testing and testing-related services in accordance with Federal requirements.

### How OIG Did This Audit

Our audit covered \$29.8 million in testing funds allocated from March 27, 2020, through December 31, 2020, to 10 judgmentally selected Direct, Tribal, and UIO programs within the Great Plains Area Office's (GPAO's) geographical region. We conducted interviews and analyzed the formulae used to calculate allocation amounts to determine inclusion of community needs. We also reviewed applicable agreements and contracts, funding and utilization reports, testing logs, and accounting records documenting the receipt and use of funds for COVID-19 testing.

## Although IHS Allocated COVID-19 Testing Funds To Meet Community Needs, It Did Not Ensure That the Funds Were Always Used in Accordance With Federal Requirements

### What OIG Found

IHS ensured that COVID-19 testing funds from the Families First Act and Paycheck Protection Act used existing allocation methodologies to meet community needs through use of the existing recurring base formulae, which took into consideration programs' populations and health care needs. However, IHS did not ensure that COVID-19 testing funds were always used by Direct, Tribal, and UIO programs for testing and testing-related services in accordance with Federal requirements. Five of the 10 sampled Direct, Tribal, and UIO programs used a combined \$480,437 (\$19,912 from one Direct program and \$460,525 from Tribal and UIO programs) on expenses that did not support COVID-19 testing or testing-related activities. In addition, one Tribal program did not spend Families First Act funds totaling \$86,261 because Tribal officials were unaware that the funds expired on September 30, 2022. Finally, two Tribal programs and one UIO program did not track testing funds in accordance with Federal requirements.

These errors occurred because IHS did not provide adequate guidance to the programs regarding the appropriate uses of allocated testing funds and the proper tracking and accounting for these funds, and did not perform oversight specific to testing funds. As a result, the programs did not always have a clear understanding of how the funds could be used.

### What OIG Recommends and IHS Comments

We made a series of recommendations to IHS, including that it correct the \$19,912 in funds not used on COVID-19 testing and other testing-related activities from one Direct program and that it recover the other \$460,525 in funds not used on COVID-19 testing and other testing-related activities from the applicable sampled Tribal and UIO programs. We also made procedural recommendations that IHS recover any unused, expired Families First Act funds from all locations within GPAO; strengthen its review and oversight processes; and develop and provide adequate guidance to programs on the proper use and tracking of testing funds. IHS concurred with five of our nine recommendations and described its corrective actions. IHS partially concurred or did not concur with our other four recommendations and provided additional documentation for two of our draft report's findings. We removed those findings and reduced the dollar amount of our recommended recovery but otherwise maintain that our findings and recommendations are valid.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

The Indian Health Service (IHS) provides comprehensive health services for American Indians and Alaska Natives—a population that has long experienced health disparities (in quality of care, access to care, and outcomes) and a lower life expectancy compared to other Americans. In addition, American Indians and Alaska Natives have experienced disproportionately high rates of COVID-19 infection and mortality during the pandemic. Specifically, American Indians and Alaska Natives were 3.5 times more likely to catch COVID-19 than non-Hispanic white persons. In 2020 and 2021 (the first 2 years of the pandemic), average life expectancy for American Indians and Alaska Natives fell by over 6 years.<sup>1</sup>

COVID-19 has created extraordinary challenges for the delivery of health care and human services to the American people. There was a global shortage of basic supplies needed to respond to the COVID-19 pandemic, including COVID-19 tests. During the pandemic, IHS allocated funds for COVID-19 tests (testing funds) appropriated in two bills to IHS-administered facilities, tribally administered facilities, and urban Indian organization (UIO) clinics.<sup>2</sup> As the oversight agency for the Department of Health and Human Services (HHS), the Office of Inspector General (OIG) oversees HHS's COVID-19 response and recovery efforts. This audit is part of OIG's COVID-19 response strategic plan.<sup>3</sup>

### OBJECTIVE

Our objective was to determine whether IHS ensured that COVID-19 testing funds were allocated to meet community needs and were used by IHS Direct, Tribal, and UIO programs for testing and testing-related services in accordance with Federal requirements.

### BACKGROUND

#### Indian Health Service

Within HHS, IHS delivers clinical and preventative health services to American Indians and Alaska Natives. IHS provides a comprehensive health service delivery system for approximately

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<sup>1</sup> This information appears in the Vital Statistics Rapid Release report issued on August 2022, which used statistics from the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics, National Vital Statistics System.

<sup>2</sup> The two COVID-19 bills were the Families First Coronavirus Response Act (Families First Act), P.L. No. 116-127 (Mar. 18, 2020), and the Paycheck Protection Program and Health Care Enhancement Act (Paycheck Protection Act), P.L. No. 116-139 (Apr. 24, 2020).

<sup>3</sup> OIG's COVID-19 response strategic plan and oversight activities can be accessed at [HHS-OIG's Oversight of COVID-19 Response and Recovery | HHS-OIG](#).

2.6 million American Indians and Alaska Natives who belong to 574 federally recognized Tribes in 37 States. IHS receives annual appropriations to fund these services.

IHS has a decentralized management structure that consists of two major components: headquarters (IHS HQ) in Rockville, Maryland, and 12 Area Offices. IHS HQ responsibilities include setting health care policy, ensuring the delivery of quality comprehensive health services, and advocating for the health needs and concerns of Tribal members. The Area Offices coordinate with IHS HQ on the allocation of funds to programs within their geographical areas. The Area Offices are also responsible for monitoring operations of IHS Direct programs and for providing guidance and technical assistance to IHS Direct, Tribal, and UIO programs.

## **IHS Programs**

### *Direct Programs*

The Indian Health Care Improvement Act (IHCIA) and the Snyder Act authorize IHS to provide health services to American Indians and Alaska Natives who are members of federally recognized Tribes. IHS provides these services through IHS Direct programs.<sup>4</sup> These programs provide services, such as medical care and dental care, through IHS-operated facilities located within the Area Offices' geographic areas.

### *Tribal Programs*

In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA). ISDEAA allows Indian Tribes and Tribal organizations to have greater autonomy and to have the opportunity to assume the responsibility for programs and services administered to them on behalf of the Federal Government.<sup>5</sup> ISDEAA ensures that Tribes have paramount involvement in the direction of services provided by the Federal Government in order to target the delivery of such services to the needs and desires of the local communities. Tribal programs authorized under the ISDEAA allow Indian Tribes and Tribal organizations to administer health care programs or services under self-determination contracts with IHS (Title I

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<sup>4</sup> The Indian Health Care Improvement Act, P.L. No. 94-437 (Sep. 30, 1976), as amended; codified under 25 U.S.C. chapter 18; and the Snyder Act, P.L. No. 67-85 (Nov. 2, 1921), codified at 25 U.S.C. § 13.

<sup>5</sup> The Indian Self-Determination and Education Assistance Act, P.L. No. 93-638 (Jan. 4, 1975), as amended; codified under 25 U.S.C. chapter 46.

Tribal programs) or self-governance compacts with IHS (Title V Tribal programs).<sup>6, 7</sup> With both self-determination contracts and self-governance compacts, Tribes and Tribal organizations enter into annual or multi-year funding agreements (ISDEAA agreements) with IHS. Title I Tribes contract with IHS to plan, conduct, and administer one or more individual services that IHS would otherwise provide. Area offices are responsible for the execution of these Title I Tribal programs. In contrast, Title V Tribes compact with IHS for the Tribe to assume full funding and control over those services that IHS would otherwise provide. For Title V Tribes, IHS's Office of Tribal Self-Governance develops and oversees the implementation of Tribal Self-Governance legislation and authorities within IHS.

### *Urban Indian Organization Programs*

UIOs authorized under the IHClA receive IHS funds through grants and contracts with the appropriate Area Offices; unlike ISDEAA funding agreements, these contracts (IHClA/Federal Acquisition Regulation (FAR) contracts) are subject to the provisions of the FAR. The UIOs serve American Indians and Alaska Natives living in urban areas.

### **IHS Great Plains Area Office**

To assess the IHS Direct, Tribal, and UIO programs' use of COVID-19 testing funds, we focused on the Great Plains Area Office (GPAO), located in Aberdeen, South Dakota. The GPAO works with Direct and Tribal programs to provide health care to approximately 130,000 Native Americans who live in North Dakota, South Dakota, Nebraska, and Iowa. The GPAO's service units include seven hospitals, eight health centers, and several smaller health stations and satellite clinics. In addition, the GPAO works with two UIO programs to provide health care to Urban American Indians who do not have access to the resources offered through Direct or Tribal programs because they do not live on or near a reservation.

### **Families First Coronavirus Response Act**

On March 18, 2020, Congress passed the Families First Coronavirus Response Act (Families First Act) (footnote 2), which provided IHS with \$64 million for COVID-19 testing and testing-related

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<sup>6</sup> P.L. No. 93-638 states that self-determination contracting involves a direct "government to government" relationship between the Federal Government and the various American Indian and Alaska Native governments. With the contract, a Title I Tribe also enters into an annual funding agreement with IHS that describes the services to be administered, the associated funding, and the method of payment.

<sup>7</sup> A compact sets forth the general terms of the nation-to-nation relationship between the Tribal program and the Secretary of HHS. With the compact, a Title V Tribe enters into an annual or multi-year funding agreement with IHS that identifies the services to be administered by the Tribe, the financial terms and conditions, and the responsibilities of the Secretary of HHS.

items and services.<sup>8</sup> Section 6007 of the Families First Act requires coverage for COVID-19 testing for American Indians and Alaska Natives who receive health services through IHS, without cost-sharing on the part of those individuals. These funds remained available until September 30, 2022.

IHS provided implementing guidance for Families First Act funding through a March 27, 2020, informational letter to Tribal and UIO Leaders. This letter stated that \$3 million of the \$64 million in Families First Act funds would be allocated to UIO programs through existing IHCA/FAR contracts.

IHS allocated the remaining \$61 million to Direct and Tribal programs, using the existing allocation methodology (discussed below). IHS allocated funds to the Direct programs through increases to the programs' budgets. Tribal programs received these one-time funds through unilateral modifications to their existing ISDEAA agreements (which, according to IHS officials, meant that only IHS's authorization was required for these funds to be allocated to Tribal programs). Of the \$64 million in funding, IHS allocated \$5.6 million (approximately 9 percent) to the programs within the GPAO.

### **Paycheck Protection Program and Health Care Enhancement Act**

On April 24, 2020, Congress passed the Paycheck Protection Program and Health Care Enhancement Act (Paycheck Protection Act) (footnote 2), which provided \$750 million for COVID-19 testing and testing-related activities in Direct, Tribal, and UIO programs. The funds were to be used to develop, purchase, administer, process, and analyze COVID-19 tests. Funds could also be used for support to the workforce (such as salaries and wages for staff members who support the COVID-19 testing effort); epidemiology; and scale-up testing by public health, academic, commercial, and hospital laboratories, and by community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing. In addition, funds could be used to conduct surveillance, trace contacts, and perform other activities related to COVID-19 testing.<sup>9</sup>

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<sup>8</sup> Section 6001 of the Families First Act defines COVID-19 testing and testing-related items and services as: (1) *in vitro* diagnostic products (as defined in 21 CFR § 809.3(a)), for the detection of COVID-19 that are approved, cleared, or authorized by the Federal Food, Drug, and Cosmetic Act and (2) items and services provided to an individual during health care provider office visits, urgent care center visits, and emergency room visits that result in an order for or administration of a COVID-19 test (but only to the extent such items and services relate to the furnishing or administration of a COVID-19 test or to the evaluation of such individual for purposes of determining the need of a COVID-19 test).

<sup>9</sup> In the context of COVID-19 testing and testing-related services, the CDC website states: "Public health departments routinely collect information on people with certain infections. This process [is] known as case surveillance. . . . The information collected helps identify similarities and differences among cases. Information commonly collected includes demographic information . . . , clinical factors such as symptoms, epidemiologic characteristics (where, when, and in which populations an illness is transmitted), exposure and contact history . . . and course of clinical illness and care received." See [FAQ: COVID-19 Data and Surveillance | CDC](#).

Of the \$750 million in Paycheck Protection Act funding, \$600 million was allocated to Direct, Tribal, and UIO programs for COVID-19 testing and testing-related activities (P.L. No. 116-139, Div. B, Title I).<sup>10</sup> IHS provided implementing guidance for Paycheck Protection Act funding through a May 19, 2020, informational letter to Tribal and UIO Leaders. This letter stated that \$50 million of the \$600 million in Paycheck Protection Act funds would be allocated to UIO programs through existing IHClA/FAR contracts.

IHS allocated the remaining \$550 million to Direct and Tribal programs, using the existing allocation methodology (discussed below). IHS allocated funds to the Direct programs through increases to the programs' budgets. Tribal programs received these one-time funds through bilateral modifications to their existing ISDEAA agreements. (Bilateral modifications, agreed to by both IHS and the Tribe, were necessary because IHS could not unilaterally impose the additional contractual obligations required by the Paycheck Protection Act on the Tribal programs). Of the \$600 million in funding, IHS allocated \$50.9 million or (approximately 8 percent) to the programs within GPAO.

### **Purpose Statute and Antideficiency Act**

The Purpose Statute states that appropriated funds may only be used for the purposes for which they were appropriated. It prohibits both charging authorized items to the wrong appropriation and making unauthorized charges to an appropriation.<sup>11</sup> If a Federal agency (such as IHS) uses funds inconsistently with the appropriation's statutory language, the use is improper, even if it would result in substantial savings or other benefits to the Government.<sup>12</sup>

The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, and from accepting voluntary services.<sup>13</sup> When a Federal agency violates the Purpose Statute, the Antideficiency Act is violated only when there are insufficient funds in the correct appropriation to repay the improperly spent funds. Therefore, while many Antideficiency Act violations are caused by Purpose Statute violations, not all Purpose Statute violations create Antideficiency Act violations because the agency may be able to correct the accounts. Because Direct programs provide health services through IHS-operated facilities, funds used by the Direct Programs are subject to the provisions of the Purpose Statute and the Antideficiency Act. (Tribal and UIO programs, which are administered differently from Direct programs, are not subject to these provisions.)

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<sup>10</sup> Of the \$750 million in Paycheck Protection Act funds appropriated to IHS through HHS, \$100 million was allocated for IHS's National Supply Service Center in Oklahoma City, Oklahoma, and \$50 million was allocated for IHS to support surveillance and contact tracing. Because these funds were not allocated to the IHS Direct, Tribal, and UIO programs, they were outside the scope of this audit.

<sup>11</sup> 31 U.S.C. § 1301(a).

<sup>12</sup> See 61 Comp. Gen. 419 (1982). See also 39 Comp. Gen. 388 (1959).

<sup>13</sup> Codified at 31 U.S.C. § 1341(a), with additional provisions also found in §§ 1342 and 1517(a).

## COVID-19 Testing Funds Allocation Methodology

To expedite decisions for allocating funds to Tribal and UIO programs, IHS conducted what it refers to as “rapid Tribal Consultation and Urban Confer sessions” with officials from Tribal and UIO programs, respectively, to seek input for allocation decisions regarding the testing funds appropriated in the two COVID-19 bills (footnote 2).<sup>14</sup> Based on input received through these discussions, IHS elected to allocate funds to Tribal and UIO programs using its existing allocation methodology, which involved awarding funds to Tribal and UIO programs through existing funding mechanisms authorized by the ISDEAA (for Tribes through Title I contracts and Title V compacts) and the IHCI A (for UIO IHCI A/FAR contracts).

Under this allocation methodology, IHS used a formula that determined allocation amounts proportionally, based on each Direct and Tribal program’s recurring base funding amount.<sup>15</sup> IHS explained to us that the recurring base funding is a historical funding amount that was created over time through many Tribal consultations and negotiations that started in the early 1990s. The formula for the recurring base funding, according to IHS, has been updated and revised since then to take into account numerous factors, including population and the individual needs of the community.

Accordingly, IHS used existing allocation methodologies to allocate funding increases to the programs’ recurring base funding, thereby to determine the percentage of funds that should be allocated to each program under the Families First Act and the Paycheck Protection Act.

As described in its informational letters to Tribal and UIO Leaders, dated March 27, 2020, and May 19, 2020, IHS used a two-part allocation formula for UIO programs. Specifically, the informational letters explained that this formula consisted of a base amount for each UIO program and an amount based on the size of each program’s population.<sup>16</sup>

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<sup>14</sup> The *IHS Tribal Consultation Policy*, IHS Circular No. 2006-01, includes provisions for consultations with Tribes. In addition, the IHCI A explains that IHS policy is to confer with UIO programs whenever a critical event arises. IHS accelerated its normal consultation and confer timelines early in the COVID-19 pandemic and explained these procedural changes in both the March 27, 2020, and May 19, 2020, informational letters to Tribal and UIO Leaders. According to IHS officials, these accelerated procedures gave IHS insight on how best to serve the American Indian and Alaska Native population.

<sup>15</sup> According to IHS Circular No. 92-05, funds are designated as recurring if it is likely that appropriation will be continued in the next year and that the program, in its purpose and design, will be operated continuously to ensure maximum effectiveness. The cumulative sum of recurring allocations is called the recurring base.

<sup>16</sup> According to IHS *Special General Memorandum 95-02*, population is determined by the count of American Indians and Alaska Natives who are eligible for IHS services, who have registered for those services, and who have used those services during the most recent 3-year period.

## Requirements for Receipt and Use of COVID-19 Testing Funds

While Tribal and UIO programs received COVID-19 testing funds in a manner consistent with the needs of their community through existing funding mechanisms authorized by the ISDEAA (for Tribes through Title I contracts and Title V compacts) and the IHCA (for UIO IHCA/FAR contracts), the COVID testing funds included specific restrictions on the use of the funds with which the programs were required to comply. Therefore, the requirements for the testing funding differed from the requirements applicable to the usual Tribal and UIO funding.

As a condition of receiving Families First Act funds, the modifications to ISDEAA agreements stated that Tribal programs must abide by the following requirements:

- These funds may be used only for health services consisting of COVID-19 testing-related items and services as described in the Families First Act, Div. F, section 6007.<sup>17</sup>
- In the event the program does not use the funds for that purpose, it should promptly return those unused funds to IHS.
- If the Tribe disagrees with these requirements, it should immediately notify IHS to return the funding in its entirety.

As a condition of receiving Families First Act funds, each UIO program was also required to submit a scope of work, budget, and budget narrative describing the planned use of the funds.

In addition, according to guidance issued by IHS HQ, Tribal and UIO programs should track funds separately from their other revenues.

As a condition of receiving Paycheck Protection Act funds, each Direct, Tribal, and UIO program was required to complete and submit both a one-time spending plan before receiving funds and a testing plan within 30 days of receiving the funds. In addition, Tribal and UIO programs must abide by the following requirements:

- These funds may be used only for necessary expenses for activities related to COVID-19 testing as identified in the Paycheck Protection Act, Div. B, Title I.<sup>18</sup>
- The funds cannot be re-budgeted or re-designed for any other purpose.

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<sup>17</sup> The Families First Act, Div. F, section 6007, refers to section 6001(a), which specifies items and services furnished to an individual during health care provider office visits, urgent care center visits, and emergency room visits that result in an *in vitro* diagnostic product. Further details on required uses appear in Appendix B.

<sup>18</sup> The Paycheck Protection Act, Div. B, Title I, describes necessary expenses as those used to develop, purchase, administer, process, and analyze COVID-19 tests. Further details on required uses appear in Appendix B.

- In the event the program does not use these funds consistent with all conditions outlined above, it agrees to return the funds to IHS.
- If the program does not agree with these requirements, it cannot receive the funds.

IHS explained to us that it did not conduct a “unique” review of funds once they had been allocated to the different programs, and instead relied on “existing review mechanisms [that were] in place” for Families First Act and Paycheck Protection Act funds, as described below:

- For Direct programs, the chief executive officer and governing board of each program, and the applicable Area Office, oversee of the use of all funds, including COVID-19 funding.
- For Tribal programs, if the program expends \$750,000 or more of Federal assistance during the fiscal year, the program is required to have a single or program-specific audit conducted each year in accordance with Federal regulations (45 CFR §§ 75.501 through 75.521).
- For UIO programs, an Urban Indian program-controlled board of directors oversees the use of all funds, including COVID-19 funding. Area Offices oversee the administration, management, evaluation, contract monitoring, and funding responsibilities for these contracts.

In addition, IHS explained that the programs were encouraged, but not required, to report to IHS the numbers of tests that they administered.

## **HOW WE CONDUCTED THIS AUDIT**

Our audit covered testing funds allocated to Direct, Tribal, and UIO programs from March 27, 2020, through December 31, 2020. Specifically, our audit covered \$29.8 million in funds (\$3.3 million from the Families First Act and \$26.5 million from the Paycheck Protection Act) that IHS allocated to 10 sampled programs within the GPAO’s geographical region. These amounts represented approximately 59 percent and 52 percent, respectively, of the total amounts of funds that IHS allocated to the GPAO. We judgmentally selected 10 programs to review, consisting of 4 Direct, 4 Tribal, and 2 UIO programs, as shown in the table on the following page.<sup>19</sup>

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<sup>19</sup> We judgmentally selected four Tribal programs: two programs managed by Title I Tribes (Three Affiliated Tribes and Santee Sioux Nation) and two programs managed by Title V Tribes (Spirit Lake Nation and Winnebago Tribe).

**Table: Direct, Tribal, and Urban Indian Organization Programs Sampled for This Audit**

Type of Program	Name of Sampled Program	Families First Act Allocation Amount	Paycheck Protection Act Allocation Amount
Direct Programs	Belcourt Service Unit	\$520,141	\$3,998,304
	Eagle Butte Service Unit	731,322	4,692,451
	Pine Ridge Service Unit	543,170	4,811,912
	Rosebud Service Unit	366,983	2,808,928
Tribal Programs	Spirit Lake Nation	162,100	1,423,868
	Winnebago Tribe	378,838	2,788,922
	Three Affiliated Tribes	367,592	2,735,274
	Santee Sioux Nation	96,490	823,163
Urban Indian Organization Programs	Nebraska Urban Indian Health Coalition	50,164	836,068
	South Dakota Urban Indian Health	93,949	1,565,815 <sup>20</sup>
<b>Total Amounts</b>		<b>\$3,310,749</b>	<b>\$26,484,705</b>

We interviewed IHS HQ and GPAO personnel; analyzed the formulae used to calculate allocation amounts to determine inclusion of community needs; and obtained and reviewed applicable modifications to ISDEAA agreements and IHCIA/FAR contracts, funding and utilization reports submitted to IHS, testing logs, and relevant accounting records of Direct, Tribal, and UIO programs documenting the receipt and use of funds for COVID-19 testing.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology and Appendix B contains the details of Federal requirements and guidance related to COVID-19 testing.

## FINDINGS

IHS ensured that COVID-19 testing funds from the Families First Act and Paycheck Protection Act used existing allocation methodologies to meet community needs through use of the existing recurring base formulae, which took into consideration programs' populations and health care needs. However, IHS did not ensure that COVID-19 testing funds were always used by Direct, Tribal, and UIO programs for testing and testing-related services in accordance with

<sup>20</sup> Although IHS determined the allocation amount for South Dakota Urban Indian Health to be \$1,565,815 under the Paycheck Protection Act, the program did not accept the funding. Therefore, IHS did not disburse any Paycheck Protection Act funds to this program. During our audit, IHS officials told us that these funds are still earmarked for this specified program. We continue to show this amount in the table because it has a bearing on our first finding.

Federal requirements. Five of the 10 sampled Direct, Tribal, and UIO programs used a combined \$480,437 on expenses that did not support COVID-19 testing or testing-related activities. In addition, one Tribal program did not spend Families First Act funds totaling \$86,261 because Tribal officials were unaware that the funds expired on September 30, 2022. Finally, two Tribal programs and one UIO program did not track testing funds in accordance with Federal requirements.

These errors occurred because IHS did not provide adequate guidance to the programs regarding the appropriate uses of allocated testing funds and the proper tracking and accounting for these funds, and did not perform oversight specific to testing funds. As a result, the programs did not always have a clear understanding of how the funds could be used.

## **IHS ENSURED THAT COVID-19 TESTING FUNDS FROM THE FAMILIES FIRST ACT AND PAYCHECK PROTECTION ACT WERE ALLOCATED TO MEET COMMUNITY NEEDS**

### **Federal Requirements and IHS Guidance**

The Families First Act provided \$64 million to IHS to be allocated at the discretion of the IHS Director (P.L. No. 116-127, Div. A, Title IV). Similarly, the Paycheck Protection Act provided \$750 million to IHS to be allocated—in coordination between HHS and the IHS Director—to the Direct, Tribal, and UIO programs (P.L. No. 116-139, Div. B, Title I). IHS issued implementing guidance through informational letters to Tribal and UIO Leaders dated March 27, 2020, and May 19, 2020, which announced that funds would be allocated using existing allocation methodologies through modifications to existing ISDEAA agreements and IHClA/FAR contracts.

IHS Circular No. 92-05 described the factors used in the existing allocation methodologies, such as a recurring base funding calculation (footnote 15). IHS's existing allocation methodologies are designed to target resources based on measures of need. In the health care context, "need" refers to the requirements for the well-being of the population receiving relief. These measures include the program's population count and specific health care needs.

### **IHS Allocated and Awarded COVID-19 Testing Funds Based on Its Existing Allocation Methodology**

IHS ensured that COVID-19 testing funds from the Families First Act and Paycheck Protection Act used existing allocation methodologies to meet community needs through use of the existing recurring base formulae, which took into consideration programs' populations and health care needs. Some of the major indicators of health care need that IHS used in its resource allocation formulae were population, quality of care, productivity standards, cost differentials, external conditions, and health status of Tribal members. To determine the allocation amounts for the COVID-19 testing funds, IHS used a formula that determined those amounts proportionally, based on each Direct and Tribal program's existing recurring base amount. IHS then used a two-part allocation formula for UIO programs, which consisted of a base amount for each UIO program and an amount based on the size of each program's

population (footnote 16). Through existing methodologies, IHS made allocations from the Families First Act and Paycheck Protection Act to its Direct programs, to Tribal programs through modifications to existing ISDEAA agreements, and to UIO programs through existing IHCI/FAR contracts. Because IHS used existing allocation methodologies through the use of the recurring base formulae that considered the programs' populations and health care needs, it allocated COVID-19 testing funds to Direct, Tribal, and UIO programs to meet community needs.

## **IHS DID NOT ENSURE THAT COVID-19 TESTING FUNDS WERE ALWAYS USED BY DIRECT, TRIBAL, AND URBAN INDIAN ORGANIZATION PROGRAMS IN ACCORDANCE WITH FEDERAL REQUIREMENTS**

### **Federal Requirements**

The Purpose Statute (footnote 11) states that appropriated funds may only be used for the purposes for which they were appropriated. It prohibits both charging authorized items to the wrong appropriation and making unauthorized charges to an appropriation. If a Federal agency (such as IHS) uses funds inconsistently with the appropriation's statutory language, the use is improper, even if it would result in substantial savings or other benefits to the Government (footnote 12). The starting point in applying the Purpose Statute is that, absent a clear indication to the contrary, the common meaning of the words in the appropriation act and the program legislation it funds governs the purposes to which the appropriation may be applied.

Violations of the Purpose Statute may, but are not guaranteed to, result in violations of the Antideficiency Act. When a Federal agency violates the Purpose Statute, the Antideficiency Act (footnote 13) is violated only when there are insufficient funds in the correct appropriation to repay the improperly spent funds. Therefore, while many Antideficiency Act violations are caused by Purpose Statute violations, not all Purpose Statute violations create Antideficiency Act violations because the agency may be able to correct the accounts.

The Families First Act appropriated \$64 million to IHS for COVID-19 testing and other testing-related activities (footnote 8). In addition, the Families First Act stipulated that these funds were available only through September 30, 2022 (P.L. No. 116-127, Div. A, Title IV).

The Paycheck Protection Act authorized \$25 billion to the Public Health and Social Services Emergency Fund, of which not less than \$750 million was to be allocated to IHS. Of this \$750 million, IHS allocated \$600 million to Direct, Tribal, and UIO programs and stated that these funds could be used for necessary expenses to purchase, administer, process, and analyze COVID-19 tests.<sup>21</sup> The Paycheck Protection Act also allowed these funds to be used to conduct surveillance, trace contacts, and perform other activities related to COVID-19 testing (P.L. No. 116-139, Div. B, Title I). The Paycheck Protection Act funds were allocated to IHS through an Intra-Departmental Delegation of Authority (IDDA) with HHS. The IDDA requires bilateral

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<sup>21</sup> See also footnotes 9 and 10.

modifications to ISDEAA agreements with Tribal programs and IHCIA/FAR contracts with UIO programs to state that the funds cannot be redesigned and used for other purposes (P.L. No. 116-139, Div. B, Title I).

The modifications that IHS made to ISDEAA agreements with Tribal programs include language stating that Families First Act and Paycheck Protection Act funds may be used only for COVID-19 testing and testing-related activities. Additionally, the modifications state that the Tribal programs must promptly return to IHS any funds that are not used for this purpose.

The modifications that IHS made to IHCIA/FAR contracts with UIO programs include language stating that Paycheck Protection Act funds may be used only for COVID-19 testing and testing-related activities. Additionally, the modifications state that the UIO programs must promptly return to IHS any funds that are not used for this purpose.

### **Some Sampled Programs Did Not Use COVID-19 Testing Funds in Accordance With Federal Requirements**

Five of the 10 sampled Direct, Tribal, and UIO programs used a combined \$480,437 of testing funds for expenses unrelated to COVID-19 testing. Of this amount, \$19,912 was used by a Direct program (the Pine Ridge Service Unit). Because the Direct programs are run by a Federal agency (i.e., IHS), the amounts used by the Pine Ridge Service Unit are subject to the provisions of the Purpose Statute and the Antideficiency Act.

Specifically, four sampled programs used \$475,241 of Paycheck Protection Act funds on activities that were not related to COVID-19 testing, as follows:

- Santee Sioux Nation used a total of \$292,139 (consisting of \$180,080 to purchase vaccine incentive gift cards and \$112,059 to purchase three cars);
- Three Affiliated Tribes used \$163,170 for productivity bonuses;<sup>22</sup>
- Pine Ridge Service Unit used \$19,912 to purchase dietary food; and
- Nebraska Urban Indian Health Coalition used \$20 for a streaming service subscription.

If IHS has insufficient funds to correct the \$19,912 in violation of the Purpose Statute by the Pine Ridge Service Unit, this would constitute a violation of the Antideficiency Act.

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<sup>22</sup> Officials from Three Affiliated Tribes told us that the “productivity bonus” is an existing bonus provided biannually to providers based on the overall number of patients seen by the provider, whether or not related to COVID-19 testing. In addition, Tribal officials explained that while third-party revenue was typically used for this bonus, the Tribal finance department believed that it was appropriate to use Paycheck Protection Act funds to make up for third-party revenue that was lost because of the COVID-19 pandemic.

In addition, one Tribal program (Spirit Lake Nation) used \$5,196 of Families First Act funds on activities that were not related to COVID-19 testing, as follows:

- multiple lunch purchases totaling \$2,455,
- controlled substance prescriptions for \$1,770,
- Easter cards and candy for \$631, and
- expenditures related to the Vote North Dakota website totaling \$340.<sup>23</sup>

Finally, Three Affiliated Tribes did not spend Families First Act funds totaling \$86,261 because Tribal officials were unaware that the funds expired on September 30, 2022. If the Tribe had returned these unspent funds to IHS prior to the end of their period of availability (September 2022), IHS could have deobligated<sup>24</sup> the funds and the funds could have been reallocated to other programs to support COVID-19 response and recovery efforts.

### **IHS Did Not Provide Adequate Guidance and Oversight**

IHS issued some guidance in its informational letters to Tribal and UIO Leaders, dated March 27, 2020, and May 19, 2020, and in the additional publicly issued *Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations*, dated April 27, 2020. This publicly issued information was general in nature, and some Tribal programs told us that this guidance was not adequate. Specifically, some Tribal programs informed us that they were not given clear guidance on how to use the funds, and one program said that it was hesitant to spend the appropriations because it was worried about possible misuse. Officials from Spirit Lake Nation, which misused both Families First Act and Paycheck Protection Act funds, stated that they received very little guidance even though they contacted IHS to ask how the funds could be used. According to these Tribal officials, IHS replied that “[i]t is spelled out in the documents that were sent,” but the Tribal officials were unable to locate any clarifying information and did not believe that their program had received adequate guidance.

In addition, IHS based its oversight of Families First Act and Paycheck Protection Act funding on its routine financial controls for overall spending. IHS explained that it had relied on review mechanisms that it already had in place and had not conducted “unique” reviews of the allocated Families First Act and Paycheck Protection Act funding. However, because the requirements of the funds awarded by, and used under, these Acts differed from those applicable to routine Direct, Tribal and UIO funding, we expected to see oversight measures put into place to address these specific requirements.

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<sup>23</sup> Vote North Dakota is the governmental website for voting in the State of North Dakota and can be accessed at <https://vote.nd.gov>.

<sup>24</sup> Deobligated funds may be reobligated within the period of availability of the appropriation. For example, annual appropriated funds may be reobligated in the fiscal year in which the funds were appropriated, while multiyear or no-year appropriated funds may be reobligated in the same or subsequent fiscal years. See, GAO’s [A Glossary of Terms Used in the Federal Budget Process](#).

Furthermore, IHS did not have an adequate process in place to review modifications made to existing ISDEAA agreements and IHCIA/FAR contracts for accuracy and completeness. IHS's modifications to ISDEAA agreements and IHCIA/FAR contracts did not always convey the funding requirements of the Acts, which would—among other things—specify the purpose and expiration dates of the funds, and did not always convey that programs were expected to return funds that could not be used. For example, IHS completed a contract modification for Nebraska Urban Indian Health Coalition that: (1) incorrectly identified the funding source as the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and (2) lacked the standard language required by the IDDA that details the stipulations for receipt of Paycheck Protection Act funds.<sup>25</sup> Because of these errors, the Nebraska Urban Indian Health Coalition believed that it had not received Paycheck Protection funds and, in turn, misused some of the funds.

Because IHS did not perform adequate oversight, provide clear and adequate guidance, or ensure that funding requirements were included in modifications to existing ISDEAA agreements and IHCIA/FAR contracts, the five sampled programs used testing funds for expenses that were unrelated to COVID-19 testing and did not return unused funds to IHS for reallocation to other programs to support those program's needs for COVID-19 testing and testing-related services.

## **IHS DID NOT ENSURE THAT COVID-19 TESTING FUNDS WERE TRACKED IN ACCORDANCE WITH FEDERAL REQUIREMENTS**

### **Federal Requirements and Guidance**

For Title I tribes, Federal regulations state that Tribes should have financial management systems that allow for accounting records sufficiently detailed to identify the source and application of funds received, and that contain sufficient information to identify contract awards, obligations, and expenditures. These regulations also state that the financial management system shall permit the comparison of actual expenditures with the amounts budgeted (25 CFR § 900.45). For Title V Tribes, Federal regulations state that Tribes must maintain a recordkeeping system (42 CFR § 137.175). For UIO programs, Federal regulations state that Tribes must have organization, experience, accounting, and operational controls in place (48 CFR § 9.104-1).

Office of Management and Budget (OMB) Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, states that Federal agencies are responsible for assuring that programs are managed with integrity and in compliance with applicable law. Controls are used to reasonably ensure that: programs achieve their intended results; programs and resources are protected from waste, fraud, and mismanagement; laws and regulations are followed; and reliable and timely information is obtained, maintained, reported, and used for decision making. Further, this Circular requires agencies to assess the adequacy of internal

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<sup>25</sup> The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. No. 116-136 (Mar. 27, 2020).

control in Federal programs and operations, identify needed improvements, and take corresponding corrective action.

*IHS's Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations*, dated April 27, 2020, which provides guidance for the use of Families First Act funds, states that these funds must be used for the purposes for which they were appropriated, and that Tribal and UIO programs should track the funds separately from their other revenues.

### **Three Sampled Programs Inadequately Tracked COVID-19 Testing Funds**

Two Tribal programs and one UIO program (Three Affiliated Tribes, Spirit Lake Nation, and Nebraska Urban Indian Coalition, respectively) inadequately tracked funds that they had received through the Families First Act and the Paycheck Protection Act. Specifically, Spirit Lake Nation and Nebraska Urban Indian Health Coalition comingled their Families First Act funds with their allocated CARES Act funds. Although the CARES Act and Families First Act funds were provided to both Spirit Lake Nation and Nebraska Urban Indian Health Coalition under different account numbers, each of these programs combined the funds—without distinction—from both these acts into one fund within its general ledger.

We brought these issues to the attention of both programs during our audit. Spirit Lake Nation was subsequently able to manually identify amounts used under the Families First Act and the CARES Act. This permitted us to identify with reasonable assurance, and subsequently review, the amount of funds that that program used under the Families First Act (we did not review the CARES Act funds, as they were outside the scope of this audit). However, Nebraska Urban Indian Health Coalition was unable to manually identify the \$50,164 received and potentially used under the Families First Act. During the early stages of the pandemic, Nebraska Urban Indian Health Coalition experienced turnover in its Chief Financial Officer (CFO) position. The previous CFO was in place during this UIO program's receipt of COVID-19 testing funds, and at that time the program's CARES Act and Families First Act funds were combined in the program's general ledger. The new CFO was unable to differentiate, in the general ledger, between expenses associated with CARES Act funds and expenses associated with Families First Act funds. For this reason, we were unable to thoroughly review Families First Act funds used by Nebraska Urban Indian Health Coalition.

In addition, Three Affiliated Tribes was unable to accurately identify and report the amount of funds used from both the Families First Act and the Paycheck Protection Act. This program reported different amounts of funds used to IHS and to us and was unable to reconcile these funds to the detailed line items for the Families First Act and the Paycheck Protection Act.

### **IHS Did Not Provide Adequate Guidance and Oversight**

IHS did not provide adequate guidance to the sampled programs on how to properly track and account for allocated funds from the Families First Act and the Paycheck Protection Act.

Specifically, in one piece of publicly issued guidance, IHS's *Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations*, dated April 27, 2020, IHS stated that these funds must be used for the purposes for which they were appropriated. However, the guidance does not provide a description or examples of the types of uses that IHS considers appropriate and that align with the requirements under both Acts. This guidance also stated that Tribal and UIO programs should track the COVID-19 funds separately from their other revenues. However, the guidance does not provide examples of good practices for how to separately track and account for allocated funds.

Additionally, IHS did not perform adequate oversight to ensure the proper tracking of amounts used for the Families First and the Paycheck Protection Acts. Specifically, IHS relied on its existing review mechanisms that were in place for overall spending and did not establish specific procedures to review whether program amounts expended from Families First Act and Paycheck Protection Act funds were being separately tracked.

IHS's guidance and oversight therefore did not fully comply with Federal cost principles. OMB Circular A-123, *Management's Responsibility for Enterprise Risk Management and Internal Control*, states that Federal agencies, such as IHS, should have controls in place to reasonably ensure that: programs achieve their intended results; programs and resources are protected from waste, fraud, and mismanagement; laws and regulations are followed; and reliable and timely information is obtained, maintained, reported, and used for decision making. Because IHS did not provide adequate guidance and oversight of the Families First Act and Paycheck Protection Act funds to the programs we reviewed, as required of the agency under OMB Circular A-123, we determined that IHS has internal control deficiencies. These deficiencies limited the effectiveness of IHS's oversight, the purpose of which was to ensure that programs are managed with integrity and in compliance with applicable law. Specifically, IHS did not ensure that the Tribal programs' financial management systems' accounting records were sufficiently detailed to identify the source and application of funds received, thereby increasing the risk that funds would be misused.

## RECOMMENDATIONS

We recommend that the Indian Health Service:

- correct Purpose Statute violations totaling \$19,912 relating to funds not used on COVID-19 testing and other testing-related activities from the Pine Ridge Service Unit (an IHS Direct program), and, if IHS is unable to correct those violations, report any Antideficiency Act violations;
- identify and correct any other Purpose Statute violations relating to funds not used on COVID-19 testing and other testing-related activities from the Families First Act and Paycheck Protection Act funds allocated to the IHS Direct programs within the GPAO, and, if IHS is unable to correct those violations, report any Antideficiency Act violations;

- recover \$460,525 in funds not used on COVID-19 testing and other testing-related activities from the applicable sampled Tribal and UIO programs;
- identify and recover amounts not used for COVID-19 testing or other testing-related activities that we did not sample from remaining Tribal and UIO programs within the GPAO;
- develop and implement procedures to identify and deobligate any unused Families First Act funds that expired on September 30, 2022, from all locations within the GPAO;
- develop and provide adequate guidance to programs within the GPAO on the proper use of Paycheck Protection Act funds in accordance with Federal requirements;
- strengthen its review process to ensure that modifications to ISDEAA agreements and IHCI/FAR contracts contain complete and accurate information, including the funding source, amount awarded, and applicable language required under the funding source;
- provide adequate guidance to the programs on how to track and account for funds allocated and used under the Paycheck Protection Act; and
- work with Tribal and UIO programs within the GPAO that we did not sample to ensure that they have properly tracked and accounted for funds used under the Paycheck Protection Act.

#### **IHS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

In written comments on our draft report, IHS concurred with our first, second, fourth, seventh, and ninth recommendations and described corrective actions that it had taken or planned to take. IHS partially concurred with our third recommendation, provided additional information to support its response—to include supporting documentation related to our second major finding—and described corrective actions that it had taken or planned to take.

IHS did not concur with the remaining three recommendations.

After reviewing IHS's comments and additional documentation it provided, we removed two specific findings for this final report and correspondingly reduced the amount of our third recommendation. We maintain that our other findings and recommendations remain valid.

A summary of IHS's comments and our responses follows. IHS's comments appear in their entirety as Appendix C.

## **IHS CONCURRED WITH FIVE RECOMMENDATIONS AND DESCRIBED CORRECTIVE ACTIONS TAKEN AND PLANNED**

IHS concurred with our first recommendation and stated that it had corrected the accounting entries by reclassifying the \$19,912 in dietary food expenses (used by the Pine Ridge Service Unit) to the appropriate accounts. IHS added that this Direct program had experienced an increase in patient admissions during the COVID-19 pandemic and used these funds to purchase additional food required to feed the patients. IHS acknowledged that this use of funds did not constitute a COVID-19 testing or testing-related activity.

IHS also concurred with our second recommendation and said that it would conduct an internal review of purchases made by IHS-operated health facilities within the GPAO that used Families First Act and Paycheck Protection Act funds. IHS added that it “is considering utilizing existing enterprise risk management efforts to design and implement a plan for identifying and mitigating any potential violations” of applicable requirements.

For our fourth and ninth recommendations, IHS concurred and described its authority under the ISDEAA to review all Single Audits for Tribal programs each year. IHS stated that it would use this existing practice to identify misuse of funds from the Families First Act and Paycheck Protection Act. In addition, IHS stated that if it identifies any findings, it would work with the relevant Tribes to implement corrective actions—and said that this process would include Tribal health plans within the GPAO that we did not sample. IHS also noted that our audit included both UIOs within the GPAO; therefore, there were no other UIOs within the GPAO to review. IHS stated that it would continue to review UIO Single Audits and would work with the UIOs on corrective actions, including recovery of funds, if findings are identified.

IHS concurred with our seventh recommendation and stated that it was developing a strategy to improve review processes for ISDEAA agreements and IHCIA/FAR contracts. IHS also stated that it “recognizes that there may be a need to make corrections in specific contract modifications related to the Paycheck Protection Act funds.” Additionally, IHS referred to the “unprecedented” nature of the COVID-19 pandemic, the supplemental funding that it received, and the “urgency to allocate funding . . . to save lives in the face of disproportionate incidence and mortality rates among American Indians and Alaska Natives.” IHS stated it would use the lessons learned from the COVID-19 pandemic to develop the process improvement strategy.

## **IHS PARTIALLY CONCURRED WITH OUR RECOMMENDATION THAT IT RECOVER FUNDS USED ON EXPENSES NOT RELATED TO COVID-19 TESTING**

### **IHS Comments**

IHS partially concurred with our draft report’s third recommendation—that it recover \$529,885 in funds not used for COVID-19 testing and other testing-related activities from the applicable sampled Tribal and UIO programs. Specifically, IHS concurred with our finding on the Santee Sioux Nation’s use of a total of \$292,139 for vaccine incentive gift cards and the purchase of

three cars, and added that it would work with the Tribe on corrective actions. IHS also concurred with our finding (but not our recommendation) on the Three Affiliated Tribes's use of \$163,170 for productivity bonuses. IHS said that because the Tribe corrected "the recording error," IHS considered the matter to be resolved and thus, would not recover the \$163,170.

Our draft report conveyed findings that the Nebraska Urban Indian Health Coalition used a total of \$2,384 for landscaping services and a streaming service subscription. IHS agreed that the streaming service subscription was not for COVID-19 testing-related activities and stated that it would work with this UIO on corrective action. IHS did not agree, however, with our finding—or the associated amount in our third recommendation—regarding this UIO's use of \$2,364 in COVID-19 testing funds for the landscaping service. IHS's comments included additional documentation to show that the UIO used this service to remove snow for a COVID-19 testing event.

Our draft report also conveyed a finding involving Spirit Lake Nation's purchase of two cars for a total of \$66,996. IHS did not concur with the associated amount in our third recommendation and included in its comments additional documentation to show that Spirit Lake Nation used the cars to support contract tracing. Accordingly, "IHS determined that the Tribe's use of the funds was related to COVID-19 testing."

### **Office of Inspector General Response**

After reviewing IHS's comments and additional documentation that it provided, we removed two specific findings for this final report and correspondingly reduced the amount of our third recommendation. Specifically, we removed our draft report's findings on the \$2,364 for landscaping services (Nebraska Urban Indian Health Coalition) and the \$66,996 for the purchase of two cars (Spirit Lake Nation), and we reduced the amount of our final report's third recommendation from \$529,885 to \$460,525. (Our final report retains the finding on the \$20 for the streaming service subscription (Nebraska Urban Indian Health Coalition).)

Although we acknowledge that IHS concurred with our finding related to the Three Affiliated Tribes's use of \$163,170 for productivity bonuses, we disagree with its determination not to recover funds because the Tribe corrected a recording error. IHS did not provide additional supporting documentation that this misuse of testing funds was due to a recording error nor during fieldwork did the Three Affiliated Tribes indicate to us that a recording error had occurred.

### **IHS STATED THAT THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT ALLOWS TRIBES TO USE COVID-19 TESTING FUNDS BEYOND THE EXPIRATION DATE**

#### **IHS Comments**

IHS did not concur with our fifth recommendation—that it develop and implement procedures to identify and recover any unused Families First Act funds that expired on September 30, 2022,

from all locations within the GPAO—because, it stated, the ISDEAA and IHS annual appropriation provide authority for Tribes to use COVID-19 funding beyond the expiration date as long as IHS obligates the funds before they expire. IHS said that it obligates funds to a Tribal program “when funding is transferred through an ISDEAA Title I contract or Title V compact” (footnotes 6 and 7) and added that once IHS has obligated funds to a Tribal program, the funds are available to that program until expended. In these contexts, IHS cited to relevant language in Title I and Title V of the ISDEAA and the IHS annual appropriation, and stated that it provided guidance to Tribes through a Dear Tribal Leader and Urban Indian Organization Leader Letter dated November 25, 2022. IHS stated that therefore, it would not recover expired funds that have been obligated to Tribal Health Programs through ISDEAA Title 1 contracts and Title V compacts.

Additionally, IHS stated that it obligates funds to a UIO when funding is transferred to a UIO through an IHCI/FAR contract. IHS added that once obligated, “these funds are available for expenditure by UIOs until the date specified in the FAR contract or until the overall contract expires.” Furthermore, with respect to Direct programs (referred to as “IHS-operated Health Programs” in its written comments), IHS relayed that as of May 1, 2023, the GPAO has \$10,000 remaining in expired, unobligated Families First Act funding. IHS stated that these funds are “legally available for five years after expiration for any necessary adjustments,” after which the funds would cancel and be returned to Treasury.

### **Office of Inspector General Response**

We reviewed IHS’s comments and adjusted our fifth recommendation with respect to funds distributed to Tribal programs. Accordingly, this recommendation now states that IHS should develop procedures to identify and deobligate (rather than “recover,” which is the word that our draft report used here) any unused Family First Act funds that expired on September 30, 2022, from all locations within the GPAO.

We maintain, however, that the process IHS used to distribute these funds to the Tribal programs was problematic. When awarding these funds, IHS bound these funds’ recipients to the Families First Act’s purpose limitations in non-binding guidance it issued, explaining that “[i]f [Families First Act] funds are not used for these purposes during the period of availability, then they must be returned to the IHS.”<sup>26</sup> However, IHS did not bind the recipients to the Families First Act stipulations that these funds were available only through September 30, 2022.

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<sup>26</sup> IHS, *Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations* (last updated Apr. 27, 2020), available at [https://www.ihs.gov/sites/coronavirus/themes/responsive2017/display\\_objects/documents/COVID-19\\_Funding\\_Guidance\\_Tribes\\_UrbanIndianOrganizations.pdf](https://www.ihs.gov/sites/coronavirus/themes/responsive2017/display_objects/documents/COVID-19_Funding_Guidance_Tribes_UrbanIndianOrganizations.pdf).

Thus, even though these funds were expired, under ISDEAA, Tribal programs could still spend them beyond the date reflected in the appropriation.<sup>27</sup>

With respect to the IHCI/FAR contracts, we are encouraged by IHS's commitment to review and seek repayment of unused Families First Act funds from UIOs. With respect to the GPAO's expired Families First funds, we agree that deobligated amounts for expired funds are not available to incur a new obligation but are available to cover appropriate adjustments to obligations in the expired account for 5 fiscal years after the period of availability of the funds. The intent of our fifth recommendation remains valid, as we are requesting that unused IHS funds for COVID-19 testing be reallocated to other programs to support COVID-19 response and recovery efforts.

### **IHS STATED THAT IT PROVIDED APPROPRIATE GUIDANCE ON THE PROPER USE, TRACKING, AND ACCOUNTING OF COVID-19 TESTING FUNDS**

#### **IHS Comments**

IHS did not concur with our sixth and eighth recommendations, both of which called for IHS to provide adequate guidance to programs within the GPAO on how to properly use, track, and account for the Paycheck Protection Act Funds. For our sixth recommendation, IHS stated that it "provided accurate, adequate, and appropriate guidance to IHS, Tribal, and UIO health programs within the [GPAO] on the proper use of Paycheck Protection Act funds. . . ." In this context, IHS cited to guidance it provided to the programs through regular calls with the GPAO director and through a Dear Tribal Leader and Urban Indian Organization Leader Letter dated May 19, 2020.

IHS also stated that providing additional guidance to the Tribal programs and UIOs "would appear to be legal advice to a Tribe or UIO. While IHS can provide some technical assistance the IHS cannot legally advise Tribes or UIOs because IHS employees are not functioning as attorneys in their capacities." IHS added that Tribes and UIOs are encouraged to consult counsel if they have questions about the legality of spending funds on particular expenses. IHS also said that furthermore, the GPAO provides regular guidance to IHS-operated facilities as needed. Moreover, IHS stated that "[b]ecause the Paycheck Protection Act only authorized testing expenses, the statutory text of the act itself provided guidance that would be sufficient in most instances."

IHS did not concur with our eighth recommendation "because we provide adequate guidance" and stated that it had partnered with HHS and the Office of Management and Budget "to create

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<sup>27</sup> Appropriations made with a specified end date are available for obligation only during the timeframe for which they were made. If an agency fails to obligate the funds by the end of the timeframe for which they were appropriated, the funds cease to be available for incurring and recording new obligations and are said to have "expired" and can only be used for limited purposes. Accordingly, agencies must take great care to ensure that use of expired funds is within appropriate limits and does not subject the agency to unnecessary risk. See 31 U.S.C. § 1502(a).

accounting structures that appropriately track and account for funds allocated and used under all COVID-19 supplemental appropriations, including the Paycheck Protection Act.” IHS also said that it issued guidance on each source of COVID-19 supplemental appropriations and the uses of those funds based on the language in the bills that authorized each of these appropriations. In addition, IHS stated that it “ensured that funding was distributed down to the location code, which allows [IHS] to appropriately track and account for all COVID-19 funding in its financial system to the lowest possible levels.”

### **Office of Inspector General Response**

With respect to our sixth recommendation, we disagree with IHS’s statement that the statutory text of the Paycheck Protection Act was “sufficient in most cases” and maintain that guidance from IHS is needed to augment that text. In this regard, we note that almost half of the programs we sampled incorrectly used COVID-19 testing funds from the Paycheck Protection Act funds. We acknowledge that IHS did provide general guidance to the programs; however, the guidance was not adequate to prevent or minimize the misuse of testing funds by Direct, Tribal, and UIO programs. In addition, the provision of guidance and oversight to the Direct, Tribal and UIO programs to ensure that they did not violate the Purpose Statute and the Antideficiency Act would not constitute legal advice. We therefore maintain that IHS needed to provide adequate guidance to the programs on the proper use of Paycheck Protection Act funds.

With respect to our eighth recommendation, we again disagree that adequate guidance was provided to the programs. We acknowledge that IHS worked with HHS and the Office of Management and Budget to create its own accounting structure to appropriately track and account for COVID-19 testing funds; however, our findings demonstrate the need for IHS to provide additional guidance to the IHS Direct, Tribal, and UIO programs on how to use this accounting structure to track and account for funds allocated and used under the Paycheck Protection Act. The guidance that IHS provided to the programs did not include examples of what types of items the Tribes could purchase with Families First Act and Paycheck Protection Act funds, nor did it include details on how to separately track these funds.

We also note that although IHS distributed the COVID-19 funds by location code, three of the programs in the GPAO that we sampled were unable to track the funds to the correct appropriation. As discussed in our findings,<sup>28</sup> three programs comingled their Families First Act funds with either their CARES Act or Paycheck Protection Act funds. While one program was able to manually identify the amounts used under both bills, thereby to allow us to identify and review, with reasonable assurance, the funds used under the Families First Act funds, the other programs were not able to manually identify these funds and provide this assurance. As the cognizant Federal agency, IHS was responsible to ensure that the Tribal programs’ financial management systems’ accounting records were sufficiently detailed to identify the source and application of funds received. Accordingly, we maintain that our eighth recommendation remains valid.

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<sup>28</sup> See “Three Sampled Programs Inadequately Tracked COVID-19 Testing Funds” earlier in this report.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

Our audit covered testing funds allocated to Direct, Tribal, and UIO programs from March 27, 2020, through December 31, 2020. Specifically, our audit covered \$29.8 million in funds (\$3.3 million from the Families First Act and \$26.5 million from the Paycheck Protection Act) that IHS allocated to 10 sampled programs within the GPAO's geographical region. These amounts represented approximately 59 percent and 52 percent, respectively, of the total amounts of funds that IHS allocated to the GPAO. We judgmentally selected 10 programs to review, consisting of 4 Direct, 4 Tribal, and 2 UIO programs, as specified in footnote 19 and as shown in the table in "How We Conducted This Audit" earlier in this report.

We determined that IHS's control activities and information and communication were significant to our audit objective. We assessed the design and implementation of IHS's internal controls related to the allocation and use of COVID-19 testing funds during our audit period. We met with IHS HQ and GPAO personnel and reviewed Federal requirements and IHS guidance to gain an understanding of IHS's organizational structure and oversight. In addition, we interviewed personnel from the 10 sampled programs to assess the effectiveness of the allocation of COVID-19 testing funding as well as the communication between IHS and those programs.

We conducted our audit work from August 2020 to March 2023.

### METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance pertaining to COVID-19 testing funds;
- reviewed IHS policies and procedures pertaining to COVID-19 testing funds as well as the IDDA between HHS and IHS;
- interviewed IHS HQ and GPAO personnel to gain an understanding of the administration, oversight, and use of COVID-19 funds;
- obtained a list with allocation amounts of all Direct, Tribal, and UIO programs within GPAO and from that list judgmentally selected 10 Direct, Tribal, and UIO programs;
- reviewed and verified IHS's allocation formulae for the Families First Act and the Paycheck Protection Act for each sampled Direct, Tribal, and UIO program;

- interviewed personnel from each sampled Direct, Tribal, and UIO program to gain a better understanding of the allocation and use of the COVID-19 testing funds;
- obtained and reviewed applicable modifications to ISDEAA agreements and IHCIA/FAR contracts, funding and utilization reports, testing logs, and relevant accounting records;
- determined compliance with Federal requirements and IHS guidance pertaining to the Families First Act and the Paycheck Protection Act for each sampled Direct, Tribal, and UIO program; and
- discussed the results of our audit with IHS HQ and GPAO personnel on August 12, 2022.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **APPENDIX B: FEDERAL REQUIREMENTS AND GUIDANCE RELATED TO THE USE OF FUNDS FROM THE FAMILIES FIRST ACT AND THE PAYCHECK PROTECTION ACT**

### **FEDERAL LAWS**

#### **Purpose Statute**

The Purpose Statute (footnote 11) states that appropriated funds may only be used for the purposes for which they were appropriated. It prohibits both charging authorized items to the wrong appropriation and making unauthorized charges to an appropriation. The starting point in applying the Purpose Statute is that, absent a clear indication to the contrary, the common meaning of the words in the appropriation act and the program legislation it funds governs the purposes to which the appropriation may be applied.

#### **Antideficiency Act**

The Antideficiency Act (footnote 13) prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation, and from accepting voluntary services. The Antideficiency Act is violated only when there are insufficient funds in the correct appropriation to repay the improperly spent funds.

#### **Families First Coronavirus Response Act**

The Families First Act (footnote 2) appropriated \$64 million for IHS, which was to remain available until September 30, 2022. These funds were awarded for health services consisting of COVID-19 testing-related items and services or the administration of such products.

Section 6001 of the Families First Act specifies that *in vitro* diagnostic products used for the detection of COVID-19 are also covered (footnote 8). This provision includes items and services furnished to an individual during health care provider office visits, urgent care center visits, and emergency room visits that result in an order for or administration of an *in vitro* diagnostic product.

Section 6007 of the Families First Act requires coverage, without cost-sharing, for COVID-19 testing for American Indian and Alaska Natives who receive health services through IHS. The Families First Act also covers related items and services regardless of whether the items or services have been authorized.

This Act also states that the Secretary of HHS shall cover, without the imposition of any cost-sharing requirements, the cost of providing any COVID-19 testing-related items and services (or the administration of such products) or visits furnished during any portion of the emergency period receiving health services through the IHS Direct, Tribal, and UIO programs.

## **Paycheck Protection Program and Health Care Enhancement Act**

The Paycheck Protection Act (footnote 2) appropriated \$750 million, which would be allocated in coordination with the Director of IHS until expended, to prevent, prepare for, and respond to the COVID-19 pandemic.

Paycheck Protection Act funds were to be used to develop, purchase, administer, process, and analyze COVID-19 tests. Funds could also be used for support to the workforce (such as salaries and wages for staff members who support the COVID-19 testing effort); epidemiology; and scale-up testing by public health, academic, commercial, and hospital laboratories, and by community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing. In addition, funds could be used to conduct surveillance, trace contacts, and perform other related activities related to COVID-19 testing (footnote 9).

## **FEDERAL REGULATIONS AND GUIDANCE**

### **Federal Regulations**

Federal regulations state that Title I Tribes should have financial management systems that allow for accounting “records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The systems shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income” (25 CFR § 900.45(b)).

Federal regulations state that Title I Tribes should have financial management systems that permit “the comparison of actual expenditures or outlays with the amounts budgeted by the Indian tribe or tribal organization for each self-determination contract” (25 CFR § 900.45(d)).

Federal regulations state that Title V Tribal Programs must maintain recordkeeping systems (42 CFR § 137.175).

Federal regulations state that prospective contractors (which in the context of this report refers to UIO programs) must have organization, experience, accounting, and operational controls in place (48 CFR § 9.104-1).

### **Office of Management and Budget Circular A-123**

OMB Circular A-123, sections 2 and 3, states:

2. Policy. Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law. Management controls are the organization,

policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision making.

3. Actions Required. Agencies and individual Federal managers must take systematic and proactive measures to (i) develop and implement appropriate, cost-effective management controls for results-oriented management; (ii) assess the adequacy of management controls in Federal programs and operations; (iii) identify needed improvements; (iv) take corresponding corrective action; and (v) report annually on management controls.

**HHS MEMORANDUM: INTRA-DEPARTMENTAL DELEGATION OF AUTHORITY FOR THE PAYCHECK PROTECTION ACT (SELF-DETERMINATION CONTRACT, SELF-GOVERNANCE COMPACT, AND URBAN INDIAN PROGRAM)**

The purpose of the IDDA is to authorize IHS to administer \$750 million of funds appropriated under the Paycheck Protection Act for necessary expenses for testing and testing-related activities. Designated activities include the following:

- purchase, administration, and expanded capacity for COVID-19 tests;
- procurement and allocation of tests, testing supplies, and personal protective equipment needed to administer tests;
- surveillance and contact tracing;
- development of COVID-19 testing plans;
- support for testing and the epidemiology workforce;
- costs associated with Tribal and UIO programs' administration of these funds; and
- other activities related to COVID-19 testing.

For any funds transferred to Tribal and UIO programs, the modifications or amendments adding the funds must be bilateral and require the recipients to:

1. Expend the funds in accordance with the purposes for which the allocation is authorized by the Paycheck Protection Act.

2. Require an all-inclusive budget from recipients prior to awarding the funds.
3. Sign a modification or amendment that awards the funds and states that:
  - a. the funds are “all-inclusive” of costs, including costs that would otherwise be contract support costs for ISDEAA contractors;
  - b. required reporting is a condition of receiving the funds;
  - c. the funds cannot be redesigned and used for other purposes; and
  - d. the funds are not recurring under 25 U.S.C. § 5325(b).

### **IHS-ISSUED GUIDANCE AND LETTERS**

Section 3 of IHS Circular No. 92-05, dated June 19, 1992, defines the following:

**Recurring Base:** Funds are designated as recurring if it is likely that appropriations will be continued in the next year and the program, by its purpose and design, will be operated continuously to ensure maximum effectiveness. The cumulative sum of recurring allocations is called the recurring base.

**Health Needs Indicators:** Most IHS resource allocation formulae are designed to target resources based upon measures of need. Need is the lack of something requisite, desirable, or useful. In the health context, need refers especially to requirements for the well-being of individual people and the Indian community at large and/or conditions requiring supply or relief. . . .

Through long experience, detailed study, and extensive tribal consultation, IHS has established primary indicators in the measurement of the health care needs of Indian people. In resource allocation formulae, these indicators are used as standards to compare the relative needs of different geographic service areas. Each indicator measures a different attribute or characteristic of the health care system. The major indicators of need used in IHS resource allocation formulae are:

- A. Population. All other things being equal, the health care needs of a service area is directly proportional to the number of people that are served. The most common indicator of this type is the user population count. The potential service population count is also considered in some formulae.
- B. Services. Each eligible Indian should have access to a comparable but not necessarily identical set of health care services. Commonly used indicators of

services are hospital admissions, physician visits, dental visits, etc. Standards of utilization (average services consumed per person) are established to compare the general availability and use of these services among service areas. National health care utilization norms are used in some IHS resource allocation formulae to benchmark IHS standards (see dental for example). In addition to service utilization, some formulae may include measures of services covered. Such indicators frequently account for both the scope and breadth of services that are available and their relative resource intensity. The general concept is to allocate resources in such a way as to promote equivalent utilization and coverage among Indian communities.

- C. Quality of Care. Many IHS resource allocation formulae, especially those for medical and clinical care, are developed using quality of care standards. These are diagnostic and treatment protocols that are appropriate for a given clinical condition. Standards of care also require appropriate professionally trained staff for each diagnostic and treatment protocol (e.g., a general practice physician is needed for some things, a specialist for others.) The IHS clinical staffing standards are based upon matching clinical task requirements with professional skill levels.
- D. Productivity Standards. Most IHS resource allocation formulae include labor productivity standards. These are assumptions about the amount of time necessary to provide a given service (or alternatively, the number of staff necessary to provide a given number of health care services.) While the standards of care determine the appropriate professional mix considering qualifications and education, the productivity standards specify the expected or average amount of time needed to complete a particular protocol and, hence, the number of staff needed for a given number of patients with average levels of services use. Furthermore, the standards are extended to include support staff ratios. For example, a primary provider is supported by other clinical staff (Registered Nurses, Licensed Practical Nurses, etc.), ancillary clinical staff (X-RAY technologists, pharmacists, etc.), general support staff (housekeeping, maintenance, supply, etc.), and administration (bookkeepers, managers, secretaries, etc.). Normally, all labor productivity standards have a minimum threshold of workload. Most also assume some increased economies of scale as the size of the workload increases.
- E. Cost Differentials. Many IHS resource formulae include or consider pricing standards and cost differentials. Staff costs are normally priced by application of the Federal pay scales (or averages based on the Federal pay scale). These are adjusted for [cost-of-living allowances] where applicable. Some support costs are factored in as standard ratios based upon national experience. Other costs are so variable and unpredictable (at least

at the scale of individual facilities), that they are simply “passed through” at the amounts and values actually experienced.

- F. Health Status. All other things being equal, health care needs are inversely related to the level of health status. There are several indicators of health status used in IHS resource allocation formulae. Most frequently, the health status indicator for the Indian service population is compared to the national average for all races to determine the degree of any gap. Health care needs are assumed to be larger in communities with greater gaps because [of the necessity of] providing additional, often more expensive, services to less healthy people.
- G. Performance Targets. Several IHS resource allocation formulae establish a standard of performance to provide incentive and rewards for certain programmatic goals. For example, the dental formula may reward an Area that serves a higher percentage of the eligible population with basic services (breadth) as compared to an Area that serves a smaller percentage with more complete services (depth).
- H. External Conditions. Some IHS resource allocation formulae incorporate measures of external conditions that are not directly patient related. For example, sanitation facilities construction formulae include measures of the number and condition of Indian housing. Similarly, formulae related to health care facilities and equipment replacement consider the age and condition of the physical plant and its equipment. In recent years, a number of proposals to include measures of socio-economic status as proxy measure of health status and health care needs have been made. Such measures are under study and will be duly considered after consultation with Indian tribes.

*IHS's Guidance on Indian Health Service COVID-19 Funding Distribution for Tribes, Tribal Organizations, and Urban Indian Organizations, dated April 27, 2020, states that Families First Act funds must be used for the purposes for which they were appropriated, and that Tribal and UIO programs should track the funds separately from their other revenues.*

On March 27, 2020, IHS issued a letter to Tribal and UIO Leaders to expedite funding allocation decisions for distributing funds to all programs. This letter referred to “rapid Tribal Consultation and Urban Confer sessions” that IHS conducted through national conference calls on March 23 and March 25, 2020, to seek input. This letter added that in general, responders to these conference calls supported the allocation of funds using existing allocation methodologies.

On May 19, 2020, IHS issued another letter to Tribal and UIO Leaders that referred to an additional Tribal Consultation and Urban Confer session on April 29, 2020. This letter stated that IHS had received written comments from responders that supported allocating funds using

existing allocation methodologies, including funding through the ISDEAA and the IHCI. This letter added that the funds must be used for the purposes for which they are appropriated, consistent with a modified scope of work and bilateral modification for each contract. If a Tribal or UIO program cannot use the funds for the specified purposes, it should not sign the bilateral modification or amendment awarding the funds. This letter also stated that to support IHS Direct programs, IHS would allocate the funds directly to these programs.



DATE: May 8, 2023

TO: Inspector General

FROM: Director

SUBJECT: IHS Response to Draft OIG Report: *Although IHS Allocated COVID-19 Testing Funds To Meet Community Needs, It Did Not Ensure That the Funds Were Always Used in Accordance With Federal Requirements (A-07-20-04123)*, dated March 1, 2023

We appreciate the opportunity to provide our official comments on the draft Office of Inspector General (OIG) report entitled, *Although IHS Allocated COVID-19 Testing Funds To Meet Community Needs, It Did Not Ensure That the Funds Were Always Used in Accordance With Federal Requirements*. The Indian Health Service (IHS) concurs and non-concurs with the nine OIG recommendations below.

**OIG Recommendation No. 1:** The IHS concurs with this recommendation.

*We recommend that the Indian Health Service correct Purpose Statute violations totaling \$19,912 relating to funds not used on COVID-19 testing and other testing-related activities from the Pine Ridge Service Unit (an IHS Direct program), and, if IHS is unable to correct those violations, report any Antideficiency Act violations;*

**Planned and completed actions:**

The Great Plains Area (GPA) IHS corrected the accounting entries by reclassifying the expenses to appropriate accounts. The IHS Pine Ridge Service Unit experienced an increase in patient admissions during the COVID-19 public health emergency, and used \$19,912 in Paycheck Protection Program and Health Care Enhancement Act (Patient Protection Act) funds to purchase additional food required to feed the patients, which is not considered to be a COVID-19 testing or testing-related cost.

**OIG Recommendation No. 2:** The IHS concurs with this recommendation.

*We recommend that the Indian Health Service identify and correct any other Purpose Statute violations relating to funds not used on COVID-19 testing and other testing-related activities from the Families First Act and Paycheck Protection Act funds allocated to the IHS Direct programs within the GPAO, and, if IHS is unable to correct those violations, report any Antideficiency Act violations.*

**Planned and completed actions:**

The IHS will conduct an internal review of purchases made by IHS-operated health facilities in the GPA using funding provided by the Families First Coronavirus Response Act (Families First Act) and the Patient Protection Act. The IHS is considering utilizing existing enterprise risk management efforts to design and implement a plan for identifying and mitigating any potential violations.

**OIG Recommendation No. 3:** The IHS partially concurs with this recommendation.

*We recommend that the Indian Health Service recover \$529,885 in funds not used on COVID-19 testing and other testing-related activities from the applicable sampled Tribal and UIO programs.*

**Planned and completed actions:**

Paycheck Protection Act Funds:

- The IHS concurs with OIG’s recommendation to recover funds from the Santee Sioux Nation, and will work with the Tribe on corrective actions related to OIG’s recommendation.
- The IHS concurs with the OIG’s finding about the Three Affiliated Tribes but does not concur with the recommendation. The Three Affiliated Tribes has resolved the issue by correcting the recording error and the IHS will not recover the funds.
- The IHS concurs to recover a partial amount of funds from NUIHC. The OIG reported that the NUIHC used \$2,384 for landscaping services and a streaming service subscription and that these expenses were not related to COVID-19 testing. The NUIHC responded to the IHS about OIG’s findings and provided documentation that landscaping services were employed to remove snow for a COVID-19 testing event for the amount of \$2,364.70. The snow was removed so that participants could receive drive through COVID-19 testing. The IHS determined that NUIHC’s use of funds were for COVID-19 testing purposes. The IHS does not concur with OIG that IHS should recover the funds for the COVID-19 testing-related snow-removal services. As for the funds for the streaming service subscription, IHS agrees with OIG’s determination that the use of these funds was not for COVID-19 testing related activities. The IHS will work with NUIHC on fixing the error and take any corrective action required. It is possible the funds may not need to be collected if the error can be adjusted.
- IHS does not concur with OIG’s recommendation to recover funds from the Spirit Lake Nation. The OIG reported that the Spirit Lake Nation used \$66,996 to purchase two cars and that this expense was not related to COVID-19 testing. On February 1, 2021, the Spirit Lake Nation submitted a plan to the GPA IHS on the use of Paycheck Protection Act funds. This plan included the purchase of five vehicles to support contact tracing.

Contact tracing is the process of identifying, assessing, and managing people who have been exposed to someone who has been infected with the COVID-19 virus. Contact tracing can also help people who are at a higher risk of developing severe disease know earlier that they have been exposed so that they can be tested and receive medical care quicker than if they go on to develop symptoms. As described in the Tribe’s plan, Spirit Lake Nation purchased two vehicles using funds from the Paycheck Protection Act. The IHS determined that the Tribe’s use of the funds was related to COVID-19 testing and the IHS does not concur with the OIG’s recommendation to recover the funds.

Families First Act Funds:

- The IHS concurs with OIG’s recommendation to recover Families First Act funds from the Spirit Lake Nation and will work with the Spirit Lake Nation on corrective actions related to OIG’s recommendation.

**OIG Recommendation No. 4:** The IHS concurs with this recommendation.

*We recommend that the Indian Health Service identify and recover amounts not used for COVID-19 testing or other testing-related activities that we did not sample from remaining Tribal and UIO programs within the GPAO.*

**Planned and completed actions:**

Consistent with its authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the IHS reviews all single audits for Tribal Health Programs (THP) each year. Through this process, the IHS identifies findings and questioned costs, and works to resolve those issues with relevant Tribes. The IHS will use this process to identify misuse of funds from the Paycheck Protection Act or Families First Act, in the same way that it reviews single audits for all IHS funding sources. If the IHS identifies any findings, the Agency will work with the relevant Tribes to implement corrective actions, which may include possible funds recovery. This process would include the GPA THPs not sampled by the OIG.

The OIG’s review included both Urban Indian Organizations (UIOs) in the GPA, therefore, there are no other UIOs to review in the GPA. For all UIO contracts, the responsible IHS Area Chief Contracting Officer and Area Urban Coordinator coordinate to review all modifications and any needed repayment to the Government. The IHS will also continue to review UIO single audits through its single audit review process, and work with relevant UIOs on corrective actions, which may include funds recovery, if the Agency identifies any findings.

**OIG Recommendation No. 5:** The IHS non-concurs with this recommendation.

*We recommend that the Indian Health Service develop and implement procedures to identify and recover any unused Families First Act funds that expired on September 30, 2022, from all locations within the GPAO.*

### **Planned and completed actions:**

The IHS non-concurs with OIG’s recommendation.

#### Tribal Health Programs

The ISDEAA and IHS annual appropriation provide authority for Tribes to use COVID-19 funding beyond the expiration date provided the Agency obligates them before they expire. Title I of the ISDEAA provides that “Notwithstanding any other provision of law, any funds provided under this Contract—(A) shall remain available until expended” (25 U.S.C. § 5329(c)(b)(9)). Similarly, Title V of the ISDEAA provides that “[a]ll funds paid to an Indian Tribe in accordance with a compact or funding agreement shall remain available until expended” (25 U.S.C. § 5388(i)). Finally, the IHS annual appropriation states, “funds made available to Tribes and Tribal Organizations through contracts, grant agreements, or any other agreements or compacts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. § 450), shall be deemed to be obligated at the time of the grant or contract award and thereafter shall remain available to the Tribe or Tribal Organization without fiscal year limitation” (Public Law 117-328).

The IHS obligates funds to a THP when funding is transferred through an ISDEAA Title I contract or Title V compact. Once funds are obligated by the IHS to a THP, the funds are available to the THP until expended. For example, Coronavirus Response and Relief Supplemental Appropriations Act funding for COVID-19 testing, contact tracing, mitigation, and surveillance were available to be obligated by the IHS until September 30, 2022. Once these funds were transferred to a THP through an ISDEAA Title I contract or Title V compact, the THP can spend the funds beyond September 30, 2022, until fully expended, so long as the THP meets all other requirements for the funds. The IHS provided this guidance to Tribes through a Dear Tribal Leader and Urban Indian Organization Leader Letter, dated November 25, 2022.

Therefore, the IHS will not recover expired funds that have been obligated to THPs through ISDEAA Title I contracts and Title V compacts.

#### Urban Indian Organizations

The IHS obligates funds to an UIO when funding is transferred to an UIO through an Indian Health Care Improvement Act (IHCIA), Title V, Federal Acquisition Regulation (FAR) contract. Once obligated by the IHS, these funds are available for expenditure by UIOs until the date specified in the FAR contract or until the overall contract expires. The IHS provided this guidance to UIOs through a Dear Tribal Leader and Urban Indian Organization Leader Letter, dated November 25, 2022. The UIO FAR contracts are still active for each program. For any unused funds, pursuant to FAR 52.232-12(d) and under Section I.3.3(D) of the Urban Indian Contract, the UIO may repay all or any part of the funds advanced by the Government. The responsible IHS Area Chief Contracting Officer and Area Urban Coordinator will coordinate to provide review of all modifications and any needed repayment to the Government. The IHS

Division of Acquisition Policy will also incorporate a review element to the annual Acquisition Management Reviews to ensure these procedures are accurately completed.

#### IHS-operated Health Programs

As of May 1, 2023, the GPA IHS has \$10,000 remaining in expired, unobligated Families First Act funding. Consistent with appropriations law principles, these funds are legally available for five years after expiration for any necessary adjustments. After those five years, the funds would cancel, and be returned to Treasury.

**OIG Recommendation No. 6:** The IHS non-concurs with this recommendation.

*We recommend that the Indian Health Service develop and provide adequate guidance to programs within the GPAO on the proper use of Paycheck Protection Act funds in accordance with Federal requirements.*

#### **Planned and completed actions:**

The IHS non-concurs with OIG’s recommendation. The IHS provided accurate, adequate, and appropriate guidance to IHS, Tribal, and UIO health programs within the GPA on the proper use of Paycheck Protection Act funds through weekly, later changing to monthly, calls with the GPA Director. The THPs and UIOs also received guidance on the uses of Paycheck Protection Act funds in the publicly available Dear Tribal Leader and Urban Indian Organization Leader Letter dated May 19, 2020, which states that,

[T]hese funds can be used for necessary expenses to purchase, administer, process, and analyze COVID-19 tests, including support for workforce, epidemiology, and use by employers or in other settings. In addition, these funds can be used to scale up testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing. Funds may also be used to conduct surveillance, trace contacts, and perform other related activities related to COVID-19 testing.

The IHS does not concur that additional guidance needs to be given to THPs and UIOs as it would appear to be legal advice to a Tribe or UIO. While IHS can provide some technical assistance the IHS cannot legally advise Tribes or UIOs because IHS employees are not functioning as attorneys in their capacities. Tribes and UIOs are encouraged to consult with their own counsel if they have questions about the legality of spending funds on a particular expense that is not expressly outlined in the statute. Because the Paycheck Protection Act only authorized testing expenses, the statutory text of the act itself provided guidance that would be sufficient in most instances. The GPA also continues to provide regular guidance to IHS-operated health programs as questions arise.

**OIG Recommendation No. 7:** The IHS concurs with this recommendation.

*We recommend that the Indian Health Service strengthen its review process to ensure that modifications to ISDEAA agreements and IHCIA/FAR contracts contain complete and accurate information, including the funding source, amount awarded, and applicable language required under the funding source.*

**Planned and completed actions:**

The IHS is developing a strategy to improve review processes for ISDEAA agreements and IHCIA/FAR contracts when negotiating bilateral agreements, developing unilateral agreements, and developing new contract language for contracts. The IHS recognizes that there may be a need to make corrections in specific contract modifications related to the Paycheck Protection Act funds.

The COVID-19 pandemic, and the supplemental funding that the IHS received to prepare and respond to the pandemic, were unprecedented, as was the urgency to allocate funding to IHS, Tribal, and UIO health programs to save lives in the face of disproportionate incidence and mortality rates among American Indians and Alaska Natives. As cited by the OIG in the report, one UIO contract was identified that did not have correct or complete language. The IHS will use the lessons learned from the COVID-19 experience to develop the aforementioned process improvement strategy.

**OIG Recommendation No. 8:** The IHS non-concurs with this recommendation.

*We recommend that the Indian Health Service provide adequate guidance to the programs on how to track and account for funds allocated and used under the Paycheck Protection Act.*

**Planned and completed actions:**

The IHS non-concurs with this recommendation because we provide adequate guidance. The IHS partnered with Health and Human Services (HHS) and the Office of Management and Budget to create accounting structures that appropriately track and account for funds allocated and used under all COVID-19 supplemental appropriations, including the Paycheck Protection Act.

The IHS complied with government- and HHS-wide guidance in establishing this accounting structure so that COVID-19 funding could be accounted for and tracked separately from annual appropriations, and between each of the COVID-19 supplemental appropriations acts. The IHS issued guidance on each funding source and its uses based on the appropriations language in each Act.

The IHS also ensured that funding was distributed down to the location code, which allows the Agency to appropriately track and account for all COVID-19 funding in its financial system to the lowest possible levels. This includes individual ISDEAA Title I contracts and Title V compacts, individual UIO contracts, and individual IHS-operated health programs.

**OIG Recommendation No. 9:** The IHS concurs with this recommendation.

*We recommend that the Indian Health Service work with Tribal and UIO programs within the GPAO that we did not sample to ensure that they have properly tracked and accounted for funds used under the Paycheck Protection Act.*

**Planned and completed actions:**

The IHS concurs with the recommendation to the extent that it reflects current federal requirements. As addressed in the response to Recommendation No. 4, the IHS uses its authority under the ISDEAA to review all single audits for THPs each year. Through this process, the IHS identifies findings and questioned costs, and works to resolve those issues with relevant Tribes. The IHS will use this process to identify any misuse of funds from the Paycheck Protection Act or Families First Act, in the same way that it reviews single audits for all IHS funding sources. If the IHS identifies any findings, the Agency will work with the relevant Tribes to implement corrective actions, which may include possible funds recovery. This process includes the GPA THPs not sampled by the OIG.

OIG’s review included both UIOs in the GPA, therefore, there are no other UIOs to review in the GPA. For all UIO contracts, the responsible IHS Area Chief Contracting Officer and Area Urban Coordinator review all modifications and any needed repayment to the Government. The IHS will also continue to review UIO single audits through its single audit review process, and work with relevant UIOs on corrective actions, which may include funds recovery, if the Agency identifies any findings.

Thank you for the opportunity to review and comment on this draft report. Please refer any follow up questions you have regarding our comments to Mr. Benjamin Smith, Deputy Director, IHS, by e-mail at [Benjamin.Smith@ihs.gov](mailto:Benjamin.Smith@ihs.gov).

for **S**  
Roselyn Tso  
Director

**Phillip B. Smith**  Digitally signed by Phillip B. Smith  
Date: 2023.05.08 15:58:07 -0400