

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**AUDIT OF COSTS CLAIMED BY
KLAMATH TRIBAL HEALTH &
FAMILY SERVICES
KLAMATH FALLS, OREGON
FOR THE PERIOD JANUARY 1, 1992
THROUGH DECEMBER 31, 1994**

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG Office of Audit Services. Final determination on these matters will be made by authorized officials of the HHS operating divisions.



JUNE GIBBS BROWN
Inspector General

DECEMBER 1995
CIN: A-10-95-01001



Region IX
Office of Audit Services
50 United Nations Plaza - Room 171
San Francisco, California 94102

CIN: A-10-95-01001

December 1, 1995

Ms. Lorraine Brave Heart
Executive Director
Klamath Tribal Health & Family Services
3949 South 6th Street
Klamath Falls, Oregon 97603

Dear Ms. Brave Heart:

The purpose of this letter is to provide you with the results of our "AUDIT OF COSTS CLAIMED BY KLAMATH TRIBAL HEALTH & FAMILY SERVICES, KLAMATH FALLS, OREGON, FOR THE PERIOD JANUARY 1, 1992 THROUGH DECEMBER 31, 1994. "

We determined that the Indian Health Service (IHS) initially provided cash to Klamath Tribal Health & Family Services (KTHFS) in excess of actual cash expenditures, thus resulting in the accumulation of excess Federal cash by KTHFS. The KTHFS did not subsequently reduce its cash requests to eliminate the excess. The KTHFS also made excessive payments to its executive director. As a result, we are recommending that KTHFS (i) reduce future cash requests to eliminate the \$316,651 of excess cash held in certificates of deposit as of December 31, 1994 and any additional excess Federal cash which was accumulated since that date, (ii) use projected immediate cash disbursements to determine future cash needs, and (iii) revise past financial status reports (FSRs) and prepare future FSRs on the basis of cash disbursements. We are also recommending that KTHFS provide necessary information to the IHS, Portland Area Office (IHS/PAO), so that IHS/PAO can determine the allowability and reasonableness of \$94,637 paid to the former executive director which was in excess of authorized amounts.

INTRODUCTION

Background

The Klamath Indian Tribe (Tribe) was restored as a federally recognized tribe on August 27, 1986. On January 27, 1992, the Executive Council of the Tribe established the Klamath Tribal Health Authority (Authority) as a separate legal entity to serve the health needs of all tribal members. Under the Authority's charter, a ten-person Board of Commissioners (Board) was established. The Authority has the power to enter into contracts separate from the Tribe and to hire an executive director to manage the operations of KTHFS, the operational entity under the Authority.

The IHS/PAO entered into an Indian Self-Determination Act (Public Law 93-638) cost reimbursement contract with the Tribe to provide contract health services and other health services for the Tribe effective January 1, 1992. Under Section G of the contract, expenditures were to be claimed quarterly on an FSR.

The DHHS Manual for Recipients Financed under the Payment Management System (PMS) provides recipients paid through the PMS with operative guidance and instructions to help recipients understand their responsibilities in expediting payments, completing required reports, and controlling Federal cash received through the PMS. A basic requirement stated throughout the guide is that all recipients must limit Federal cash draws to the minimum amounts needed and must time draws to coincide with the actual immediate cash requirements in carrying out the approved program or project. This means that recipients receiving monthly cash advances must request only enough Federal cash to cover the Federal share of anticipated disbursements for the ensuing month, less any Federal cash that will be on hand when that month begins.

To receive advance payments under the advance payment system, a "Federal Cash Transactions Report, Status of Federal Cash" (PMS-272) was to be completed and submitted at least quarterly by KTHFS to the Division of Payment Management, Rockville, Maryland. The PMS-272 was to be on a cash basis with no accrued amounts.

The contract was not clear whether costs claimed on the FSR were to be on a cash or accrual basis. However, we were advised by IHS/PAO officials that cash basis reporting was required and that KTHFS officials had been instructed that the costs claimed on the FSR should match costs reported on the PMS-272 (which should have been on a cash basis).

The KTHFS received cash and claimed costs under the IHS contract during the audit period as follows:

<u>Period</u>	<u>Advance Payments/ Wire Transfers</u>	<u>costs Claimed</u>
01/01/92 - 12/31/92	\$3,088,400	\$3,192,775
01/01/93 - 12/31/93	3,401,280	3,122,973
01/01/94 - 12/31/94	<u>2,686,000</u>	<u>2,322,592</u>
Totals	<u>\$9,175,680</u>	<u>\$8,638,340</u>

Scope of Audit

Our audit was performed in accordance with generally accepted government auditing standards. The audit was performed at the request of the HHS/OIG Office of Investigations (OIG/OI) based on allegations that funds provided to KTHFS may be missing.

The objectives of the audit were to determine whether (i) all Federal funds received were properly deposited and accounted for, (ii) costs claimed by KTHFS were allowable, allocable and reasonable in accordance with the terms of the contract, and (iii) activities of the former executive director and other employees were in accordance with stated IHS and KTHFS directives and policies. We audited \$8,638,340 of costs claimed for the period January 1, 1992 through December 31, 1994.

To ascertain the receipt and deposit of all Federal funds, we obtained listings of transfer payments for the audit period from the Advance Payment System and the Payment Management System (PMS), Rockville, Maryland, via the IHS/PAO, and reconciled the listings with the bank accounts. Additionally, we performed a review of canceled checks and bank statements for the contract for the period January 27, 1992 through December 31, 1994. We reviewed supporting documentation made available to us by KTHFS for expenditures. We reviewed independent public accountant reports for the years ended December 31, 1992 and 1993.

We performed the field work at KTHFS in Klamath Falls, Oregon during December 1994 through June 1995. In addition to work performed at KTHFS, we reviewed records at the IHS/PAO and records received through the mail from the State of Oregon, Office of Medical Assistance Programs. We also contacted outside organizations with which the former executive director was affiliated, either as a consultant or in some other capacity.

FINDINGS AND RECOMMENDATIONS

In response to the allegation that funds provided to KTHFS may be missing, we determined that all Federal funds received by KTHFS were properly deposited and accounted for. However, IHS provided cash to KTHFS which exceeded actual cash expenditures and KTHFS reported its costs on both the PMS-272 and FSR on an accrual basis. As a result, KTHFS received cash in advance of its needs, and approximately \$350,000 in excess funds was accumulated in the first year of operation under the contract. The \$350,000 was invested at interest in certificates of deposit. As of December 31, 1994, KTHFS still held \$316,651 of excess Federal funds which was invested in certificates of deposit.

Although costs claimed by KTHFS were generally allowable, allocable and reasonable in accordance with the terms of the contract, we found that a former executive director was paid salary and benefits in excess of those amounts established by the Authority Board. We calculated the excess payments to be \$94,637 during a 2-year period.

As part of our review, we evaluated allegations that certain activities of the former executive director and other employees were not in accordance with stated IHS and KTHFS directives and policies. We found no evidence to support these allegations.

We are recommending that KTHFS (i) reduce future cash requests to eliminate the \$316,651 of excess cash held in certificates of deposit as of December 31, 1994 and any additional excess Federal cash which was accumulated since that date, (ii) use projected immediate cash disbursements to determine future cash needs, and (iii) revise past FSRs and prepare future FSRs on the basis of cash disbursements. We are also recommending that KTHFS provide necessary information to IHS/PAO so that IHS/PAO can determine the allowability and reasonableness of \$94,637 paid to the former executive director which was in excess of authorized amounts.

Receiving and Reporting of Funds

We found that IHS initially provided cash to KTHFS under an advance payment schedule which exceeded actual cash expenditures. As a result, KTHFS received excess Federal funds. Additionally, expenditures were claimed on the FSRs submitted to the IHS/PAO on an accrual basis. The excess funds received by KTHFS were invested in certificates of deposit at various local banks. The KTHFS invested in certificates of deposit on March 6, 1992 at various banks as follows:

Klamath First Federal S&L	\$100,000
South Valley State Bank	100,000
U.S. National Bank	100,000
Western Bank	<u>-50,000</u>
Total	<u>\$350,000</u>

Subsequently, when KTHFS was converted to the PMS and initiated its own cash requests, the cash requests were not reduced to eliminate the excess cash on hand. During the audit period, certificates totalling \$200,000 were cashed in and another certificate of \$166,651 was opened. Per bank statements, the KTHFS investments in certificates of deposit, excluding interest, totaled \$316,651 as of December 31, 1994 as follows:

South Valley State Bank	\$166,651
South Valley State Bank	100,000
Western Bank	<u>50,000</u>
Total	<u>\$316,651</u>

Payments to the Former Executive Director

We determined that the former executive director received excessive salary payments, severance and loan repayment of \$86,895 for a 2-year period. We also calculated an overpayment for annual leave of \$7,742 for a total overpayment of \$94,637. The excess payments were due primarily to the former executive director misleading the Board regarding the salary and other amounts that would be paid to him. The Board was given net amounts that he would receive rather than gross amounts as normally would be represented for a stated salary figure.

The former executive director's actual gross salary was initially estimated in June 1992 at \$84,873, approximately the equivalent of a Federal General Schedule Grade 15, Step 10, which was computed as a net salary of \$57,812. The salary of \$57,812 which was presented to the Board was not disclosed as a net salary. The calculation was subsequently adjusted such that when payments began in September 1992, the actual gross salary was at a rate of \$86,485. Other benefits received were also presented to the Board at net amounts. For a 2-year period ended August 1, 1994, we calculated overpayments of \$86,895. Additionally, we calculated an overpayment for annual leave as \$7,742 for a total overpayment to the former executive director of \$94,637 (\$86,895 plus \$7,742).

The Board believed the approved salary of \$57,812 was gross salary, not the net amount of \$86,495. Subsequent discussions with Board members and review of correspondence among Board members disclosed a lack of awareness of what the former executive director received as salary or was paid as benefits. Members believed that they were misled regarding the total salary and other amounts that were to be paid to the former executive director.

Recommendations

We recommend that KTHFS:

1. Reduce future cash requests to eliminate the \$316,651 of excess cash held in certificates of deposit as of December 31, 1994 and any additional excess Federal cash which was accumulated since that date.
2. Use projected immediate cash disbursements to determine future cash needs.
3. Revise past FSRs and prepare future FSRs on the basis of cash disbursements.
4. Provide necessary information to IHS/PAO so that IHS/PAO can determine the allowability and reasonableness of \$94,637 paid to the former executive director which was in excess of authorized amounts.

KTHFS Comments

The KTHFS did not concur with draft recommendation 1, concurred in principle with draft recommendation 2, and concurred with recommendations 3 and 4. The complete text of KTHFS's comments is included in the attached APPENDIX to the report.

Recommendation 1. Our draft report recommended that KTHFS refund \$348,168 of excess Federal cash and related interest as of December 31, 1994. The KTHFS disagreed, stating that (i) the cash had been provided by IHS under an advance payment schedule and had not been requested by KTHFS; (ii) of the original \$350,000 invested in certificates of deposit, \$200,000 had been cashed in and used for ongoing operational needs, leaving only \$150,000; (iii) a subsequent \$166,651 investment represented a separate and distinct reimbursement by IHS for a catastrophic health care case; (iv) the Indian Self-Determination Act provided that tribal organizations "shall not be held accountable for interest earned" on funds pending disbursement; (v) the IHS had temporarily frozen the certificates of deposit pending the investigation of alleged financial improprieties, but has now authorized KTHFS to spend those funds; and (vi) the excess funds could be eliminated by reducing the amounts of future cash draws.

Recommendation 2. Our draft report recommended that KTHFS use cash disbursements to determine future cash needs. Although agreeing in principle, KTHFS disagreed with the recommendation, stating that the recommendation assumes there were previous cash disbursements from which to project future cash needs. Since the funds at issue represented program start-up funds, there were no previous cash disbursements. The KTHFS stated that, with the exception of these initial distributions initiated by IHS, its practice has been to base projections of cash needs on actual cash disbursements. Current drawdowns are based on cash disbursement experience and approved plans.

Recommendation 3. The KTHFS concurred with our recommendation, stating that FSRs have been prepared on a cash basis since the December 31, 1994 report.

Recommendation 4. The KTHFS concurred with our recommendation, stating that it will cooperate with IHS as necessary.

Auditor's Comments

Based on the written comments received from KTHFS and discussions with the Executive Director, we revised recommendation 1 and made appropriate changes in the body of the report to describe the initial accumulation of excess cash and to eliminate interest earned on Federal funds from the computation of excess cash. We also made a minor revision of recommendation 2 and the report as appropriate.

Recommendation 1. We agree that the initial excess funds were provided by IHS and were not requested by KTHFS. However, when KTHFS was subsequently converted to

the PMS and made its own cash requests, it should have reduced those requests to eliminate the excess. We have modified the final report to show that the IHS advance payment schedule caused the initial build-up of excess cash.

Based on the comments from KTHFS we have reduced the computation of excess Federal cash presented in the report to \$316,651. We agree with KTHFS that \$200,000 of the original amount deposited was used for operational expenses, and this was reflected in our draft report. However, we do not agree that the deposit of \$166,651 represented a separate reimbursement by IHS. In actuality, the \$166,651 represented a refund from a provider, thus canceling the original expense, because the provider received payment for the case from the Medicaid program. Therefore, the \$166,651, which was placed back into a certificate of deposit, must be included as excess funds. We agree that we should not have included interest in the computation of excess cash. Therefore, we have revised the amount in the final report from \$348,168 to \$316,651. The \$316,651 includes the \$150,000 remaining from the original investment in certificates of deposit and the \$166,651 refund of expense, but excludes interest earned.

Although we agree that IHS has authorized expenditure of the funds held in certificates of deposit, the cash should not be on hand until actually needed for immediate disbursement. As indicated in the Background section of this report, a basic requirement of the PMS is that recipients must limit Federal cash draws to the minimum amounts needed and must time draws to coincide with actual immediate cash requirements in carrying out the approved program or project.

We also agree that, under the circumstances, the excess could be eliminated by reducing future cash draws. We have modified our recommendation accordingly in the final report.

Recommendation 2. We have modified the recommendation in the final report to clarify that future cash needs should be based on “projected immediate cash disbursements” rather than previous cash disbursements. However, as discussed above, KTHFS needs to reduce its future cash draws to eliminate the current excess cash balance.

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We request that you respond to the HHS action official named below within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department’s grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

Page '8 - Ms. Lorraine Brave Heart

To facilitate identification, please refer to the Common Identification No. A-10-95-01001 in all correspondence relating to this report.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence Frelot". The signature is written in black ink and is positioned above the typed name.

Lawrence Frelot
Regional Inspector General
for Audit Services

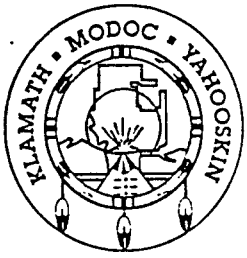
Attachment:

APPENDIX - KTHFS's Response, dated October 31, 1995

Direct reply to:

Ms. Kathy Block
Senior Contracting Officer
Portland Area Indian Health Service
Room 476
1220 SW Third Avenue
Portland, Oregon 97204

APPENDIX



Klamath Tribal Health & Family Services

Executive Plaza
3949 South 6th St.
Klamath Falls, OR 97603
(503) 882-1487
CHS (503) 882-1487
FAX (503) 882-1670

CONFIDENTIAL

KTH&FS RESPONSE
October 31, 1995

Lawrence Frelot, Regional Inspector General
for Audit Services Region IX
50 United Nations Plaza
San Francisco, CA 94 102

Dear Mr. Frelot:

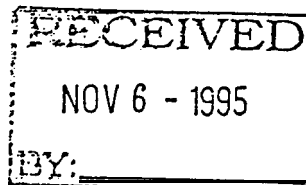
We have reviewed the draft audit report sent under your signature with interest. The draft report has been discussed with program management, The Klamath Tribal Health Board, The Klamath Executive Committee, and consultants to Klamath Tribal Health & Family Services. We were entirely cooperative, as you know, in making our records, staff, and directors completely open and available for your review. We are pleased that virtually all of the initial allegations have been found to have no merit. The following is our formal response to the remaining four recommendations made in your draft report.

RECOMMENDATION NUMBER ONE

" REFUND \$348,168 of excess cash held in Certificates of Deposit as of December 31, 1994 and any additional excess federal cash and related interest which was accumulated since that date."

Response: Klamath Tribal Health & Family Services does not concur with Recommendation Number One.

Response: We do concur with the conclusion that "... all Federal funds received by KTH&FS were properly deposited and accounted for."



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Discussion: However, the second paragraph of the first page of the draft report states, “we determined that Klamath Tribal Health & Family Services (KTH&FS) overstated its cash needs and thus received excess, federal cash.” It is our best information and belief that the above quote is, at least in part, inaccurate.

We have shared this report in general with our Finance Officer, Don Berry, and discussed the above quote in particular. The Klamath Tribal Health Board and management also discussed the receipt of the \$350,000.00 with Louis Longee, former Klamath Tribal Health Executive Director on loan from Indian Health Service during the time at issue.

Based on the completely consistent accounts given by both Mr. Longee and Mr. Berry, we believe that, in fact, Klamath Tribal Health & Family Services did not request the \$350,000.00 at issue. Both individuals insist that Indian Health Service, at their own initiative, provided the funds to “start up” the PL 93-638 Contract awarded to the Klamath Tribes. Mr. Longee advised us that he placed the start up costs in CD’s with the full knowledge of IHS Officials. Mr. Longee has advised us that he will verify his statements to us in writing, upon our request. We have so requested.

In addition, we believe that the statement of CD amounts on hand could be subject to misinterpretation. Upon review, we find that the draft report statement on deposits is accurate. However, the draft report appears to have a significant omission. Two CD’s of \$100,000.00 each, or \$200,000.00 total, were cashed and spent to meet ongoing operational needs. Thus, \$150,000.00, not \$350,000.00, remained of the initial \$350,000.00 IHS provided for start up costs (See Attached investment statement).

IHS froze all CD’s held by us when allegations of financial improprieties were made by an undisclosed informant. Since that time, IHS has conducted an independent investigation in regard to the CD’s. As a result of the IHS investigation, the Area Director of IHS has authorized us in writing to spend the temporarily frozen funds. Section 105 (b) Public Law 93-638 as amended states, “Payments of any grants or under any contracts pursuant to sections 102 and 103 of this Act may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this title... Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organizations.”

IHS, in effect, chose to advance KTH&FS payments from the base funding negotiated with, and approved by, their agency, to facilitate a new program start up. The \$150,000.00 remaining from these advances are part of our negotiated and approved base budget. Since we concur with the draft report that, “... costs claimed by KTH&FS were generally allowable, allocable, and reasonable in accordance with the terms of the contract...,” and our independent audits as well as the IHS review reach the same conclusion, we cannot agree that it is appropriate to return the remaining funds at issue. In fact, we have developed definite plans for the use of carryover and reserve funds to meet the health needs of tribal members in reliance on federal assurances that the start up funds were and remain part of our formally approved base budget.

Corrective Action: The only corrective actions we can suggest in terms of future practices is to state that we will spend funds held in reserve in a more timely manner in the future since, as an ongoing program, we now have specific plans and projects in place.

RECOMMENDATION NUMBER TWO

"Use cash disbursements to determine future cash needs"

Response: We can not concur with this recommendation but do agree in principle. This recommendation assumes that there were previous cash disbursements from which one could project future cash needs. The funds at issue were provided by IHS to start up a new PL 93-638 contract program.

Other than these initial distributions initiated by IHS, our practice has consistently been to base our projections of cash needs on actual cash disbursements. Under the first financial relationship established by IHS, payments were based on the quarterly accounting of expenditures we provided to IHS. Under the current financial relationship established by IHS, our cash drawdowns are based on our cash disbursement experience and approved plans. Our financial director has provided a technical memo verifying this information in the attachments to this response.

Corrective Action: We do not believe that any corrective action is appropriate or necessary as to recommendation number two.

RECOMMENDATION NUMBER THREE

"Revise past FSRs and prepare future FSRs on the basis of cash disbursement"

Response: We concur with Recommendation Number Three. As the attached memo from our Finance Director reflects, our past FSRs have been revised for some time now. Our standard operating procedure is to make all drawdowns on the basis of historical cash disbursements and approved plans or projects.

Corrective Action: Corrective action has taken place in terms of adjustments and present practices.

RECOMMENDATION NUMBER FOUR

“Provide necessary information to IHS/PAO so that IHS/PAO can determine the allowability and reasonableness of \$ 94,637.00 paid to the former Executive Director which was in excess of authorized amounts”

Response: Klamath Tribal Health & Family Services concurs, since we have no dispute with the findings and are agreeable to the cooperation described in Recommendation Number Four.

Two successive Tribal Health Boards and Klamath Tribal Executive Committee attempted to determine the amount of salary and benefits enjoyed by our former Executive Director. We are presently assembling complete documentation on the issue of compensation of the former Executive Director and the Board's efforts to evaluate his performance and compensation. We would anticipate that IHS will find such information to be necessary to their evaluation process.

Your investigation included review of internal documents and interviews. These resources evidence the sustained efforts of Klamath Tribal Health & Family Services Board members to determine the salary and benefits package the Executive Director received during his tenure. We are making an independent inquiry as to whether we might be in a position to pursue legal recourse based upon the appearance of malfeasance and /or misfeasance by the former Executive Director.

Corrective Action: In terms of corrective actions, we believe that all appropriate actions have been taken. When the former board of directors were unable to obtain basic information from the Executive Director, despite repeated and documented efforts from several members, the Klamath Tribal Executive Committee removed the entire board for cause. The newly appointed board hired a highly competent and professional Executive Director. The Board is now fully informed on all aspects of program operations as well as financial matters. This response to the draft report is reflective of our involvement and knowledge. We offer it with respect and in the expectation that our honesty and sincerity will be met with reciprocity.

SUMMARY OF KLAMATH TRIBAL HEALTH BOARD FINDINGS

Based upon review of documents, reports of staff and former Board members, and issue specific interviews, the Klamath Tribal Health & Family Services Board of Commissioners makes the following findings of fact:

1. We find, based on reports and presently available documents, that the first Board of Commissioners made repeated good faith efforts to obtain information regarding the former Executive Director's salary and benefits. These efforts are reflected by written directives and notices of meetings.
2. Based on our audit reports, and IHS review, and formal interviews of our first Director, Louis H. Longee, and our current Financial Manager, Don V. Berry, the Klamath Tribal Health & Family Services Board of Commissioners further find:
 - A. The original \$350,000.00 put in C.D.'s was provided to us for start up costs at the initiation of IHS, not at our request; and,
 - B. \$200,000.00 of the original \$350,000.00 has been spent to meet appropriate operating expenses; and
 - C. The remaining \$150,000.00 is part of our base budget; and,
 - D. IHS has authorized us to spend the \$150,000.00 plus interest.

We again thank you for allowing extra time for our review of your findings and the opportunity to fully examine each issue.

Sincerely,



Lorraine Brave Heart
Executive Director, KTH&FS

LBH/jak

cc: Marvin Garcia, Acting Chairman, The Klamath Tribes
Health Authority Board of Commissioners
Rod Clarke, Director, KADA
James R. Floyd, Director, PAIHS
Robert Williams, Senior Auditor, Office of Audit Services
Kathy Block, Contract Officer, PAIHS

The response prepared by KTHFS included several attachments which contained confidential and proprietary information in support of statements made in their letter dated October 31, 1995. Although we appreciate the additional documentation included for our review, it was not necessary to include copies of those documents in the audit report and we did not do so.