

Self-Governance Advisory Meeting

April 23 – 24, 2019

Attendance:

| Region | Member | Present |
|------------------|-------------------------|---------|
| Alaska | Robert Keith | X |
| | Will Micklin | X |
| Eastern | Cheryl Andrews-Maltais | X |
| | Marilynn "Lynn" Malerba | X |
| Eastern Oklahoma | Terra Branson (Proxy) | X |
| Midwest | Annette Johnson | X |
| Northwest | W. Ron Allen | X |
| Pacific | | |
| Rocky Mountain | | |
| Southern Plains | Kasie Nichols (Proxy) | X |
| | Kay Rhoads | X |
| Southwest | E. Michael Silvas | X |
| Western | Delia M. Carlyle | X |

SGAC Committee Business

- Muscogee (Creek) Nation made a motion to approve the October minutes with identified edits. The Sac and Fox Nation seconded the motion. The meeting minutes from October 2018 were approved.
- Ysleta del Sur Pueblo submitted a nomination form for Governor E. Michael Silvas to be the new representative to the SGAC. The Wampanoag Tribe of Gay Head (Aquinnah) made a motion to accept the nomination and Sac and Fox Nation seconded the motion. The motion was approved.
- Muscogee (Creek) Nation submitted a letter identifying Terra Branson as proxy for Chief Floyd.
- Taos of Pueblo submitted a letter identifying Ian Chisholm as proxy for the Governor.

DOI's Office of Self-Governance (OSG)

Sharee Freeman, Director, OSG

Director Freeman provided a number of updates to the committee, including information on:

- personnel changes within Indian Affairs,
- tribal nations that have expressed interest in pursuing Self-Governance for the delivery of BIA programs,
- funding distribution status,
- contract support cost distributions,
- an update on the upgrade plan for the Self-Governance Database, and
- the 2018 minimum data collection report on Tribal Self-Governance activity.

A copy of the presentation that goes into more detail on each of these topics can be found at:

<https://www.tribalselfgov.org/events/event/2nd-tsgac-sgac-advisory-committee-meeting-19/>

A few highlights from the discussion include:

- **Jason Freihage** was appointed to Deputy Assistant Secretary – Management (DAS-M) effective March 17, 2019.
- **Richard (Rich) Myers** was appointed to the position of Chief of Staff for the Assistant Secretary of Indian Affairs.
- **Danny Santiago** recently departed from OSG and his duties have been divided between existing staff. For example, **Miles Reader** will be managing the base funding calculations.
- OSG received inquiries from several Tribal Nations regarding the use of Self-Governance as the mechanism for the delivery of BIA programs.
- To date, OSG has received and obligated approximately \$311,758,613 in FY 2019 funding for distribution.
- The new date for the CSC workgroup meeting has not been finalized.
- The Self-Governance Database needs to be updated in order to automate some of the processes that are currently manual. OSG plans to make a request for Tribal leaders to submit suggestions for database upgrades.
- The Minimum Data Request form is nearly 30 years old and OSG would like to receive feedback on opportunities to update the form and to make it more user friendly. The comments are due on May 15, 2019. *OSG would like to develop a workgroup from SGAC to identify additional updates to the form. The workgroup can be formed at the next SGAC meeting.*

During the update, Director Freeman and participants discussed the importance of terminology and a request was made for DOI to avoid the terminology “shortfall” when referring to contract support costs not yet paid. Rather than “shortfall,” a participant suggested DOI refer to it as an “additional obligation request.”

Congressional Updates from Hill Staff

Mike Andrews, Majority Staff Director/ Chief Counsel, SCIA

Chase Goodnight, Counsel, SCIA

Anthony Sedillo, Senior Policy Advisory, Minority Staff Director/Chief Counsel, SCIA

Jennifer Van der Heide, Chief of Staff, Rep. Deb Haaland

Heidi Todacheene, Legislative Assistant, Rep. Deb Haaland

- Mr. Sedillo provided an overview of the Indian Programs Advance Appropriations Act legislation that was proposed by Senator Udall. The impetus for the legislation was the government shutdown and the harmful effects the shutdown had on Tribal Nations. The legislation was referred to the budget committee. To date, Chairman Hoeven has not signed on to the proposed bill. The minority staff would love to have a hearing but does not have control of the hearing schedule. Absent a hearing, the staff plan to have roundtable discussions.
- Mr. Andrews stated that another piece of legislation is also being considered by Senator Porter that would trigger an automatic Continuing Resolution (CR) if appropriations are not finalized before the beginning of the fiscal year.

- A participant noted that CR's are not much better than a shutdown because the uncertainty of funding makes it impossible for proper planning. Another participant noted that there is not much support for BIA within DOI and suggested that discussions about moving BIA out of DOI should commence.
- Mr. Andrews announced that Rhonda Harjo retired from the Committee and Chase Goodnight will be taking over Rhonda's portfolio.
- Ms. Van der Heide provided an update on the priorities and activities of Rep. Deb Haaland. Specifically, among other priorities, Ms. Van der Heide announced that Rep. Haaland plans to have a hearing in June on the PROGRESS Act. Rep. Haaland is also working in coordination with Senator Warren on legislation related to the findings from the U.S. Commission on Civil Rights Broke Promises report. Ms. Van der Heide also introduced Heidi Todacheene to the committee.
- Ms. Todacheene walked through numerous priorities and legislative proposals sponsored by Rep. Haaland, including Savannah's Act, legislation related to Missing and Murdered Indigenous Woman and Girls, judicial jurisdiction legislation and others. Participants provided a few comments for consideration related to potential legislation and Ms. Todacheene stated that she would keep the committee informed when specific bills are made available. Participants suggested that expansion of Self-Governance into the Department of Justice should be a consideration as it would help address concerns about the number of and burden associated with justice related grants.

SGAC Discussion with AS-IA Representative

John Tahsuda, Principal Deputy Assistant Secretary

Marc Cruz, Deputy Assistant Secretary, Policy and Economic Development

Jason Freihage, Deputy Assistant Secretary, Management

Mr. Cruz provided a general update from Indian Affairs and noted a few of the key priorities, which include the opioid epidemic, missing and murdered indigenous women and girls, and implementation of the 477 MOU. A number of topics were raised during the joint discussion, including:

Johnson O'Malley – In December of 2018, S.943, the Johnson-O'Malley (JOM) Supplemental Indian Education Program Modernization Act was signed into law. The law requires the Department of Interior (DOI) to annually update Indian students eligible to participate in the JOM Program. There is also a new process for revising funding allocations for the program. The new statutory requirements provide an opportunity for the Bureau of Indian Education (BIE) to actively engage with the Tribes through consultation to determine how: 1. The regulations will define eligible students; and 2. The funding formula is updated to ensure full participation and clarity of process.

Action items identified:

Consultation should consider the following elements: (1) improve the data collection process; (2) ensure eligibility requirements are appropriate and ensure all American Indian/Alaska Native AI/AN students are being counted; (3) all Federally Recognized Tribes should be treated equally, including, Tribes that were recognized after 1995 and Tribes in Alaska; (4) regional Offices should assist all Tribes gathering JOM data – Direct Service, 638 and Self-Governance; and (5) increase the current per student funding allocation.

Small & Needy Tribes – The small and needy designation is based on population and funding thresholds. Smaller Tribes face more challenges accessing resources to operate their programs and services. In 1992, the Senate Committee on Indian Affairs established a task force and one of the initiatives was to ensure small Tribes had the minimum amount of funding needed to run viable Tribal governments. Current funding levels for Tribes in the lower 48 are \$160,000 and for Alaska \$200,000.

Action item identified:

- Increase funding for small and needy Tribes in Alaska and the lower 48 to \$300,000 to ensure the Tribes receive a minimum threshold of funding to be able to develop stronger Tribal governments.

Welfare Assistance – This program supports Tribal services that support AI/AN families in crisis by providing funding for general assistance, child assistance, non-medical institution or custodial care of adults, burial and emergency assistance. Funding for these programs support essential basic needs to include food, clothing, shelter and utilities. Currently the need far exceeds what the program supports.

Action items identified:

- We need a better explanation on the welfare assistance methodology and how the Office of Indian Services updates it.
- There should be a national methodology.

Carry-Over Funding – There is a lack of transparency and inconsistency in processes across regions regarding carry-over that is available for distribution; how the funding is allocated; and, the methodology that is being used.

Action items identified:

Regions need to be on the same page and we need a process in place that allows for Tribal input on the reprogramming of these dollars. Specifically,

1. What is the process for identifying surplus funds in each respective region?
2. Are there any restrictions on the use of those funds?
3. Regions need to be held accountable to the Tribes by providing all Tribes notice of the availability of funds; developing and using a consistent process for awarding those funds; use of a standard methodology that is fair and impartial; Improving coordination and communication with Tribal governments by acknowledging receipt of funding requests and communicating with the Tribes who were awarded funds and those who were not awarded funds to include reasons for the funding decisions.

Area Directors & Self-Governance – We are looking for better transparency, coordination and leadership in coordinating with Self-Governance at the regional level.

Action items identified:

- Area Directors need to be held accountable for their actions and Tribes need to be informed;
- Processes need to be consistent and there should be mandatory Self-Governance education and training provided to all Regional Directors and their staff.
- There seems to be a misunderstanding that once a Tribe becomes Self-Governance the Office of Self-Governance is solely responsible for the provision of any technical or other assistance that is needed. Self-Governance Tribes have left shares in each region for certain programs and services and/or the provision of inherent federal functions. Regions have a responsibility to provide technical assistance to all Tribes.

- Self-Governance Tribes have been locked out of the opportunity to apply for certain grant funds because the language in the Request for Proposal (RFP) was limited to 638 Tribes. Communication and correspondence needs to be improved and any Requests for Proposals for grants or other funding opportunities that go out should include all Tribes as eligible applicants.

Advanced Appropriations – The Bureau of Indian Affairs provides funding for essential core government programs and services. During the shutdown Tribes that operate their own programs were forced to make tough decisions. Continuing Resolutions (CR) are not any better. The length of a CR can vary from a few weeks to several months. It leaves Tribes in the predicament of having to make long term decisions with only short-term funding guaranteed. Budgetary uncertainties impact everything from recruitment and retention and increase administrative burdens and costs creating adverse financial effects on Tribes.

Action items identified:

Advanced Appropriations would provide Tribes funding a year in advance to allow for better planning and services. Specifically,

1. We urge your support for Advanced Appropriations for BIA programs and services.
2. The agency should begin to develop processes to develop and manage an advanced appropriation.
3. Fill vacancies in key positions to reflect capacity to manage a change to the budget formulation process.

Public Safety & Justice – There are severe public safety challenges across Indian country to include P.L. 280 states, such as, Alaska and California.

Action items identified:

There have been repeated requests for coordination amongst the agencies on public safety and justice issues. Specifically,

1. Convene a Public Safety and Justice Summit to bring together agencies and resources from across the Federal government.
2. What processes and procedures have the agencies adopted regarding coordination and cooperation?
3. How does the Office of Justice Services interface with the other public safety and justice agencies?
4. There is a public safety crisis in Alaska and the state and municipalities are not addressing it. Some of the greatest atrocities against women and children are occurring in Alaska. Senator Murkowski created a set aside for PL280 Tribes for law enforcement. How has this money been used to assist these Tribes?

Progress Act CBO Score – The Title IV Bill has been scored at zero for the past two Congresses. The language in the bill hasn't changed but the zero score is now \$1.5 million.

Action item identified:

- If the Department's position has not changed we urge you to make your position known to Congress through a letter.

P.L.102-477 MOA – Tribes have concerns with the 477 MOA because portions of it conflict with the 477 law. The MOA sets Tribes back and doesn't allow them to include programs and services that were once allowed to be included in their plans.

Action items identified:

- We urge you to work with the 477 workgroup to convene a meeting which is mandated by law to occur on an annual basis to go over the MOA. The meeting should be held prior to the end of the fiscal year in DC.

TIWAHE – The value of the TIWAHE program is that it is addressing root problems in communities. The intent of the program was to provide flexibility so that the program can be redesigned by the Tribes to best address their community's needs.

Action item identified:

- How can we work with you to expand this successful program?

Post Conference Discussion on P.L. 477 MOU and Implementation

Spike Bighorn, Associate Deputy Bureau Director, Office of Indian Services

Margaret Zientek, Assistant Director, Workforce and Social Services, Citizen Potawatomi Nation

Mr. Bighorn and Ms. Zientek provided an overview of the Memorandum of Agreement (MOA) put in place between 12 federal agencies to implement P.L. 477. Specifically, the 477 MOA was completed in December 2018. Mr. Bighorn stated that to a certain extent, some of the language put into the MOU was a result of compromises between federal agencies and some of the language was the result of revisions made by the White House General Counsel's office.

Mr. Bighorn noted that BIA is aware of some tribal concerns with the MOA. For example, the MOA says that BIA will take the recommendation of the other federal agencies as the final decision as to whether or not a specific program is eligible for inclusion. The reasoning behind the decision to include this language in the MOA is because staff at BIA are not as familiar with the programs at other federal agencies as the staff that administer those programs. Another issue pertains to competitive grants—the MOA says that the only competitive grant that can be included in the MOA is one that is only available to Tribal Nations because of their status as a political entity. The decision to include this provision was made by the White House General Counsel.

Regarding implementation and how the MOA will work in practice, it is largely unknown at this point because no Tribes have submitted an application that include the 8 new Federal agencies identified in P.L. 477.

Ms. Zientek noted that there is a lot of room for improving the MOA. A participant noted that the MOA, as currently written, has unfortunately set back the progress made in getting P.L. 477 enacted. Ms. Zientek also noted that another issue is that the TANF office in the Department of Health and Human Services (HHS) will not allow a program to be included unless a tribe has already operated the program for a year. The Tribal Workgroup does not believe there is any basis for this determination by HHS and BIA has not received any statutory basis from HHS for the decision.

Ms. Zientek said that Indian Affairs leadership has provided assurance to the Tribal Workgroup that the MOA is a living document and revisions can be made moving forward to make it a stronger and more effective tool.

The Tribal Workgroup is seeking to set up a time for the Tribal Workgroup, Indian Affairs, and the other agencies included in the MOA to hold an annual meeting. The Tribal Workgroup is having a difficult time getting all the partners together but will provide an update on the progress setting up this joint meeting at the next SGAC meeting.

Post Conference Discussion on TIWAHE Demonstration Project

Spike Bighorn, Associate Deputy Bureau Director, Office of Indian Services
Mercedes Garcia, National TIWAHE Coordinator

Mr. Bighorn and Ms. Garcia provided an overview of the TIWAHE Initiative. Specifically, the following points were identified:

- TIWAHE fosters the coordination of services among Tribes, Federal Agencies, and State Agencies.
- In fiscal year 2017, Congress required that the tribes submit performance reports. BIA worked with the pilot Tribes to identify measures that were common among all of the pilot Tribes. The first-year report also provides the baseline for measuring future performance.
- The TIWAHE Framework is forthcoming and will demonstrate the success of the TIWAHE Initiative. The framework helps Tribes demonstrate the value of Tribes administering the services on the ground to their community and the importance of the cultural aspect in service delivery.
- TIWAHE has become more of a practice than a program.
- The basis for TIWAHE Initiative is a successful policy implemented by the New Zealand government over 12 years ago—Whanau Ora Policy.
- Ms. Garcia noted that it is important to demonstrate the benefit of the program to Congress. We want to connect what the Tribes are doing on the ground and the method of delivery. The Tribes and BIA are finding that the method of delivery is the most impactful component of the program. The goal is to now document the success and the approach so that additional Tribes can use and build upon the successful approach of administration.
- BIA plans to hold a session in August to demonstrate the success of the TIWAHE Initiative. The event will be open to all Tribal Nations.
- Although funding for the program ends in fiscal year 2019, BIA is moving forward under the assumption that the program will continue in fiscal year 2020. In the last 2 years, the Administration has not included TIWAHE funding in its proposed budget but Congress continues to fund it.

Mr. Bighorn and Ms. Garcia provided a detailed presentation to outline the key points from the presentation. The presentation can be found at:

<https://www.tribalsef.gov/wp-content/uploads/2019/04/SGAC-Tiwahe-presentation-42319.pptx>

- Several participants expressed support for the TIWAHE Initiative and Chairman Allen noted that TIWAHE was a tribally-driven initiative.

- A participant asked Mr. Bighorn and Ms. Garcia about actions taken in response to the Inspector General report on TIWAHE funding distribution. A participant also requested that Ms. Garcia participate in the tribal workgroup focused on funding distribution. A request was made for the Office of Indian Services to be more involved in partnerships and working with Tribal Nations because some of the practices within the Office of Indian Services are not aligned with Self-Governance principles and make it difficult to reprogram funding in ways the best meet the needs of Tribal communities.

Post Conference Discussion on SG Provisions in the Farm Bill

*Kayla Gebeck, Senior Public Affairs Advisor, Holland & Knight
Diane Cullo, Acting Director, Office of Tribal Relations, USDA*

Ms. Gebeck provided an overview of the Native Farm Bill Coalition. The impetus for the creation of the coalition is to present a united front to Congress. The details included in Ms. Gebeck's session are included in the following presentation:

<https://www.tribalseg.gov/wp-content/uploads/2019/04/NFBC-IFAI-2018FarmBillConsult-DRAFT-KG-SGAC.pptx>

- Ms. Gebeck noted that the US Forest Service appears very excited about the increased partnerships that will form between the agency and Tribal Nations when the self-determination provision is fully implemented. Forest Service is currently working on guidance for rolling out the demonstration project and the agency hopes to have a call for projects by the end of the fiscal year. Agency officials said the guidance is largely internal to help them get up to speed on self-determination. Ms. Gebeck encouraged Tribes to be very involved in discussions with Forest Service as this guidance is under development.
- Ms. Gebeck stated that USDA is unlikely to start developing guidance for the provision of the Farm Bill to implement self-determination into the Food Distribution on Indian Reservations (FDIPR) until it receives \$5 M in appropriations.
- A participant noted that while it is great that the self-determination authority was provided in the Farm Bill, we should continue to move forward with getting Self-Governance authority implemented within USDA and these programs.

Ms. Cullo stated that the USDA leadership is very happy about the work of the Native Farm Bill Coalition and that the Secretary of Agriculture has publicly announced a dedication to Indian Country. USDA currently has several teams working on implementation of the Farm Bill and that the Secretary and Deputy Secretary will both be at the Tribal Consultation on May 2 related to implementation of the Farm Bill. Immediately following the consultation, the USDA is convening a meeting to discuss hemp regulations.

Regarding self-determination provisions, USDA sees this as an opportunity for USDA to look ahead and develop agency-wide guidance and procedures on the implementation of self-determination within all USDA programs so that as additional authorities are recognized in legislation, it will be ready to implement very quickly. USDA recognizes that the relationship between Indian Country and the Department has been rocky and it is committed to improve the relationship. Ms. Cullo provided the

group with her cell number (202-836-0791) and asked Tribal officials to please reach out to her with any questions or concerns related to USDA programs.

Priorities for the 116th Congress

Geoff Strommer, Partner, Hobbs, Straus, Dean and Walker, LLP

Phil Bake-Shenk, Holland & Knight

Tribal issues are generally an afterthought on the Hill but there are a number of potential things that might be doable in this Congress. Senator Udall is not running for reelection.

Indian Community and Economic Development Act S. 212

- Buy Indian Act provisions within the Act – language within this legislation would clarify that the Buy Indian mandate applies to all agencies within DOI and HHS. Indian Country has requested this clarification for decades. If passed, it could really bolster economic development in Indian Country.

Tribal Law and Order Act

- Includes a provision that clarifies Tribes' inherent authority of sovereigns over their territory and the authority to exclude people from coming into their territory.

Violence Against Women Act

- The Act has strong provisions that are good for Indian Country. The bill passed the House. However, the Senate is considering a stripped-down version of the bill that would not include the provisions that would benefit Indian Country.

Budget Update

Raina Thiele, Thiele Strategies, LLC

George Bearpaw, Director, Office of Budget and Performance Management

Tyler Scribner, NCAI

Ms. Thiele provided an overview of the project and the recommendations. The aim of the TIBC Budget formulation improvement project is to streamline and increase the effectiveness of the TIBC formulation process and outcomes. The recommendations were formulated by the TIBC Budget Formulation Work Group, Federal Partners, NCAI, and Raina Thiele from Thiele Strategies consulting. A presentation covering the TIBC Budget formulation improvement project https://www.tribalseg.gov/wp-content/uploads/2019/04/SGAC-Presentation_4-24-19.pptx

Mr. Bearpaw provided an overview of the fiscal year 2019 budget and the fiscal year 2020 budget. The President's Budget for FY 20 totals \$2.8 Billion across Indian Affairs, which is a 9% reduction to the Indian Affairs budget. Mr. Bearpaw noted that some DOI bureaus took a bigger hit than Indian Affairs. Mr. Bearpaw stated that the big change in the FY 20 budget is the separation of BIA and BIE budgets. This is primarily to establish reforms that are being discussed within BIE and the Administration. Mr. Bearpaw noted that a number of programs have been zeroed out in the Administration's budget.

Chairman Allen noted that we need to have a conversation about changing the name of the Small & Needy Tribes budget line. The name does not capture that the purpose of these funds is to provide smaller tribes with a base level of funding for operations.

Mr. Scribner summarized recommendations of the TIBC and TIBC Budget Subcommittee for the FY 2021 BIA/BIE budget. The recommendations were formed based on discussions held at the TIBC/National BIA Budget Meeting April 9-12, 2019, and during TIBC Budget Subcommittee meetings on April 8, 11, and 12. The recommendations were further discussed in a TIBC webinar on April 16.

The TIBC Budget Subcommittee Recommendations for BIA/BIE FY 20201 Budget can found at: <https://www.tribalsegov.org/wp-content/uploads/2019/04/TIBC-FY2021-Budget-Submission-Executive-Summary-04.18.19.pdf>

Post Conference Discussion on the Formula Matrix Report

Terra Branson, Director, Planning, Grants and the Office of Self-Governance, Muscogee (Creek) Nation
Vickie Hanvey, Financial Specialist, Office of Self-Governance, DOI

Ms. Hanvey and Ms. Branson provided a presentation on the 2019 Program Formulas Matrix Update Report. The presentation can be found at:

<https://www.tribalsegov.org/wp-content/uploads/2019/04/SGAC-Tech-Workgroup-PFMUReport-PPT-FINAL-2019.04.18.pptx>

The following topics were discussed during the session:

- With the release of the IG report, the workgroup prioritized the programs from the original report that overlap with the programs in the IG report.
- The workgroup held routine meetings since October 2018 and both Ms. Hanvey and Ms. Branson noted the commitment of the workgroup members.
- The discussion focused primarily on the recommendations developed by the workgroup and sought feedback and consensus on the proposed recommendations. Participants asked several questions regarding the recommendations and Ms. Branson and Ms. Hanvey explained the rationale behind the recommendations.
- The workgroup believes the next steps should be a letter from SGAC to AS-IA Sweeney. Ms. Freeman noted that the recommendations would be implemented by OSG but believes that the workgroup is not ready for drafting a final report.
- Chairman Allen asked the workgroup to draft a letter related to phase I recommendations for SGAC to review and consider before sending it to OSG.
- Tribal representatives did not reach consensus regarding the need for consultation prior to implementing the recommendations. Chairman Allen believes it is more important for Tribes be informed about the recommendations and the effects of implementing them over a formal consultation process.

