DOI SELF-GOVERNANCE ADVISORY COMMITTEE (SGAC)

QUARTERLY MEETING
OCTOBER 25-26, 2017

Embassy Suites DC Convention Center
900 10th Street Northwest, Washington, DC 20001

Phone: (202) 739-2001
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   c. Strategy Session Recap
   d. Strategy Session Blueprint

3. **Department of Transportation – Update on Section 207 of the FAST Act, Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee**
   a. DOT Negotiated Rulemaking Deadline Extension Notice
   b. Tribal Co-Chairs letter USDOT Secretary Chao (extend rulemaking under TTSGP FAST Act)

4. **Budget Update**
   a. TIBC Budget Update for SGAC

5. **Bureau of Indian Education**
   a. 7.12.17 Carla Mann Testimony
   b. 7.12.17 Tony Dearman Testimony

6. **Other Documents**
   a. 904 Task Force Call for Nominations FINAL September 2017
   b. DOJ Tribal Grants Consultation Flyer-VAWA ETD
   c. Listening Session on Traders with Indians Regulations July 2017
   d. DTL Land to Trust
   e. Consultation Draft - Trust Acquisition Revisions
DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education 
P.O. Box 1734, McAlester, OK 74501
Telephone (918) 302-0252 ~ Facsimile (918) 423-7639 ~ Website: www.tribalselgov.org

DOI Self-Governance Advisory Committee and Technical Workgroup
Quarterly Meeting
Wednesday, October 25, 2017 (1:00pm to 5:30pm)
Thursday, October 26, 2017 (8:30am to 2:00pm)

Embassy Suites Washington DC - DC Convention Center
900-10th Street NW
Washington, DC 20001
Phone: (202) 739-2001

AGENDA

Meeting of the SGAC and Technical Workgroup Members

Wednesday, October 25, 2017 (1:00pm to 5:30pm)

1:00 pm  SGAC Tribal Caucus
Facilitated by: Shawn Duran, Tribal Program Administrator, Taos Pueblo and Vice-Chairwoman, SGAC
(Send items for discussion to Jennifer McLaughlin, SGAC, Tribal Technical Co-Chair at Jmclaughlin@jamestowntribe.org)

- Burial Assistance
- Preparing for the 30th Anniversary of Self-Governance – Need some themes and Tribal showcases from the regions and nationally
- DOJ Tribal Consultation & Listening Sessions on Tribal Grants
- BIA Regulations – Solicitation for Comments Indian Trader Act and Dual Taxation – how it can be amended to address dual taxation and other jurisdictional matters (Indian Self-Determination Act as the nexus)
- OST Trust Services Review & Audit – broad canvass target of small and medium Tribes (restrictions against reallocation) Over-reach?
- DOI Strategic Plan Update

1:30 pm  Legislative Update
- Survive Act
- 477
- Tribal Labor Sovereignty
- Tax Reform
- Title IV DOI Amendments

Geoff Strommer, Partner, Hobbs, Straus, Dean & Walker
Mathew Jaffe, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

2:00 pm  Invocation – (All Participants and Invited Guests)

Roll Call

Welcome and Opening Remarks
Shawn Duran, Tribal Program Administrator, Taos Pueblo and Vice-Chairwoman, SGAC

SGAC Committee Business
Shawn Duran, Tribal Program Administrator, Taos Pueblo and Vice-Chairwoman, SGAC
- Approval of Meeting Minutes (July 19-20, 2017)
- Recap Strategy Session (Jennifer McLaughlin)
2:15 pm **Office of Self-Governance Update**  
*Sharee Freeman, Director, Office of Self-Governance, DOI*

2:30 pm **GWU Center for Indigenous Politics and Policy**  
*Wendy Helgemo, Director & Associate Professor, AT&T Center for Indigenous Politics and Policy, The George Washington University*

3:00 pm **Government Accountability Office**  
*Mickey Peercy, Director of Self-Governance, Choctaw Tribal Nation of Oklahoma  
Jay Spaan, Senior Analyst, GAO*  
- High Risk – How it works  
- How Tribes can manage visits and data calls  
- Regulatory and other Barriers to Self-Governance

3:30 pm **Department of Transportation – Update on Section 207 of the FAST Act, Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee**  
*Kay Rhoads, Principal Chief, Sac and Fox Nation, Tribal Co-Chair, TTSGP Negotiated Rulemaking Committee  
Anthony Bedell, Deputy Assistant Secretary, Intergovernmental Affairs and  
Deputy Assistant Secretary, Tribal Government Affairs, DOT  
Ada Valaitis, Congressional and Tribal Affairs Liaison, DOT  
Robert W. Sparrow, Jr., Director, Tribal Transportation Program, DOT*

4:00 pm **Budget Update**  
*Dave Conner, Director, Natural Resources, Red Lake Band of Chippewa Indians  
George Bearpaw, Director, Office of Budget Management, Indian Affairs  
Amber Ebarb, Budget/Policy Analyst, National Congress of American Indians*  
- FY2018 President’s Budget Request  
- FY2018 Appropriations Update  
- FY2019 Budget Status  
- FY2020 Budget Formulation Process  
- Tribal Interior Budget Committee Update (OVW Update & Listening Session) –

4:45 pm **Bureau of Indian Education**  
*Melanie Fourkiller, Policy Analyst, Choctaw Nation Health Services Authority  
Bill Nuttle, Program Specialist, DOI, Bureau of Indian Education*  
- Johnson O’Malley

5:15 pm **Preparation of Issues to Discuss with Acting Assistant Secretary – Indian Affairs**

5:30 pm **Adjourn for the Day**

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**Thursday, October 26, 2017 (8:30 am to 2:00 pm)**  
Meeting of the SGAC & Technical Workgroup with Acting Assistant Secretary – Indian Affairs  
(Only Members of the SGAC and Proxies to be seated at the table)

8:30 am **Welcome & Introductions**  
*Shawn Duran, Tribal Program Administrator, Taos Pueblo and Vice-Chairwoman, SGAC*
8:45 am  **Indian Economic Development, Labor and Population Data**
Kasie Nichols, Self-Governance Director, Citizen Potawatomi Nation
Hyon B. Shin, Chief of Racial Statistics Branch, Population Statistics, US Census Bureau, Department of Commerce
Thomas Krolik, Data Economist, Bureau of Labor Statistics, Department of Labor
Benjamin Simon, Chief DOI Economist and Assistant Director, Economics, Office of Policy Analysis (Labor Force Report), DOI

9:45 am  **Break**

10:00 am  **SGAC Joint Discussion with Acting Assistant Secretary - Indian Affairs**
Mike Black, Acting Assistant Secretary - IA, DOI (invited)
John Tahsuda, Principal Deputy Assistant Secretary – IA, DOI (invited)
- Introduction and Responsibilities of Principal Deputy Assistant Secretary - IA
- Summary of Listening Sessions on E.O. 13781 Comprehensive Plan for Reorganizing the Executive Branch. Will consultation occur prior to action being taken?
- Update on Comments Received on ANPRM on the Traders with Indians Regulations

12:00 pm  **SGAC Members Executive Session with Acting Assistant Secretary - Indian Affairs**

1:00 pm  **Technical Workgroup Work Session**
Jennifer McLaughlin, SGAC, Tribal Technical Co-Chair, Self-Governance Legislative Associate, Jamestown S’Klallam Tribe
Ken Reinfeld, SGAC, Federal Technical Co-Chair, OSG Senior Policy Analyst, DOI

2:00 pm  **Adjourn the SGAC Meeting**
## 2018 Calendar

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<td>Albuquerque Convention Center Albuquerque, NM</td>
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<td>Tribal Self-Governance Strategy Session</td>
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<td>4th Quarterly Meeting</td>
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## 2019 Proposed Calendar

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<td>Cheryl Andrews-Maltais, Chairwoman</td>
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<td>Annette Johnson, Treasurer Red Lake Band of Chippewa Indians</td>
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<td>Jane Rohl, Tribal Council Secretary</td>
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<td>W. Ron Allen, Tribal Chairman/CEO</td>
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<td>Tyson Johnston, Council Member</td>
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| Rocky Mountain | Beau Mitchell, Council Member | Chippewa Cree Tribe  | PO Box 544, Box Elder, MT 59521  
P: (406) 395-5705 ext. 205  
E: beau@cct.rockyboy.org |
|              | VACANT                        |                      |                                                                                    |
| Southern Plains | John Barrett, Jr., Chairman | Citizen Potawatomi Nation 1601 S. Gordon Cooper Dr. Shawnee, OK 74801  
P: (405) 275-3121 ext. 1157  
F: (405) 275-4658  
E: rbutcher@potawatomi.org |
|              | Rhonda Butcher, Director      |                      |                                                                                    |
|              | Kay Rhoads, Principal Chief   | Sac and Fox Nation   | 920883 S Hwy 99, Building A Stroud, OK 74079  
P: (918) 968-3526 ext. 1004  
F: (918) 968-1142  
E: chief@sacandfoxnation-nsn.gov |
| Southwest    | Ruben A. Romero, Governor     | Taos Pueblo          | P.O. Box 1846, Taos, NM 87571  
P: (575) 758-8626 ext. 115  
F: (575) 758-8831  
E: SDuran@taospueblo.com |
|              | Shawn Duran                   |                      |                                                                                    |
|              | SGAC, Vice Chairwoman         |                      |                                                                                    |
|              | Chris Gomez, Lt. Governor     | Ysleta del Sur Pueblo | 119 S. Old Pueblo Road El Paso, TX 79907  
P: (915) 859-8053  
E: cgomez@ydsps-nsn.gov |
| Western      | Delia M. Carlyle, Council Member | Ak-Chin Indian Community 42507 W. Peters & Nall Road Maricopa, AZ 85138  
P: (520) 568-1019  
F: (520) 568-1001  
E: dcarlyle@ak-chin.nsn.us |
|              | VACANT                        |                      |                                                                                    |
## SGAC TECHNICAL WORKGROUP
### TRIBAL TECHS

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<th>MEMBER (Name/Title/Organization)</th>
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<tr>
<td>Alaska</td>
<td>Bruce Baltar</td>
<td>Tech Rep</td>
<td>PO Box 130</td>
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<td>Bristol Bay Native Association</td>
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<td>Dillingham, AK 99576</td>
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<td>Martha Whitman-Kassock</td>
<td>Tech Rep</td>
<td>P.O. Box 219</td>
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<td>Association of Village Council Presidents</td>
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<td>John Bioff</td>
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<td>Kawerak, Inc.</td>
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<td>Nome, Alaska 99762</td>
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<td>Dee Sabattus</td>
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<td>711 Stewarts Pike</td>
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<td>United South and Eastern Tribes</td>
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<td>Ferry, Suite 100</td>
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<td>Elizabeth Malerba</td>
<td>Tech Rep</td>
<td>400 North Capitol</td>
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<td>United South and Eastern Tribes</td>
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<tr>
<td>Midwest</td>
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<td>43408 Oodena Drive</td>
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<td>Mille Lacs Band of Ojibwe</td>
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<td>Onamia, MN 56359</td>
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<td>Dave Conner</td>
<td>Tech Rep</td>
<td>24200 Council Street</td>
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<td>Red Lake Band of Chippewa Indians</td>
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<td>Jay Sam</td>
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## Additional Technical Resources

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Telephone (918) 302-0252 – Facsimile (918) 423-7639 – Website: [www.tribalselfgov.org](http://www.tribalselfgov.org)
### SGAC TECHNICAL WORKGROUP ASSIGNMENT MATRIX

**Quarterly Meeting**  
**July 24, 2017**

**Technical Workgroup Co-Chairs:**  
Jennifer McLaughlin, Tribal Co-Chair  
Kenneth Reinfeld, Federal Co-Chair

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<tr>
<th>Assignment</th>
<th>Person(s) Responsible</th>
<th>Date Task Originated</th>
<th>Status</th>
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<tbody>
<tr>
<td>1. State, County, and Local land issues paper</td>
<td>Kasie Nichols Tolowa Dee-ni’ Nation Representatives</td>
<td>July 20, 2016</td>
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<tr>
<td>2. Draft recommendations for improving the budget distribution process/Greenbook</td>
<td>Budget Workgroup</td>
<td>October 25, 2016</td>
<td>On hold – TIBC hired a contractor to review and make recommendations on the BIA Budget Process</td>
</tr>
<tr>
<td>3. Host call to discuss follow up on /BIA Strategic Plan (these changes will support the DOI Strategic Plan)</td>
<td>Jennifer McLaughlin Pitt Clyde Terra</td>
<td>March 30, 2017</td>
<td>On hold – pending DOI initiation of consultation.</td>
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<tr>
<td>4. Offer technical assistance and training for Government Accountability Office (GAO) analysts</td>
<td>Sharee Freeman Terra</td>
<td>March 30, 2017</td>
<td>Director Freeman touched base and is moving forward with plans.</td>
</tr>
<tr>
<td>5. Develop a Self-Governance Legislative Package for Tribes to download.</td>
<td>Pitt &amp; SGCE</td>
<td>March 30, 2017</td>
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<td>7. Share form letter for Tribes to send to Congress requesting appropriations support for the Office of Self-Governance.</td>
<td>SGCE</td>
<td>July 21, 2017</td>
<td>Completed.</td>
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<tr>
<td>8. Send letter to Mr. Cason and Ms. DuMontier requesting that DOI initiate the demonstration project authorized in the Indian Trust Asset Reform Act</td>
<td>Terra Branson</td>
<td>July 21, 2017</td>
<td>Completed.</td>
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DOI Self-Governance Advisory Committee and Technical Workgroup
Quarterly Meeting
Wednesday, July 19, 2017 (1:00pm to 4:30pm)
Thursday, July 20, 2017 (8:30am to 2:00pm)

Embassy Suites Washington DC - DC Convention Center
900-10th Street NW
Washington, DC 20001
Phone: (202) 739-2001

AGENDA

Meeting of the SGAC and Technical Workgroup Members
Wednesday, July 19, 2017 (1:00pm to 5:00pm)

Legislative Update
Geoff Strommer, Partner, Hobbs, Straus, Dean and Walker
Lloyd Miller, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP
Mathew Jaffe, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP

- Title IV
  - There has not been much movement, primarily because there are not many champions to make this move. The Senate has indicated that it would like to see the House take up and move the bill forward prior to the Senate.

- 477 Program Updates
  - Tribes are currently waiting for the legislation to be put on the calendar and then for the bill to reach the floor and pass.
  - Currently there is a bottleneck on all legislation due to the Senate’s work on health reform.

Akelia Kennison,
- Currently education bills are not moving much. However, there are still opportunities to have very interesting conversations regarding education.
- Ester Martinez – This includes providing grants for incorporating Native languages into all areas of education curriculum as well as funding for language survival schools, and language restoration programs.
  - Funded was provided at $4 million in 2017. Additionally, a bill was introduced to reauthorize funding and lower the enrolled student requirements. The Senate has said it would report on it favorably in May. However, to date no movement has been seen.
  - Tribal Comment: We need to make sure the language of the bill isn’t so restrictive that Tribes can’t do the things they need to do in order to keep the students engaged and bring the language into their homes.

- Johnson O’Malley (JOM) Program
  - The JOM count hasn’t been updated recently, which means that there are a lot of students not receiving needed funding. Originally, the JOM count provided approximately $150 per student, but now it only provides approximately $68 per student.
  - BIE did conduct a survey to update the student count. However, the Bureau said that it could not provide accurate numbers because not all of its contractors responded.
  - The Senate has introduced a bill that would increase funding and direct the BIE to update the student count. However, it only allows 240 days for applicants to update their numbers, which could be complicated. There is also no companion bill in the House.
• Indian Head Start Reauthorization
  o There has not been a reauthorization bill introduced yet. However, there has been a bill introduced that would allow more flexibility for implementing Native languages into the Head Start Program which is supported by Tribes.
  o A modernization bill has been introduced that would block grant the program but this does not have the support of the national and Tribal head start program.
  o The challenge is that there is a large debate as to whether Head Start works, so it is important for Tribes to express their support.

• Federal Communication Proposed Rule
  o There has been discussion around infrastructure, particularly cell towers. Currently cell companies have indicated that the cost of soliciting Tribal input outweighs the cost of the project and are justifying it through the idea that if one cell tower exists, another one will not do much more harm to sacred and Tribal lands.
  o There was a comment period. However, Tribes are concerned about the Proposed Rule because of the possibility that implementation could lead to litigation.

Matthew Jaffe, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP
• BIA FY18 Budget
  o House and Senate marked up and approved budgets for BIA that did not support the President’s budget request.
  o They built on the FY 2017 appropriations level. Despite the publicity, the FY 2018 budget is about $45 million above the enacted FY 2017 levels. Included in the increases are $21.5 million for Operation of Indian Programs and $11 million for additional hiring and $10 million for construction of 10 Bureau of Indian Education schools as well as $10 million more for Indian land and water claims lines.
  o Despite significant cuts to the Environmental Protection Agency (EPA), Congress has restored, at a lower amount, the funding for EPA projects, such as the Great Lakes Restoration Program. The State and Tribal General Assistance Program (GAP) was cut by $230 million.
  o The funding level for IHS is $147 million over the FY 2017 enacted level.

• NAHASDA Reauthorization
  o A scaled down version of the original NAHASDA that does not reauthorize Title VIII regarding Native Hawaiians was moved out of the Senate Committee.

Mary Pavel, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP
• Public Safety Funding
  o The Subcommittee Bill shorted millions of dollars that the President requested. However, several Senators moved to restore the funding to the amount requested by the President as well as to include Indians in the Victims of Crimes Act (VOCA) funding.

• Juvenile Justice and Delinquency Prevention Act
  o Tribes have identified an issue regarding the lack of notification to Tribes when Native youth are in the juvenile justice system – which is significantly different than the foster care system.
  o This is also a major issue when it comes to youth who have been forced into sex trafficking, because young women are labeled as criminals.

• Adam Walsh Act - Sex Offender Registration Bill
  o The Bill has passed the House and is pending in the Senate.
  o Changes were made regarding how long juvenile offenders have to register.

• Tribal Labor Sovereignty Act
  o Cole has a provision in his Labor-Health Appropriations Bill that the National Labor Relations Board cannot implement restrictions against Tribal governments. This has not passed out of committee thus far, but perhaps it will this year.
We are doing well within the House regarding National Labor Relations and feel we are getting closer on the Senate side. This does not open up the Pandora's box of the private sector and only applies to governmental revenue that is mandated by law.

Invocation
Ruben A. Romero, Governor, Taos Pueblo provided the invocation

Roll Call
Alaska: William Micklin, 1st Vice President, Central Council Tlingit and Haida Indian Tribes of Alaska
Eastern: Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah)
Eastern Oklahoma: Karen Ketcher, Proxy for Bill John Baker, Principal Chief, Cherokee Nation
Midwest: Jane Rohl, Secretary, Grand Traverse Band of Ottawa and Chippewa Indians
Northwest: W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe
Pacific: Scott Sullivan, Council Secretary, Tolowa Dee-ni’ Nation
Rocky Mountain: Richard Sangrey, Chief of Staff, Chippewa Cree Tribe
Southern Plains: Kasie Nichols, Proxy for John Barrett, Jr., Chairman, Citizen Potawatomi Nation
Southwest: Ruben A. Romero, Governor, Taos Pueblo
Western: Karen Fierro, proxy for Delia M. Carlyle, Councilmember, Ak-Chin Indian Community

Welcome and Opening Remarks
W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)

SGAC Committee Business
W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)

- Approval of Meeting Minutes (March 29-30, 2017)

  MOTION
  Taos Pueblo made a motion to approve the March SGAC Meeting Minutes as corrected. Pueblo of Jemez seconded the motion.
  The minutes approved with editorial amendments.

- Approval of Midwest Alternate Representative Nominee

  MOTION
  Taos Pueblo made a motion to approve Jane Rohl, Secretary, Grand Traverse Band of Ottawa and Chippewa Indians as the Midwest Alternate Representative. Tlingit and Haida Tribes of Alaska seconded the motion.
  The motion passed without objections.

Office of Self-Governance (OSG) Update
Sharee Freeman, Director, Office of Self-Governance, DOI

- Dr. Gavin Clarkson has been appointed as the Deputy Assistant Secretary – Policy and Economic Development and will oversee OSG and Office of Indian Energy and Economic Development, and Office of Indian Gaming.
  o He is most interested in the Indian Trader Regulations.
The Department has decided that OSG will not move to Reston, but will be on the main hallway and available for meetings with the Assistant Secretary.

FY2018 BIA Greenbook
- The President’s Budget proposed to reduce $520,000 from the OSG budget which would only support four employees.
- Funding was recently transferred to OSG to support ongoing activities including negotiations.
  - Tribal Question: How many positions are in Self-Determination Services and how does that compare to the positions in OSG?
    - Response: Self-Determination services have 87 positions, not including positions that handle budget and distribution. The overall total would include those 87 positions, all of their budget positions, and the 14 positions within OSG.
  - Tribal Comment: It is important to have this data so that we can show the importance of maintaining the positions in OSG. The office already has a small staff and reducing it further would only harm Tribes.
- There is a little trouble with the FY 2018 Greenbook because the tables in the front of the book do not match the back of the book, creating negotiation problems. The OSG is trying to update the database so the numbers are clarified.

Contract Support Costs (CSC) Update
- OSG has finalized CSC amounts for FY 2016 and 2015.
- OSG anticipates that $98 million is needed to cover CSC in payments in FY 2017.
- CSC data for 2017 is due August 1, 2017.

Welfare Assistance Funding Final Distribution
- The annual Welfare Assistance distribution is below what it was last year and is about 79.2%.
- The BIA Office of Indian Services will host a webinar on July 26, 2017 to provide information and allow Tribes to ask questions.

TIBC
- An Economic Development Workshop will be held next week in conjunction with the TIBC meeting being held in Phoenix.

Indian Trust Asset Reform Act (ITARA) Update
- A transition team has been developed to adopt the requirements set forth by ITARA regarding single entity appraisals as well as the alignment of the Department’s appraisal functions with Executive Order 13781.
- The transition team includes members from OSG and Office of the Special Trustee (OST).
- The communication team is supposed to share information with Tribes in the near future, including a point of contact.
- All information regarding the transition is available at: https://www.doi.gov/ost/itara
- Tribal Question: Is ITARA a function of OSG?
  - Response: No
- Tribal Comment: It is concerning that the Department has only focused on implementing Title IV of ITARA instead of implementing the entire law.
- Tribal Comment: The issue with consultation held is that it was coordinated by the OST and driven by the report required for Congress.
- Tribal Question: Will Tribes be kept informed as to what is going on with Executive Order 13781?
  - Response: In regard to this project, OST communications will be coordinating the effort to inform Tribes and it should come from the Secretary’s Office.
- Tribal Question: Has there been a timeline established for when the development of the Executive Order and related communications will occur?
Response: We have made the request that they include specific dates and we expect to have that next week. Additionally, we have requested that OST create a FAQ to address Tribal questions.

- Tribal Question: Since many of these Executive Orders are intertwined, there needs to be a publication regarding these issues, such as reorganization plans, that Tribes can then comment on. Is that something that will be done?
  - Response: We don’t have that answer currently.
- Tribal Comment: Since OST was intended to eventually go away, the agency that will actually be completing the appraisals needs to be the ones that drive the efforts – not OST.

SGAC Comments on Executive Order (EO) 13781, Comprehensive Plan for Reorganizing the Executive Branch

Shawn Duran, Tribal Programs Administrator, Taos Pueblo, SGAC Vice-Chair
Jennifer McLaughlin, Self-Governance Legislative Associate, Jamestown S’Klallam Tribe and SGAC Tribal Technical Co-Chair

- Comprehensive Plan for Reorganizing the Executive Branch/Draft Comments
  - The SGAC workgroup looked through all the information from previous years regarding organization recommendations on similar efforts.
  - It was determined that we would draft a letter that highlights the guiding principles of Self-Governance and provides recommendations that align with those principles, rather than go into greater detail.
  - Leadership has encouraged the TSGAC to perform the same process.

- Executive Order 13777 Regarding Regulatory Reform
  - This Executive Order requires the designation of an individual within each agency to be their regulatory reform officer. Additionally, this Executive Order calls for the elimination of positions.
  - We need to keep these in mind and determine a plan to address them.

- SGAC also reviewed the draft letter and the committee membership agreed to send the broader, more principled letter.

Budget Update

Amber Ebarb, Budget/Policy Analyst, National Congress of American Indians

- FY 2018 Appropriations
  - Committees are doing their work without the budget resolution to set caps
  - The House version of the Appropriations Bill does not include significant cuts that the President’s budget proposed.
  - Tribal Question: Will the House version of the legislation likely pass the Senate?
  - Response: This will be part of the budget resolution debate to balance defense and non-defense discretionary funding. We will have a better idea of the outcome when the discussion about the budget resolution concludes.
  - The Appropriations Committee restored all the cuts and maintained level funding for FY 2018 Department of the Interior Appropriations. The report explicitly supports social services, ICWA, and the Housing Improvement Program (HIP).
  - Additional strategy to respond to the President’s Budget Request will be discussed at the Tribal Interior Budget Committee next week. They hope to publish something in The Hill or Roll Call.

- Tribal Interior Budget Committee Update
  - Kepner-Tregoe Assessment was contracted to assess the current budget formulation process and formulation. The report for this assessment will be available by the next TIBC meeting at the end of July.
They are proposing an additional step to implement some of the recommendations they are making. The next phase of the work would require additional action from TIBC.

George Bearpaw, Director, Office of Budget Management, Indian Affairs

- Update on Consolidated Appropriations Act, 2017, P.L. 115-31
  - The FY2017 Appropriations were finally passed on May 5, 2017. However, there was a hold up with the apportionments and warrants, which slowly trickled in during June.
  - This has delayed other processes including the budget and other work that normally occurs in the summer.
  - All the base budget funding has been distributed and Tribes should have received that funding.
  - The only programs that had cuts were real estate services, executive director and administrative services, education construction, and settlements.

- FY 2018 President’s Budget Request
  - The total request for FY 2018 was $2.488 billion which is an overall decrease of $303.2 million below the 2017 planning level.
  - The Operations of Indian Programs appropriation was decreased by $181.1 million below the planning level.
  - Includes additional investments in infrastructure.
  - Maintains funding for energy development.
  - Prioritizes programs that service Tribes nation-wide and eliminates pilot programs that serve only a few Tribes.
  - Increases include:
    - $1.2 million for deferred maintenance of BIA-owned roads
    - $2.6 Irrigation Operations and Maintenance (O&M)
    - $2.2 million for Indian Irrigation Rehab/Survey & Design
    - $4.3 million for Safety of Dams programs
    - $2 million for deferred maintenance for BIA facilities.
  - Decreases include:
    - $62.9 million less for Tribal Priority Allocations
    - $5.3 million less for Self-Governance Compacts
    - $35.4 million less for Contract Support Costs…which does fully fund the CSC need based on new funding levels.

- FY 2019 Budget Formulation Process
  - Indian Affairs did submit the Departmental Budget Submission on July 7th. It is likely that the FY 2019 budget will continue to focus on infrastructure and energy development and maintain programs that serve tribes on a nation-wide basis.

- Tribal Comment: Tribes should not continue to be subjected to major and sustained cuts that are being leveled against Indian Affairs. Those actions have created and continue to perpetuate the gross underfunding of CSC.
  - Response: Legislative language does not allow for money to be taken from programing for CSC. If there is more funding needed for CSC the Department has to go back to Congress to request it.

- Tribal Question: It is unlikely that the House and Senate will agree on a budget resolution. The House has already indicated that it does not intend to meet the budget caps. What meaning is there to do a markup when we know that the Ways and Means Committee is already asking for savings from nearly all the subcommittees?
  - Response: We do not know exactly what impact this will have on programs. However, the work done in the House regarding the budget has been good. Additionally, having Indian Country on the record opposing the consequences of the President’s budget framework is important for keeping those Congressional concerns on the radar.
• Tribal Question: What data will be used by Congress to build its budget?
  o Response: Congress is operating on the designated amount of $5 million below maximum spending which is outlined by the Budget Control Act.

• Tribal Comment: What is the ideal budget for fully funding all programs and deliverables? This will be helpful to determine how short the budget is. Additionally, does NCAI develop a report which includes this information and how do the Tribes access that?
  o Response: NCAI provides a budget request for Indian Programs across the government annually. TIBC has been working on a methodology to identify need.

• Tribal Question: Was the list of unmet need from each BIA Region included in the Indian Affairs budget and will you be able to include the success stories from each Tribe so that they will be available to Congress?
  o Response: All information we have submitted has been embargoed.

• Tribal Comment: Please share how frustrated Tribes are with the outcome of this budget and the lack of transparency of the budget process moving forward.
  o Response: There are a lot of people within Indian Affairs that advocate for Tribes and we provide information on the status of Indian Country to them.

• Tribal Question: Is there any planned improvement or changes to the survey that determines the level of unmet need?
  o Response: We were not able to include the survey results regarding unmet need as it was too long and cumbersome to do so. There are planned changes for the survey, which include: keeping the ranking system as a separate section; removing the character limit for answers; and developing an interface for an app. The survey is planned to be released in September and the ranking system in October. We are also putting more work into ensuring that the right people are present for the trainings and meetings in the regions.

• Tribal Comment: Training this year will be very helpful. We encourage you to do additional training.
  o Response: Indian Affairs needs to provide additional guidance regarding who should attend the training so that the right folks are in the room.

• Tribal Comment: There are issues when it comes to providing Tribal information. Tribes want to know how their programs are impacting the community and families. However, there is not a way to illustrate that the beneficiary’s situation has been improved. As such, we cannot fully show the success and outreach of Tribal programs.
  o Response: Of course, there are two different components. There are strategic planning metrics and then measuring unmet need.

• Tribal Comment: There needs to be improvement in communication with the regions. Each region is different and not all of them have regional officials that provide the needed information, which has led to many issues with the process.
  o Response: We are aware of this issue and are evaluating ways to remedy that situation, improve communication, and provide better assistance.

• Tribal Comment: We do appreciate your efforts on the tool kit. However, you do need to include the warm-fuzzy outcomes within the data. Additionally, agencies need to demonstrate the data and success stories that highlight best practices within the justification, which will lend its own efforts to advocating for a better budget.

• Tribal Comment: We suggest that you include a request that regional officials submit when they will be holding budget formulation meetings to ensure those meetings are actually happening. Finally, the current reporting structure does not align with the intent of the law for Self-Governance and we recommend transitioning to a reporting structure that does so.

• Federal Question: Are there any examples or best practices of which regional offices are doing things well and could provide that information to other regions?
  o Tribal Response: Historically, many regional offices have not done well. However, in recent years some of the regions have improved and do have good intentions even
though they still have issues. At this point it would likely be better to develop a new process rather than trying to salvage the current processes that are not working.

- Tribal Response: Currently the Northwest and Midwest have a good process for addressing budget formulation meetings or summits. Eastern Oklahoma also did a good job this year.

**Preparation of Issues to Discuss with Acting Assistant Secretary – Indian Affairs**

- Department of Transportation and Environmental Protection Agency.
- Executive Order on Reorganization and concerns with moving regional directors around.
- Support for OSG and budget office.
- BIA Greenbook and full funding for OSG.
- ITARA listening session.
- Keep Tribes engaged on the development of the BIA Strategic Plan.

**Adjourn for the Day**

**Thursday, July 20, 2017 (8:30 am to 2:00 pm)**

**Meeting of the SGAC and Technical Workgroup with Acting Assistant Secretary – Indian Affairs, Department of the Interior**

*(Only Members of the SGAC and Proxies to be seated at the table)*

**Invocation**

Floyd Gomez, Tribal Secretary, Taos Pueblo provided the invocation

**Welcome & Introductions**

_W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)_

- We welcome you (Gavin Clarkson), to the SGAC meeting. I know through our previous interactions that you understand Self-Governance, Sovereignty and Economic Development and we appreciate your partnership in trying to improve things at DOI.
- During our meetings since the Administration transitioned several issues that are concerning to us have arisen, including inadequate support from the Department to fully fund Indian Affairs programs, as well as, reorganization and physical relocation of Bureau of Indian Affairs and Indian Affairs offices that are especially important to the Tribes.
- We are very frustrated by the Administration’s proposal to downsize OSG and urge you to support this office and funding necessary to allow it to fully function. OSG has 14 staff to conduct nearly all regional office functions on behalf of 277 Self-Governance Tribes, compared to the 3,500 BIA staff that serve direct service and contracting Tribes. It remains SGAC’s position that OSG really needs at least one, perhaps two, additional FTEs to transfer funding to Tribes in a more efficient manner.
- We hope that an Assistant Secretary of Indian Affairs is appointed and confirmed soon so that operations can be organized under appropriate leadership.
- Another issue that has come up in our recent discussion is related to the Greenbook and whether it is as clear as it could and should be. We need your support to ensure that the Greenbook is accurately depicting the successes of Self-Governance and providing a narrative that supports Tribal sovereignty.
- Additionally the SGAC needs your support to advance Self-Governance throughout the Department. In particular, we hope this Administration will work with us to coordinate with additional DOI agencies to ensure the application and expansion of Self-Governance benefits by respecting Tribal authority to operate programs within their jurisdiction.
- We have also noticed a troubling pattern at the Department of Transportation regarding the expansion of Self-Governance at DOT. The Negotiated Rulemaking process has come to a halt
and the legislation sets a specific timeline for completion. We need you and others in the White House to press this issue forward so that Tribes can start to leverage this opportunity properly.

Gavin Clarkson, Deputy Assistant Secretary for Policy and Economic Development, Office of the Assistant Secretary – Indian Affairs, DOI

- The DOI Secretary’s evaluation of Indian Affairs is an “F” and we have no one to blame but ourselves.
- In moving offices around to clear the South Interior building we are working to ensure all front facing offices are in the main DOI building so that Tribes can meet with anyone they need to at one time.
- In terms of the President’s Budget, we believe it is a balanced one. Generally, Indian Affairs took less of a cut than others within the Department.
- The best thing to do in terms of interacting with this Administration is to submit a two-page memo explaining: 1) what you want; 2) does the Department have the authority to approve it; and 3) what are the benefits to Tribes and surrounding communities that come from the Department approving it; as well as, 4. Identifying any known objections or challenges that may be connected to the issue.

SGAC Joint Discussion with Acting Assistant Secretary - Indian Affairs

Mike Black, Acting Assistant Secretary - Indian Affairs, DOI
Miles Janssen, Senior Counselor to the Assistant Secretary – Indian Affairs, DOI
W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC)

- DOI Reorganization Plans in accordance with Executive Order 13871 “Comprehensive Plan for Reorganizing the Executive Branch”
  - It has been reiterated that there is no plan regarding reorganization.
  - Tribal Comment: There should be a process in place for consulting with Tribes regarding the hiring and placement of Regional Directors.
    - Response: There is a lot of diversity within Indian Country and we need to be able to recognize that. I believe many of our Regional Directors do understand that, but we can still improve on combining that understanding while remaining consistent in what we do.
  - Tribal Comment: There is a major quality issue, especially in the Southwest Region, that needs to be addressed.
    - Response: That is a great opportunity to put resources at the local level where the work is and to change the culture in some of the regions
  - Tribal Comment: What do you mean by changing the culture?
    - Response: For example, the Northwest has developed a wonderful culture around interacting with Self-Governance Tribes. We need to be able to take that culture and transfer it to regions that have not been interacting with Self-Governance as long so that we can improve those regions.
  - Tribal Comment: There has been discussion about whether there is actual value in Self-Governance, which poses major concerns for Tribes.
    - Response: I will take full responsibility for the listening session and the lack of communication provided with them. I have been beat up over the years for coming into consultation with a plan and my intent was that these sessions and the comments would help us shape the consultation and that is why we did it that way. I wanted to get out right away and not wait for a 30 day notice to ensure Indian Country had a voice.
  - Tribal Comment: So it sounds as if there will be another round of comments, but will we receive a summary of the commitments submitted to date?
We will get back to you. The comments that come in will help us to shape the consultations. We are looking at the top ten priorities for BIA and BIE for the next two years. These are two of the things on the priority list and it is not things that are day-to-day.

- Tribal Comment: The Listening Session is a proper way to formulate questions for consultation but if sessions are not structured and executed properly it is a waste of resources. One of the suggestions we debated was either Self-Governance Tribes have their own Central Office or maintain regional offices and imbue someone who is a Self-Governance specialist. The old model does not work. When Tribes are being creative we are stymied by people unfamiliar with Self-Governance. We need a specific path forward.

- Tribal Comment: Inherent Federal Functions should be consistent and out there for Tribes to see.
  - Response: Yes, these functions should be consistent across the board. Tribal governments may all be different, but we as the Federal government are the same and have the same laws, regulations, and obligations.

- Tribal Comment: Tribes have to make decisions about how to maximize funding with regard to where they travel to meet with officials. Please keep that in mind as Indian Affairs considers moving people around.
  - Response: That’s a great comment. What offices need to have a footprint in DC? Who do you interface with most often?

- Tribal Comment: Do Regional Directors go through a Self-Governance orientation process? If not, we request that an orientation be implemented.
  - Response: Yes, we agree that would be a great idea. Many times Self-Governance is the hardest aspect for people to understand and an orientation would be a good way to address the lack of understanding.

- Tribal Comment: Additionally, the people around Regional Directors also need to be included in the orientations.

- Tribal Comment: Tribes also need to be provided with the promised assistance for navigating processes such as obtaining General Services Administration (GSA) funding for purchasing GSA vehicles. Tribes should not have to wait an indefinite amount of time, because the agency is not providing the services that Tribes need.
  - Response: We believe that services should be provided across the self-determination spectrum.

Tribal Comment: We need to make sure we don’t confuse core responsibilities with core functions. Tribes have paid their share, in full, for services and a budget that fully funds them.

- ITARA Implementation
  - Tribal Comment: Although ITARA passed, the Administration made the decision that it would only consult and address certain parts of it. Tribes need to have input and be engaged in the decision-making process.
  - Tribal Comment: HEARTH-lite is not the answer for addressing issues within ITARA.
    - Response: This is a very flexible bill that I believe can serve as a starting point for the conversations we need to have.

- Office of Tribal Justice Services
  - Tribal Comment: Taos Pueblo has had many issues regarding communications with this office. We have a major problem in the north with opioid abuse, which is crowding our detention centers and tying the hands of Tribal courts due to the fact that a majority of these detainees are non-Tribal.
    - Response: The Yuma facility was shut down due to funding issues. The opioid crisis has exacerbated the already existing issues regarding detention and we are working to develop solutions to those problems. Additionally, we recognize that communication is a major issue that needs to be addressed.
• Ensure the Tribal Transportation Self-Governance Program is implemented in accordance with the Fast Act, P.L. 114-94
  o Tribal Comment: The negotiated rulemaking committee has not met in several months. Although, we understand that things stall for a brief time with any administration change, we have reached a point where things are almost finished and we need to start moving it forward again. We request that you look into the issue and help us in those efforts.
  ▪ Response: I will follow up to see what I can do. The last time SGAC inquired, the Administration was in transition and Federal Highways, like the rest of the federal government, was struggling to get people on board.

Gavin Clarkson, Deputy Assistant Secretary for Policy and Economic Development, Office of the Assistant Secretary – Indian Affairs, DOI

• Closing Remarks: Although we are currently only talking about Indian and Commerce Regulations, land into trust, ITARA implementation, and other issues Indian Country faces are important topics for Secretary Zinke and the Department. We welcome any comments and recommendations from Tribes regarding these issues. Additionally, I am more than happy to meet with Tribes to discuss any of these issues whenever I am in the office and we take meetings until late into the evening.

Technical Workgroup Work Session
Jennifer McLaughlin, SGAC, Tribal Technical Co-Chair, Self-Governance Legislative Associate, Jamestown S'Klallam Tribe
Ken Reinfeld, SGAC, Federal Technical Co-Chair, OSG Senior Policy Analyst

Adjourn the SGAC Meeting
**Opening Remarks**

**Chief Malerba**

- Partner with other agencies and others that care about social justice
- Still struggling to have a budget that reflects our needs
- New England 1600 first immigrants
- How do we advocate with states that don’t have federally recognized tribes – how do we adopt those reps and educate them on our topics? ACA reach out to VT, NH and NJ and they said no one has ever talked to us about it before. 13 states don’t have Tribes within their borders
- Tribes need to be bi-partisan and there are opportunities with this Administration (tax and infrastructure) – issues cross agency boundaries (infrastructure - indoor sanitation)

**Chairman Allen**

- Refocus on self-governance
- Keep watchful eye on our President
- Where are we going – direction and destiny for SG agenda. We have been in movement for 25 years and have experienced amazing success. If take resources and move them to community we can make dollars work more effective.
- Watchful eye on what’s going on with congress – last 6 months it has been healthcare but there are many other things we are dealing with – public safety Tribal law and order act, voca, etc. natural resources, education, housing, jobs and economic development
- Budget issues – commonly hear $20 billion in federal system that serves Indian country – bottom line is what is the need may be closer to $200 billion or more. Benchmark IHS analysis 10 years ago $30 billion need now take on housing and other issue and number increases
- How move agenda forward – the solution is not going to come from the Federal system – we are going to fight for the federal system so we can generate our own strong economies. Mohegan doing amazing; Navajo – doesn’t matter the size
- Protect interests and protect sovereignty – bottom line
- Inouye – sovereignty is the most important – have treaties because sovereign nations 300 Treaties consummated and 350 plus not consummated.
- 10-20 years ago we didn’t have a lot of resources but do we have more money if you calculate in the inflationary value – not sure worth spending energy on
- Administration has a view that is not positive with respect to domestic spending – they say give something up to get something funded – discuss it later
- Hill – have friends and they say have a different idea than the President has regarding the budget
• We will not allow the President to name Chiefs – insist he engage with us. Fall this President plans on having a White House meeting with Indian country.
• Lot of engagement will take place with the people under the President (Cason, Clarkson, Keel)
• Stronger, smarter and more sophisticated – you will not run us over
• Zinke and Price messages – where will Indian country be in 100 years – we will tell you. We know what is best for our sovereign nations and we will protect our culture and nations. This is not the new version of termination and it will not happen on our watch.
• At the end of the day we are a team – we have a mission and a game plan “SG works”
• What is the new message – tax reform is about sovereignty and your jurisdiction and authority
• We are going to survive and move our agenda forward

Budget Discussion

Bureau of Indian Affairs (BIA)
• Sequestration/Rescissions
• Protect Base Budgets – as opposed to one time grants
• FY2020 Budget Formulation Guidance
• Greenbook – Tribes need to weigh in
• Indian Trader Act – listening sessions regulations

Indian Health Service (IHS)
• Process is similar to the BIA Budget Formulation Process - Tribal priorities; Area Regional Meetings; National Roll up
• Budget delays – need for advanced appropriations
• Tell your story – need to go beyond it
• Support urban health centers because they provide services to members and hope they get a seat at the budget formulation table
• How can national committees work together to advance their priorities
• Create transparency in the formulas and formula methodology – agency not forthcoming; OMB attend meetings and understand TSGAC needs; line item for SG (push SG up to the front)
• Appropriations for IHS 2017 – several increases but IHS is considering pushing the money out in the form of grants
• Execution of the budget is just as important as appropriations
• FY2018 – President’s skinny budget pushed out; House passed Interior Bill and several increases to IHS in that bill but zero increase to PRC which is one of top priorities. Interesting provisions – IHS study on unfunded priorities in Indian Health Care Improvement Act and IHS has to respond within 90 days of passage. Provision on reimbursement – directs IHS to report on trends in population being served and how population is being served (Medicare, Medicaid, 3rd party, compacted and contracted programs) Maximize 3rd party
reimbursements and we need to have a discussion about it. Some of it requires a comparison among areas (may stem from the issues with the Great Plains)

- CSC reduction but IHS overstated need in 2017 – any cuts to CSC will go straight to the Tribes not the agency.
- What will be budget vehicle? CR but how will hurricanes and fires impact the final budget?

**Legislative Update**

- **477** - Successful program but resistance from IHS with flexibility and accountability. Past couple of years effort to develop legislation to revamp the program and limit agency discretion. Last Congress close to enacting – passed in Senate and then House with few changes went back to the Senate and there was agreement but clock ran out and the Senate was not able to pass the bill. Current congress – momentum carried forward into this Congress – House passed Bill on February 22 voice vote and pending in the Senate – same bill waiting for Senate to act. Wait for UC calendar to be put on the floor of the Senate. First window of opportunity this bill will pass the Senate.

- **Reauthorization of NAHASDA** – Expired in October of 2013. In 2014 House passed reauthorization bill but held up on Senate side (Senator Lee Utah – Native Hawaiian portion is raced based and stopped bill from being enacted) This Congress dynamic different – fiscal conservatives raised their own issues and hasn’t passed House side over funding and on Senate side Hoeven introduced a scaled down version of the Act and removes Native Hawaiians. Tribal advocates are luke warm about it. It is not clear what the prospects are right now.

- **Repeal and Replace Affordable Care Act (ACA)** – Defeat of the “skinny bill” but doesn’t mean repeal and replace is off the table. There have been efforts (bipartisan) to fix some of the provisions and hearings on insurance issues. President still urging replace and repeal. Big issues sucking up the oxygen not sure how much time to focus on ACA. Good news Indian country – House version would protect IHCIA and Indian provisions but bad news gutted Medicaid. Watch it as it develops over next weeks and months.

- **Restore Accountability in Indian Health Service Act of 2017** – Introduced May 2017 goal is to institute structural changes in the IHS. Focus on the unintended consequences on SG principles – there is language to try and prevent it but it may not be sufficient.

- **Reauthorization of the Special Diabetes Program for Indians** - Program will expire at the end of September. There has been effort to reauthorize it. There was an effort to reauthorize in the Doc fix but there is no Doc fix this time so have to identify another legislative vehicle. CHIP program – hearing later this week and hope is to attach SDPI funds to that bill. $150 million dollars and if not reauthorized it will be a significant blow to the programs that have developed. Funding needed for disasters – how will it impact CR.

- **Title IV** – Fifteen (15) year initiative and a draft bill was prepared by Tribal advocates and efforts every Congress to enact this legislation and multiple hearings held. Administration was fully behind it – passed Senate then went to the House side. Association of American Federation of Wildlife Agencies raised
alarm with the bill. Spent a year to work with the organization to come up with language and we were able to address it in a package of amendments. After reached Agreement – House staffer raised two issues BOR – killed the bill. Need to work on the House side and find the right champion to advance the bill.
- **Expand SG Program within HHS** – Title IV directed HHS to conduct a feasibility study and concluded it was feasible for 11 programs. Tribes drafted legislation and Tribal witness showed up and no one from HHS showed up. Resistance at HHS to expand SG. Obama Administration set up a Committee but the effort died out. Institutional resistance has proven to be a difficult nut to crack.

**Policy BIA**
- Tax Authority and Indian Trader Act – last Administration tried to update it and there were differences of opinion between Acting Assistant Secretary and Solicitor so could not get it done. Listening Sessions are currently being held.
- Executive Order 13781 Comprehensive Reorganization of the Executive Branch – instructed to review operations and propose to OMB better way to run the shop with less staff. We need to be mindful of plans and their proposal and how it would impact the agencies that serve us.
- DOI Secretary Zinke – notion of leadership is best if leadership move around similar to the military. Regional Directors and SES are being moved all over the country. Concern – RD get assigned to an area and they learn about the area and the complexities of the area Tribes is this the best way to serve Tribes. What is our opinion of this? Are they trying to push them out?

**Policy IHS**
- We need to think about health in a broad perspective. We need IHS and they are a big employer in rural areas. Indian health is inequitably – doesn’t increase with demographics, technology, because on discretionary and we are subject to sequestration.
- Need to look at Social determinants – food, early childhood, education, access to healthcare
- Contract Health and Purchase and Referred Care – need for services
- Better coordinate with VA on Tribal priorities
- IT systems – as VA changes their health system need to be vocal
- Reorganization of Government Services – any changes proposed need to go to the Tribes through consultation. Haven’t seen documents even though requested it.
- Look at level of need funding with a health economist. If provide for level of need provided how does it prevent the costs from escalating in the future?
- Expansion of Medicaid – some of the states are recommending people with access to Medicaid are working and how do you do that in Indian country with no job opportunities?
**Communication and Education Blueprint**

Government Relations – Ascertain federal and state priorities for CN  
Organize events  
Oversee tribal/federal/state nominations  
Manages voter registration  
Attend At-Large meetings  
Political giving for Federal/State races

Ascertain Priorities – what is the plan? Annual meetings develop and execute strategies (list of things you want to advance – try to figure out possible to move based on current political climate)  
Federal – legislative, regulatory and judicial – have to be proactive testify, write letters  
State – Protect Tribal/State compact structure, Indian Arts and Crafts Bill

What is your role in the process?  
Pre-introduction know the issue – idea/proposed bill language  
After the introduction – letter of support/letter expressing concerns/collaboration  
Legislative Hearing – witness, testimony/statement for the record, questions at hearing/for legislative record  
Mark-up – amendments  
Engage the Administration because Congress will ask the agency for technical assistance and their views  
Develop a legislative record – important to memorialize statements and positions by interested parties  
Sending letters is critical  
Who should you meet with? Cherokee Nation footprint in every state and abroad and use citizens in every state to their advantage.

Know Committees of jurisdiction and other relevant committees  
Seek meetings with leadership  
Prior to meeting – choose proper targets; work both sides of the aisle  
Crystalize your ask – what do you want them to do? Is it politically feasible? Does it line up with their policies?  
Meeting – Brief 15-20 minutes – handouts brief and state clearly your position  
Building Alliances – National organizations, regional organizations, lawyer/lobbyists

**Questions**

Agencies don't feel like they can advocate so we request they let us know and we can thread the questions to be asked to Congress.  
- Integrity and trust is important and relationships are important  
- Identify the stumbling block and frame your question that way

One of the alliances is the Native American Caucus in the House. We need our congressional delegates to join it. Share the value of it.

- Kildee formed the Native American Caucus because there was a time when legislation attacking Tribes was developing in the House. So formed Native American Caucus to serve as a bi-partisan body to educate both sides of the aisle to prevent proposals from coming forward. Made sure briefing sessions –
where is there agreement? Where do we not agree? So we agreed up front what we would work on. Defeated negative proposals had champions on the House side and outreached to members on both sides of the aisle and make sure Native American issues was part of the briefing book.

To be effective in DC – It is about developing relationships with individuals who make decisions. Be succinct and clear – when write a letter tell them upfront what you want. These people are swamped and overworked. Ask them to have lunch with you because they remember you. Attend fundraisers – make contributions. In terms of lobbying – remember you have a team and that team is important. Have to have integrity to identify pitfalls and troubleshoot pitfalls. Need to work the national and local level simultaneously. Use real life examples – biologist bear thermometer.

Overview of Education and Communication Plan and SG Report Cards – documents helpful for legislative associates – there is a lot of turnover in these positions on the hill.

Questions
Consider hosting the Strategy Session in DC.
Brief Tribal Leaders prior to meetings in DC

Self-Governance
- 1988 SG Demonstration Project P.L.100-472 Title III
- No permanent legislation and regulations
- Initial 10 Tribes met with DOI and BIA
- Advance the government-to-government process a new partnership
- Tribal leaders, finance and technical staff worked together and negotiated collectively
- SG Coordinators met regularly to share documents
- 1989 SGCE Office was formed – central office to coordinate SG efforts, share resources, provide trainings, develop SG Guidebooks, plan and coordinate Annual Conferences and Strategic Sessions
- 261 SG Tribes in DOI and 363 in IHS
- SG Coordinators contact other coordinators in the region, attend SG quarterly meetings, utilize resources on the SGCE website, participate in SG annual conferences and strategy sessions, share success stories and best practices, find a mentor/be a mentor

Questions/Comments
- Make sure communicate issues that new Tribes may have to share experiences and connect with one another
- Certain regions push back and do not support SG – continue to push forward
- Salt River – finished negotiation to take over land, titles and records function. The NW Region allows Confederated Salish and Kootenai handle it; San Francisco does same but Western doesn’t. It took 19 years for Salt River to get it through –obstructions Tribal, agency and central office level. Had to go back to
the formula. In region have Navajo and Tohono O’odham – formula use land base – fought to use land transactions instead. It was going to take 3 years to do a gifting with one land owner. Own lease payouts, turn around pay outs within 3 work days.

- Old Guard blazed trail and defended the sovereignty of the Tribe – it was about authority, jurisdiction and control over your affairs. Navajo consider SG – ripped Tribes up and down but now Navajo is in. Great Plains issue is treaty rights but this does not absolve treaties. Are we there? No there are new obstacles emerging the system has the propensity to protect itself because they do not like the idea and will look for ways to undermine us. We are showing success but we have a long way to go. When do we feel we have won the war? We have changed the tide. Inherent Federal Function is still not well defined yet – they need to show us what federal statute says that we cannot take it over.

- What is sovereignty? Sovereignty is whatever you do with your powers that you have – however far you take them. It is up to the Tribe to determine what they want to do for their people.

- Joe DelaCruz – quit acting like fort Indians waiting for the blankets and food and take control of our affairs

- Midwest BIA employee (new) made comment why should I help you? You are self-governance. 20 years ago when Red lake was negotiating we interviewed all the offices said if took share it will hurt other Tribes so we left it. There were times when they hid the shares and didn’t include SG Tribes in funding increases. Everyone has to be watchful for this type of thing.

- Ysleta del Sur – also there is a fallacy on the Tribal side that once compact out of the region but that is not true. Stay involved and put accountability back on the regional director.

- Within the system you still have senior staff or anyone underneath them that may or may not know a lot about SG so we have to continue to educate them and educate new players. If there are programs A through Z no one is taking everything. There are always a handful of programs you left and inherent federal functions that are their job. They need to identify our proprieties and our budget.

- Strategy – challenge the leadership in their region to establish regular orientation or updating of the SG agenda.

- We had to educate community members and council when we decided to go SG and every year when we negotiate we remind them of what those are.

- What are the rebuttals to the regional folks? Inherent federal functions are not contracted duties so there are some things we need to forge through.

- Common questions – develop a list that we hear or common perceptions we hear and what are the responses?

- We need to remind OSG and OTSG that they should be strongly advocating on our behalf and educating their own colleagues. SG Tribes need to get behind the Tribe and support them. Sometimes we do not get that support from them.

- It has to be about service and not money because often the programs are underfunded. Dental services we get $20 a year so we need to subsidize it.
ICWA funding if we just relied on federal funds what kind of service would we be providing our people?

- When Tribes take money we are really helping the federal government do their job.
- A lot of us look around and ask how did you do it and make it work – this is of value. It provides confidence take what you can get and run.
- Salt River – won’t sign funding agreement unless you satisfy these conditions and now went to 5 year funding agreement.
- Tribe exercising sovereignty and set up infrastructure to take that function over under their jurisdiction
- Two sets of work – one among ourselves sharing amongst Tribes – documents how to negotiate and implement programs – consolidating programs The practices we use to have fallen away and we could educate ourselves and new Tribes coming in.
- Why not instead of how to – sharing of how we do certain things and run certain programs or have a clearinghouse of examples.
- Success breeds new kinds of problems and you don’t always share.

**Executive Orders**

Self-Determination and Self-Governance is a product of Republican Administrations. Josh Petri is the new senior policy analyst at NCAI and will be the key contact for SG.

- Executive Order on Executive Branch Reorganization – actions are already occurring staffing issues and staffing changes at DOI. Continue to ask for consultation. Hope a lot of things will be pulled back once consultation is held. Reform plans were supposed to be submitted to the President soon. Acting AS-IA stated he would only have Tribal input first then the draft plan would be released after that. DOI has not submitted a plan yet. We won’t see a draft plan. All indications at DOI are that they do not have a plan to submit. Subcommittee holding the hearing led by two members of the SCIA.
- Sounds as though the Departments are being encouraged to circumvent the consultation process.
- Sometimes we have to re-emphasize the government to government relationship and there is such a lack of confirmations that the folks that would keep things running are not in place. 124 confirmed positions throughout the entire government – impacting Tribes. In some agencies there is an effort to get around the normal ways of doing things and a lot of constituencies are complaining but the difference for us is our political status.
- Inquiries and interactions with the hill have almost doubled. Congress realizes it is filling in the gaps.
- Bishop is going to attend Tribal Impact Days –
- Self-Governance is important right now because we show that things are working.
- White House is governing by EO and Congress is filling in gaps – EOs are limited.
- John Tesuda started yesterday as Principle Deputy
- Impact Days next week congressional briefing Tuesday 8:30-1:00pm House and Senate Members from key committees – healthcare, tax, etc.
- NCAI Annual Meeting Milwaukee and have space for Tribal consultations – Indian Trader Regulations, Land into Trust and Executive Branch Reorganization.

**What Works – What Message do we shape out?**
- Themes – “Grow Self-Governance – our promise our legacy” “30 Years Strong – Tribal Self-Governance in Action” “30 years strong – sovereignty in action” “Tribal control – Tribal authority” “30 years strong – working to fulfill the promise” “Tribal Self-Governance - 30 years strong making America Great in Indian country” “Self Governance is an evolution” “Tribal Self-Governance expanding SG reducing the bureaucracy” “Self-Governance Ancient Ways Translated in a New Day” “TSG Experience and Evolving” “TSG Making America Ours Again” “First Nations First Resisting the Federal Government since Time Immemorial” “Determining our own destiny”
- Common phrases to use with the Administration
- Come up with a new theme – a lot of these things can become talking points and messages

**Develop and Mobilize Teams**
- Team A, B and C
- Tribal leadership and co-chairs on the teams
- Identification of the types of work that needs to be done – track who takes the lead and spread the workload out amongst everyone
- Education on the issues – position papers
- We have a roster – have a second person to list as tech rep
- SGCE Director can help facilitate
- SGCE develop issues to share with the Tribes
- Provide options on how to move forward
- Need more hands on deck
- Topics – how will the topics come down – this Administration we will be reacting to something we didn’t know was happening
- Proactive work is also in the plan
- SGCE Newsletter – useful tool
- Wendy Helgemo Appointed Director of Center for Indigenous Politics and Policy at George Washington University (former senior advisor on Indian Affairs to Senator Harry Reid)
- Staff development – professional development offer small fee
- Homework item -
Strategy Session Day II

Meeting Preparation – “the how and what to do”

- Pick your topic, know your topic and develop white paper/issue paper/issue brief/one pager
- Find out what your issue is and state it clearly (example SDPI for Indians – expire in 30 days)
- Facts, history, background and other information about the issue – highlight why it needs to be done by September 30th
- Reiterate your ask at the bottom – short and sweet “request, ask, recommendation”
- Have a packet of information if you plan on visiting a number of offices – four components (Who we are; (add graphs/pictures); issue/position paper; personal stories; include business card or follow-up document
- Packet – (see handout) Folder on one side issue paper and the other side information about Tribal government with pictures of Executive and Legislative branch how the government is set up and how they are held accountable to Tribal citizens
- Communicate message and helps staff/congress/Admin learn about the Tribe and leaves impression that professionals and take matter seriously. Want them to care about our cause.
- Hearings – Representative Cole held up the per capita graph of how IHS is funded compared to the national average – IHS is underfunded.
- Visuals are a good tool to use – anticipate questions and jot down notes on your paper to help guide your discussion
- Follow-up after the meeting to check in and see if they need clarification or have questions so you can provide additional details

Questions

Slade Gorton trying to cut budget and slash Tribal sovereignty – Tribes united to fight against Gorton – Tribes got together and identified big ticket items – had 500 Tribes visiting with Congress. Proven technique – one page bulleted items – united message.

Blueprint

Session – create additional structure to the team – “grouping of tasks” that can be bucketed together

A - Research portion of the work develop documents that can be leveraged (tech team)
B – External communication – SGCE or law/lobbyists
C – Strategy and Coordination – Team familiar with legislation and players to advance those issues
  - Key words – prosperity, sovereignty, 30 years success
  - How do we put buckets of work into action? What are the issues we want to target?
  - Want to hear from new folks – what can we do to help develop learning process?
  - How do we use these tools on a regular basis?
• Look to identify the top priorities we would like to see? Instead of being too reactionary how do we move forward into the proactive area?
• Have information packets on how to do things – how we may handle process with a team approach?

**Facilitated Session – “Blueprint”**

Couple components to the Blueprint – this is a “National Communication Plan”

• Start with a folder – have theme and logo on front of folder
• Basic material about Self-Governance (update Report Cards) including frequently asked questions and misperceptions
• What is the “Ask” – top issues develop one pager
• Develop team around task to form the one pager
• Develop issue papers as needed
• Form multiple team A depending on “subject matter” - Blueprint is good and like you can customize it and provide an introduction to SG – Tribes assisting Federal Government in upholding treaty and trust obligations
• Narrow down three top priorities:
  - Executive Orders
  - Appropriations/Budget
• People need to know who is meeting with who – know what the conversation was about and what the response was include “confidential” section on website that Tribal leaders and representatives can access. Tribes need to know what the latest is on a specific issue – who are the sponsors now so you can ask your rep to sponsor it or sign on as a co-signer.
• Purpose of Communication and Education Blueprint is to develop stronger messages, empower group and how to get it done with the Administration and Congress
• Strengthen networking
• Actions – Develop educational materials; Tribal examples – success stories, best practices and photos; basic facts (frequently asked questions and updating report cards)
• Volunteers (Update Report Cards – two work groups DOI/IHS and two areas language and graphics)
  - DOI Report Card: Gerry Hope, Linda Austin, Jennifer McLaughlin
  - IHS Report Card: Beau Mitchell, Melanie, Rhonda Farrimond, Cyndi Ferguson, Councilwoman Carlyle
  - Brochure – Frequently Asked Questions – updated on the website; content may need to be updated in the brochure. (SGCE Office) In what forums do we use it? In the materials we are packaging. Training information can be included in the brochure. (maybe defer to new ED to market SGCE Office)
  - How do we partner with Universities and Graduate Students? Partnered with Harvard – best practices for internal research committees. George WA University
• Workgroups on issues – whatever workgroup or team identify two co-chairs to lead the team – small workgroup calls, report back the results of the call to leadership and technical workgroup
• Utilize social media and virtual tools – Director SGCE
• Reporting Forms – collect reports (identify members who serve on the Committees) – Here are the issues and here is the information we need back.
• SGCE has a consultant that does PR and graphic design. Branding and marketing – budget for a PR Firm – fundraising outreach for it and form relationships with mainstream media; identify individuals with experience in this area; convene a press conference.
• Engage in the agenda development when issues arise – list of who groups are and who the reps are and include them in the agenda development
• Written reports may be helpful in the future to brief people at the Annual – Hot topics for agenda
• Outline what happens – develop testimony – language – messaging for formulation
• Issues –
  ➢ Appropriations/Budget - everyone wants more money – SG important thing is how we improve the system so it is accountable in terms of ensuring SG Tribes receive their fair share; protection of base budgets and use of budget graphics; new money will be coming in at DOJ and Tribes need to be engaged about how the new money will be distributed and what the formula will be; are there things we can do legislatively to authorize transfers from one agency to another; help with re-visualize DOI budget; Expansion of SG across the federal government – getting authority for other departments to send money to DOI
  ➢ Expansion of SG Agency Wide
  ➢ Inverted Triangle – Administration heavy and funding for the Tribe – identify inefficiencies and work with Tribal task force to go through the organizational chart

Closing Remarks
New chapter for SG – we have lots of reasons for optimism and hope and a better day for our communities in exercising sovereignty and SG and taking back control over our destiny. Success breeds higher expectations. Stronger, more effective, more savvy, and more engaged. It is about our cultural and identity. We have to follow-up and refine materials and conversations with congressional and administrative leadership and make sure we are treated fairly. In old days we had two meetings – then we decided we need to meet amongst ourselves which is where the Strategy Session arose. Busy people always get busier. Sharing –

It takes all of us to get this work done. Use everything that you share with me when develop position papers and thoughts. All of the work we do is appreciated. Love how everyone shares their experiences so we can advocate for all of Indian country. We need to continue to work on the fact that Tribes are holistic but the Federal government
wants us to silo everything and force us to conform to their needs. SG is the opposite of this. You honor us by joining us here. It is about putting one foot in front of the agenda.

Closing Blessing -
Strategy Session Recap

Take Away Messages

- Partnerships – aligning with other agencies that support social justice
- Advocate in states that don’t have Federally Recognized Tribes (13 states)
- Bi-partisan opportunities – look for opportunities within the Administration and Congress
- “Self-Governance” and local control – game plan is that SG works show Tribal success from last 30 years
- Sovereignty, Jurisdiction and Authority - Protect Tribal interests – we are stronger, smarter and more sophisticated and Tribes will define what sovereignty means to them not the Federal or State Governments
- Consultation and Engagement with Tribes – will not allow the President to name "Chiefs" insist they engage with us

Budget

- Protect Tribal Base Budgets and funding mechanisms such as contracts and compacts as opposed to grant funding
- Hold Tribes Harmless from Budgetary reductions and rescissions
- Budget Formulation – important to engage in the process and continue to push for improvements
- Green book – Tribes need to weigh in with recommended changes
- Advanced Appropriations – execution of budget is as important as Appropriations

Policies

- Indian Trader Regulations
- Reorganization of the Executive Branch
- Tribal Consultation
- Equitable funding for Tribal programs (IHS, Law Enforcement, etc.)
- Better coordination amongst the agencies (social determinants of healthcare) and between the agencies and Tribes (VA)
- IT systems in healthcare
- Economists to study Trends

Legislation

- Legislation – ACA- Repeal and Replace;
- Medicare/Medicaid and 3rd party collections;
- Restore Accountability in Indian Health Service Act of 2017;
- Special Diabetes Program for Indians;
• Tax Reform;
• 477
• Reauthorization of NAHASDA
• Title IV
• Expansion of SG

Communication and Education Blueprint

• Ascertain federal and state priorities – What is the plan? Develop and Execute Strategies
• Be proactive at Federal and State levels of government – testify, write letters, call, visit
• What is your role? – Know the issue and crystalize your ask – what do you want? Tell them up front what you want. Is it politically feasible? Does it line up with their policies; know the committees of jurisdiction and other relevant committees, seek meetings with leadership, work both sides of the aisle
• Meetings – Be Brief – keep handouts brief and state your position clearly; identify pitfalls and troubleshoot them; use real life examples (Biologist and Bear)
• Build political alliances/form relationships
• Native American Caucus – plays key role
• Organize events – attend fundraisers – make political contributions
• Oversee Federal/state/tribal nominations and manage voter registration

Self-Governance

• Overview of the history of SG and role of Tribal leaders, finance and technical staff
• Importance of coordination and sharing of documents and resources, including success stories and best practices
• Develop a list of common perceptions and our responses
• Participate in quarterly meetings, strategy session and annual meeting
• Trainings
• Challenge leadership in region to establish regular orientation and update the SG agenda
• OSG and OTSG need to be stronger advocates and educate their colleagues
• Focus is on services (money is not sufficient) we are helping the federal government do their job
• Develop a Tribal clearinghouse for best practices and sharing of resources

Executive Orders

• Continue to push for Tribal consultation
- Re-emphasize the government-to-government relationship
- NCAI – Impact Days and Annual Conference

**Themes**

- Ideas generated for new theme and talking points and messages
- Brainstorming ideas – list of suggested themes – couple additional
  - “30 years of Self-Governance – catalyst to Native prosperity” Wilma Mankiller – opening pages issue in OK state was cracking down on the Tribes “If we work together we will all prosper” Work together we can create jobs and all of us will prosper. SG Tribes are to be commended for exercising sovereignty and energy and making their communities prosperous. Human energy makes America great.
  - “SG 30 years strong - Sovereignty, Responsibility and Prosperity”

**Develop and Mobilize Teams**

- Mechanics of how we get this work done
- Keep group cohesive and make progress to get things done
- Groups may be standing groups or center on issues but we want a more formalized way to follow-up on work
- Recruit more folks to help with work
- Have a more deliberate and organized process to get the work done
- Identify the type of work that needs to be accomplished; identify leaders of groups/issues and spread out the workload
- Need to educate on the issues and develop position papers
- Professional development is needed – invest in people by training/mentoring
- We need to be both reactive to what comes down the pipe and proactive in advancing our plan
The purpose of the Self-Governance Communication and Education "BluePrint" is to provide Self-Governance Tribes with the tools needed to launch a major "Tribal Self-Governance Communication and Education Campaign" that will:

1. Develop stronger and better messages about Self-Governance;
2. Empower Self-Governance Leaders and technical staff to speak about the Self-Governance mission, vision and priorities; and,
3. Focus on how to "get it done" on Capitol Hill and within the Administration.

By forming Teams to lead this effort and improving coordination and communication among Self-Governance Tribes, the BluePrint actions/strategies identified below will be tracked and shared regularly with Self-Governance Tribal leaders, technical staff and the Self-Governance Communication and Education (SGCE) office to assist in the advancement of Self-Governance policy, legislative and budget issues within the Administration and the Congress.

**OBJECTIVES AND ACTION ITEMS:**

**Initiative I - Tribal Networking and Educational Campaign**

**Objective:** Develop a coordinated and consistent Self-Governance educational campaign to provide information to Congress, the Administration, non-Self-Governance Tribes and other interested parties regarding Self-Governance. Facilitate and support the active participation of Self-Governance Tribal leaders and representatives in a collective effort to strengthen communication and outreach of Tribal issues and positions on key policy, legislative, budget and administrative proposals.

**Actions:**

- **Develop educational materials that will include:** (1) History and description of Self-Governance; (2) Tribal examples (success stories, photos, best practices) of Self-Governance implementation to include highlights of the creative and positive developments and impacts on Tribal communities; and, (3) Basic facts that everyone should know about Self-Governance (e.g. Update DOI and IHS Self-Governance Report Cards).

- **Develop an updated Self-Governance Communication & Education Office (SGCE) brochure** that outlines the Self-Governance objectives and services provided, including Self-Governance materials, workshops and training sessions;

- **Identify Teams** who will take the lead on respective key priorities included in the 2017-2109 National Tribal Self-Governance Strategic Plan. Each team will identify two Co-chairs who will be responsible for leading the Team, organizing teleconferences, and reporting back regularly to SGCE and at the quarterly DOI SGAC and IHS TSGAC meetings;

- **Review list of Self-Governance Representatives in other outside Committees/Workgroups and include those individuals in TSGAC/SGAC agenda development as warranted.**

- **Utilize social media** and virtual tools to share updates and messages; and,

- **Coordinate and strengthen advocacy** efforts with other national and regional Tribal organizations.
Initiative II - Proactive Legislative & Administrative Initiatives

Objective: Develop and build upon existing relationships with Congressional members, the Administration and their staff to advance a proactive agenda for Self-Governance priority policies, budget issues, legislation and Executive Orders.

Actions:
- **Track Tribal visits to Capitol Hill:** Streamline and update the SGCE website to allow for updates on Hill visits and to track allies and adversaries; sharing of white papers and strategy discussions among SG Tribes on a secured password protected format. Develop and include a database to track Congressional allies and adversaries on Self-Governance legislation;
- **Include links to Congressional Committees** that have primary jurisdiction for Tribal authorization and appropriations legislation. Include expanded capability to link other Congressional Committees as needed to assist Self-Governance Tribes with advocacy and outreach on legislative issues;
- **Conduct ongoing educational Training Sessions & Workshops** for new Congressional Members and staff, Administration and other interested Tribes and Tribal organizations;
- **Disseminate regular broadcasts** to all Self-Governance Tribes on urgent issues; submit Congressional testimony and letters for the record, and include “sample” letters for Self-Governance Tribes to utilize.
- **Coordinate legislative advocacy,** including but not limited to: (1) Develop listing of Congressional and Administrative targets to contact and distribute to Self-Governance Tribes; (2) Identify Teams from the TSGAC and SGAC to track and monitor issue(s), track actions and report out to Self-Governance Tribes status of effort and next steps; and (3) Develop advocacy materials and coordinate meetings with Congress and the Administration on Self-Governance legislative and policy issues.
- **Build political alliances and form relationships.** Organize events, attend fundraisers and make political contributions.
- **Get involved in Federal/State/Tribal nominations** and manage voter registration.

Initiative III - Self-Governance Strategic Media and Public Relations Campaign

Objective: Develop a Press Package that is distribution-ready and insert “topics” as needed for media.

Actions:
- **Partner with other national and regional Tribal organizations** during major events, (e.g. NCAI Tribal Unity Impact Days) to advance Self-Governance materials and messaging;
- **Cultivate relationships with major news bureaus in Washington, D.C. area** (Washington Post, USA Today, PoliticoPro, Roll Call, The Hill, etc.);
- **Identify individuals with expertise in media and public relations** to assist Tribes in outreach and

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1 A recommendation was made for SGCETC to specifically fund-raise for this campaign and identify an individual/firm with specialized public relations and media expertise.
messaging and utilize local Tribal expertise that have had successful media campaigns;²

➢ Convene regular national and regional press conferences including advertisements, radio, television, and other educational spots;

➢ Audiences to be targeted include non-Self-Governance Tribes, Executive Branch, Legislative Branch, Judicial Branch, general public, federal agencies, foundations, educational institutions, state governments, business industry, advocacy alliances, international organizations and other media organizations; and,

➢ Self-Governance Tribes can repackage information for local media campaigns and messaging.

² It was suggested to reach out to Self-Governance Tribes to inquire if they have internal PR/Media staff that may be able to contribute their efforts to advance this Initiative.
September 1, 2017

The Honorable Peter A. DeFazio
Ranking Member, Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman DeFazio:

Section 1121 of the Fixing America’s Surface Transportation (FAST) Act, Pub. L. 114-94, (23 U.S.C. 207) calls for the Secretary of Transportation to establish and carry out a Tribal Transportation Self-Governance Program (TTSGP) at the Department. Section 207 requires the Department to develop the TTSGP regulations through negotiated rulemaking with Tribes in accordance with the Negotiated Rulemaking Act (subchapter III of Chapter 5 of Title 5) and publish a Notice of Proposed Rulemaking by September 4, 2017.

In accordance with 23 U.S.C. 207(n)(1)(D), the deadline may be extended by 180 days if the committee determines that the deadline cannot be met. This letter is to notify you that the committee has unanimously determined that the 180-day extension is necessary.

I have sent a similar letter to the Chairman of the House Committee on Transportation and Infrastructure and to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation; the Senate Committee on Environment and Public Works; the Senate Committee on Banking, Housing, and Urban Affairs; and the Senate Committee on Indian Affairs.

Sincerely,

Anthony Bedell
Deputy Assistant Secretary for Intergovernmental and Tribal Affairs
DEPARTMENT OF TRANSPORTATION
TRIBAL TRANSPORTATION SELF-GOVERNANCE PROGRAM
NEGOTIATED RULEMAKING COMMITTEE
TRIBAL REPRESENTATIVES

Sent electronically Elaine.L.Chao@dot.gov and DeLynn.Henry@dot.gov

August 4, 2017

The Honorable Elaine L. Chao
Secretary
United States Department of Transportation
West Building
1200 New Jersey Avenue, SE, 9th Floor
Washington, D.C. 20590-9898

Re: Extend the Department’s deadlines to publish a proposed and final rule
to implement the FAST Act’s “Tribal Transportation Self-Governance Program”
within the Department and reconvene the Negotiated Rulemaking Committee

Dear Secretary Chao:

We write to you in our capacities as the elected Tribal Co-Chairs of the Department of
Transportation’s Tribal Transportation Self-Governance Program (TTSGP) Negotiated
Rulemaking Committee. The Committee was established in August 2016 and authorized by
section 1121 of the FAST Act, Pub. L. 114-141, the “Tribal Transportation Self-Governance
Program,” to develop a proposed rule to implement the Self-Governance Program within the
Department and its modal administrations. Under the Committee’s adopted Protocols, the
Rulemaking Committee is specifically tasked with developing the Notice of Proposed
Rulemaking (NPRM), receiving and reviewing public and government comments, and finalizing
a recommended final rule to the Department that contains the regulations required to carry out
the TTSGP.

A statutory deadline is approaching on September 4, 2017, the date by which the
Department must publish the NPRM. 23 U.S.C. § 207(n)(1)(B). Under the authorizing statute,
however, if the Rulemaking Committee concludes that it cannot complete its work, the 21-month
deadline to publish the NPRM, and the 30-month deadline for the Department’s rulemaking
authority, may both be extended by you up to 180 days; provided the Secretary “so notifies the
appropriate committees of Congress.” See 23 U.S.C. §§ 207(n)(1)(B), (C) and (D).

It is clear to us that the TTSGP Negotiated Rulemaking Committee cannot meet the
deadline. We believe our Federal colleagues on the Committee will readily concur. We therefore
request that you exercise the authority conferred on you under section 207(n)(1)(D) of the FAST
Act and notify the appropriate House and Senate Committees which exercise jurisdiction over
the Department and the TTSGP that you are extending both deadlines by the full 180 days
permitted the Department by law. By doing so, it will allow the Committee and the Department until March 3, 2018, to complete and publish the NPRM in the Federal Register, and until December 1, 2018 to promulgate the final rule.

Both dates are quite ambitious, but are within the authorization provided by the TTSGP. In order to meet these dates, we respectfully request that you promptly reconvene the 25-member joint Tribal-Federal TTSGP Negotiated Rulemaking Committee at the earliest date possible, and instruct Designated Federal Official (DFO), Robert Sparrow, FLH, FHWA, to continue Committee meetings monthly, as contemplated under the Committee’s Protocols (Art. VII), until the Committee completes a proposed rule.

The Rulemaking Committee convened five times between August and December 2016, with the final meeting held in Atmore, Alabama. With a new administration, subsequent Committee meetings have been suspended since December to allow you and your staff the opportunity to evaluate the TTSGP and the Rulemaking Committee’s legal basis. The Tribal and Federal officials who are representatives to the Rulemaking Committee are dedicated professionals who want to see this important work finished. The Tribal Self-Governance Program is among the most successful Federal programs serving American Indians and Alaska Natives. It empowers Tribal governments and improves and streamlines the delivery of Federal programs serving our citizens. The Committee’s progress must continue.

The Tribal representatives to the Department’s TTSGP Negotiated Rulemaking Committee look forward to working with you and your staff to fulfill our joint obligations under the authorizing legislation. Thank you for considering our request.

Please let us know if we may be of any further assistance to you concerning this matter.

Sincerely,

Kay Rhoads, Tribal Co-Chair
Principal Chief, Sac and Fox Nation

Joe A. Garcia, Tribal Co-Chair
Head Councilman, Ohkay Owingeh

cc: DFO Robert Sparrow, FLH, FHWA
Associate Administrator Timothy Hess, FLH
Deputy Assistant Secretary for Intergovernmental Affairs Anthony Bedell
Assistant Chief Counsel, FHWA, Vivian Philbin, Esq.
TIBC Budget Update for SGAC

FY 2017
On May 3 Congress enacted an Omnibus 2017 funding bill which funds BIA at $2.86 Billion. The Omnibus language itself says $2,859,765,000; whereas BIA’s latest Comp Table pegs the number at $2,863,165,000. Some highlights of the bill include:

**Tribal Government:**
$3.6 million increase for Road Maintenance
$2.6 million increase for Small & Needy Tribes to ensure all tribes get the maximum base level

**Human Services:**
$16 million increase for the Tiwahe Initiative in Social Services, ICWA, HIP, Courts, Job Placement & Training

**Trust Natural Resources:**
$9.1 million increase including Alaska subsistence programs, forest thinning, and fish hatcheries

**Public Safety & Justice:**
$8.3 million increase, of which $3.1 million is for more Indian Country police officers, $1 million for Detention, $2.6 million for Courts under the Tiwahe Initiative, and $1 million to implement the Native American Graves Protection and Repatriation Act. The $10 million for Tribal Justice Support for tribes subject to PL 83-280 jurisdiction is retained.

**BIE:**
A host of increases were provided including $3.5 million for Tribal Scholarships, $6.9 million for Tribal Grant Support Costs, $8.4 million for ISEP Formula Funds, $2 million in Education Program Enhancements to expand Native language immersion programs, and other increases for Early Child & Family Development, Facilities O&M, Haskell & SIPI, Education Program Management & Education IT.

**Fixed Costs/Pay Costs:**
Congress enacted FY 2017 Fixed Costs at the requested amount of $5.3 million. Unfortunately, in this last Budget of President Obama, the requested amount of $5.3 million was by far the tiniest request in the history of the BIA (the FY 2008 request in Bush’s last budget was $41.3 million, which was enacted).

One of the few bright spots in the FY 2018 budget request is that Fixed Cost are $17.3 million, about 3-times the FY 2017 request. And, BIA informed us the FY 2019 Fixed Costs estimate will be $25 million. So Fixed Costs, which include Pay Costs, may be one area that SGAC and TIBC may want to focus on, since this Administration seems to be open to better numbers.

FY 2018
The President’s FY 2018 budget request for BIA is $2,488,059,000, which is $375,106,000 below the FY 2017 enacted level of $2,863,165,000. This is a 13.1% cut, compared to 12% for Interior overall.
Proposed cuts are really too numerous to detail, but below is a sampling of the cuts most impacting to tribal programs:

Road Maintenance is cut $2.2 million, or 7.1%

Social Services is cut $17.4 million, or 33%

Human Services collectively is cut $35.2 million, or 22%

Trust Natural Resources overall is cut $35.5 million, or 14%

Law Enforcement is cut $27.6 million, or 8%

Tribal Courts is cut $8.8 million, or 29%

Scholarships & Adult Education is cut $9.6 million, or 28%

JOM is cut $4.6 million, or 31%

BIE collectively is cut $105 million, or 12%

Most of these programs serve children and families, provide public safety, and assist youth with their education. These cuts are diametrically opposed to the most recent budget priorities established by the Tribal Interior Budget Council.

In addition to proposed budget cuts, there are at least 15 programs slated to be entirely eliminated. These include:

**Tribal Government:**
- Small & Needy Tribes

**Human Services:**
- Tiwahe Initiative
- Domestic Violence Initiative
- Methamphetamine Initiative
- Housing Program

**Trust Natural Resources:**
- Tribal Climate Resilience

**Trust Real Estate Services:**
- Alaska Native Programs
- Litigation Support/Attorney Fees
Public Safety & Justice:
- Recidivism Reduction Initiative
- Tribal Justice Support for tribes subject to P.L. 83-280

Indian Education:
- Juvenile Detention Education
- Special Higher Education Scholarships
- Science Post Graduate Scholarships
- Replacement School Construction
- Replacement Facility Construction

On Wednesday July 12, the House Interior Appropriations Subcommittee held a markup hearing on the FY 2018 Interior Appropriations bill. Budget detail available for review at this time is scant, and Chairman Ken Calvert stated in the hearing, that all meeting materials had to stay in the room at the end of the hearing. The limited information available is that the Subcommittee recommends an overall increase for BIA of $10 million, which suggests a funding level of about $2,873,165,000. Welfare Assistance is identified in the draft bill at $74.65 million, essentially the same as FY 2017. $51 million is collectively provided for HIP, Road Maintenance, Litigation Support, Land Records Improvement, and Navajo-Hopi Settlement programs, which at least suggests that two programs slated for elimination – HIP and Litigation Support, are funded. The amount for Contract Support is not stated, but language indicates such sums as needed to provide full CSC will be provided. The draft bill also mentions $9.3 million for the Indian Guaranteed Loan program, which would be an increase of $1.7 million above FY 2017. The only other thing to add at this time, is that Ranking Member Betty McCollum did mention in her opening remarks, that the Tiwahe Initiative is restored, and that $11 million is provided to increase the number of law enforcement officers to combat drugs in Indian Country.

The take away at this point is that the Subcommittee rejected President’s Trump’s harsh proposal, but we are likely entering a period, where at best, there may be little or no growth in the BIA budget.

FY 2019
The FY 2019 BIA budget process is moving along quickly. Budget priorities were identified at the TIBC meeting last March. The July TIBC meeting next week will likely be the last opportunity for TIBC to weigh in on the FY 2019 budget. The TIBC agenda will include a report on the Budget Formulation process from an outside contractor, Kepner-Tregoe, who was asked last year to analyze the budget process, and make recommendations on improvement.

In terms of actual tribal input on the FY 2018 and FY 2019 BIA budgets, there has been little of that. Some folks have heard that BIA was instructed to impose an additional $150 million in budget cuts on top of the $375 million in cuts proposed for FY 2018. We did confirm with the BIA Budget Office that they have one FY 2019 scenario that includes an additional 5% cut overall, which would be about $125 million. We should not be surprised to see a FY 2019 BIA budget request that is $500 million, or more, below the FY 2017 enacted level.
STATEMENT BY
CARLA MANN, PRESIDENT
NATIONAL JOHNSON O’MALLEY ASSOCIATION (NJOMA)
BEFORE THE SENATE INDIAN AFFAIRS COMMITTEE
ON S. 943
THE JOHNSON O’MALLEY SUPPLEMENTAL INDIAN EDUCATION PROGRAM
MODERNIZATION ACT OF 2017
July 12, 2017

Mr. Chairman and Members of the Committee, I am pleased to represent the National Johnson O’Malley Association (NJOMA) before you today in support of S. 943, the Johnson O’Malley Supplemental Indian Education Program Modernization Act of 2017; legislation developed to direct the completion of necessary updates to the Johnson-O’Malley Supplemental Indian Education program (JOM) operated by the Department of Interior, Bureau of Indian Education (BIE).

Mr. Chairman, as I have testified before, NJOMA has for nearly 25 years and through several Administrations advocated for actions to reverse the Department of Interior and BIE’s “determined unwillingness” to complete the necessary work to be able to finalize a count of the numbers of Indian students “eligible” for JOM services. In 2012, 2014, 2016 and again in 2017, Members of Congress approved language in the Interior appropriations bills directing the Department and BIE to update and report to the Congress a count of the eligible Indian students for the JOM program. Given this unacceptable situation, I come here again today on behalf of the over 1 million Indian children asking this Committee and the Congress to quickly approve S. 943 so that these children can rightfully obtain the kinds of supplemental educational services and assistance they need to become productive American citizens.

We are extremely pleased and thankful that Senators Heidi Heitkamp, James Langford, Steve Danes have stepped up to reintroduce legislation to direct the Secretary of Interior to acknowledge the 20 plus year gap in data collection for the JOM program, and to select and use one of the widely accepted government data sets such as Census Bureau and/or National Center for Education Statistics (NCES) data, to develop a reasonably reliable projection of the current JOM-eligible student population. This bill will authorize the Secretary to use one these data sets to establish a new baseline count of eligible Indian students for use in help BIE and NJOMA build a modern, more accurate, and uniform allocation funding formula; establish a data reconciliation process-like the one used by HUD in the Indian Housing Block Grant program to work with Tribes, public school districts and other organizations to refine, and establish on an ongoing basis, the requirement for BIE to keep the count accurate and report this information to the Congress on an annual basis.

When NJOMA began our pursuit of legislation to modernize and reform the Johnson O’Malley program, we established four primary goals for this legislation:

- First, we are seeking the Johnson O’Malley Modernization Act to obtain a complete update of the student count for the number of Indian students “eligible for JOM services and assistance”;
- Second, we wanted to initiate and conclude an open, honest and reality based discussion about the true cost and funding needed to provide the types of supplemental
learning and educational services and assistance needed by Indian students in today's educational and career environment;

- Third, we wanted to obtain a general update and modernization of JOM's Rules, as reflected in Title 25, Code of Federal Regulations; and
- Finally, we wanted to codify the objective of increasing geographic and Tribal participation in the Johnson-O'Malley Supplementary Education Program.

**UPDATING THE JOM STUDENT COUNT**

For nearly 25 years and through several Administrations, the Department of Interior and BIE have been unable, or in some peoples’ opinion, unwilling to do the necessary work needed to finalize a count of the numbers of Indian students currently enrolled or calculate the true total count of Indian students eligible for JOM services. It should be noted once again that the JOM program has been all but frozen in time since 1995: no updated student count, no update of the program rules, and no real increase in funding to meet the real-time growth in the eligible population as noted from data collected for other Indian education activities and the 2010 Census (and its bi-annual Community Population updates).

Once again, I would remind the Committee that in 2012, 2014, 2016, and again in 2017, the Congress approved language in the Interior appropriations bills directing the Department and BIE to update and report to the Congress a count of the eligible Indian students for the JOM program. Given what I believe we would all agree is a totally unacceptable situation, we firmly believe that the “total eligible student population” for JOM when projected using the accepted factors of “enrollment in a Federally recognized Indian tribe or ¼ blood quantum” that the eligible JOM Indian student count is well over 1 million Indian children verses the 272,000 students counted in 1995, and still in use for funding and allocation purposes today.

NJOMA is totally supportive of the authorization contained in S. 943 that provides the Secretary of Interior with direct authorization to select and use one or more of the widely accepted government data sets such as Census, National Center for Education Statistics (NCES), and data collected by the Office of Indian Education of the Department of Education to develop a reasonably reliable projection of the currently enrolled JOM-eligible student population. We hope to be able to continue working with this Committee, our other Congressional supporters and the Department of Interior and BIE to fully identify and extend JOM services and assistance to the full Indian student population JOM is intended to reach.

**DETERMINING TRUE COST AND FUNDING TO PROVIDE SUPPLEMENTAL LEARNING AND EDUCATIONAL SERVICES AND ASSISTANCE NEEDED BY INDIAN STUDENTS IN TODAY'S EDUCATIONAL AND CAREER ENVIRONMENT**

Under currently utilized JOM regulations (Title 25 Code of Federal Regulations (CFR) INDIANS, Part 273, 16-17), JOM programs are based on community and student needs assessments, not the needs of the school district and therefore provide specialized educational services to Indian students. As you may know, the JOM program is the only Federally-funded Indian educational program that allows for student, parent, and community involvement in meeting their educational needs which are both academically, culturally and geographically based.

In 1995 when JOM was frozen, the per student allocation amount funded was approximately $125.00 per student, based on the then 272,000 counted students. A review of the nearly 22
years of frozen funding for JOM appearing later in this testimony shows that today’s JOM per student allocation is effectively $43.00 per student; an amount that is not based on any accepted measurement of the true costs of the goods, services, personnel and transportation costs and types of assistance needed by JOM eligible students.

NJOMA is pleased that S. 943 directs the Secretary to establish, in consultation with contracting parties, a present day per student funding allocation that shall serve as a funding “target baseline” for the JOM program going forward. This baseline will enable all of us to remain focused on insuring that the commitments make as far back as the early 1800s, and codified in the 1934 Johnson O’Malley Act, to “ensure that Indian children received the educational opportunities that would not otherwise be provided” are kept.

We are also pleased that S. 943 requests that the Secretary make recommendations for legislation to logically increase the amount of funds available per eligible Indian student through contracts, at amounts equal to or greater than the amount of funds that were available per eligible Indian student for fiscal year 1995, and to identify additional sources of funding that do not reallocate existing funds otherwise utilized by Indian students served by JOM.

Finally, NJOMA is also supportive of the provisions that establish “Hold Harmless” funding conditions in S. 943, and are pleased that they accommodate the need, should it occur, for JOM Contracting Parties to adjust their program and services over a period to accommodate a decrease in enrolled students should it fall below the number of eligible Indian students identified in the initial eligible student count for that program entity.

**UPDATING AND MODERNIZATION OF JOM’S RULES**

The program operating rules for JOM are terribly outdated and lacking in the kind of guidance generally needed by JOM Contracting Parties. Many of the needed Rule updates are to provisions that have not been reviewed or amended since the 1970s, or are in areas where the Courts have rendered decisions that require JOM Rules to be brought into compliance with the Court’s findings such as the definition of “eligible Indian student” as ruled by the Ninth Circuit Federal District Court in *Diane Zarr v. Earl Barlow*, 800 F.2d 1484 (9th Cir. 1986).

S. 943 instructs the Director of the Bureau of Indian Education to undertake and complete a rulemaking process to determine how the regulatory definition of ‘eligible Indian student’ may be revised to clarify eligibility requirements for contracting parties; determine, as necessary, how the funding formula may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process; and otherwise reconcile and modernize the rules guiding the JOM program.

NJOMA looks forward to working with BIE and other JOM stakeholders to improve and update the JOM program Rules; and are hopeful that this effort will be conducted via a fully engaged and consultative process.

**INCREASING GEOGRAPHIC AND TRIBAL PARTICIPATION IN THE JOM PROGRAM**

S. 943 instructs the BIE to consult with Indian tribes and contact State educational agencies and local educational agencies that have not previously entered into a contract to determine the
interest of the Indian tribes and State educational agencies and local educational agencies in entering into contracts, and to share information relating to the process for entering into a contract. This mandate is justified because in 1996, BIE stopped accepting and processing applications from Tribes and other potential JOM program contractors, even as inquiries continued to flow into the Bureau from school districts, Tribes and other eligible entities.

NJOMA strongly believes that as the true impact of the likely “total eligible student population” for JOM of well over 1 million Indian children and that the need to increase the number of JOM Contractors, expand resources and otherwise raise funding for this U.S. Government “Trust Responsibility” program will be self-evident. We likewise believe it is important that these and other outreach efforts are critically needed to insure also that “No Indian Child is Left Behind.”

**What Does the Census Data Tell Us?**

In previous testimony NJOMA has spoken to the issues of using widely acknowledged data and a reconciliation process to better determine and establish a viable estimate of the number of JOM eligible Indian students. The Native American population that has been one of the demographic groups experiencing positive population growth for the last 40 plus years.

According to the 2010 census, 5.2 million people, or 1.7 percent of all people in the United States, identified as American Indian and Alaska Native, either alone or in combination with one or more races. This population alone grew by 27 percent from 2000 to 2010. In the 2010 census, those who reported being American Indian and Alaska Native alone totaled 2.9 million, an increase of 18 percent from 2000 to 2010. The multiple race American Indian and Alaska Native population, as well as both the alone and alone-or-in-combination populations, all grew at a faster rate than the total U.S. population, which increased by 9.7 percent from 2000 to 2010. The data also shows us the steady growth that has occurred and is forecast to continue to happen within the ages 3-12 years old demographic, and the forecasts up to and beyond 2020 present this same picture.

In 2014, the U.S. Census Bureau provided Representative Tom Cole (R-OK) with census data regarding American Indian and Alaska Native child populations. The information provided included data tables that reflect American Indian and Alaska Native population aged 3 to 18 years by selected tribe from the 2000 Census, the 2006-2010 American Community Survey, the 2010 Census, and the 2008-2012 American Community Survey. In addition, the Census Bureau provided population projections of the American Indian and Alaska Native population aged 3 to 18 years for 2010 through 2020. According to the most reliable numbers available from the 2010 Census, there are at least 798,000 Indian and Alaskan Native students who are counted as having been enrolled in a single, federally recognized tribe. That number is over 1.0 million eligible Indian children who, based on meeting the current JOM 1/4th quantum requirement, and attending Public Schools who we believe, should also be receiving JOM services today.

Because of bureaucratic fumbling and Administration neglect, JOM's student count has been frozen at 272,000 students since 1994. The Senate Indian Affairs Committee stated in its 2012 Report accompanying S. 1262 (Senate Report 112-262), “[that] currently, 620,000 or 93% of Native students attend public schools and approximately 45,000, or 7%, attend BIE schools.” It was clear then, and remains true, that there are many JOM-eligible students being denied or
deprived of services that they are legally entitled to, amounting to a failure of the Federal Government to meet its trust responsibility.

NJOMA has lead an effort- that we are pleased that the BIE has now embraced- to temporarily set-aside BIE’s once used annual student count process, and replace their count with U.S. Census or other data to build a new baseline count of JOM Indian students. We have argued that Census data is reliable, comprehensive information that is provided without any additional funding or resources for the Bureau. There are many federally funded programs, including ones specifically for Native American populations, which use U.S. Census data for the apportionment of funds. Census information is reliable data upon which Congress and the Administration regularly rely including for the Reading First State Grants (Dept. Ed), Career and Technical Education – Basic Grants to States (Dept. Ed), Tech-Prep Education (Dept. of Ed), Safe and Drug-Free Schools and Communities State Grants (Dept. Ed), Water and Waste Disposal Systems for Rural Communities (USDA), Grant Program to Establish a Fund for Financing Water and Wastewater Projects (USDA), Special Programs for the Aging Title VI, Part A, Grants to Indian Tribes Part B, Grants to Native Hawaiians (HHS), Urban Indian Health Services (HHS), Low-Income Home Energy Assistance (HHS), Head Start (HHS), Family Violence Prevention and Services/Grants for Battered Women’s Shelters Grants to States and Indian Tribes (HHS), Preventive Health and Health Services Block Grant (HHS), Violence Against Women Formula Grants (DOJ), State Public Water System Supervision (EPA), Water Pollution Control State, Interstate, and Tribal Program Support (EPA), Nonpoint Source Implementation Grants (EPA), Economic Adjustment Assistance (DOC), National Fire Plan - Wildland Urban Interface Community Fire Assistance (DOI), Americorps (CNCS), Native American Employment and Training (DOL).

The Federal Government, including the Department of Interior and the Bureau of Indian Affairs use Census data for other Indian programs including tribal housing, tribal roads, law enforcement, and labor force reports. BIA currently uses Census data for its American Indian Population and Labor Force Reports and Congress regularly uses this data to inform policymaking decisions. Census data is also widely used locally for planning and program purposes to identify appropriate economic development approaches and gauge particular community needs and resources. Another critical use of this data is to determine levels of federal funding for tribes under the Workforce Investment Act, the Indian Housing Block Grant program, the BIA Tribal Transportation program, and many other Indian programs. Using Census data would reduce duplicitous spending by BIA to perform a count for which data already exists. Any significant changes to data collection (or lack thereof) and the continued non-collection of data impact the ability of tribal governments to adequately provide for their citizens, and affect the federal government from carrying out its trust responsibility in essential social and economic areas.

In 1997, OMB issued a Federal Register notice regarding revisions to the standards for the classification of federal data on race and ethnicity. OMB developed race and ethnic standards in order to provide "consistent data on race and ethnicity throughout the Federal Government. The development of the data standards stem in large measure from new responsibilities to enforce civil rights laws." Among the changes, OMB issued the instruction to "mark one or more races" after noting evidence of increasing numbers of interracial children and wanting to capture the diversity in a measurable way and having received requests by people who wanted to be able to acknowledge their or their children's full ancestry rather than identifying with only one group. Prior to this decision, the Census and other government data collections asked people to report only one race.
The OMB states, "many federal programs are put into effect based on the race data obtained from the decennial census (i.e., promoting equal employment opportunities; assessing racial disparities in health and environmental risks). Race data are also critical for the basic research behind many policy decisions. States require these data to meet legislative redistricting requirements. The data are needed to monitor compliance with the Voting Rights Act by local jurisdictions".

While BIE has traditionally relied on tribes to provide data for the student count, tribes should not bear sole or primary responsibility for providing quality data with little to no resources, training, or other support from the Bureau to do so. It is clearly essential that student count data be available for monitoring the quality of services that the BIE and JOM contractors are responsible for providing to American Indian and Alaska Native students. Going forward, there needs to be greater coordination between the BIE, Census Bureau, and the Office of Management and Budget to address the widespread problems that plague data collection generally in Indian Country, and especially JOM.

For the record, BIA/BIE’s 2012 and 2014 counts - as imperfect as they were – made it clear that there have been increases in the number of students needing and being serviced by JOM since 1995. The only real issues in dispute today are how much of a student increase has occurred, and what the cost would be of adequately serving this population. As the number of students served by JOM has grown, so too must the funding in order for JOM to continue to operate and offer the much needed services it provides to an already underserved Native American population.

In our view, at this point in time, it is clear that this data is a more comprehensive compilation of population data and more accurately reports the demographics of the client group that JOM is intended to serve. The BIE has more than proven that is not capable of performing and reporting student counts as mandated by Congress. S. 943 will direct the use of Census and/or other data to bridge the over 20-year gap since the last true JOM student count, but does serve as a replacement for a BIE count altogether.

We look forward to working with BIE, the current JOM contractors and all new program providers in providing Congress with accurate and compelling justifications for increases in funding and expansion of the allowable-but badly needed-program activities that JOM can operate that will advance the attainment of the goal of enhancing the education and training of Indian students.

**JOM Funding and Student Count History**

For over 60 years, the JOM program constituted a separate appropriation under the Federal budget and appropriations bills. However, in 1995, the Bureau of Indian Affairs moved the JOM program into the TPA budget category of the BIA. The TPA is a block grant to tribes of a number of program allocations and authorities which originally were separate programs. Theoretically, the TPA system allows tribes flexibility to move funds between activities within the program to meet locally, tribally designated priorities. However, as with most block grant schemes, the TPA has been used as a budget regulatory tool, with amounts for the TPA account limited and not increasing with the needs of various components. In fact, the TPA has allowed the Federal government to flat-line funds for the account for years, while the needs of the constituent programs have increased. The tribes and the JOM Indian community resisted
the proposed Bureau addition of the JOM to the TPA. Despite tribal and educator opposition, the BIA added the JOM program to the TPA, creating the current program.

Prior to the 1995 freeze, the BIA had a full time JOM Director in the D.C. office. This director collected the program annual reports, student count information, and provided technical assistance the programs. While there were local JOM managers in the regional BIA offices that oversaw the local JOM programs and provided direct technical assistance, the JOM program administrators had a direct line to the Director in D.C. The Director's primary task was to provide the JOM programs with their annual funding based on the student count received from the local JOM managers. The Director makes a funding distribution based on the national budget divided by the student count, taking into consideration the cost of living in each state. For example, Alaska received the highest per student cost based on the high cost of living in that state.

The regional JOM managers would collect the information from the local JOM programs; they would put out notices of deadlines, hold JOM forums, and conduct annual evaluations of each program, including a random student certification verification and financial audit review. These regional managers would provide their findings of non-compliance to the programs and provide them a timeline to comply or funding would be withheld until such time as the individual program was compliant with federal regulations and BIA policies and procedures. Compliance included annual reports, student count certificates, or lack of Local Indian Education Committee (LIEC) involvement.

The LIEC is comprised of parents of eligible Indian students enrolled in the public school district. Choices are made at the local level, with scarce resources going to locally determined needs. The regional JOM managers also reviewed each JOM program application and ensured that there were measurable goals and objectives based on an actual needs assessment that was conducted annually. In addition, the managers reviewed their prospective budgets before forwarding them to the Director in D.C. The managers collected the following from each program and sent them to the Director: annual needs assessment, program application with measurable goals and objectives, budgets, student count verifications, LIEC bylaws, and LIEC election process.

In 1982, the BIA proposed eliminating the JOM, arguing duplication of Indian Education Act. Congress soundly refuted this reasoning, stating the programmatic differences in local Indian control and scope, and difference in student eligibility. In 1983, the Department of Education (DOE) proposed eliminating the Indian Education Act, arguing similar funding was available from DOE and the lack of accountability for how the funding was used.

The U.S. Department of Education oversees the Title VII Indian Education Act programs and Title VIII Impact Aid funding which Congress considers duplicate funding sources for Indian Education. The Title VII program is run directly through the school districts and is not subject to tribal control. The tribes have no actual authority over the design or implementation of the Title VII programs.
Under the JOM regulations, parents of eligible JOM Indian students are ‘vested with authority” to design and implement local JOM programs. 25 Code of Federal Regulations (CFR) INDIANS, Part 273, 16-17, states JOM programs are based on community needs assessments, not the needs of the school district and therefore provide specialized educational services to Indian students. The JOM program is the only Federally-funded educational program that allows for student, parent, and community involvement in meeting their educational needs which are both academic and cultural based.

The eligibility for Title VII students is not based on students being an enrolled member of Federally-recognized tribe; they simply need to identify themselves on a DOE Form #506. Congress reacted so negatively to this proposal that any further debate on these two programs was shelved and put to rest.

However, the effort to eliminate JOM was resurrected in 1995. The effort to eliminate JOM began with the reduction and eventual phasing out of the regional JOM manager positions, and eventually, the Director’s position in D.C. The Director went from a full time coordinator, to a quarter time position, and then phased out altogether. At this time, there was an effort by the BIA to put more emphasis and efforts into the Bureau-operated schools and wanted to direct JOM funds to those schools.

JOM funding has been in a state of “suspended animation” since 1995. The funding formula and the movement of JOM into TPA has caused many tribes and other grantee/contractors under JOM to be frozen at the 1995 student count and funding figures, indefinitely. In 1994 the eligible Indian student count was 272,000 and now there is an unmet financial need for the additional JOM students currently being served by public schools throughout the nation. This student count is not an accurate representation of the number of Indian students served today.

Since the freeze in 1994, there has been no correlation of educational services with the lack of an accurate Indian student count. The JOM programs are not able to show due to the freeze and those Indian students attending public schools are being overlooked for services. Without a current JOM student count, there is no way to estimate the current percentage of JOM students being served in comparison to the BIE.

Many in Indian country believe that the Department of Interior and the BIE have mismanaged the JOM count for over two decades, a situation they many contend is a clear violation of the Federal Government’s Trust Responsibility to Indian Country. Evidence of this mismanagement by BIA occurred with the FY 2007 Budget submission. Lack of program performance accountability, duplication of other state and federal programs and implementation of management efficiencies were among the reasons given in the budget documents for the reprogramming of twenty-five percent of JOM funds by the BIA Tribal Budget Advisory Council (TBAC). The BIA has not monitored the JOM program properly since 1995, and thus these reasons are invalid and unverifiable. The JOM program is the one remaining Federal program that puts the program under the strict control of a LIEC.

Legislative History of JOM and the House Subcommittee on the Department of Interior FY 1993-2017
Source: Dept. of Interior Budget Justifications and Performance Information
<table>
<thead>
<tr>
<th>DATE</th>
<th>SOURCE</th>
<th>AMOUNT REQUESTED</th>
<th># STUDENTS FUNDED</th>
<th>NOTES</th>
<th>CITATION</th>
</tr>
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| 1992 | BIA Budget Justification FY 1993 | Base: $22,817,000 | 228,681 in 32 states | • JOM funds home-school coordinators and academic remediation.  
• JOM has blood quantum and eligibility requirements.  
• Although JOM has a base of $22,817,000, $644,000 transferred to tribes so as to let them manage their educational needs. | ISBN 0-16-037580-0; pg. 1066 (BIA-184) |
| 1992 | Testimony re: FY 1993 | FY 1993 Request: $22,177,000 | | • In oral testimony, Committee asks why BIA did not request more money for education even though it’s a priority for the Clinton Administration.  
• In the “additional questions” section, the BIA answers basic questions about the feasibility of transferring JOM funds to tribes. | ISBN 0-16-038719-1 pgs. 172-76; 211-12 |
| 1993 | BIA Budget Justification FY 1994 | Base: $22,826,000 | First reported as 229,728 students in 1993; later revised to 245,102. | • JOM-funded home-school coordinators work with families to motivate students to stay in school.  
• JOM also helps parents meet school-related expenses. | ISBN 0-16-040785-0 pgs. 954, 1193 (BIA pgs. 83, 319) |
| 1993 | Testimony re: FY 1994 | FY 1994 Request: $22,826,000 | | • To justify why its request matched its base, BIA explains that JOM enrollment increased by only .5 percent in the previous year.  
• BIA expects JOM enrollment to increase to approximately 245,000 students in FY 1994 because private and tribal schools now receive JOM funds. | ISBN 0-16-041023-1 (pg. 228-29) |
| 1994 | BIA Budget Justification FY 1995 | Base: $24,326,000 | 259,813 | • Nothing in green book re: JOM activities. | Pg. 1044 of the FY95 budget justifications (BIA pg. 79) |
• Committee notes that the amount requested for JOM is about the same as for FY 1994; BIA explains that it expects JOM to fund only a few more students than the year before. | Part 10, Pgs. 93; 228-29 |
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<tr>
<td>1995</td>
<td>BIA Budget Justification FY 1996</td>
<td>Base: $24,359,000 FY 1996 Request: $22,752,000</td>
<td>271,857</td>
<td>- State-by-state breakdown shows that JOM primarily funding students in Alaska, Arizona, and New Mexico.</td>
<td>Part 2, pgs. 839; 1144-45 (BIA pgs. 61, appendix)</td>
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<td>Testimony re: FY 1996</td>
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<td>- ASIA Ada Deer once again mentions education and JOM at the beginning of her testimony.</td>
<td>Part 11 pg. 955</td>
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<td>1996</td>
<td>BIA Budget Justification FY 1997</td>
<td>Estimated Base: $19,634,000 FY 1997 Request: $22,570,000</td>
<td>&quot;nearly 272,000 students in 33 states&quot;</td>
<td>- BIA notes that it received 14 percent less than its FY 1996 request. Some JOM funds were transferred to self-governance compacts.</td>
<td>Part 4, 54-56</td>
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<td>Testimony re: FY 1997</td>
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<td>JOM is mentioned nowhere in the testimony.</td>
<td>Part 5</td>
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| 1997  | BIA Budget Justification FY 1998| Estimated Base: $18,177,000 FY 1998 Request: $17,216,000 | "272,000 students in 33 states" | - JOM “is the only Bureau program that provides for the culturally related and supplementary academic needs of Indian children attending public schools.”
- Explains that JOM transferred to the TPA part of the Tribal Budget System in FY 1996.
- BIA used the FY 1995 student count to distribute JOM funds to tribal TPA bases. | Part 2, pg. 692 (BIA pgs. 57-58) |
<p>|       | Testimony re: FY 1998           |                                       |                   | JOM mentioned once in the oral testimony, but nothing else beyond that.                                                               | Part 8, pg. 304               |
| 1998  | BIA Budget Justification FY 1999| Base: $18,534,000 FY 1999 Request: $18,080,000 | a &quot;constant population&quot; of 272,000 students in 33 states | - Same information as previous year.                                                                                                  | Part 2, pg. 878 (BIA 74)      |
|       | Testimony re: FY 1999           |                                       |                   | Although Indian education discussed at length, JOM not mentioned.                                                                     |                               |
| 1999  | BIA Budget Justification FY 2000| Base: $18,080,000 FY 2000 Request: $17,469,000 | a &quot;constant population&quot; of 272,000 students in 33 states | - Same information as previous year.                                                                                                  | Part 2, pg. 924-25 (BIA pg. 60-61) |
|       | Testimony re: FY 2000           |                                       |                   | JOM mentioned once, but nothing else beyond that.                                                                                   | Part 8, pg. 215               |</p>
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| 2000  | BIA Budget Justification FY 2001| Base: $17,387,000 | a "constant population" of 272,000 students in 33 states | • Essentially the same information as in previous years.  
• JOM funds "tutoring and counseling and parental involvement programs." | Part 2, pg. 789 (BIA pg. 63) |
|       | FY 2001 Request: $17,035,000    |                  |                   |                                                                      |          |
|       | BIA Testimony re: FY 2001       |                  |                   | • JOM mentioned nowhere in the testimony.  
• At a couple of points, ASIA Kevin Gover concedes that BIA has struggled to keep up with student counts. | Part 8, pgs. 194, 255 |
| 2001  | BIA Budget Justification FY 2002| Base: $16,998,000 | a "constant population" of 272,000 students in 33 states | • JOM meets "the unique and specialized educational needs of Indian children in public school systems"  
• JOM for PreK-12 students, excludes "those who are enrolled in Bureau- or sectarian-operated schools" | Pg. 51-52 |
<p>|       | FY 2002 Request: $17,113,000    |                  |                   |                                                                      |          |
|       | BIA Testimony re: FY 2002       |                  |                   | • JOM designed to meet &quot;specialized and unique educational needs, including programs supplemental to the regular school program and school operational support.&quot; | Part 6, pg. 351 |
| 2002  | BIA Budget Justification FY 2003| Base: $17,113,000 | &quot;about of 272,000 students in 33 states&quot; | • &quot;The program supports the Bureau's Annual Performance Plan goal of improving the succession of students to each educational level by providing tutoring and counseling and parental involvement programs.&quot; | Pg. 56 |
|       | FY 2003 Request: $17,019,000    |                  |                   |                                                                      |          |
|       | BIA Testimony re: FY 2003       |                  |                   | • JOM is not discussed                                               |          |
| 2003  | BIA Budget Justification FY 2004| FY 2004 Request: $16,874,000 | &quot;about of 272,000 students in 33 states&quot; | • Approximately the same information as previous year.               | Pg. 44-45 |
|       | FY 2004 |                  |                   |                                                                      |          |
|       | BIA Testimony re: FY 2004       |                  |                   | • JOM is not discussed                                               |          |
| 2004  | BIA Budget Justification FY 2005| 2003 Actual: $16,908,000 | &quot;about of 272,000 students in 33 states&quot; | • Explains that &quot;the programs in public schools are often not designed to provide ethnic Indians with the support systems they need to be successful.&quot; | Pg. 57-58 |
|       | 2004 Enacted: $16,666,000       |                  |                   |                                                                      |          |
|       | FY 2005 Request: $16,743,000    |                  |                   |                                                                      |          |
|       | BIA Testimony re: FY 2005       |                  |                   | • JOM is not discussed                                               |          |</p>
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<td>2005</td>
<td>BIA Budget Justification FY 2006</td>
<td>FY 2004 Actual: $16,666,000</td>
<td>Not discussed</td>
<td>To justify cutting JOM funds in half, BIA says its core responsibility is to operate federally funded schools; in light of scarcity, BIA wants to cut down on supplemental education funding.</td>
<td>Pgs. BIA-TPA 21-23</td>
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<td>FY 2005 Enacted: $16,510,000</td>
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<td>FY 2006 Request: $7,777,000</td>
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<td>BIA Testimony re: FY 2006</td>
<td>FY 2005 Enacted: $16,510,000</td>
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<td>BIA explains that JOM “grants for Indian children attending public schools do not currently address a focused goal for academic achievement and duplicate similar funding made available by the Department of Education.”</td>
<td>Pgs. 18, 74</td>
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<td>FY 2006 Enacted: $16,371,000</td>
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<td>Example of duplicate funding: DOE has $150 million in funding specifically targeted to Indian students attending public schools.</td>
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<td>FY 2007 Request: $0</td>
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<td>Remaining JOM funding will go toward “the highest-priority components” of the program</td>
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<td>BIA Budget Justification FY 2007</td>
<td>FY 2005 Enacted: $16,510,000</td>
<td>Not discussed</td>
<td>“These grants are duplicative of other Federal and State assistance programs and do not address a focused goal for academic achievement. Eliminating the $16.4 million JOM grants allows the Bureau to realign funds and focus resources on the requirements of the Bureau funded school system, while also reducing redundancy with other Federal programs.”</td>
<td>Pgs. BIA-SUM-12,13; BIA-ED-1</td>
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<td>FY 2006 Enacted: $16,371,000</td>
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<td>FY 2007 Request: $0</td>
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<td>2006</td>
<td>BIA Testimony re: FY 2007</td>
<td>FY 2005 Enacted: $16,510,000</td>
<td>Not discussed</td>
<td>Sen. Dorgan (D-ND) asks why JOM is cut, says this is a mistake, points out that BIA does not seem to increase education spending elsewhere so as to “refocus” itself.</td>
<td>Part 5, pg. 74</td>
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<td>FY 2006 Enacted: $16,371,000</td>
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<td>BIA explains that it is phasing out JOM because DOE programs can now provide the same types of grants.</td>
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<td>FY 2007 Request: $0</td>
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<td>BIA</td>
<td>Budget Justification for FY 2008</td>
<td>FY 2006</td>
<td>Not discussed</td>
<td>“The FY 2008 request proposes corresponding reductions to Self-Governance Compacts and Consolidated Tribal Government Programs funding related to JOM. This reduction eliminates $6.7 million from Self-Governance Compacts. Public school districts will continue to receive funding and are eligible for grants similar to JOM under Title VII of the Indian Education Act (Public Law 107-110) through the US Department of Education. Title VII funding addresses the special academic and culturally relevant education needs of Indian children.”</td>
<td>Pg. IA-TG-3; IA-EDUC-1</td>
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<td>FY 2007</td>
<td>CR: $0</td>
<td>FY 2008 Request: $0</td>
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<td>BIA</td>
<td>Testimony re: FY 2008</td>
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<td>• Testimony from Umatilla: Restore JOM to 2004 levels • Umatilla questions BIA's argument that JOM was duplicative of Title VII funding available through DOE, saying that JOM monies go to tribes whereas Title VII monies are managed by non-Indian school districts. • Umatilla attributes underperformance of its students to lack of JOM programs. • Confederated Tribes of the Warm Springs Reservation in Oregon also testifies, asks that BIA restore JOM to $17 million • Warm Springs: “(JOM) is the only tool available to our Tribe to directly participate in the K-12 education of our children.” • Fond du Lac Band: JOM not duplicative; unlike other programs, JOM had a cultural enrichment and Native language component unavailable elsewhere. Asks that BIA “restore full funding.” • NCAI: JOM not duplicative; valuable because it gave tribes a foothold in the K-12 public school systems. • Nisqually: “While we support the administration's initiative to improve performance at BIA schools, we cannot support balancing these increases with cuts that would harm children attending public schools and our youth who are pursuing a college education.” Asks that BIA restore JOM to $16.3M. • Puyallup: Restore JOM funding to $16 million. • Shoshone-Bannock Fort Hall: Restore JOM funding to $16.4 million. • Skokomish: JOM key to the tribe's ability to track students’ academic progress.</td>
<td>Pgs. 194, 195-97, 292, 328, 358, 369,</td>
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<td>2008</td>
<td>BIA Budget Justification for FY 2009</td>
<td>FY 2007 Operating Budget for JOM: $19,700,000 total</td>
<td>Not discussed</td>
<td>• BIA justifies elimination of JOM, points out that DOE’s Office of Indian Education provides cultural and educational support akin to JOM’s. • Reports that in 2008, DOE’s Office of Indian Education administered $119.6 million in grants for improving Indian student achievement, special programs, and research activity</td>
<td>Pg. IA-OVW-9; IA-EDU-2</td>
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<td>• Grants: $12,000,000</td>
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<td>• For Self-Governance Tribes: $6,689,000</td>
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<td>• For Consolidated Tribal Programs: $1,011,000</td>
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<td>FY 2008 Request: $0</td>
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<td>FY 2008 Enacted: $21,341,000 total</td>
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<td>• Grants: $13,782,000</td>
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<td>• Self-Gov: $6,570,000</td>
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<td>• Consolidated Tribal Programs: $995</td>
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<td>FY 2009 Request: $0</td>
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<td>BIA Testimony re: FY 2009</td>
<td>• When asked about the elimination of JOM, Secretary Kempthorne said that such funding could be replaced through DOE. • Alamo Navajo School Board: BIA’s reasoning for cutting JOM is unsubstantiated; cutting JOM means letting go of a staff member integral to Indian learning. • Umatilla: Same information as previous year. • Fond du Lac: JOM key to helping Indian kids keep up with the achievement goals of No Child Left Behind. • Jamestown S’Klallam: Restore JOM to $21.4 million. • Lac Du Flambeau: JOM funds help tribal kids make the transition from an Indian-majority elementary school into a predominately white high school; points out that DOE has not increased its funding for Indian programs in years. • Lummi: Restore JOM to $21.4 M. • NCAI: “What is different about JOM is that its ”special and unique needs” are determined not by the school boards, but</td>
<td>Pg. 195, 222, 291, 325, 369, 374-75, 384, 403, 443, 445, 453, 460, 464,</td>
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instead through parent committees that each JOM program is required to have …”; Restore JOM to $21.4 million.

- Puyallup: Restore JOM to $16M.
- Quinault: Restore JOM to $21.4M
- Skokomish: “remain disappointed” re: cutting JOM.
- Squaxin Island: Restore JOM to $21.4 M.
- Standing Rock: Opposes JOM cuts.

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<tr>
<td>2009</td>
<td>BIA Budget Justification for 2010</td>
<td>FY 2008 Enacted: $13,782,000 FY 2009 Enacted: $13,797,000 FY 2009 Funding: $21,425,000 total • Education: $13,589,000 • Self-gov: $6,882,000 • Consolidated Tribal Programs: $954,000 FY 2010 Request: $13,589,000</td>
<td>• Explains that JOM can be used for small expenses such as school supplies. • Priority given to schools on or adjacent to Indian reservations or schools that are Oklahoma- or Alaska-based. • Appendix has a region-by-region breakdown of JOM funds distribution</td>
<td>IA-EDU-25</td>
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<td>2009</td>
<td>BIA Testimony re: FY 2010</td>
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<td>• Sen. Dicks (D-Washington) said JOM was &quot;corrected&quot; the previous year through a bipartisan effort. • Lummi: Restore JOM to $21.4 million • NCAI: Supports $24.3 million proposed for JOM • National Indian Education Association: calls for population re-count so as to reformulate program dollars; reports that JOM programs help Indian students build self-esteem through various means such as providing eyeglasses, resume review, etc. • Warm Springs: Restore JOM at $25 million; JOM important because it gives tribes a say in public schools • National Indian Education Association: Program dollars need updating because of growth in Oklahoma. • Navajo Nation: Restore JOM at $24.3 million to factor in &quot;inflationary costs of additional students;&quot; 50,000 Navajo students covered by JOM. • Cherokee Nation: mentions JOM in passing • National JOM Association (Harold Dustybull): Congress saved JOM; JOM effective because it is so flexible; JOM funds need to be stabilized to avoid mid-</td>
<td>Part 7: 2, 18, 78, 92-93, 96-97, 145, 209, 217, 255-57, 340, 344, 356, 800, 943,</td>
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<td>Sault Ste. Marie Tribe of Chippewa Indians</td>
<td>lift the funding freeze, restore JOM to $24 million.</td>
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<td>Cook Inlet</td>
<td>JOM funds core curriculum, including calculus; direct, positive correlation between JOM participation and GPAs.</td>
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<td>Siletz Tribe</td>
<td>restore JOM to $24.3 million; $83,000 of JOM funds not enough for tribe’s needs, which span 11 counties</td>
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<td>Fond du Lac</td>
<td>Continue funding JOM because it addresses unique needs.</td>
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<td>Squaxin</td>
<td>$21.4 million for JOM</td>
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| 2010       | BIA Budget Justification for FY 2011 | FY 2009 Enacted: $13,797,000 (TPA)  
FY 2010 Enacted: $13,589,000 (TPA)  
**FY 2011 Request:**  
$21,273,000 total  
- Education: $13,434,000  
- Self-Governance: $7,074,000  
- Consolidated Tribal Programs: $765,000 |  
- Same information as previous year.  
- Does not mention how many students benefit. | IA-EDU-21,22       |
|            | BIA Testimony re: FY 2011     |                                                      |  
Committee on Appropriations asks ASIA Larry Echo Hawk about the future of JOM; Echo Hawk says he is "just starting to learn more" about the program's significance; recognizes that program dollars do not match growing student population.  
Lummi Nation: $21.4 million for JOM  
Warm Springs: $25 million for JOM; criticizes $13.4 million requested for TPA in FY 2011; suggests JOM can counter dropout rates.  
Siletz: $24.4 million for JOM; program helps tribal youth in Oregon's urban centers; numbers growing since 1995; covers scholastic and athletic school fees.  
National Indian Education Association: $24 million for JOM; says tribal involvement is key to students' success.  
National Johnson-O'Malley Association's Harold Dustybull: Blackfeet dedicates JOM monies to parental instruction classes; seeks $24 million for JOM.  
Tribal Education Departments National Assembly: requested $2 million to help its members administer JOM and other programs. | Part 6: 20-21;  
Part 7: 8, 70, 76, 80, 91, 96-97, 209-211, 438-37 |
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| 2011 | BIA Budget Justification for FY 2012 | FY 2010 Enacted/2011 CR: $13,589,000 (TPA) **FY 2012 Request:** $21,510,000 total  
  - Education: $13,402,000  
  - Self-governance: $7,189,000  
  - Consolidated Tribal Programs: $919,000 |  
  - Same information as in previous years.  
  - 88% of JOM funding distributed directly to tribes via base funding through Self-Governance compacts or Consolidated Tribal Programs. | IA-EDU-23, 24 |
|      | BIA Testimony re: FY 2012 |  
  - JOM not discussed with ASIA Echo Hawk.  
  - Pueblo of Acoma: requests $24.3 million for JOM; student recount for accuracy purposes  
  - Cherokee: mentions JOM.  
  - National Johnson-O’Malley Association: requests $24 million for JOM, asks that funding freeze be lifted; asks that Interior dedicate one staff position to JOM.  
  - Standing Rock: $24.3 million for JOM  
  - Lac Du Flambeau: JOM merits full funding.  
  - Rep. Laura Richardson (D-Calif.): $24 million for JOM  
  - Warm Springs: requests $27 million for JOM; notes that 85% of Indian children attend public school; says “doubling JOM to $27 million is a modest but helpful gesture in recognition of the U.S. treaty and trust obligation to assist all Indian school children.”  
  - Siletz: $89,000 in JOM monies not enough; requests $24.3 million for JOM  
  - Lummi: $24.3 million for JOM;  
  - Cook Inlet: JOM funds health and wellness classes.  
  - National Indian Education Association: notes that BIA request for FY 2012 less than its FY 1994 request; emphasizes importance of Indian parent committees.  
  - Sac and Fox: requests $24.3 million for JOM, emphasizes importance of Indian parent committees. | Part 8, 274, 278-79, 334, 344-45, 376, 418, 522, 542, 546-47, 569, 616, 621, 784, 951, 1038 |
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<td>2012</td>
<td>BIA Budget Justification for FY 2013</td>
<td>FY 2012 (TPA) Enacted: $13,304,000</td>
<td>• Same information as previous years.</td>
<td>IA-BIE-30-31</td>
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<td>FY 2013 Request: $21,396,000 total</td>
<td>• Education: $13,286,000</td>
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<td>• Self-governance: $7,197,000</td>
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<td>• Consolidated tribal programs: $895,000</td>
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<td>BIA Testimony re: FY 2013</td>
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<td>• JOM not discussed with ASIA Echo Hawk</td>
<td>Part 8: 429, 445-50, 506, 855, 993-94, 1008,</td>
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<td>• Choctaw: compacts w/BIA re: JOM</td>
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<td>• National Johnson-O’Malley Association: four major concerns include:</td>
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<td>o Combining JOM with Title VII would take JOM out of tribes’ control</td>
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<td>o Restore JOM funds to $24 million</td>
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<td>o Order a new student population count</td>
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<td>o Reinstall JOM position at BIE</td>
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<td>• Ute: JOM needs to be a permanent fixture on BIA budget.</td>
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<td>• Siletz: same information as previous year</td>
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<td>• Pueblo of Acoma: JOM program tailored for pueblo children</td>
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<td>• Santa Clara Pueblo: $24.3 million for JOM;</td>
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<tr>
<td>2013</td>
<td>Budget Justification for FY 2014</td>
<td>FY 2012 Enacted: $13,304,000</td>
<td>• Same information as previous year.</td>
<td>IA-BIE-32, 33</td>
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<td>FY 2013 CR: $13,396,000</td>
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<td>FY 2014 Request: $21,484,000 total</td>
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<td>• Education: $13,134,000</td>
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<td>• Self-governance: $7,197,000</td>
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<td>• Consolidated Tribal Programs: $1,153,000</td>
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<td>Testimony re: BIA Budget FY 2014</td>
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<td>• JOM student count mentioned in Washburn testimony as a topic discussed between BIE and tribal governments</td>
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<td>2014</td>
<td>Budget Justification for FY 2015</td>
<td>FY 2013 Enacted: $12,615,000</td>
<td>• Increase JOM funds for a JOM Coordination position and to update the 2012 student count</td>
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| Year | Budget Justification for FY 2015 | FY 2014 Enacted: $14,338,000 | FY 2014 Request: $14,739,000 | Biennially update student count of all eligible students  
Intends to implements the updated 2014 student count in FY 2015 |
|------|----------------------------------|-------------------------------|-------------------------------|---------------------------------------------------------|
| 2015 |预算 | FY 2014 Enacted: $14,338,000 | FY 2015 Enacted: $14,739,000 | Increase JOM funds $500,000 for a JOM Coordination position and to update the 2012 student count  
Biennially update student count of all eligible students  
Intends to implements the updated 2014 student count in FY 2015 |
| 2016 |预算 | FY 2015 Enacted: $14,739,000 | FY 2016 Enacted: $14,778,000 | Increase JOM funds $2.6 million to fund increased 2012 student count  
Biennially update student count of all eligible students  
Intends to implement the updated 2014 student count in FY 2016 |
| 2017 |预算 | FY 2016 Enacted: $14,778,000 | FY 2017 Enacted: $14,750,000 | Biennially update student count of all eligible students  
Intends to implement the updated 2014 student count in FY 2017 |
| 2018 |预算 | FY 2016 Enacted: $14,778,000 | FY 2018 Request: $10,152,000 | A base reduction of $4.6 million. |

**Conclusion**

On behalf of the over 1.0 million Indian children eligible for JOM, NJOMA is elated by the Committee's speedy consideration of S. 943, and would urge its immediate approval. After 25 years of waiting for any action by Congress or the Administration to rectify this shameful condition that the JOM program exists today, we are encouraged by today’s hearing and the Committee’s pending approval of this legislation.

We are hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to also quickly act on the bill. Given the number of tasks that
are prescribed in the bill, we pray that all this work can be completed and put in place in time for the 2018-2019 school year. To meet this proposed schedule, we need this bill enacted and signed by the President as soon as possible.

Thank you.
Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. It is good to see you again. As Director of the Bureau of Indian Education (BIE), I am here today to provide the Department of the Interior’s (Department) views regarding S. 943, the Johnson-O’Malley Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 943 and recommends some technical changes.

**Background**

The supplemental educational JOM Program is authorized by the Johnson-O'Malley Act of 1934 and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible Indian students not enrolled in Bureau- or sectarian-operated schools. A local JOM program operates under a BIE approved individual educational plan. JOM education plans include objectives designed to address the educational needs of eligible American Indian and Alaska Native students, offering students various opportunities, which may include cultural enrichment, tribal language support, academic assistance, and dropout prevention programs.

We understand that Indian students have unique educational and cultural needs, which include learning their languages, cultures, and histories. The supplemental JOM program has historically worked to address this need by assisting Indian students who often enter public school with an academic skills deficit. In short, JOM functions to help Indian students thrive in an environment suited to their strengths.

Tribal organizations, Indian corporations, school districts, or states may be eligible to receive such funds once they establish an Indian Education Committee. The role of such committees is to approve supplementary support programs. American Indian and Alaska Native students are eligible if they are members of a federally-recognized Indian tribe or one-fourth or more degree of Indian blood and recognized by the Secretary as being eligible for services from the Bureau. In addition, students must be age three through grade 12.
Student Counts
Most recently, BIE performed a student count as required by Congress in Fiscal Years (FYs) 2012 and 2014. After formal consultation with representatives from tribes, public schools, tribal organizations, and parents, a total of 448 entities submitted student count data. The FY 2012 JOM count identified 321,273 eligible Indian students as compared to the last official count from 1995, which identified 271,884 eligible Indian students. The FY 2014 count resulted in a final student count of 341,495 for the 399 JOM contractors that submitted data. Allowable under law, not all current JOM contractors submitted student count data to the BIE, which affected our ability to officially verify and update the student count. As such, the current official count of JOM-eligible students continues to be based on the number from 1995.

S. 943
An accurate illustration of need for students served by the JOM program is essential. To that end, the Department supports S. 943. For too long, the count has been considered inaccurate and therefore difficult to confirm true local needs of students served by the supplemental education program. As the BIE focuses on its core institutional mission – providing for the direct operation of schools and supporting classroom instruction for Indian students – we must ensure taxpayer dollars are being used efficiently and effectively. As such, it is critical that the Department utilizes funding in a way that minimizes waste and supports programs that can accurately portray need. This legislation works to accomplish this while ensuring accountability for contractors in reporting their number of students served under the program.

The Department has the following recommendations regarding S. 943, the JOM Supplemental Indian Education Program Modernization Act:

- **New Applicants.** Section 7(a)(4) defines “New Applicants” as an entity that applies to participate in a contract “not later than 240 days…” in coordination with S. 943’s reporting requirements for the Bureau. The Department believes this provision could potentially limit prospective applicants due to the period mentioned and suggests language that clarifies that new applicants will not be limited to a particular timeframe.

- **Hold Harmless.** Section 7(f) assumes sufficient funding will be available to meet the hold harmless requirement. The Department is concerned that the provision does not carve out an exception for potential appropriation reductions and recommends adding language that the hold harmless provision is contingent upon available funding.

- **Student Count Data.** Section 7(c)(1)(B)(i) directs the Department, through the BIE Director, to cross-check student count data with data from the U.S. Bureau of Census, the National Center for Education Statistics (NCES) in the U.S. Department of Education’s Institute for Education Sciences, and the U.S. Department of Education’s Office of Indian Education (OIE). The Department assumes that the bill is referring to the student count used for OIE formula grant payments under Title VI of the ESEA (formerly Title VII).

If that is the case, it should be noted that Title VI formula grants are based on student eligibility that is broader than the JOM eligibility, as OIE’s count includes members of state-recognized tribes, and children and grandchildren of members of federally recognized tribes without regard to blood quantum. The Department is also concerned
that U.S. Census Bureau data will include self-identified individuals who may not be eligible for services because BIE jurisdiction extends only to members of federally-recognized tribes or students who are identified as eligible under the Act. We look forward to working with the committee to ensure that the bill adequately protects the privacy rights of Indian students and their families.

**Conclusion**

Thank you for the opportunity to present testimony today on such important legislation. The Department and BIE look forward to continuing our work with this Committee, Indian tribes, and our important stakeholders. We also look forward to working with the sponsors of the legislation to address the aforementioned recommendations. Thank you for your time, and I would be honored to answer any questions you may have.
Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Tony Dearman and I am currently serving as the Director of the Bureau of Indian Education at the Department of the Interior (Department). Thank you for the opportunity to present testimony on behalf of the Department regarding S. 1223, the Klamath Tribe Judgement Fund Repeal Act, which would repeal Public Law 89-224, commonly known as the Klamath Tribe Judgement Fund Act. The Department is still reviewing the legislation and cannot take a position at this time.

The Klamath Tribe Judgement Fund Act, enacted on October 1, 1965, authorizes the Secretary of the Interior to establish and apply appropriated dollars to a judgement fund for the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, better known as the Klamath Tribe.

Background

The Klamath Indian Reservation, located in southern Oregon, was established by the Treaty of October 14, 1864. The reservation was managed under the supervision of the Federal Government and headquartered at the Klamath Agency. In 1954, the federal trust responsibility for the reservation was terminated by the passage of the Western Oregon Indian Termination Act. Upon formal termination, the Klamaths were provided an opportunity to remain tribal members or withdraw from their tribal membership. Those opting to withdraw their memberships forfeited their share of some tribal assets, and those who remained retained ownership of tribal assets. Both groups were able to keep any interests in future awards claims.

Docket 100.

The Aboriginal Title Claim case was settled when the Indian Claims Commission issued an order on January 31, 1964, which granted a judgement fund award of $2,500,000. This settled amount was to serve as fair payment for lands in Oregon ceded under the Treaty of 1864. Legislation
authorizing distribution was not enacted by Congress until October 1, 1965. Payment began in
1966 and each of the 2,133 members on the membership roll received $1,124.00 resulting in a
total of $2,351,250.14 paid out, and the remaining balance supported attorney fees and expenses.

**Docket 100A.**

In September of 1969, the Klamath Tribe successfully claimed additional compensation for lands
ceded by Treaty of October 14, 1864. The claim, better known known as ‘the boundary claim’
involved 621,824 acres that were excluded from inclusion in the reservation boundaries. Docket
100A was completed on September 2, 1969, with the sum of $4,162,992.82 being granted in
favor of the Klamaths. Payment began in 1970 with each member receiving $1,841.45.
Historically, the Bureau of Indian Affairs consulted with the Klamath Tribe to prepare proposed
distribution of judgment funds remaining in the various Klamath accounts, pursuant to Klamath
Tribal Resolution 96-15, dated March 6, 1996.

It is important to make clear that the Klamath Tribe Judgement Fund Act is the appropriate
vehicle for distributing this funding. We have concluded that the Judgement Fund Distribution
Act, which was signed into law in 1973, does not apply to the Klamath Tribe Judgement Fund, as
its ability to apply dollars that were appropriated and authorized for use and distribution precedes

In 1983 and 1996, funds were disbursed for each tribal member on the 1954 Klamath roll. The
Klamath Tribe currently has 188 Individual Indian Money (IIM) accounts for tribal members. An
estate account was set up for deceased tribal members. These accounts are still open due to lack
of information, no death certificates, no birth certificates, and Whereabouts Unknown. These
funds will remain as IIM accounts with the Office of the Special Trustee (OST).

**Conclusion**

At this time, the Department needs to better understand the impact the repeal of this fund will
have on our actions moving forward and the trust responsibility we have to the Tribe, and
therefore takes no position on the legislation. Again, thank you for the opportunity to testify on
the S. 1223, the Klamath Tribe Judgement Fund Repeal Act. I would be glad to answer any
questions the Committee may have.
Good afternoon Chairman Hoeven, Vice Chairman Udall, and members of the Committee. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on S. 1285. This legislation would allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands. The Department supports S. 1285.

The Department is aware that the Tribes listed in this legislation wish to lease, sell, convey, warrant, or otherwise transfer all or any part of their interests in any real property that is not held in trust by the United States for the benefit of the Tribes without further approval, ratification, or authorization by the United States. As the language in the bill indicates, such lands do not include any lands held in trust by the United States unless authorized by Congress. The Tribes presumably are referring to federal law, 25 U.S.C. §177, which prohibits any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians."

S. 1285 would expressly allow each of the Tribes to lease, sell, convey, warrant, or transfer all or any portion of its interest in any real property not held in trust status by the United States for the benefit of the Tribe. Under S.1285, further approval, ratification, or authorization by the United States is not required in order to validate the land transaction. The legislation also clearly states that S. 1285 does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in any real property that is held in trust by the United States for the benefit of the Tribe. Given these clear lines, the Department supports S. 1285 and believes this authority should be extended to all Tribes for fee simple lands.

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.
Dear Tribal Representative:

The Office on Violence Against Women (OVW) is seeking nominations for members of the Task Force on Research on Violence Against American Indian and Alaska Native Women (Task Force). First chartered on March 31, 2008, the Task Force has assisted the United States Department of Justice's National Institute of Justice (NIJ) and OVW in the implementation of a program of research that examines violence against Indian women in Indian Country, including domestic violence, dating violence, sexual assault, stalking, murder, and sex trafficking, and in evaluating the effectiveness of federal, state, tribal and local responses to these crimes. The Task Force was authorized by Section 904(a)(3) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (Pub. L. No. 109-162) and is subject to the requirements of the Federal Advisory Committee Act. To ensure that the Department of Justice continues to receive timely advice from the Task Force, the Task Force was re-chartered and filed with Congress on July 13, 2016.

The Task Force last met in March of 2013. Because so much time had passed since the last Task Force meeting, some members could no longer serve. In October of 2016, OVW sought nominations for new Task Force members. OVW received only nine submissions in response to last year’s request for nominees; therefore we have decided to re-solicit for nominations to ensure that we have a nominee pool that reflects the entities described in the statute and that has diverse expertise and experience. By statute, Task Force members must be representatives of one of the following entities: tribal governments; national tribal domestic violence and sexual assault non-profit organizations; or national tribal organizations.

Task Force members have provided valuable feedback on NIJ's program of research priorities, research design strategies, research and evaluation protocol issues, and research and evaluation findings from studies conducted to date. Moving forward, the Task Force will continue to play an important role in shaping the program and will assist NIJ and OVW with disseminating results that will influence policy and practice. The Task Force is a working body that will produce reports and other important documents. Task Force members are expected to: attend meetings that usually last 1-2 days; be prepared to discuss topics and materials distributed in advance of each meeting; and draft written recommendations and reports, as necessary. Additional information on the Task Force can be found on the OVW and NIJ websites at: https://www.justice.gov/ovw/section-904-task-force and https://www.nij.gov/topics/tribal-justice/vaw-research/pages/task-force.aspx. OVW and NIJ hope to schedule the next meeting for the spring of 2018.

For each nominee, the nominating entity should submit a cover letter recommending the individual to serve and explaining the individual's qualifications to serve on the Task Force, as well as a copy of the individual's resume or curriculum vitae. The cover letter and supporting documentation should be submitted by e-mail to OVW.taskforce@usdoj.gov no later than
Tuesday, November 14, 2017. OVW will conduct a vetting process on the nominations, which will include a telephone interview, public records search, input from NIJ, and forwarding the nominees’ names to the Attorney General, including those recommended by OVW for selection, for his approval.

Please feel free to contact Sherriann C. Moore, Deputy Director of Tribal Affairs at (202) 616-0039, if you have questions regarding the nomination process. We look forward to hearing from you in the near future and working with the new Task Force. Thank you for your continued dedication to addressing violence against American Indian and Alaska Native women.

Sincerely,

Nadine M. Neufville
Acting Director
The U.S. Department of Justice (DOJ) will hold listening and consultation sessions to receive tribal comments on the Department’s seven percent tribal set-aside funding, as authorized by the Consolidated Appropriations Act, 2017 (Public Law 115-31), and other funds appropriated for tribal assistance. A “Dear Tribal Leader Letter,” framing paper, and other materials will follow. We encourage appointed and elected tribal officials to invite their justice and public safety staff to attend these sessions. Please save the following dates for your participation:

**LISTENING SESSION #1** - National Congress of American Indians
74th Annual Convention & Marketplace
Wisconsin Center
400 W. Wisconsin Ave, Milwaukee, WI 53203
Wednesday, October 18, 2017, 1:30 – 4:00 p.m.

**LISTENING SESSION #2** - CTAS Orientation & American Indian Justice Conference
Meeting room site TBD
Agua Caliente Band of Cahuilla Indians Reservation, CA
Wednesday, December 6, 2017, Time TBD

**CONSULTATION SESSION** - National Congress of American Indians
Executive Council Winter Session
Capital Hilton Hotel
1001 16th Street, NW, Washington, DC 20036
Thursday, February 15, 2018, 9:30 a.m. – 12:00 p.m.

**QUESTIONS:**
Eugenia “Gena” Tyner-Dawson (Sac and Fox Nation)
Senior Advisor for Tribal Affairs and Justice Program Council on Native American Affairs
Bureau of Justice Assistance
Office of Justice Programs
(202)353-3442, Eugenia.Tyner-Dawson@usdoj.gov
We want to get out of your way and help other Tribes with different experiences become fully empowered all while maintaining our fiduciary sacred bond to defend the zone of Tribal sovereignty.

Secretary Zinke has expressed to DOI employees that “Sovereignty has to mean something.” He’s identified several priorities, which include economic development, Tribal Empowerment and Human Capital Development.

Priority #1: Economic Development
- Tribes need to have economic activity in order to support governmental services, but the Department has to protect that activity and prevent leakage whenever possible.
- We recognize that what makes Indian Country prosperous is also beneficial to states.

Priority #2: Tribal Empowerment
- The Department needs to get out of the way and let Tribes decide what is right for their communities.
- Only a long term strategy allows for economic development and Tribal empowerment.

Priority #3: Human Capital Development
- We need to shore up capital in Indian Country to be successful economically. This does not mean everyone should go to College, but everyone should have an opportunity to develop skills needed in the economy.

Indian “Trade and Commerce” Regulations
- The major comments received noted that state regulation and dual taxation were the biggest problems for Tribes.
- Updating this regulation could potentially end dual taxation. We are working to develop a mechanism to create full economic sovereignty and give Tribes full right to tax on Tribal land and opt out of the micromanagement that the Department can create.
- This could become a multi-billion dollar stimulus package that will not cost the Federal government a dollar. However, we need to convince states that this is just as beneficial to them as it is to Tribes. We need data to tell that story.
- The department needs information to move this issue forward. This includes information about your projects that are not or cannot happen because of regulation and dual taxation. We need you to put a value on those lost opportunities. Try to value the initial capital investment, annual revenue generation, and jobs that are not created because of these problems. Share what treaty obligations we must fulfill and any economic impact study outcomes that may help us make this case to states and other stakeholders.
There is a Dear Tribal Leader Letter forthcoming that will outline these questions. We need your responses. The bottom line is that we need to see how much the existing system is standing in the way of Tribal economic development.

- Tribal Comment: Every time Tribes try to exercise their authority, there is major pushback from the Department, which leads to never-ending litigation cycles. How will this new approach change that?
  - Response: The only way it will work is with data. Historically, we have said it was the right thing to do but, without data, that argument is not persuasive. The major difference is that by building a strong economic case, we can prove that states can be equally served by the changes and additional economic development. We want to show partnership and collaboration with states.

- Tribal Comment: What is the timeline for the data collection, analysis, and report publication?
  - Response: We hope to have a proposed set of regulations in September. We have set an aggressive schedule and hope to have a final set of regulations finalized by December 31, 2017.

- Tribal Comment: Are you having the Solicitor’s Office review your draft regulations, especially when they have already voiced concern regarding the Department’s ability to issue regulations regarding dual taxation?
  - Response: We are having those conversations now. If you look at legislative history, it is very clear. Tribes providing this data will be massively beneficial. NCAI provided a great analysis but we get sued all the time so the issue is data will provide coverage. We are hopeful we will have a proposed rule in September. The Secretary told us to be bold, move forward, and don’t wait. Don’t be afraid to do the right thing. December 21 is the Winter Solstice. We hope to publish the final regulations by that date, but it will depend on how much help we get. We are ready for the data and comments. When it comes time for commentary we will have attorneys reinforce the notion that we can overturn court cases because we are an old agency with lots of authority.

- Tribal Comment: There is an important role of government in the development of Tribal economies and although we recognize that funding is unlikely to increase, ensuring that the indirect cost rates are fully funded is extremely important. Dual taxation is a very important issue and one that will take a lot of courage from the administration to address. Other issues are related to economic development. These include fee-to-trust, energy development and expansion, and adequate access to broadband. Finally, transportation and roads are critical for Tribal development.
  - Response: I have not been briefed on many of these projects. Regarding land into trust, we are working to create a better model. In terms of energy, we want to bring more electrification to Indian Country. However, there is a lack of data and information within the Office of Indian Energy and Economic Development that supports this need. Therefore, I encourage Tribes to provide any data to Dr. William Bradford.

- Tribal Comment: I encourage you to add diplomacy between Nations to your list of priorities. Sovereignty is being used loosely and we need to change the language. Fully empowering Tribes is a goal but we are not there yet. Self-Governance needs to expand across the entire Federal government. All revenues generated by Tribes should stay with Tribes unless they choose otherwise. However, there are some very basic things this Administration has done that weakens your position to make these things happen. We are disappointed with decisions about reorganization made prior to Tribal comments coming in. Regional directors have intimate understanding and knowledge about the
Tribes in their regions and moving them around is disruptive. We are involved in joint effort to modernize the trust in Indian Country and we support your bold movement to shape it with a 21st century understanding, but we have to do it together or it won’t be successful.

- Response: Our hope is to use regulation to overturn statutory common law. However, that won’t be possible without data. I support the notion of rethinking the relationship between Tribes and the Federal government.

- Tribal Comment: How do you think the paradigm shift from direct service to Self-Governance would impact cultural preservation?
  - Response: It is the Tribe’s right to decide what should be done regarding culture and the Federal government needs to recognize and acknowledge that it does not always know what is best.

- Tribal Comment: You need to keep in mind that many Tribes who have gaming still heavily rely on Federal funds. Additionally, there are many ways to provide more direct funding to Tribes by streamlining many processes, but that money doesn’t always make it back to Tribes.

- Tribal Comment: We also agree with the idea of providing free tuition to Tribal students in states that work directly with Tribes through gaming.

- Tribal Comment: OST has been a good example of how an agency has disrupted the federal trust relationship and created unnecessary regulations in the name of “protecting Tribes.” We need to balance the policy and quit punishing Tribes with things like the Endangered Species Act and National Environmental Policy Act for things done outside the Tribe.
  - Response: Those recommendations and examples need to be submitted, because they are exactly the kind of regulations we are trying to address.
Dear Tribal Leader:

The application process for taking land in trust can be costly for Tribes. In consideration of the often-times limited tribal resources, the Department of the Interior (Department) is considering revisions to 25 CFR § 151.11 and § 151.12 that will reduce the burden on tribal applicants. In furtherance of the Department’s commitment to government-to-government consultation, enclosed is a copy of draft revisions to the fee-to-trust regulations at 25 C.F.R. Part 151.

The draft revisions create a two-step review and approval process for off-reservation trust acquisitions, while distinguishing off-reservation trust acquisitions for the purposes of gaming from off-reservation trust acquisitions for other purposes. During the initial review, Tribes would be required to provide certain application information. Only if an application meets certain threshold criteria, would the applicant proceed to the final review in which more resource-intensive information would be required. This two-step process would provide Tribes with more certainty as to the possibility of an approval before expending significant resources.

Additionally, the draft revisions reinstate the 30-day waiting period between when a decision is issued and when land is taken into trust. This will help to prevent situations where title is transferred into trust and a Tribe expends resources developing that land, only to face protracted litigation and the possibility of a court reversing the Department’s decision and ordering that the land be taken out of trust. The draft revisions provides that on the 31st day, the Department will take the land into trust unless a court orders otherwise.

In addition to comments on the draft revisions, we are seeking input on the following questions:

1. Under what circumstances should the Department approve or disapprove an off-reservation trust application?

2. What criteria should the Department consider when approving or disapproving an off-reservation trust application?

3. Should different criteria and/or procedures be used in processing off-reservation applications based on:
   a. Whether the application is for economic development as distinguished from non-economic development purposes (for example tribal government buildings, or Tribal health care, or tribal housing)?
   b. Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?
   c. Whether the application involves no change in use?
4. Should pending applications be subject to new revisions if/when they are finalized?

5. Do Memoranda of Understanding (MOUs) and other similar cooperative agreements between tribes and state/local governments help facilitate improved tribal/state/local relationships in off-reservation economic developments? If MOUs help facilitate improved government-to-government relationships, should that be reflected in the off-reservation application process?

We will be hosting a listening session at the National Congress of American Indians (NCAI) annual convention in Milwaukee, Wisconsin, on Monday, October 16, at 9:00 a.m. (in conjunction with the session on Indian trader regulations). In addition, we will be hosting the following formal Tribal consultation sessions:

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<tr>
<th>Date</th>
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<th>Location</th>
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<tbody>
<tr>
<td>Tuesday, November 14, 2017</td>
<td>9:00 a.m. - Noon</td>
<td>Seattle, WA</td>
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<tr>
<td>Thursday, November 16, 2017</td>
<td>9:00 a.m. - Noon</td>
<td>Sacramento, CA</td>
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<tr>
<td>Wednesday, November 29, 2017</td>
<td>9:00 a.m. - Noon</td>
<td>Phoenix, AZ</td>
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Please RSVP to consultation@bia.gov if you plan to attend one of the three consultation sessions listed above. As our schedule is still evolving, please periodically check the calendar on the following website for times and other updates, found at:


Please provide any written input on the Consultation Draft, as well as any input on the questions listed above, by midnight on December 15, 2017, to consultation@bia.gov or the address below:

Attn: Fee-To-Trust Consultation  
Office of Regulatory Affairs & Collaborative Action  
Office of the Assistant Secretary – Indian Affairs  
1849 C Street NW, Mail Stop 4660-MIB  
Washington, DC 20240

I look forward to your ideas for decision-making criteria and your input on the Consultation Draft. Please feel free to contact Elizabeth Appel at (202) 273-4680 if you would like any additional information on this effort.

Sincerely,

John Tahsuda  
Acting Assistant Secretary – Indian Affairs

Enclosures
§ 151.11 Off-Reservation Acquisitions.

The Secretary must consider the following requirements in evaluating requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the Tribe's reservation, and the acquisition is not mandated:

(a) Application contents. The applicant must submit an application that states the purposes for which the land will be used, and, if applicable, provide a detailed description of the project to be developed.

(1) For Tribal applicants, if the acquisition is for gaming purposes, the application must include:

(i) The Tribe's historical or modern connection, if any, to the land;

(ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(iii) The need of the applicant for additional land;

(iv) A map showing the location of the land to be acquired and:

   (A) The exterior boundaries of the Tribe's reservation, if any;

   (B) The shortest distance, in miles, between the Tribe's reservation, if applicable, and the land to be acquired; and

   (C) The shortest distance, in miles, between the Tribe's trust lands, if any, and the land to be acquired;

(v) An analysis whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction;

(vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site;

(vii) A plan that specifies the anticipated economic benefits to the Tribe and its members associated with the gaming project, including investment and recurring revenues;

(viii) Information on economic benefits, if any, to the local community from the gaming project;
(ix) Identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project; and

(x) Identification of the on-reservation benefits from the proposed gaming project, including whether any of the revenue will be used to create on-reservation job opportunities.

(xi) Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist;

(2) For Tribal applications, if the acquisition is not for gaming purposes, the application must address the criteria listed in this paragraph.

(i) The Tribe’s historical and/or modern connection, if any, to the land;

(ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(iii) The need of the applicant for additional land;

(iv) A map showing the location of the land to be acquired; and

(A) The exterior boundaries of the Tribe’s reservation, if any;

(B) The shortest distance, in miles, between the Tribe’s reservation, if applicable, and the land to be acquired; and

(C) The shortest distance, in miles, between the Tribe’s trust lands, if any, and the land to be acquired;

(v) An analysis whether the acquisition will facilitate the consolidation of the Tribe’s land holdings and reduce checkerboard patterns of jurisdiction; and

(vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site.

(vii) For acquisitions for economic development purposes, excluding gaming, a plan that specifies the anticipated economic benefits to the Tribe, its members, and the local community (if any), associated with the economic development.

(3) For individual requests for off-reservation trust acquisitions of restricted fee land under § 151.3, the applicant must provide the information required by § 151.11(a)(2)(ii), (iii), the amount of trust or restricted land already owned, and a description of the degree to which he or she needs assistance in handling his or her affairs.
(b) Notice

(1) Upon receipt of the information required in paragraph (a), if the land is in unrestricted fee status, the Secretary will notify the State and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the State and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, potential conflicts of land use, real property taxes, and special assessments.

(2) A copy of the State and local comments will be provided to the applicant, which will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.

(c) Secretarial Review

(1) Initial review. Upon receipt of the application information required in paragraphs (a) and (b), the Secretary will complete an initial review of the application.

(i) The initial review of an off-reservation application should precede any effort to comply with NEPA and 602 DM 2.

(ii) In completing the initial review, as the distance between the Tribe’s reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the applicant’s justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

(iii) If the initial review reveals that the application fails to address, or does not adequately address, the information required in paragraph (a), the Secretary will deny the application and promptly inform the applicant in accordance with section 151.12.

(2) If the Secretary does not deny the application during the initial review, the applicant will be informed and must submit the following information:

(i) Documentation that the Secretary needs in order to comply with NEPA and 602 DM 2;

(ii) If applicable, any information in support of the Tribal applicant being “under federal jurisdiction” in 1934.

(iii) If the application is for gaming, information regarding the eligibility to conduct gaming, in accordance with 25 CFR Part 292;

(iv) Any additional information the Secretary requires.

(3) Final review. Upon receipt of the information required by this paragraph, and review of the entire application record, the Secretary will issue a decision to approve or deny the application in accordance with section 151.12. The Secretary’s decision will document consideration of all of the criteria required by this section and:
(i) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and

(ii) As the distance between the Tribe’s reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the Tribe’s justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

(d) Effect of Regulation.

(1) This section applies to all applications to acquire off-reservation land in trust where the acquisition is not mandated, including applications that are pending before the Secretary for consideration on XX/XX/20XX, where no final agency decision has been made.

(2) This section does not alter agency decisions made before the date of enactment of this section.

§ 151.12 Action on requests.

(a) The Secretary will review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary’s decision to approve or deny a request will be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary—Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary will promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the Federal Register a notice of the decision to acquire land in trust under this part; and

(iii) Acquire the land in trust under § 151.14 no sooner than 30 days after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.
(1) If the official denies the request, the official will promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or no sooner than 30 days after exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(3) The administrative appeal period under part 2 of this chapter begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.

(4) Any party who wishes to seek judicial review of an official’s decision must first exhaust administrative remedies under 25 CFR part 2.

(e) If land has been acquired in trust before judicial review of the decision to take the land into trust has concluded, and a court rules that the Department erred in making the trust acquisition decision, the Department will comply with a final court order and any resulting judicial remedy, including, for example, taking land out of trust.
What does the Consultation Draft suggest revising?

The Consultation Draft suggests revising existing regulations governing trust acquisitions, and specifically sections 151.11 (Off-Reservation Acquisitions) and 151.12 (Action on Requests).

Specifically, the Draft suggests:

A. Creating a two-phased Secretarial review and approval process for discretionary off-reservation trust acquisitions so that certain resource-intensive application information will be required only if the application meets the threshold criteria to reach the second phase of review and approval;

B. Distinguishing acquisitions for gaming from off-reservation trust acquisitions for other (non-gaming) purposes;

C. Revising application items required for a discretionary off-reservation trust acquisition, including:
   - Information on the Tribe’s connection to the land,
   - Whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction;
   - Whether the Tribal government can effectively exercise its governmental and regulatory jurisdiction over the land (in deference to Tribal sovereignty and self-determination, instead of focusing on whether the BIA is equipped to discharge additional responsibilities);
   - For acquisitions for economic development (including gaming) a plan that specifies anticipated economic benefits to the Tribe, its members, and to the local community (if any); and,
   - For acquisitions for gaming, an analysis of the effect the project would have on the unemployment rate, on-reservation benefits from the proposed gaming, and evidence of cooperative efforts to mitigate impacts to the local community.

D. Reinstituting the 30-day delay for taking land into trust following a decision by the Secretary or Assistant Secretary, or exhaustion of administrative remedies under 25 CFR Part 2; and

E. Explicitly stating that the Department will comply with court orders to take land out of trust.

Each of these changes is described in more detail on the following pages.
A. Two-Phased Secretarial Review and Approval Process

Currently, applicants must submit all the application information, including certain resource-intensive application information, before the Department will consider whether to approve the trust application.

The Consultation Draft would bifurcate that process, so that an applicant must first provide basic application information and, only if an application meets certain threshold criteria, may the applicant then proceed to the next step of:

- Undergoing the sometimes lengthy and costly process of complying with the National Environmental Policy Act (NEPA),
- Providing an analysis of whether the Tribe was under Federal jurisdiction in 1934 under the reasoning in Carcieri, and,
- If applicable, complying with the requirements of 25 CFR part 292 regarding the eligibility to conduct gaming.

Although identification of the statutory authority is required during the initial application phase, evidence to support the Department’s statutory authority analysis is not required until the final phase. This approach reduces burden, saving applicants time and money from expending resources on NEPA compliance, a Carcieri analysis, and (if applicable) information regarding eligibility to conduct gaming under 25 CFR 292, for an application that the Department would ultimately disapprove on other factors. If the Department disapproves an application following initial review, depending on the official who issues the decision, that decision could be administratively appealed or challenged in Federal district court.

B. Distinguishing Acquisitions for Gaming from Other Off-Reservation Acquisitions

Currently, the same application requirements apply to all discretionary off-reservation trust acquisitions, regardless of whether the purposes for which the land will be used are for gaming, other economic development, government facilities, housing, or some other use. Distinguishing acquisitions for gaming purposes allows the Secretary to better assess the unique issues raised by off-reservation gaming and reduces the burden on applications that do not include gaming.

The Consultation Draft suggests requiring four additional items in off-reservation trust acquisitions for gaming purposes. A list of those items and explanations for each is provided in the following table:

<table>
<thead>
<tr>
<th>Suggested Additional Item for Off-Reservation Acquisitions for Gaming</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project</td>
<td>This item is necessary to determine the effect the trust acquisition will have on the current reservation. This information is already frequently provided by applicants under § 151.11(c) and/or as part of NEPA compliance.</td>
</tr>
<tr>
<td>Identification of the on-reservation benefits from the proposed gaming, including whether any of the revenue will be used to create on-reservation job opportunities</td>
<td>This item is necessary to determine the effect the trust acquisition will have on the current reservation. This information is already frequently provided by applicants under § 151.11(c) and/or as part of NEPA compliance.</td>
</tr>
<tr>
<td>Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist</td>
<td>This item is not explicitly required under the current regulations; nevertheless, applicants provide it as a matter of practice.</td>
</tr>
<tr>
<td>Identification of economic benefits, if any, to the local community from the gaming project</td>
<td>This item is not explicitly required under the current regulations; nevertheless, applicants provide it as a matter of practice through the NEPA process and in response to comments from state and local governments.</td>
</tr>
</tbody>
</table>

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C. Revising Criteria BIA Considers and Items That Must Be Included in a Discretionary Off-Reservation Trust Acquisition Application

Currently, the regulations require BIA to consider certain criteria as part of their review for an off-reservation trust acquisition but do not specify what an application for an off-reservation acquisition should include. Applicants provide information to assist BIA in its review of the regulatory criteria. The Consultation Draft instead suggests the regulations explicitly list what an application must include, depending on whether the applicant is a Tribe or individual, and whether the purpose of the acquisition is gaming or non-gaming and, further, revises some of the criteria. Appendix A shows a comparison of these requirements.

D. Suggested Revisions to § 151.12 (Action on Requests), Which Affect All Trust Acquisitions

The Consultation Draft suggests making the following changes that will affect all trust acquisitions.

<table>
<thead>
<tr>
<th>Existing 25 CFR § 151.12</th>
<th>Suggested Change in Consultation Draft</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c)(2)(iii) &quot;Immediately acquire the land in trust under § 151.14 on or after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Department requirements.&quot;</td>
<td>• Delete the word &quot;Immediately&quot; and replace the words &quot;on or&quot; with the phrase &quot;no sooner than 30 days&quot;. The draft amended § 151.12(c)(2)(iii) would read: &quot;Acquire the land in trust under § 151.14 no sooner than 30 days after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Department requirements.&quot; On the 31st day, the Department will take the land into trust unless a court orders otherwise.</td>
</tr>
<tr>
<td>(d)(2)(iv) &quot;Immediately acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or upon exhaustion of administrative remedies under part 2 of this title, and upon fulfillment of the requirements of § 151.13 and any other Department requirements.&quot;</td>
<td>• Delete the word &quot;Immediately&quot; and insert the phrase &quot;no sooner than 30 days after&quot; before the phrase &quot;exhaustion of administrative remedies.....&quot; The draft amended § 151.12(d)(2)(iv) would read: &quot;Acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or no sooner than 30 days after exhaustion of administrative remedies under part 2 of this title, and upon fulfillment of the requirements of § 151.13 and any other Department requirements. On the 31st day, the Department will take the land into trust unless a court orders otherwise.</td>
</tr>
</tbody>
</table>

• Add a paragraph (e)
• The draft paragraph (e) would read: "If land has been acquired in trust before judicial review of the decision to take the land into trust had concluded, and a court rules that the Department erred in making the trust acquisition decision, the Department will comply with a final court order and any resulting judicial remedy, including, for example, taking land out of trust."
## Appendix A: Comparison of Application Items

<table>
<thead>
<tr>
<th>Current regulations</th>
<th>Draft application requirements for Tribal acquisitions for gaming purposes</th>
<th>Draft application requirements for Tribal acquisitions for other (non-gaming) purposes</th>
<th>Draft application requirements for individuals’ trust acquisitions of restricted fee land</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>New requirement for the historical or modern connection, if any, of the Tribe to the land. This includes a historical connection or present-day connection, such as the location of the Tribal government offices on or near the site. (See draft § 151.11(a)(1)(ii)).</td>
<td>New requirement for the historical or modern connection, if any, of the Tribe to the land. This includes a historical connection or present-day connection, such as the location of the Tribal government offices on or near the site. (See draft § 151.11(a)(2)(A)).</td>
<td>N/A</td>
</tr>
<tr>
<td>The existence of statutory authority for the acquisition and any limitations contained in such authority. (See § 151.10(a), as incorporated by § 151.11(a)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft § 151.11(a)(1)(ii)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft § 151.11(a)(2)(ii)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft §§ 151.11(a)(2)(ii) and (a)(3)).</td>
</tr>
<tr>
<td>The need of the individual Indian or the Tribe for additional land. (See § 151.10(b), as incorporated by § 151.11(a)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft § 151.11(a)(1)(iii)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft § 151.11(a)(2)(iii)).</td>
<td>Clarifies this is an application requirement. No change to criteria BIA must consider. (See draft §§ 151.11(a)(2)(iii) and (a)(3)).</td>
</tr>
<tr>
<td>The purposes for which the land will be used. (See § 151.10(c), as incorporated by § 151.11(a)).</td>
<td>Clarifies this is an application requirement. Revises criteria BIA required to consider to include a detailed description of the project, if applicable. (See draft § 151.11(a).)</td>
<td>Clarifies this is an application requirement. Criteria BIA required to consider revised to require a detailed description of the project, if applicable. (See draft § 151.11(a).)</td>
<td>Clarifies this is an application requirement. Revises criteria BIA required to consider to include a detailed description of the project, if applicable. (See draft § 151.11(a).)</td>
</tr>
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</tr>
<tr>
<td>------------------------------------------------------------------------------------</td>
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<td>----------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls. | The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify the impact resulting from removal of the land from their tax rolls. 

See draft § 151.11(b)(1). 

New requirement for Tribal applicants to provide evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the state and local governments, if any, or an explanation as to why no such agreements or efforts exist. 

See draft § 151.11(a)(1)(xi). | No change to information applicant must provide or criteria BIA must consider. State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify the impact resulting from removal of the land from their tax rolls. 

See draft § 151.11(b)(1). | N/A |
<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Jurisdictional problems and potential conflicts of land use which may arise. See § 151.10(f), as incorporated by § 151.11(a).</td>
<td>The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify potential impacts on regulatory jurisdiction, and potential conflicts of land use. This will continue to be considered in the Secretarial review. See draft § 151.11(b)(1); § 151.11(c)(1)(B). New requirement for Tribal applicants to provide evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the state and local governments, if any, or an explanation as to why no such agreements or efforts exist. See draft § 151.11(a)(1)(xi).</td>
<td>The State and local governments continue to have the opportunity to provide this information during the 30-day comment period, because they are best positioned to identify potential impacts on regulatory jurisdiction, and potential conflicts of land use. This will continue to be considered in the Secretarial review. See draft § 151.11(b)(1); § 151.11(c)(1)(B).</td>
<td>N/A</td>
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</tbody>
</table>

A-3
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<tbody>
<tr>
<td>If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.</td>
<td>BIA is still required to consider this, and new requirement for Tribal applicants to provide an analysis by the Tribe whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site. See draft § 151.11(a)(vi). The Department must still determine during the second review phase whether BIA is equipped to discharge additional responsibilities. See draft § 151.11(c)(3)(A).</td>
<td>BIA is still required to consider this, and new requirements for Tribal applicants to provide an analysis by the Tribe whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site. See draft § 151.11(a)(2)(vi). The Department must still determine during the second review phase whether BIA is equipped to discharge additional responsibilities. See draft § 151.11(c)(3)(A).</td>
<td>N/A</td>
</tr>
<tr>
<td>The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.</td>
<td>Moved to the second review phase, so that NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase. See draft § 151.11(c)(2).</td>
<td>Moved to the second review phase, so that the NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase. See draft § 151.11(c)(2).</td>
<td>Moved to the second review phase, so that the NEPA and hazardous substance documentation and analysis need only be completed if the application is not denied during the first review phase. See draft § 151.11(c)(2).</td>
</tr>
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See § 151.10(h), as incorporated by § 151.11(a).
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<tr>
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<tr>
<td>The location of the land relative to state boundaries, and its distance from the</td>
<td>Clarifies that the Tribal applicant must submit a map showing the location of the land to be acquired, the exterior boundaries of the reservation, if any, the shortest distance of the land from the boundaries of the Tribe’s reservation, if any, and the shortest distance between the Tribe’s trust lands, if any, and the land to be acquired, as part of the application. Revised to delete the requirement that BIA must consider the location of the land relative to state boundaries, because that information is irrelevant.</td>
<td>Clarifies that the Tribal applicant must submit a map showing the location of the land to be acquired, the exterior boundaries of the reservation, if any, the shortest distance of the land from the boundaries of the Tribe’s reservation, if any, and the shortest distance between the Tribe’s trust lands, if any, and the land to be acquired, as part of the application. Revised to delete the requirement that BIA must consider the location of the land relative to state boundaries, because that information is irrelevant.</td>
<td>N/A</td>
</tr>
<tr>
<td>boundaries of the Tribe’s reservation. See § 151.11(b).</td>
<td>See draft § 151.11(a)(1)(iv).</td>
<td>See draft § 151.11(a)(2)(iv).</td>
<td>N/A</td>
</tr>
<tr>
<td>Where land is being acquired for business purposes, a plan which specifies the</td>
<td>Revised to clarify that the plan should specify anticipated economic benefits to the Tribe and its members.</td>
<td>Revised to clarify that the plan should specify anticipated economic benefits to the Tribe, its members, and the local community (if any).</td>
<td>N/A</td>
</tr>
<tr>
<td>anticipated economic benefits associated with the proposed use.</td>
<td>See draft § 151.11(a)(1)(vii).</td>
<td>See draft § 151.11(a)(2)(vii).</td>
<td>N/A</td>
</tr>
<tr>
<td>See § 151.11(c).</td>
<td></td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
<td>New requirement for an analysis of whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction.</td>
<td>New requirement for an analysis of whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction.</td>
<td>New requirement for the amount of trust or restricted land the individual already owns.</td>
</tr>
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</tr>
<tr>
<td>N/A</td>
<td>New requirement to identify the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming, although this information is frequently provided by applicants under 151.11(c) and/or as part of NEPA compliance. See draft § 151.11(a)(1)(ix).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
<td>New requirement, although frequently provided by applicants under 151.11(c) and/or as part of NEPA compliance. Identification of the on-reservation benefits from the proposed gaming, including whether any of the revenue will be used to create on-reservation job opportunities. See draft § 151.11(a)(1)(x).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
<td>New requirement; however, in practice, applicants often provide this information currently and it is required by the BIA FTT Handbook. Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist. See draft § 151.11(a)(1)(xii).</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Current regulations</td>
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<td>---------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>N/A</td>
<td>New requirement; however, in practice applicants often provide this information. Information on economic benefits, if any, to the local community from the gaming project. See draft § 151.11(a)(1)(viii).</td>
<td>Revised requirements for applications for economic development purposes, excluding gaming, to add benefits to local community; however, in practice applicants often provide this information. See draft § 151.11(a)(2)(vii).</td>
<td>N/A</td>
</tr>
<tr>
<td>The Secretary notifies State and local governments having regulatory jurisdiction over the land to be taken into trust to provide them with 30 days to provide written comment as to the acquisition’s potential impacts on regulatory jurisdiction, real property taxes and special assessments. See § 151.10(e); § 151.11(d).</td>
<td>No change. See draft § 151.11(b)(1).</td>
<td>No change. See draft § 151.11(b)(1).</td>
<td>N/A</td>
</tr>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>A description of the degree to which the individual needs assistance in handling his or her affairs. See draft § 151.11(a)(3).</td>
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§ 151.11 Off-Reservation Acquisitions.

The Secretary must consider the following requirements in evaluating requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the Tribe's reservation, and the acquisition is not mandated:

(a) Application contents. The applicant must submit an application that states the purposes for which the land will be used, and, if applicable, provide a detailed description of the project to be developed.

(1) For Tribal applicants, if the acquisition is for gaming purposes, the application must include:

(i) The Tribe’s historical or modern connection, if any, to the land;

(ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(iii) The need of the applicant for additional land;

(iv) A map showing the location of the land to be acquired and:

(A) The exterior boundaries of the Tribe’s reservation, if any;

(B) The shortest distance, in miles, between the Tribe’s reservation, if applicable, and the land to be acquired; and

(C) The shortest distance, in miles, between the Tribe’s trust lands, if any, and the land to be acquired;

(v) An analysis whether the acquisition will facilitate the consolidation of Tribal land holdings and reduce checkerboard patterns of jurisdiction;

(vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site;

(vii) A plan that specifies the anticipated economic benefits to the Tribe and its members associated with the gaming project, including investment and recurring revenues;

(viii) Information on economic benefits, if any, to the local community from the gaming project;
(ix) Identification of the unemployment rate on the reservation, and an analysis of the effect on the unemployment rate by the operation of the gaming project; and

(x) Identification of the on-reservation benefits from the proposed gaming project, including whether any of the revenue will be used to create on-reservation job opportunities.

(xi) Evidence of any cooperative efforts to mitigate impacts to the local community, including copies of any intergovernmental agreements negotiated between the Tribe and the State and local governments, if any, or an explanation as to why no such agreements or efforts exist;

(2) For Tribal applications, if the acquisition is not for gaming purposes, the application must address the criteria listed in this paragraph.

(i) The Tribe’s historical and/or modern connection, if any, to the land;

(ii) The existence of statutory authority for the acquisition and any limitations contained in such authority;

(iii) The need of the applicant for additional land;

(iv) A map showing the location of the land to be acquired; and

(A) The exterior boundaries of the Tribe’s reservation, if any;

(B) The shortest distance, in miles, between the Tribe’s reservation, if applicable, and the land to be acquired; and

(C) The shortest distance, in miles, between the Tribe’s trust lands, if any, and the land to be acquired;

(v) An analysis whether the acquisition will facilitate the consolidation of the Tribe’s land holdings and reduce checkerboard patterns of jurisdiction; and

(vi) An analysis whether the Tribal government can effectively exercise its governmental and regulatory powers at the proposed site.

(vii) For acquisitions for economic development purposes, excluding gaming, a plan that specifies the anticipated economic benefits to the Tribe, its members, and the local community (if any), associated with the economic development.

(3) For individual requests for off-reservation trust acquisitions of restricted fee land under § 151.3, the applicant must provide the information required by § 151.11(a)(2)(ii), (iii), the amount of trust or restricted land already owned, and a description of the degree to which he or she needs assistance in handling his or her affairs.
(b) Notice

(1) Upon receipt of the information required in paragraph (a), if the land is in unrestricted fee status, the Secretary will notify the State and local governments having regulatory jurisdiction over the land to be acquired. The notice will inform the State and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, potential conflicts of land use, real property taxes, and special assessments.

(2) A copy of the State and local comments will be provided to the applicant, which will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.

(c) Secretarial Review

(1) Initial review. Upon receipt of the application information required in paragraphs (a) and (b), the Secretary will complete an initial review of the application.

   (i) The initial review of an off-reservation application should precede any effort to comply with NEPA and 602 DM 2.

   (ii) In completing the initial review, as the distance between the Tribe’s reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the applicant’s justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

   (iii) If the initial review reveals that the application fails to address, or does not adequately address, the information required in paragraph (a), the Secretary will deny the application and promptly inform the applicant in accordance with section 151.12.

(2) If the Secretary does not deny the application during the initial review, the applicant will be informed and must submit the following information:

   (i) Documentation that the Secretary needs in order to comply with NEPA and 602 DM 2;

   (ii) If applicable, any information in support of the Tribal applicant being “under federal jurisdiction” in 1934.

   (iii) If the application is for gaming, information regarding the eligibility to conduct gaming, in accordance with 25 CFR Part 292;

   (iv) Any additional information the Secretary requires.

(3) Final review. Upon receipt of the information required by this paragraph, and review of the entire application record, the Secretary will issue a decision to approve or deny the application in accordance with section 151.12. The Secretary’s decision will document consideration of all of the criteria required by this section and:
(i) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and

(ii) As the distance between the Tribe’s reservation, if any, and the land to be acquired increases, the Secretary will give greater scrutiny to the Tribe’s justification of anticipated benefits from the acquisition, and greater weight to the concerns raised pursuant paragraph (b).

(d) Effect of Regulation.

(1) This section applies to all applications to acquire off-reservation land in trust where the acquisition is not mandated, including applications that are pending before the Secretary for consideration on XX/XX/20XX, where no final agency decision has been made.

(2) This section does not alter agency decisions made before the date of enactment of this section.

§ 151.12 Action on requests.

(a) The Secretary will review each request and may request any additional information or justification deemed necessary to reach a decision.

(b) The Secretary’s decision to approve or deny a request will be in writing and state the reasons for the decision.

(c) A decision made by the Secretary, or the Assistant Secretary – Indian Affairs pursuant to delegated authority, is a final agency action under 5 U.S.C. 704 upon issuance.

(1) If the Secretary or Assistant Secretary denies the request, the Assistant Secretary will promptly provide the applicant with the decision.

(2) If the Secretary or Assistant Secretary approves the request, the Assistant Secretary will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly publish in the Federal Register a notice of the decision to acquire land in trust under this part; and

(iii) Acquire the land in trust under § 151.14 no sooner than 30 days after the date such decision is issued and upon fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(d) A decision made by a Bureau of Indian Affairs official pursuant to delegated authority is not a final agency action of the Department under 5 U.S.C. 704 until administrative remedies are exhausted under part 2 of this chapter or until the time for filing a notice of appeal has expired and no administrative appeal has been filed.
(1) If the official denies the request, the official will promptly provide the applicant with the decision and notification of any right to file an administrative appeal under part 2 of this chapter.

(2) If the official approves the request, the official will:

(i) Promptly provide the applicant with the decision;

(ii) Promptly provide written notice of the decision and the right, if any, to file an administrative appeal of such decision pursuant to part 2 of this chapter, by mail or personal delivery to:

(A) Interested parties who have made themselves known, in writing, to the official prior to the decision being made; and

(B) The State and local governments having regulatory jurisdiction over the land to be acquired;

(iii) Promptly publish a notice in a newspaper of general circulation serving the affected area of the decision and the right, if any, of interested parties who did not make themselves known, in writing, to the official to file an administrative appeal of the decision under part 2 of this chapter; and

(iv) Acquire the land in trust under § 151.14 upon expiration of the time for filing a notice of appeal or no sooner than 30 days after exhaustion of administrative remedies under part 2 of this title, and upon the fulfillment of the requirements of § 151.13 and any other Departmental requirements.

(3) The administrative appeal period under part 2 of this chapter begins on:

(i) The date of receipt of written notice by the applicant or interested parties entitled to notice under paragraphs (d)(1) and (d)(2)(ii) of this section;

(ii) The date of first publication of the notice for unknown interested parties under paragraph (d)(2)(iii) of this section.

(4) Any party who wishes to seek judicial review of an official’s decision must first exhaust administrative remedies under 25 CFR part 2.

(e) If land has been acquired in trust before judicial review of the decision to take the land into trust has concluded, and a court rules that the Department erred in making the trust acquisition decision, the Department will comply with a final court order and any resulting judicial remedy, including, for example, taking land out of trust.