

**Final
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2018 SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS

Office of Self Governance

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2018 FINAL DRAFT SELF-GOVERNANCE NEGOTIATION GUIDANCE FOR BIA PROGRAMS

Office of Self Governance

I. Purpose

This document is prepared as a tool to guide Federal negotiators in Indian Affairs, including the Office of Self Governance (OSG), Office of Facilities Environmental and Cultural Resources (OFECR), Office of Indian Energy and Economic Development (OIEED), the Bureau of Indian Education (BIE), the Bureau of Indian Affairs (BIA), (including the Office of Justice Services) (OJS), and the Office of the Solicitor (SOL), in conducting, on a government-to-government basis, the 2018 self-governance (SG) negotiations. This final guidance is provided to Tribes/Consortia for informational purposes.

For the most part, 2018 negotiations will be conducted telephonically/electronically. Under limited budgets, travel to conduct face-to-face negotiations will only be approved if it meets a test of what is mission critical.

II. Interpretation and Process

Prior to negotiations, if there are questions about the content or meaning of this Guidance, please contact the OSG in Washington, DC at (202) 219-0240 or the Northwest Field Office in Vancouver, WA at (360) 699-1013. As in past years, the OSG Negotiator will be the lead negotiator for the Assistant Secretary - Indian Affairs (AS/IA) and the BIA Regional Director will be the negotiator for BIA programs, services, functions, or activities (PSFAs) pursuant to guidance issued by the BIA Director for non-base programs. The BIA Regional Director has responsibility to coordinate with and notify all pertinent BIA program offices regarding dates and locations of the negotiations to support the timely completion of negotiations. The OSG Director will coordinate with the BIA Director, the BIE, OST, OIEED, OFECR, and OJS Line Officers. Where OJS and OFECR funds are involved, OJS and OFECR have requested that their representatives be contacted so that they may be present during self-governance negotiations.

The Regional Director and the OSG Negotiator will surname and date the Final Report of a Tribe's/Consortium's 2018 negotiations (see Attachment 6) once negotiations have concluded and after the funding agreement has been signed by the Tribe's/Consortium's designated official(s). The BIE and OJS Line Officers may surname and date the Final Report as participants in the negotiations. The BIE Director

and the OJS Deputy Director will participate in the OSG Central Office surname process only when the funding agreement is new or there is Education or Law Enforcement and Detention/Corrections program issues or funding changes from the previous funding agreement. The OSG Director will sign funding agreements and amendments with review and comment from the BIA Director, the BIE Director, the OIEED Director, and the OJS Director as appropriate. Subject to revision by Congressional action, when negotiations include a Fixing America's Surface Transportation (FAST) Act Tribal Transportation Program (TTP) Addendum, a separate TTP Addendum Final Report Form will be used (see Attachment 6) that includes the date and surname of the Regional Roads Administrator. The OSG Director will sign TTP Addenda after considering any comments received from the BIA Director and Chief, BIA Division of Transportation for those Tribes receiving TTP funding through a Self-Governance funding agreement.

It is the intent of the OSG to have 2018 negotiations completed for fiscal year Tribes/Consortia by June 30, 2016, and for calendar year Tribes/Consortia by August 31, 2017. This allows OSG to obtain the necessary signatures 90 days before the proposed effective date of the agreement. The 90-day review period is required by Section 403 (f) of P.L. 93-638, as amended. Under normal budget and appropriation circumstances, this allows OSG to obligate funds to Self-Governance Tribes/Consortia on a more efficient and timely basis. This also allows OSG to meet an October 1 deadline to incorporate base transfers as changes in the next President's budget. It is important to meet these deadlines so that Tribes/Consortia receive the funds necessary to continue their tribal operations without interruption and avoid the cost of borrowing other funds.

III. Tribal Self-Governance Base Budgets

Once a Self-Governance Tribe/Consortium has elected to establish a Self-Governance base budget for Operation of Indian Program (OIP) funds and the amounts have been base transferred in the Tribal Priority Allocation (TPA) portion of the FY 2018 President's Budget Request to Congress, the tribal shares which make up the base budget shall only be adjusted in accordance with 25 CFR §1000.109. Language in funding agreements regarding the Secretary's responsibility for Self-Governance base budgets shall be identical to P.L. 93-638, Section 404, 25 U.S.C. § 5364. Language in funding agreements regarding adjustment of base budgets shall be identical to 25 CFR § 1000.109. Self-Governance base budgets shall be established and maintained in accordance with 25 CFR §1000.105-109. The base budget language in the funding agreement shall include the citation to 25 CFR § 1000.109. Tribal Self-Governance base budgets do not include Contract Support Cost funds. These funds and Law Enforcement funds are awarded separately from Tribes' base budgets.¹

¹ Some tribes have OSG shortfall funds in their base budgets that, before the year 2000, had been used for law enforcement programs.

Examples of funds from sources other than the OIP accounts are FAST Act Tribal Transportation Program (TTP) funds from the Department of Transportation, Department of Labor and Department of Health and Human Services funds for the Indian Employment Training and Related Services Demonstration Project, and Fire Preparedness funding. In accordance with 25 CFR §1000.105(b) and (c), non-recurring funds and any other one-time funding are not eligible to be included as part of the Tribe's base budget and shall not be base transferred. The BIA's Reprogramming documents and OSG's Authority to Obligate (ATO) Award documents will identify funds that are awarded on a one-time-only basis and are not guaranteed to be funded in subsequent fiscal year(s).

A Tribe/Consortium may choose to base transfer funds or remove funds from its base budget for a certain program or category of programs. If a Tribe/Consortium chooses to establish or remove a base amount in a certain program or line item, there must be a clear indication in the Self-Governance funding agreement that the item is to be base transferred or removed from the base budget. In instances where funding for a program is to be base transferred or removed from the base budget, the following footnote shall be applied to that program line:

“The amount identified in Column D is requested to be transferred [**SELECT**: into OR out of] the [**SELECT**: Tribe's OR Consortium's] Self-Governance TPA Base Budget as soon as possible.”

More than \$6.085 million is requested to be transferred to the Self-Governance Compacts line item in the FY 2018 President's Budget Request to Congress. The deadline for additional base transfers in the FY 2018 President's Budget Request to Congress has passed. The next opportunity to base transfer funds will be the FY 2019 President's Budget Request to Congress.

IV. Tribal Shares

Subpart E of the Self-Governance regulations deals with funding agreements for BIA programs and the tribal shares process.

The FY 2018 President's Budget Request to Congress contains proposed appropriation language that “no funds available to the Bureau of Indian Affairs for central office oversight and Executive Direction and Administrative Services (except executive direction and administrative services funding for Tribal Priority Allocations, regional offices, and facilities operations and maintenance) shall be available for contracts, grants, compacts, or cooperative agreements with the Bureau of Indian Affairs under the provisions of the Indian Self-Determination Act or the Tribal Self-Governance Act of 1994 (Public Law 103-413).”

V. Negotiations Process

Subpart G of the Self-Governance regulations describes the process for negotiating funding agreements. Generally, that process is oriented toward new funding agreements and consists of an information phase and negotiation phase.

For continuing Self-Governance Tribes/Consortia, pre-negotiations and actual face-to-face negotiations may not be necessary. As a general rule, teleconferencing and videoconferencing are encouraged.

Section 403(b)(5) of Title IV of P.L. 93-638 (25 U.S.C. § 5363(b)(5)), as amended, requires that self-governance funding agreements specify the Programs, Services, Functions, and Activities (PSFAs) to be provided and performed, and the responsibilities of the Tribe/Consortium and the Secretary pursuant to the funding agreement. This should be specified in all funding agreements. Tribes/Consortia and the BIA shall identify the PSFAs which are being assumed by the Tribe/Consortium and which functions the BIA will continue to be performed. The funding agreement shall at a minimum identify the PSFAs that the Tribe/Consortium intends to provide by Tribal/Consortium budget categories. It should be noted that specifying the services to be provided and the functions to be performed by the Tribe/Consortium does not limit in any way the Tribe's/Consortium's authority to reallocate funds and consolidate/redesign programs as authorized by Title IV of P.L. 93-638, as amended, except for PSFAs and funds appropriated and/or authorized for specific purposes.

In instances where there is a need to identify who is performing different functions, wording shall be negotiated and included in the funding agreement to clarify the matter. Detailed Memoranda of Understanding (MOU) may be negotiated between the Tribe and the BIA or other entities such as OST and may be included as funding agreement attachments or amendments to provide greater clarity regarding the respective roles and responsibilities of the Tribe and the BIA or other entities for PSFAs included in the funding agreement. The OSG Compact Negotiator shall provide the OSG Director with a draft BIA MOU and suggested FA language prior to final signature of the BIA MOU and FA.

Tribal self-governance base budget information will be pre-loaded in the BIA reprogramming request and supporting financial information will be provided by the OSG based on the FY 2018 President's Budget Request to Congress. A Self-Governance Negotiations Checklist to help participants through the 2018 negotiations process is provided. See Attachment 1.

When a funding agreement specifically indicates, either in the narrative or the reprogramming request, that a Tribe/Consortium has elected to assume a certain PSFA, the funding for that PSFA will be awarded, once available and known, without further amendment to the funding agreement. When there is no indication in the funding

agreement that the Tribe elects to assume a certain PSFA, an amendment will be required to add the PSFA and associated funding to the funding agreement.

VI. Disputes

If, during negotiations, the policies and/or processes of this Guidance become an issue of dispute, the OSG Negotiator will contact the OSG Director for further discussion and thereafter make necessary decisions to complete the negotiations. If the negotiation agreement cannot be completed, the OSG Negotiator will complete with the Tribe a draft agreement that includes the items that are in agreement and set a date to resolve the remaining issue(s).

Disputes concerning negotiation of the compact, funding agreement or other matters involving the funding agreement will be addressed through the appropriate dispute resolution process referenced in 25 CFR Part 1000 Subpart R - Appeals.

Disputes language, disagreements, differing views and the like shall not be included in funding agreements, MOUs, reprogramming documents, or footnotes to them. Funding agreements are reserved for matters on which the parties agree.

Language which reserves specific rights of the Secretary or Tribe may be considered dispute language. A “Memorialization of Matters Remaining in Dispute” may be attached to the funding agreement where there are disagreements or the Tribe and the Department have differing viewpoints. The Memorialization of Matters Remaining in Dispute must state that it is not part of the funding agreement. See Attachment 11.

VII. Amendments

If either the Tribe/Consortium or Department wishes to amend a funding agreement, then the amendment process as prescribed by each respective funding agreement shall be used. Negotiations of the amendment shall be completed and the amendment executed.

BIA (including OJS, as well as all regional and central offices), BIE, OIEED, OFECR, the Public Law 102-477 Office and OST shall provide award letters and funding distribution lists by Tribe to OSG for funding awards made throughout the year. These documents are also needed to facilitate the timely transfer of funds. Occasionally additional programs and funds may be added to the FA. Some may require amendments.

VIII. Reporting Requests

As in past years, the Assistant Secretary – Indian Affairs’ (AS/IA) Office is requesting the cooperation of Tribes/Consortia to provide program performance data and

information as required by the Government Performance and Results Act of 1993 (P.L. 103-62) (GPRA) for budget formulation purposes. This information and data is required on a quarterly basis. The following language is provided as a starting point for the Tribe's/Consortium's negotiations with its respective Regional Office:

“The [**SELECT:** Tribe OR Consortium] agrees to provide applicable data and information to the BIA [**INSERT:** Name] Regional Office pursuant to the Government Performance and Results Act of 1993 (P.L. 103-62). Before providing such information, the [**SELECT:** Tribe OR Consortium] will work with its respective Regional Office GPRA Coordinator to determine applicable data and information needed to meet the requirements pursuant to the Act.”

Attachment 2 lists the BIA Regional Office GPRA Coordinators. Attachment 4 identifies possible information requests that Self-Governance Tribes/Consortia may receive during the 2018 operating year. It should be understood that actual requests for data and information received by individual Tribes/Consortia, as well as the timing of the requests, may vary from this list. Not included are any requests for information that might come from Federal courts, OMB or Congress, or other sources.

The current DOI Strategic Plan has an item being compiled by OSG headquarters for GPRA purposes: the percent of P.L. 93-638 Title IV agreements with clean audits.

IX. Budget Formulation

The BIA Central and Regional Offices are responsible for budget formulation for all Tribes, including Direct Service, 638 Contract, and Self-Governance Tribes. Self-Governance Tribes are strongly encouraged to participate in all Regional Budget meetings and the BIA Regions are strongly encouraged to address the budget formulation needs of all Tribes in the region. Tribal Interior Budget Committee (TIBC) Regional Representatives receive quarterly budget updates and are responsible to represent all Tribes from their Region. They are also expected to share budget and related information with all Tribes in their region.

In addition, BIA Regional Offices are responsible for collecting 638 Pay Cost information from all Tribes in their Region, including Self-Governance Tribes. This information will be used to determine increases in pay cost funding for all Regional Tribes.

X. Documents for Self-Governance Negotiations

A. Compacts

Newly selected Tribes/Consortia should prepare their draft compacts in advance of negotiations using as their guide the model compact that appears in Appendix A of the final Self-Governance regulations at 25 CFR Part 1000. This model compact applies to

all bureaus within the Department of the Interior and provides a starting point for compact negotiations.

Changes from the model compact to fit the Tribe's/Consortium's particular situation are negotiable. However, any changes must comply with Title IV of P.L. 93-638, as amended, and 25 CFR Part 1000. Tribes/Consortia should allow ample time for the proposed compact to be reviewed by OSG and SOL.

The proper title of the federal signature line of the compact is "Assistant Secretary – Indian Affairs." The federal signature line must not contain the name of an individual. This allows the Assistant Secretary – Indian Affairs to designate, if necessary, an authorized designee to sign the compact.

Negotiations to reach agreement on compact language should be scheduled as needed. One unsigned version of the compact as agreed to at the field negotiation will be routed through the Federal surname process. If issues are identified during the surname process, then negotiations may reconvene. If no issues are identified during the surname process, then the Tribe will be notified by OSG. The Tribe can then submit two originals to OSG. After the Tribe signs both originals of the final compact, the Assistant Secretary – Indian Affairs will sign the compact and OSG will return one original of the final signed compact to the Tribe.

OSG requests that changes or amendments to existing Compacts be delayed until after January 1, 2018, when the initial payments for 2018 funding agreements have been completed. If the Self-Governance Tribe/Consortium is not willing to delay changing the compact by amendment, please notify OSG as soon as possible. OSG will work with the Tribe/Consortium to establish a timeline for the amendment process.

B. Funding Agreements (FAs)

A model funding agreement has been developed for Tribes. (See Attachment 5) Existing Self-Governance Tribes/Consortia may wish to review this model funding agreement to see if there are provisions for inclusion in their respective funding agreements. A copy of the model funding agreement is also on the OSG's web site (<http://64.58.34.34>). OSG requests that the Tribe/Consortium assume the responsibility for preparing the funding agreement and reprogramming request.

When preparing the final funding agreement for signature, type in Director, Office of Self Governance. Do not type in a specific name. Once final decisions have been reached, Tribes/Consortia should submit two signed original funding agreements, along with two signed original reprogramming requests as agreed to at the negotiation, to the OSG Negotiator or the Regional Office for further processing.

C. Proposed Effective Date

Section 403(f) of Title IV of Public Law 93-638, 25 USC § 5363(f) provides that the Secretary shall submit a copy of a funding agreement no later than 90 days before the proposed effective date of the agreement to each Indian Tribe served by the Agency that is serving the tribe that is a party to the funding agreement; to the Committee on Indian Affairs of the Senate; and to the Subcommittee on Indian and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives. For annual funding agreements, the following language shall be included:

“Section (xxx) --- Proposed Effective Date. The proposed effective date of this Agreement will be 90 days following the submission of the signed Agreement to the Congress and to the other Tribes served by the BIA Agency Office. The proposed effective date is [**SELECT**: October 1 OR January 1]. The successor Agreement shall be controlled by 25 CFR § 1000.90. This Agreement shall remain in effect until [**INSERT**: APPROPRIATE date Agreement ends.]”

25 CFR § 1000.85 authorizes Tribes/Consortia to negotiate a funding agreement with a term that exceeds one year, i.e. a multi-year funding agreement. Multi-year funding agreements shall include the following language:

“Section (xxx) --- Proposed Effective Date. The proposed effective date of this Agreement will be 90 days following the submission of the signed Agreement to the Congress and to the other Tribes served by the BIA Agency Office. The proposed effective date is [**SELECT**: October 1 OR January 1]. The successor Agreement shall be controlled by 25 CFR § 1000.90. This Agreement shall remain in effect until [**INSERT**: APPROPRIATE date agreement ends]. In subsequent years, the parties shall negotiate an amendment incorporating the annual REPROGRAMMING REQUEST(s) into the Multi-Year Funding Agreement by [**SELECT**: July 1 OR October 1] of each year.”

D. Adjustments/Mistakes

Consistent with practices of previous years, the following mistakes language shall be included in the funding agreement:

“It is recognized that during negotiations, there may be errors in calculations or other mistakes which may need to be renegotiated. Both parties agree to take corrective action when such errors are identified.”

E. Self-Governance 2018 Funding Agreement - Annual Reprogramming Request Worksheet

The key financial document to be completed at negotiations is the Self-Governance 2018 Funding Agreement – annual reprogramming request worksheet. The reprogramming request data entry table is available online via the Internet located on the OSG Website (<http://64.58.34.34>).

OSG Financial Management will pre-load 2018 Self-Governance base budget data into each Tribe's/Consortium's annual reprogramming request. Negotiated amounts and associated footnotes will be entered into the annual reprogramming request via the Internet.

For Tribes/Consortia negotiating their first Self-Governance agreements, 2018 budget information will be provided prior to the negotiation by the BIA Regional Self-Governance Coordinator.

It is essential that all negotiation participants work from the same reprogramming request during negotiations and decisions are clearly documented in the reprogramming request. After negotiations are completed, those Tribal Self-Governance employees who are security cleared are encouraged to enter negotiation data on the online reprogramming request in coordination and notification with the OSG Compact Negotiator. Otherwise, the OSG Compact Negotiator will enter such data.

Tribal employees may have access to the Self-Governance Data Base in a READ ONLY capacity without undergoing a background check. Tribal employee security clearance for accessing the Self-Governance Database funding agreement online component can be requested from the OSG Finance Office, phone: (202) 208-5073. In cases where the Tribal employee's security clearance for accessing the Self-Governance Database funding agreement online component has not been completed, the OSG Negotiator will prepare the reprogramming request.

In order to properly verify and document the funding to be provided to the Tribe/Consortium in subsequent years of a multi-year funding agreement, it is necessary that a reprogramming request worksheet be completed and signed for each year of the multi-year funding agreement. For administrative and signatory purposes, subsequent year reprogramming request worksheets shall be incorporated into the multi-year funding agreement by an amendment which will be signed by the Tribe and the OSG Director. The Tribe/Consortium should provide a copy of completed documents to the OSG Negotiator and the BIA self-governance coordinator in advance of obtaining Tribal signatures.

F. Footnotes

A footnote shall be written to cover every item where there is some uncertainty concerning the amount, unusual circumstance, or need for documentation about a program. For example, a footnote could identify the circumstances under which the amount could change. Typical examples include line items in the BIA budget which are formula driven, projects, or competitive programs where the Tribe/Consortium may or may not receive an award or the amount to be awarded is not certain. Footnotes shall not be used to document disagreements of the Tribe's/Consortium's and the Department's differing positions.

G. Tribal Resolutions

The Tribe/Consortium should review its resolutions authorizing participation in Self-Governance to determine whether additional resolutions are necessary for authority to sign funding agreements in 2018. Tribes/Consortia should provide to the OSG negotiator at the time of negotiations the tribal resolution being used to authorize the 2018 funding agreement.

H. Final Reports for Federal Negotiators

The purpose of the Final Reports for Federal Negotiators (Attachment 6) is for the Federal Negotiators to attest that the language and numbers contained in the funding agreement and reprogramming request are those that were agreed to during the negotiations. Both the OSG Negotiator and the BIA self-governance coordinator shall review these documents and provide a quality control check for any errors before submission for Federal signatures. The Tribe/Consortium should provide a copy of completed documents to the OSG Negotiator and the BIA self-governance coordinator in advance of obtaining Tribal signatures.

Once the funding agreement with the Tribe's/Consortium's signature and the signed Final Report for Federal Negotiators are received in central office, a 7 to 10 day review period will likely be needed before the funding agreement is signed. There will also be a final report form for a negotiated TTP Addendum. See Attachment 6 for both of the Final Reports.

I. Incorporation of Title I Self-Determination Provisions

25 USC 5363 (e), allows participating Tribes/Consortia to include "any or all provisions of Title I" in Self-Governance agreements and "the Secretary is obligated to include such provisions at the option of the participating Tribe or Tribes."

Accordingly, OSG should receive advance notice as soon as possible with the precise wording and the specific citation regarding any provisions from Title I to be included in a funding agreement. Direct excerpts or citations from Title I will facilitate the negotiations. When selecting a Title I provision, any applicable qualifying and related language must be included.

It is recognized that Title I provisions and self-governance regulations may have superseded certain provisions of a Tribe's/Consortium's compact. The following footnote addresses this issue:

“To the extent that provisions in this Agreement conflict with the Compact, this Agreement shall apply.”

A new codification of the different Titles of P.L. 93-638 has occurred. Attachment 7 identifies the changes which were made. All Title I provisions referenced in the funding agreement must now replace the Old United States Code with the new United States Code citations.

XI. Programs Requiring Special Attention

A. Trust Programs

1. Real Estate Appraisal Services and Beneficiary Processes Program² Funds

The Real Estate Appraisal Services and Beneficiary Processes Programs are managed by the OST. Negotiations with Tribes/Consortia for these programs will involve OST participation in conjunction with BIA and OSG Negotiators. Tribes/Consortia that currently perform these programs will be contacted by OST to negotiate a separate MOU between the Tribe/Consortium and OST that outlines the roles and responsibilities for management of these programs. Attachment 8 contains a template for an MOU for the Real Estate Appraisal Services Program. Attachment 9 contains a template for an MOU for the Beneficiary Processes Program. For more information, please contact the OST Office of External Affairs – Washington D.C. (202) 208-4317. The following footnote shall be used in cases where the Real Estate Appraisal Services or Beneficiary Processes Program are being operated by the Tribe/Consortium under its funding agreement:

“The [**SELECT:** Tribe OR Consortium] and the Office of the Special Trustee for American Indians (OST) [**SELECT:** have negotiated OR are negotiating] a Memorandum of Understanding (MOU) for the OPTION: [**SELECT:** Real Estate Appraisal Services Program OR Beneficiary Processes Program]. This program

² The Beneficiary Processes Program formerly was known as the Financial Trust Services Program.

will be governed by the terms of this MOU, which OPTION: **[SELECT: is OR will be]** attached and fully incorporated into the funding agreement.”

2. Requirements for Tribes to Access DOI Information Technology Trust Systems

There are options with recommended language for training, employee security requirements for access to DOI information technology, and records management. In addition, information is provided for negotiating the Real Estate Appraisal Services Program or the Beneficiary Processes Program [Individual Indian Money (IIM)]. OST should be referenced in footnotes when the Tribe/Consortium is operating the Real Estate Appraisal Services or Beneficiary Processes Program.

Option 1 – Tribal Election to Access DOI Information Technology Trust Systems

i. Training

The following language should be included:

“Prior to being granted access to DOI automated trust information technology systems, **[SELECT: Tribal OR Consortium]** employees must successfully complete BIA trust automated technology systems training, the costs of which will be met by the BIA **[INSERT IF APPLICABLE: and OST].**”

ii. Employee Security Requirements for Access to DOI Information Technology Systems

Tribal employees and employees of Tribal contractors must be favorably screened before being granted access to DOI information technology systems and DOI Trust Records in any electronic data or hardcopy format. Further, it may become necessary to have background investigations conducted of employees of Tribes/Consortia and their contractors. Such investigations will be conducted by the U.S. Office of Personnel Management and adjudicated by the BIA Personnel and Physical Security Office (or for OST programs, the OST Security Office). Both functions (investigation and adjudication) are considered inherently Federal functions and cannot be delegated for purposes of granting access to DOI information technology systems and DOI Trust Records in any electronic data or hardcopy format and/or individual Indian and tribal trust resources. Since background investigation and adjudication may be required, it is not possible for the BIA (or OST) to rely on screening conducted by a non-Federal entity.

In addition, Homeland Security Presidential Directive 12 (HSPD-12) mandates a government-wide standard of identification for Federal Government employees, contractors and specific DOI categories of individuals who are affiliated with DOI for more than 180 days and who require access to federally controlled information systems

and/or access to federally controlled facilities (no matter the frequency or duration). Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems.

The following provision should be included in each funding agreement involving functions and activities that require access to DOI information technology systems:

“Prior to being granted access to DOI automated information technology systems and DOI Trust Records in any electronic data or hardcopy format, the [**SELECT:** Tribe OR Consortium] agrees its employees and employees of its contractors must be favorably screened and a final favorable suitability determination issued by the BIA Personnel and Physical Security Office pursuant to OMB Circular No. A-130 and DM 441. In addition, pursuant to Homeland Security Presidential Directive 12 (HSPD-12), Tribal employees and employees of their contractors must also successfully go through a Personal Identity Verification process prior to being granted access to DOI automated information technology systems. Costs will be incurred by the BIA or OST for their respective PSFAs.”

Option 2 – Alternative Tribal Election Requirements to Access DOI Information Technology Trust Systems

The following language may be included:

a) "The Parties agree that prior to being granted data entry access to DOI automated information technology systems,

1) employees of the [**SELECT:** Tribe OR Consortium] and its contractors must be favorably screened and a final suitability determination issued by the applicable Security Office pursuant to OMB Circular No. A-130 and DM 441.

2) pursuant to Homeland Security Presidential Directive 12 (HSPD-12), employees of the [**SELECT:** Tribe OR Consortium] and its contractors must also successfully go through a Personal Identification process.

3) the [**SELECT:** Tribe's OR Consortium's] employees must successfully complete DOI trust automated technology systems training, the costs of which will be met by BIA [**INSERT IF APPLICABLE:** or OST for each agency's respective PSFAs].

b) Policies are currently being developed to implement background investigation requirements for Tribal employees and their contractors. The parties agree that during the interim [**SELECT:** Tribe OR Consortium] will continue to carry out BIA [**INSERT IF APPLICABLE:** or OST] Trust PSFAs under this funding agreement and employees of the [**SELECT:** Tribe OR Consortium] will continue to have access to Federal Records.

c) The [**SELECT:** Tribe OR Consortium] will assess Tribal employees by function in order to determine level of risk for each employee as well as the corresponding level of

background investigation necessary based upon DOI guidance. However, the [SELECT: Tribe OR Consortium] will begin requesting background investigations for those employees the [SELECT: Tribe OR Consortium] determines to have an immediate need. DOI agrees to work with the [SELECT: Tribe OR Consortium] in this process.

d) The cost of the initial round of background investigations to perform the functions described in this Agreement will be paid by BIA [INSERT IF APPLICABLE: or OST for their respective PSFAs]. The parties agree to renegotiate terms upon the completion of the development of the background investigation requirement policies for Tribal employees and their contractors.

e) Wherever feasible or possible, Tribal and Federal agencies will coordinate their efforts to utilize reciprocal suitability determinations when appropriate."

Option 3 – Tribal Election Not to Access DOI Information Technology Trust Systems When a Tribe is not Operating any Trust Programs

Should a Tribe/Consortium choose not to use either of the above two options in its 2018 funding agreement, then the following disclaimer shall be included:

"The Department and the [SELECT: Tribe OR Consortium] mutually agree that for 2018, none of the [SELECT: Tribe's OR Consortium's] employees or employees of its contractors will have access to DOI automated information technology systems or DOI Trust records in any electronic data or hardcopy format."

3. Trust Records Management

The language regarding Trust Records Management to be negotiated into funding agreements was developed in consultation with Tribes and published at page 51801 of Volume 70 of the Federal Register on August 29, 2005. The purpose of the language is to specify the respective responsibilities of the Tribes and the Secretary with respect to trust record keeping for trust PSFAs included in funding agreements.

When a Tribe is operating a trust program(s) the following language shall be negotiated into the 2018 funding agreements which include PSFAs that create fiduciary Trust Records:

"The [SELECT: Tribe OR Consortium] and the Secretary agree to the following:

The [SELECT: Tribe OR Consortium] agrees to:

(a) preserve, protect and manage all fiduciary Trust Records, created

and/or maintained by the [**SELECT:** Tribes OR Consortia] during their management of trust programs in their Title IV agreements. (A fiduciary Trust Record is/was any document that reflects the existence of an Indian trust asset and is/was used in the management of an Indian trust asset. An Indian trust asset refers to lands, natural resources, monies or other assets held in trust at a particular time by the Federal Government for a [**SELECT:** Tribe OR Consortium], Alaska natives or that are or were at a particular time restricted against alienation, for individual Indians. Management includes actions that influence, affect, govern, or control an Indian trust asset. The following are examples not considered to be fiduciary Trust Records: general administrative, personnel or travel records; education records; law enforcement records; health records; law making unrelated to Indian trust assets; tribal council resolutions and laws unrelated to Indian trust assets; and tribal elections.)

(b) make available to the Secretary all fiduciary Trust Records maintained by the [**SELECT:** Tribe OR Consortium], provided that the Secretary gives reasonable oral or written advance request to the [**SELECT:** Tribe OR Consortium]. Access shall include visual inspection and at the expense of the Secretary the production of copies (as agreed upon between the parties) and shall not include the removal of the records without tribal approval; and

(c) store and permanently retain all inactive fiduciary trust records at the Tribe/Consortium or allow such records to be removed and stored at the American Indian Records Repository (AIRR) in Lenexa, Kansas at no cost to the [**SELECT:** Tribe OR Consortium].

The Secretary agrees to:

(a) allow the [**SELECT:** Tribe OR Consortium] to determine what records it creates to implement the trust program assumed under its Title IV agreement, except that the [**SELECT:** Tribe OR Consortium] must create and maintain the information required by statute and regulation. No additional record keeping requirements are required by this Agreement.

(b) store all inactive fiduciary Trust Records at AIRR at no cost to the [**SELECT:** Tribe OR Consortium] when the [**SELECT:** Tribe OR Consortium] no longer wishes to keep the records. Further, the [**SELECT:** Tribe OR Consortium] will retain legal custody and determine access to these records and such records shall not be treated as Federal records for purposes of chapter 5 of Title 5 of the United States Code unless expressly agreed to by the [**SELECT:** Tribe OR Consortium];

(c) create and manage a single tribal storage and retrieval system for all fiduciary Trust Records stored at AIRR (No records will be accepted at AIRR until

such a retrieval system exists); and

(d) provide technical assistance for [**SELECT:** Tribes OR Consortia] in preserving, protecting and managing their fiduciary Trust Records from available funds appropriated for this purpose.”

In order to request technical assistance, please contact the Office of Trust Records (OTR) at (505) 816-1600.

B. Programs Involving Contact With Children

The following provision should be included in each funding agreement involving services, functions and activities where program staff has regular contact with or control over Indian children:

“As mandated by the Indian Child Protection and Family Violence Prevention Act (P.L. 101-630), prior to being authorized to perform services, functions and activities that involve regular contact with or control over Indian children, Tribal program staff and volunteers must be favorably screened and a final favorable suitability determination issued. Minimum standards of character must be established and implemented in accordance with 25 CFR Part 63.”

The Indian Child Protection and Family Violence Prevention Act requires the Bureau of Indian Affairs and Indian tribes and tribal organizations receiving funds under the authority of the Indian Self-Determination and Education Assistance Act or the Tribally Controlled Schools Act of 1988 to conduct background investigations for individuals whose duties and responsibilities would allow them regular contact with or control over Indian children (for example, JOM, ICWA, and Child Protective Services).

C. Contract Support Costs

OSG Negotiators should check with the OSG Contract Support staff prior to beginning a negotiation for 2018 to determine the status of the Tribe's or Consortium's Contract Support Costs (CSC) submissions. The OSG Negotiator is tasked with the responsibility of presenting a copy of the CSC Dear Tribal Leader Letter of April 14, 2017 to the Tribe or Consortium during negotiations in cases where its Contract Support Costs documentation for 2017 has not been submitted to OSG and should encourage the prompt submission of this documentation.

The following language may be used as a footnote and as an acceptable section in an FA:

“Subject to applicable federal laws, the [Tribe OR Consortium] is eligible for Contract Support Costs funding on the same basis as Tribes which contract with the BIA under

P.L. 93-638. Contract Support Costs funding will be calculated in accordance with the BIA's Contract Support Costs policy. Contract Support Costs funding shall be added to this Agreement as it becomes available.”

D. Welfare Assistance

Implementation of the national distribution methodology will require all BIA and tribal welfare assistance programs to submit their welfare assistance reports in a timely manner as indicated in the 2018 Welfare Assistance Funding Distribution Methodology approved by the Assistant Secretary – Indian Affairs. A copy of the approved Distribution Methodology and associated Financial Assistance and Social Services Report (FASSR) and Narrative Report are posted in the file library of the OSG Website (<http://64.58.34.34>) for use by the Tribe. The FASSR and Narrative Reports are to be completed and electronically certified by the Tribe and sent to Ken Reinfeld at Kenneth.Reinfeld@bia.gov. The reports are required so BIA can determine whether the full need welfare assistance payment level can be made or some pro rata reduction is required. The timely submission of information is needed to avoid delaying the final national distribution and adversely impacting Tribal and Bureau welfare assistance programs nationwide.

If the report is not submitted, the Tribe will not receive funding in the final distribution. Funding is dependent upon the submission and certification of the report.

For those Tribes/Consortia not operating under an approved Tribal Redesign Plan, if the Tribe/Consortium elects to include an estimate on the reprogramming request, the following footnote shall be used:

“The amount shown is an estimate. The actual amount to be provided is to be determined and distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

For those Tribes/Consortia not operating under an approved Tribal Redesign Plan, if the Tribe/Consortium elects to omit the amount on the reprogramming request, the following footnote shall be used.

“The actual amount to be provided is to be determined and distributed based upon welfare assistance need as determined by the national distribution methodology used by the BIA.”

For Tribes/Consortia operating under an approved Tribal Redesign Plan, the following footnote shall be used:

“The [**SELECT:** Tribe OR Consortium] is operating a General Assistance program under an approved Tribal Redesign Plan and will receive a fixed

negotiated amount of General Assistance program funding subject to a pro rata reduction needed to stay within any capped Welfare Assistance appropriation level enacted by Congress. The [**SELECT:** Tribe OR Consortium] may use savings from a redesign of the General Assistance program to meet other priorities. However, the [**SELECT:** Tribe OR Consortium] must meet any increase in the cost of the General Assistance program that results solely from tribally increased payment levels due to the Tribal Redesign Plan. Welfare assistance other than general assistance funds will be distributed based upon need as determined by the national distribution methodology used by the BIA.”

Tribes/Consortia operating under an approved Tribal Redesign Plan are urged to complete the Financial Assistance and Social Services Report and Narrative Report as previously indicated in this Section. This information is needed to assist the BIA in preparing budget formulation requests.

E. Road Maintenance

The BIA – Division of Transportation (DOT) has determined that Tribes eligible for BIA Road Maintenance funds are those Tribes that have BIA owned roads that are currently included in the BIA Road Inventory Field Distribution System (RIFDS). The following language shall be used when the Tribe is eligible to receive road maintenance funds:

“When the Tribe is eligible to receive road maintenance funds, subject to appropriations, Bureau of Indian Affairs road maintenance funds will be distributed using the same formula as used last fiscal year.”

Tribes that receive Tribal Transportation Program funding pursuant to Title 23 are authorized to utilize TTP funds up to 25% under the Fixing America’s Surface Transportation (FAST) Act for the upkeep of these roads.

F. Law Enforcement

The FY 2018 President’s Budget Request to Congress for Law Enforcement funding includes Criminal Investigation/Police Services and Detention/Corrections program funding in separate Public Safety and Justice line items. These program funds are intended for Criminal Investigation/Police Services programs and Detention/Corrections programs only. Funds from these Public Safety and Justice line items will be transferred by the BIA Office of Justice Services (OJS) to the OSG for distribution to Self-Governance Tribes. The amount of funds transferred for each Tribe/Consortium will be determined by BIA OJS.

Consistent with the findings contained in the Inspector General’s Report, Tribes are encouraged to report serious incidents in the Law Enforcement and Detention/Corrections fields through the OJS chain of command.

Best estimates of 2018 Law Enforcement base amounts for Criminal Investigation/Police Services and Detention/Corrections are currently provided by the FY 2017 appropriation enacted by Congress. These base amounts are subject to Congressional FY 2018 appropriations. These amounts should be included in column D of the annual reprogramming request and described in the associated footnote either as estimates or base amounts with the possibility of additional Law Enforcement non-recurring funding being provided on the referenced line item. Estimates of non-recurring Law Enforcement funding may be included in Column D of the annual reprogramming request but should be identified in a footnote as such. An approved list of Law Enforcement programs and recurring funding estimates to be included in the 2018 funding agreements will be available for negotiations.

Those Tribes receiving Criminal Investigation/Police Services funding are required to provide monthly crime reports pursuant to 25 CFR § 12.41. OSG Negotiators are encouraged to remind Tribes that it is important to provide monthly crime data reports to OJS for purposes of ensuring eligibility for any possible funding increases.

The following footnote provisions shall be used for those tribes receiving Law Enforcement program funding:

“Any new eligible Law Enforcement program funding will be determined and added to the funding agreement based on a determination by BIA OJS. The amount identified in Column D is [**SELECT:** \$_____ and is an estimate **OR** \$_____ a base amount]. The possibility of additional Law Enforcement non-recurring funding may be added to this line. The Tribe agrees to provide monthly uniform crime data reports pursuant to 25 CFR § 12.41. The monthly reports are due by the 5th of each month and shall be submitted to the BIA District Office in the Tribe’s area.”

OSG Negotiators will notify OJS district representatives so that they may participate in negotiations when Tribes are receiving OJS funds.

Funding for the Conservation Law Enforcement Officers (CLEO) program is included in the FY 2018 President’s Budget Request to Congress under Criminal Investigations/Police Services. Funding for this program is managed by the BIA Trust Natural Resources Management Division in the Office of Trust Services and is delivered to self-governance tribes with fish and wildlife resource agencies through existing FAs enabling them to hire and provide credible certification for their CLEO personnel.

G. Indian Employment Training and Related Services Demonstration Project (P.L. 102-477), 25 U.S.C. § 3401 et seq.

A funding agreement that includes P.L. 102-477 funds shall include a section with the following language:

“To the extent this Agreement includes Indian Employment Training and Related Services Demonstration Project funds pursuant to P.L. 102-477, the **[SELECT: Tribe OR Consortium]** agrees that:

- i. Such funds will be administered in accordance with the **[SELECT: Tribe's OR Consortium's]** approved P.L. 102-477 Plan, including compliance with existing P.L. 102-477 reporting requirements for such funds.
- ii. All applicable statutory requirements governing the various integrated programs must be met. The **[SELECT: Tribe OR Consortium]** agrees to abide by all applicable federal regulations published in the Federal Register. Only those federal regulations for which waivers have been specifically requested and formally approved will be considered waived.
- iii. No program funds under this demonstration project shall be reprogrammed for other tribal functions that are not included in the **[SELECT: Tribe's OR Consortium's]** approved P.L. 102-477 Plan. The **[SELECT: Tribe OR Consortium]** has the authority to integrate the program services in its approved P.L. 102-477 Plan into a single, coordinated, and comprehensive program. Within that framework the Tribe has the authority to commingle and reallocate funds to meet program objectives, unless commingling and reallocation is expressly prohibited by law (see P.L. 102-477 and legislation related to funding origin.)”

The following language should be included in calendar year agreements to insure that non-DOI P.L. 102-477 fiscal year funds received by the BIA are awarded without regard to the status of a calendar year funding agreement:

“Advance funding for programs funded through this funding agreement that are derived from non-DOI agencies as a result of their inclusion in the **[SELECT: Tribe's OR Consortium's]** P.L. 102-477 plan is to be transferred to the **[SELECT: Tribe OR Consortium]** based on the funding year inherent in those funds and as soon as those funds are available for transfer.”

Estimates of the funding amounts to be provided by non-DOI agencies may be included in Column D of the appropriate line item in the reprogramming request. The following footnote shall be used when an estimate is included:

“Funding for this line item shall be provided by OSG to the **[SELECT: Tribe OR Consortium]** when it is transferred by **[INSERT: name of the appropriate Federal Agency]** pursuant to an approved P.L. 102-477 Plan for inclusion in the **[SELECT: Tribe's OR Consortium's]** Self-Governance funding agreement. The

amount included is a funding estimate. The actual amount will be based upon funding levels provided by **[INSERT: name of the appropriate Federal Agency].**”

The following language shall be used when an estimate of the non-DOI agency funding amount is not included:

“Funding for this line item shall be provided by OSG to the **[SELECT: Tribe OR Consortium]** when it is transferred by **[INSERT: name of the appropriate Federal Agency]** pursuant to an approved P.L. 102-477 Plan for inclusion in the **[SELECT: Tribe’s OR Consortium’s]** Self-Governance funding agreement. The actual amount will be based upon funding levels provided by **[INSERT: name of the appropriate Federal Agency].**”

H. Tiwahe Initiative

As part of a nationwide Tiwahe Initiative, all Tribes who were able to demonstrate that they had Social Services and/or Indian Child Welfare Act base funding in their 2014 Tribal Priority Allocation (TPA) base were provided a recurring base funding increase (approximately .0807 of their Social Services TPA base and approximately .2154 of their Indian Child Welfare Act TPA base). A considerable number of Tribes have consolidated program funding in a single line item (such as Consolidated Tribal Government Programs and Other Aid to Tribal Government). In order to facilitate eligibility determinations for future TPA base funding increases, as part of the 2018 Self-Governance Negotiations, if there is no existing breakout of the consolidated program funding, OSG Negotiators should identify the option for consideration by the Tribe/Consortium of including on the 2018 reprogramming request the specific programs and associated funding amounts that are consolidated in such line items.

The following Tiwahe Initiative Options may be included as footnotes on applicable Social Services and Indian Child Welfare Act TPA Line Items:

Option 1:

“Under the Tiwahe Initiative, the **[INSERT: Name of the Tribe or Consortium]** the **[SELECT: Tribe OR Consortium]** has been determined to be eligible to receive recurring **[SELECT: Social Services OR Indian Child Welfare Act]** program funding. As of June 1, 2017, the **[SELECT: Tribe OR Consortium]** has already received its recurring Tiwahe Initiative funding for **[INSERT: applicable years 2015, 2016, 2017]**. The amount shown in Column D is an estimate of the **[SELECT: Tribe’s OR Consortium’s]** additional **[SELECT: Social Services OR Indian Child Welfare Act]** program funding for 2018. Subject to Congressional action, the actual amount provided in 2018 is requested to be base transferred as soon as possible.”

Option 2:

“Under the Tiwahe Initiative, the **[INSERT: Name of the Tribe or Consortium]** the **[SELECT: Tribe OR Consortium]** has been determined to be eligible to receive recurring **[SELECT: Social Services OR Indian Child Welfare Act]** program funding. As of June 1, 2017, the **[SELECT: Tribe OR Consortium]** has already received its recurring Tiwahe Initiative funding for **[INSERT: applicable years 2015, 2016, 2017]**. Subject to Congressional action, the actual amount provided in 2018 is requested to be base transferred as soon as possible.”

I. Construction, Wildland Fire Preparedness, Wildland Fire Prevention and Non-Recurring Projects

Footnotes that identify the basis for the award and the estimated amount at the time of negotiations shall be used for Construction, Wildland Fire Preparedness, Wildland Fire Prevention and Non-Recurring projects amounts where there is a degree of uncertainty in the amount of funds to be made available. In these instances, the following footnote shall be used when an estimate of the amount of funds to be made available is included in the reprogramming request Worksheet:

“The amount identified in Column D is the best estimate at the time of negotiation and is subject to adjustment based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities can only be provided on a one-time-only basis for this year and are not guaranteed to be funded in subsequent years.”

The following footnote shall be used when an estimate of the amount of funds to be made available is not included in the reprogramming request Worksheet:

“The amount to be provided is based on actual award, selection of project, or distribution methodology used by the BIA provided Self-Governance Tribes, other Tribes, and BIA agencies are treated similarly. Funding for non-recurring Programs, Services, Functions, and Activities (PSFAs) can only be provided on a one-time-only basis for this year and such PSFAs are not guaranteed to be funded in subsequent years.”

The BIA’s Reprogramming documents and OSG’s Authority to Obligate (ATO) award documents will identify funds that are awarded on a one-time-only basis and are not guaranteed to be funded in subsequent year(s). In accordance with 25 CFR 1000.105 non-recurring program funds, construction and Wildland Fire Preparedness funds, Wildland Fire Prevention funds, Congressional earmarks, one-time project funds, funds

with restrictive conditions, other funds specifically excluded by Congress, and funds that are not in the OIP accounts cannot be base transferred to SG base budgets.

Wildland Fire Preparedness Program funding and Wildland Fire Prevention Program funding are both non-recurring and subject to adjustment based on actual award or distribution methodology used by the BIA. Wildland Fire Preparedness and Wildland Fire Prevention Program Management – Indirect (Indirect cost for Wildland Fire Preparedness) are separate line items on the reprogramming request and need to be identified separately from contract support cost needs for Tribal Priority Allocation and other Operation of Indian Programs appropriation accounts. The following footnote shall be added for this line item when an estimate of the Indirect Cost for Wildland Fire Preparedness is included in the reprogramming request Worksheet:

“The amount shown is an estimate of the Indirect Cost funding to be provided for Wildland Fire Preparedness. The actual amount will be determined at the current negotiated tribal indirect cost rate or other approved indirect cost methodology.”

The following footnote shall be added when an estimate for the Indirect Cost for Wildland Fire Preparedness is not included in the reprogramming request worksheet:

“The actual amount of the Indirect Cost funding to be provided for Wildland Fire Preparedness will be determined at the current negotiated Tribal Indirect Cost Rate or other approved indirect cost methodology.”

On April 6, 2001, the Deputy Commissioner of Indian Affairs issued guidelines for Tribally operated Wildland Fire Management programs which are included as Attachment 12.

J. Tribal Transportation Program (TTP)

Current authorization of the FAST Act expires on September 30, 2020. In order to be valid, the program Addendum must conform to the existing authorization statute that governs. Estimates of TTP and TTP Planning amounts may be included in 2018 reprogramming requests if desired.

The following language shall be used for Tribal Transportation Program footnotes in the reprogramming request:

“The Tribal Transportation Program (TTP) will be operated under this Self-Governance funding agreement in **[SELECT: FY 2018 OR CY 2018]**.. A transportation Addendum based on the FAST Act **[SELECT: has been OR will be]** attached and incorporated into the funding agreement. [The amount shown in Column D is an estimate.] The actual amount of funding to be provided for the

program will be based upon the authorizing and appropriation statutes.”

The following language shall be used for Tribal Transportation Planning Program footnotes in the reprogramming request:

“The Tribal Transportation Planning Program is being operated by the [**SELECT**: Tribe OR Consortium] under its Self-Governance funding agreement in [**SELECT**: FY 2018 OR CY 2018]. [The amount shown in Column D is an estimate.] The actual amount of funding to be provided will be based upon the authorizing and appropriation statutes.”

The Tribal Transportation Planning Program PSFAs may be included in the funding agreement without a TTP addendum.

The following language shall be used when a Tribe/Consortium decides to receive its TTP funding directly from the Federal Highway Administration during FY 2018/CY 2018:

“The [**SELECT**: Tribe or Consortium] has elected to receive Tribal Transportation Program funding directly from the Federal Highway Administration during [**SELECT**: FY 2018 OR CY 2018]. Project work or activities funded by [**SELECT**: FY OR CY] 2017 or prior years continue to be coordinated through the Office of Self Governance and Bureau of Indian Affairs and carried out in accordance with the Self-Governance Funding Agreement and [**SELECT**: IRR OR TTP OR IRR and/or TTP] Addendum in place when the funds were received by the [**SELECT**: Tribe OR Consortium] until such time that the funds are completely expended and the project work and activities are accepted by the signatory parties.”

See Section 9 of Attachment 11a/Single Tribe or Attachment 11b/Tribal Consortium for applicable TTP Reporting Requirements.

K. Consortium Breakout of Participating Tribes' Shares

To provide clarification when negotiating agreements, providing funding, and responding to inquiries, each Alaskan Consortium shall include a Tribe-by-Tribe breakout of all negotiated shares included in the funding agreement. (See attachment A & B models on the OSG website: <http://64.58.34.34>.)

L. Program Funding Not Included in the 2018 President's Budget Request to Congress

The FY 2018 President's Budget Request to Congress proposes to eliminate funding for Small and Needy Tribes, Housing Improvement Program, Tribal Climate Resilience, and Alaska Native Programs. The following footnote shall be included on those respective Reprogramming Request program lines:

“Should final appropriations restore program funding for this line item, the Tribe elects to operate the program through this Funding Agreement.”

M. Program Funding Levels Reduced in the 2018 President’s Budget Request to Congress

With regard to programs for which the FY 2018 President’s Budget Request to Congress proposes to reduce funding, the following footnote language may be included on respective Reprogramming Request program lines:

“The amount for this line item is derived from the 2018 President’s Budget Request to Congress and may be adjusted in accordance with 25 CFR § 1000.104.”

N. Motor Vehicle Operation Policy

Pursuant to the requirements of 5 CFR Part 930 and the Department of the Interior’s Motor Vehicle Safety Policy, 485 DM 16, the following language is requested to be included in funding agreements to promote the safe and prudent operations of motor vehicles while performing duties under the funding agreement:

“The [**SELECT**: Tribe OR Consortium] certifies that it will self-administer a motor vehicle operation policy that promotes the safe and prudent operations of motor vehicles while performing duties to implement the terms of the Agreement. The [**SELECT**: Tribe’s OR Consortium’s] policy is either comparable or superior to the May 3, 2006 Motor Vehicle Operation Policy for the BIA issued by the Associate Deputy Secretary. The [**SELECT**: Tribe’s OR Consortium’s] policy includes compliance with Executive Order 13513 prohibiting texting while driving.”

Pursuant to Executive Order 13513, negotiators shall give Tribes/Consortia a copy of Executive Order 13513 and shall encourage Tribes/Consortia to adopt their own policies about texting while driving and to educate their employees and contractors about texting while driving. Tribes/Consortia may elect to include compliance with Executive Order 13513 which includes texting while driving and include such reference in the funding agreement. The purpose of including a Motor Vehicle Operation Policy in the funding agreement is to better prepare to defend a tort action in the event that it becomes necessary.

A copy of the Motor Vehicle Operation Policy for the BIA is included in Attachment 14. In those instances where a Tribe declines to include this Motor Vehicle Operation Policy language in the funding agreement, the federal negotiator is to document the declination with a Memo to the File.

O. Single Audit Copies

The OSG negotiator shall advise the Tribe that the Office of the Inspector General (OIG) National Single Audit Coordinator Memorandum dated July 1, 2009 regarding the Suspension of Single Audit Extension Policy dated July 1, 2009 disallows extensions of the date by which single audits must be filed. Audits that are late will be subject to sanction in accordance with OMB Uniform Guidance, Title 2, Subtitle A, Chapter II, Part 200, Subpart F Sanctions.

The following footnote shall be included in the funding agreement.

“In addition to the required copy to the Federal Audit Clearing House, the [SELECT: Tribe OR Consortium] is required by 25 USC § 5305(f) to provide two copies of the audit financial statements and single audit report to the Office of Internal Evaluation and Assessment, DOI, 12220 Sunrise Valley Drive, Reston, VA 20191, phone (703) 390-6578, fax (703) 390-6325, or e-mail an electronic copy to OIEA@BIA.GOV.”

As part of an effort to reform and strengthen Federal grant making, the Office of Management and Budget (OMB) published new guidance on December 26, 2013, for Federal award programs, OMB Uniform Guidance, Administrative Requirements for Federal Awards, commonly referred to as the Omni Circular, codified at 2 C.F.R. Parts 200, 215, 220, 225, and 230. The new Uniform Guidance is implemented effective December 26, 2014.

XII. Summary - Final Negotiations Packets

Once the exchanging of draft documents is completed and final agreement has been reached, Tribes/Consortia should prepare final negotiations packets which should include the following items to be sent to the Compact Negotiator or the BIA Regional Office:

- A. Two signed, original funding agreements;
- B. Two signed, original funding agreement reprogramming request worksheets;
- C. Two copies of authorizing Tribal resolution(s) as needed;
- D. Two copies of attachments (MOAs, Tribal breakouts, (“Attachment A” and “Attachment B” for Alaska Consortia), footnotes, etc.);
- E. Two copies of TTP original addendum.

If one set of signed originals is submitted by a Tribe/Consortium that set will be retained by OSG and a copy will be provided to the Tribe/Consortium for their records.

BIA Regional Directors should prepare the following items for the final negotiation packets, using the current Attachment 6 in this Guidance:

- A. Final Report Form for Federal Negotiators (provided by and signed and dated by the BIA Regional Director and OSG Negotiator).
- B. Final Report Form for TTP (provided by and signed and dated by the BIA Regional Director, Regional Roads Administrator and OSG Negotiator) if TTP is included in the funding agreement.

List of Attachments

- Attachment 1:** [Self-Governance Negotiations Process Checklist](#)
- Attachment 2:** [List of BIA Regional Office GPRA Contacts](#)
- Attachment 3:** [List of BIA Climate Control Points of Contact](#)
- Attachment 4:** [Reporting Requests](#)
- Attachment 5:** [Model Annual Funding Agreement](#)
- Attachment 6:** [Final Reports for Federal Negotiators](#)
- Attachment 7:** [List of New and Old United States Codes for P.L. 93-638, as Amended](#)
- Attachment 8:** [MOU Template for the Real Estate Appraisal Services Program](#)
- Attachment 9:** [MOU Template for the Beneficiary Processes Program](#)
- Attachment 10:** [Process for Negotiating Tribal Transportation Program into Funding Agreement](#)
- Attachment 11:** Tribal Transportation Program Templates for Self-Governance Tribes and Consortia (2 Documents)
a) [Tribal Transportation Program Templates for Self-Governance \(Single Tribe\)](#)
b) [Tribal Transportation Program Templates for Self-Governance \(Tribal Consortium\)](#)
- Attachment 12:** [Memorialization of Matters Remaining in Dispute](#)
- Attachment 13:** [Guidelines for Tribally Operated Wildland Fire Management Programs, April 6, 2001 Memorandum from the Deputy Commissioner of Indian Affairs](#)
- Attachment 14:** [Motor Vehicle Operation Policy for the BIA](#)