

Tribal Self-Governance

2017 Presidential Transition Priorities

(Updated: January 3, 2017)

Since the initial demonstration projects, Self-Governance has been more than a government program. It is a Tribally-driven initiative to exert Tribal sovereignty over governmental services. Under Self-Governance, Tribal governments exercise their sovereign right to control Tribal lands, Treaty rights, natural resources and welfare of Tribal citizens. More than 350 Self-Governance Tribes provide health care, social services, and education, manage natural resources and public safety and enhance cultural resources for Tribal citizens across the United States. They have the authority to redesign programs and reassign Federal funds to more efficiently meet local needs and, therefore, are more accountable to their citizens.

The Self-Determination era irrevocably transformed the previously paternalistic relationship between Tribal Nations and the Federal government. Today, Federal agencies must recognize Tribes' sovereign status and uphold the government-to-government relationship, building and improving all Tribal communities across the Country. Tribes are sovereign governments within the United States and Self-Governance is an initiative that holds the Federal government accountable for delivery on guarantees made when the United States government was just forming.

After more than two decades, the number of Tribes and the quantity of programs and funding managed under this legislation has steadily increased. Today, 272 Federally-Recognized Tribes and Tribal organizations exercise Self-Governance authority within DOI. Likewise, 352 Tribes and Tribal organizations exercise Self-Governance authority within IHS to operate and manage Health Programs. For Self-Governance Tribes, Federal agencies become advisors and technical assistance providers, rather than day-to-day service delivery managers. Self-Governance Tribal leaders expect that the Trump Administration will work collaboratively to further our vision to preserve, protect, and advance Tribal sovereignty, culture, history, and treaty and self-governing rights. In general, Self-Governance Tribes encourage President-elect Trump and his leadership to eliminate administrative barriers to economic development, to relieve burdensome administrative oversight created by competitive grants and other short-term funding, and to support the advancements critical to the health and welfare of Tribal citizens. Self-governance Tribes have identified the priorities that hold the most importance as President-elect Trump and his administration transition into office. We have outlined these priorities below and encourage the President-elect and his team to highly consider them as they continue forward with their transition plan.

Appointments

The vitality and effectiveness of the government-to-government relationship depends on whom the President-elect chooses to act on his behalf. Presidential appointees will assist in setting the agenda for Tribal Nations and certainly oversee realization of his vision and legacy with Tribal Nations. Not only do the following listed officials need to agree with his vision, every Cabinet member and many others should also be knowledgeable of Tribes' sovereign status and the history of Federal relations with Tribal Nations.

The following appointments are critical in advancing the government-to-government relationship and the implementation of Self-Governance. These individuals should have an established

knowledge of Tribal governments, operations, and priorities. Self-Governance Tribes request that the Transition team engage Tribal Leaders immediately to begin the process of identifying appropriate criteria for selection of the Department of the Interior Assistant Secretary of Indian Affairs and the Indian Health Service Director.

- White House Advisor on Indian Nations
- Secretary of Department of the Interior
 - Assistant Secretary of Indian Affairs
 - Special Trustee for American Indians
- Secretary of Health and Human Services
 - Director of Indian Health Service
 - Administrator for the Administration on Native Affairs
 - Administrator of the Substance Abuse and Mental Health Service Administration
 - Administrator of the Center for Medicare and Medicaid Services
- Secretary of the Department of Transportation
 - Deputy Assistant Secretary for Tribal Government Affairs at the Department of Transportation
- Office of Management and Budget
 - Assistant Director for Native American Programs

Tribal Advisory Committees

Tribal advisory committees assist Administrative leaders to engage Tribal Nation on leading issues. Previously, they have provided technical assistance and information to Federal departments and agency partners, offered feedback on Administrative proposals, and coordinated implementation of new programs and activities. Tribal leaders who participate in advisory committees take time away from their communities to bolster the government-to-government relationship and provide substantive feedback to ensure that agency priorities are aligned with Tribal Nations and are implemented to the benefit of Tribal citizens.

Self-Governance Tribes regularly engage with our Federal partners on matters of policy, legislation and budget to guide program discussions and decision-making through the DOI – Self-Governance Advisory Committee (SGAC) and the IHS Tribal Self-Governance Advisory Committee (TSGAC). These two Committees represent the driving forces behind the implementation of ISDEAA, Title IV and Title V, respectively. Self-Governance Tribes affirm the continuance of these Committees, as well as, the Committees referenced below would honor the government-to-government relationship and ensure a smooth transition.

- **White House Council on Native American Affairs.**
The White House Council on Native American Affairs is the first of its kind and the only forum where the Presidential Cabinet meets regularly to consider crosscutting issues in Indian Country. Tribal Leaders strongly encourage the President-elect to maintain this Council so that multi-disciplinary issues have a venue for solution-based discussion. Further, Self-Governance Tribes anticipate that the government-to-government relationship be extended to this Council and that Tribal Leaders have a regular seat at the table during the meetings.
- **Tribal Nations Leadership Council (TLNC) at the Department of Justice (DOJ).**
Created in 2010, TLNC is a council of Tribal Leaders who advise DOJ Leadership about ongoing and emerging justice and public safety issues in Tribal communities. Continued

partnership between DOJ and Tribal Leaders will be critical as Tribal Nations identify solutions that address critical public safety needs in Tribal communities.

- **Department of Health and Human Services (HHS) Secretary's Tribal Advisory Committee (STAC).**

American Indians and Alaska Natives (AI/ANs) have a right to government-provided health care as described in more than 300 treaties. STAC provides one of the forums for Tribal Leaders and Tribal governments to offer advice and recommendations to the highest level official on all HHS programs that impact Tribal health care delivery and the welfare of Tribal communities.

Additional issues of importance to Self-Governance Tribes lie within the Department of Transportation (DOT) and Veterans Administration (VA). Therefore, Self-Governance Tribes encourage establishment of two additional Advisory Committees.

- **Tribal Leader Advisory Committee to DOT**

Though the Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee will likely complete its work by the end of 2017, DOT will need support and advisement from Tribal leaders as implementation of the Fixing America's Surface Transportation (FAST) Act proceeds. An advisory committee can provide ongoing support and education for DOT leadership, Tribes, and other industry stakeholders.

- **Veterans Health Advisory Committee**

The next Administration should make coordination between Tribes, IHS, and VA a top priority in order to improve the access and quality of care provided to all veterans. This Committee should be charged with developing solutions for improving coordination of care, updating and extending the National VA-IHS Memorandum of Understanding (MOU), and creating policy recommendations to provide greater health care access and quality for Indian and non-Indian veterans.

Tribal Consultation

Tribal consultation is the cornerstone of the government-to-government relationship. True Tribal consultation occurs when there is reciprocal information exchange and cooperative problem solving toward a collective solution. Many agencies have worked over the last two decades to develop and adopt Tribal consultation policies that guide their interactions with Tribal Nations. Many of the policies are well thought out and produce meaningful outcomes in Indian Country. We encourage this Administration to adopt and reinforce the tenants of Executive Order 13175 and to set the expectation that consultation outcomes must create meaningful changes in Tribal communities across the United States. Additionally, we respectfully request that Federal agencies whom have not yet adopted a Tribal consultation policy, work with Tribes to develop and implement such a policy, to guide their interactions with Tribal Nations, and appoint liaisons to coordinate said interactions with Tribes. Two such Federal agencies are the Department of State and US Army Corp of Engineers, whom Tribal Nations have identified as top priorities for establishing a Tribal Consultation Policy.

Department Priorities

Department of the Interior (DOI)

Implement the Indian Trust Asset Reform Act (ITARA).

Title II of ITARA provides for the establishment of Tribal Demonstration Projects for Tribes and the Secretary of the Interior to jointly develop resource management plans. Tribal Self-Governance has proven that when Federal agencies and Tribes form partnerships in the management of trust assets, Tribal conflicts and disagreements are significantly reduced. Therefore, we encourage DOI to work with Tribes to expeditiously implement Title II early in this Administration.

Additionally, DOI conducted consultation to implement ITARA's Title III. Self-Governance Tribes made many recommendations to protect compactable functions and programs within the Office of Special Trustee (OST). The transition should include actions to secure these compactable OST functions and programs and maximize the opportunity to expand Tribal Self-Governance activities.

Preserve authority to include one-time or short-term resources in Self-Governance Funding Agreements.

Self-Governance Tribes have noticed a troubling trend that DOI is moving one-time funding opportunities to grants that are restrictive in nature—undermining core Self-Governance tenants—and cannot be included in Self-Governance Funding Agreements. This trend allows DOI to heavily regulate administration of Tribal programs, which in turn, hinders Tribal governments' ability to re-design programs to better meet the needs at the local level and impedes economic self-sufficiency.

Develop a streamlined vehicle for Tribes to maximize cross-cutting funding.

Self-Governance Tribes urge that continued emphasis be placed on all Federal agencies to identify and make available cross-cut budget and program information to assist Tribes in addressing Tribal community social, economic and resource management issues. We also urge DOI to initiate work in developing a streamlined Tribal contract vehicle, to implement the cross-cut budgets and programs, that is consistent with the government-to-government relationship.

Improve inter-departmental coordination, communication and transparency.

Previously, DOI has failed to notify the Office of Self-Governance (OSG) when individual departments receive program increases or develop special projects and initiatives. This breakdown has resulted in loss of funding opportunities for Self-Governance Tribes. OSG should be treated as a centralized location to relay information to Self-Governance Tribes. In general, DOI should strive for greater transparency throughout the Department regarding funding formulas; funding distribution; and steps taken to ensure better coordination and communication internally and externally to ensure the timely and equitable distribution of funding.

Support Self-Governance and Self-Determination in DOI's Strategic Plan.

Although the Strategic Plan is structured to measure agency performance, it fails to account for the 272 Self-Governance Tribes who have assumed management and control of DOI programs, services, functions and activities (or portions thereof) that were previously managed by the Federal government. We understand that funding is tied to how well the agency performs in

these areas and it is very disconcerting that there is an absence of measurements that correlate to those services provided directly by Tribal Nations on behalf of DOI.

Currently, the two existing measures tied to supporting Self-Governance and Self-Determination are: (1) the percent of Public Law 93-638 (P.L. 93-638) Title IV Compacts with Clean Audits; and, (2) the percent of Single Audit Act reports submitted during the reporting year for which management action decisions, regarding audits or recommendations, are made within 180 days. These measurements do not effectively evaluate OSG's performance. The audits are tied to Tribal performance, a function over which OSG has very limited, if any, control. We strongly recommend new measurements that more adequately reflect the role OSG performs—with respect to contracting and accounting services—be developed. Some alternative measurements that more accurately depict OSG performance were included in comments Self-Governance Tribes provided to the Department in August of 2016.

Department of Health and Human Services (HHS)

Protect modernizing health care delivery and quality provisions included in the Indian Health Care Improvement Act (IHCIA).

IHCIA has provided significant progress in the IHS, Tribal and Urban (I/T/U) health system. IHCIA updates and modernizes health delivery services, such as cancer screenings, home and community based services, hospice care, and long-term care for the elderly and disabled. It establishes a continuum of care through integrated behavioral health programs that address alcohol/substance abuse problems and the social service and mental health needs of Indian people. Additionally, there are many essential cost-saving provisions for IHS and Tribes, such as the authority for I/T/U health providers to be licensed in any state and practice at an I/T/U facility and the ability for Tribes to access the Federal Employee Health Benefits (FEHB) system. The law also authorizes IHS and Tribes to enter into arrangements with the Department of Veterans Affairs and Department of Defense to share medical facilities and services which increases government efficiency and ensures that veterans receive the care they deserve. IHCIA allows I/T/U providers to be eligible for participation in any Federal health care program and for reimbursement from 3rd party payers which is critical to increasing additional resources within system. As the Administration considers a path forward on health care reform, we urge you to ensure that the advancements under IHCIA are preserved and the Indian health system can continue to operate under a framework appropriate for 21st century healthcare delivery.

Implement a Self-Governance Demonstration Project according to the 2013 Self-Governance Tribal Federal Workgroup.

Self-Governance Tribes and HHS worked collaboratively to develop a report to implement a Self-Governance Demonstration Project across HHS. However, the report recommendations were never implemented. This Administration should implement a Demonstration Project for Self-Governance Tribes in order to evaluate the feasibility and effectiveness of operating those programs as identified in the report.

Assign a High Level Tribal-Federal Task Force to provide recommendations for the redesign of IHS.

This Task Force should provide an analysis and make recommendations regarding alternative business models, streamlined and efficacious internal IHS policies and process, methods to maximize capture of third party revenue and access to alternative resources, and strategic workforce development ideas, such as medical school partnerships and Tribal medical residency programs.

Update the IHS Facilities Construction Policy to include broad Tribal input.

The IHS Health Care Facilities Design and Construction Policy does not currently reflect new authorities available under the Indian Health Care Improvement Act (IHCIA), nor does it accurately reflect the tenants of Self-Governance. Additionally, the Facilities Appropriations Advisory Board (FAAB) recently decided to review and possibly update the Policy to reflect new authorities and make recommendations to the prioritization system. Self-Governance Tribal leadership agrees with FAAB's decision and believes the time is ripe to make changes that have broad Tribal support and allow for greater flexibility in construction projects.

Initiate additional Joint Venture Construction Projects.

The Joint Venture Construction Program (JVCP), authorized under section 818 of IHCIA, allows IHS to establish agreements with Tribes that require the Tribe to acquire, construct, or renovate a health care facility and lease it to the IHS, at no cost, for a period of twenty years. This Program is often used as a means to increase access to care in rural, isolated communities without the cost of Federal construction; however, it is underutilized and inconsistent. This Administration should develop a consistent schedule to accept and approve new JVCP projects in order to increase the access and quality of care in Tribal communities.

Department of Justice (DOJ)

Fulfill requirements under Section 221 of the Tribal Law and Order Act (TLOA).

Public Law 280 (P.L. 280), which delegated Federal criminal law enforcement authority to certain states, was enacted as part of the Federal Termination Policies in the 1950's. P.L. 280 degraded law enforcement services in many Tribal communities and as a result, has been a source of ongoing conflict between Tribes and States. However, Section 221 of TLOA sought to remedy these conflicts by mandating DOJ to reassume Federal jurisdiction at a Tribes' request. Despite advocacy and requests from Tribes, DOJ has not consistently exercised its authority under Section 221. Therefore, Self-Governance Tribes join with the Affiliated Tribes of Northwest Indians and National Congress of American Indians to urge DOJ to implement the requirements of TLOA Section 221 when requested to do so by Tribes.

Host department-wide Tribal consultations on the DOJ annual budget.

Similar consultation with Tribes is conducted by DOI's Tribal-Interior Budget Council (TIBC), the HHS Annual Tribal Budget Consultation (ATBC) and the Indian Health Service Tribal Budget Formulation Workgroup. This has been an invaluable process to elevate the funding disparity that exists for Tribal programs in comparison to Federal spending for other citizens, including those who are incarcerated.

Identify an alternative funding mechanism.

Support transparency in the identification, coordination and consolidation of an alternative funding mechanism that will provide recurring program base dollars, as opposed to grant funding, which is at best, a short-term investment used to support ongoing and critical Tribal justice needs. Stable funding at sufficient levels is essential for viable and effective Tribal justice institutions.

Increase support for the National Indian Country Training Initiative (NICTI).

The National Indian Country Training Coordinator leads the DOJ effort to ensure Federal prosecutors and agents, as well as state and Tribal criminal justice personnel, receive training and support needed to address particular challenges relevant to prosecutions in Indian Country. Due to the unique challenges in Indian Country, it is imperative that DOJ increase support for NICTI.

Department of Transportation (DOT)

Ensure the Tribal Transportation Self-Governance Program (TTSGP) is implemented in accordance to the FAST Act.

The FAST Act, passed in December 2015, marked the first ever Self-Governance expansion outside DOI and HHS. Due to the historic nature of this expansion and the rigorous work of the TTSGP Negotiated Rulemaking Committee, Self-Governance Tribes urge this Administration to complete regulation development as required by the FAST Act. Additionally, departmental leadership and program managers should receive training to fully understand Self-Governance tenants and to ensure appropriate implementation of the FAST Act.

Department of Veterans Affairs (VA)

Utilize the National VA-IHS MOU to provide care to non-Native Veterans.

Tribes assert that IHClA Section 405(c) provides the authority for IHS and Tribal Health Programs (THPs) to receive reimbursement for services provided to non-Native veterans. While the Veterans Access, Choice and Accountability (Choice) Act is a means for VA to purchase services in addition to the IHS/THP-VA MOUs, Choice Act agreements cannot be viewed as a replacement for the existing MOUs. Together, we should strive to ensure that the Choice Act does not diminish existing agreements, but instead becomes a limited-use option for IHS and THPs to increase health care access for all veterans.

Improve coordination of care between VA and Indian health systems.

As VA, IHS, and THPs work to build greater partnerships, we must address issues with regard to coordination of care. Failing to adequately coordinate care is magnified by VA's unwillingness to reimburse referral services. For example, if a Native veteran goes to an IHS or THP facility for service and needs a referral, the same patient must then be seen within the VA system before a referral can be secured. This is a not a good use of Federal funding, nor is it navigable for AI/AN veterans. This Administration should encourage VA leadership to leverage Tribal expertise to improve coordination of and access to care for veterans.