**DOI SELF-GOVERNANCE ADVISORY COMMITTEE (SGAC)**

**July Tri-Annual Agreement**

**Embassy Suites 900 10th Street, NW**

**Washington, DC 20001**

**July 17, 2019**

***Executive Order on Evaluating and Improving the Utility of Federal Advisory Committees***

Each agency shall by September 30, 2019 terminate at least one third of its current committees established under Section 9(a)(2) of FACA and those advisory committees established under Section 9(a)(1) that are authorized by law but not required by statute. There is an August 1, 2019 deadline for submission of list of Advisory Committees to the President.

* Agencies are authorized to request a waiver of this requirement from the Director of the Office of Management and Budget and the Director may grant a waiver if the Director concludes it is necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by the public interest.
* The US has a unique legal relationship with Tribal Nations as set forth in the Constitution, Treaties, Statutes, Executive Orders and Court Decisions.
* US recognizes the ongoing right of Tribes to Self-Governance and supports Tribal Sovereignty and Self-Determination and continues to work with Indian Tribes on a government to government basis concerning Indian Tribal Self-Government, Trust Resources and Indian Tribal Treaty and other Rights.
* Federal Actions shall be guided by respect for Indian Tribal Self-Government and Sovereignty, for Tribal treaty rights and for responsibilities that arise from the unique legal relationship between the federal government and Tribal governments.
* Federal action shall consider maximum Tribal participation with the goal of consultation and collaboration in federal decision-making
* Tribes would like a list of all of the Advisory Committees within DOI that impact Native interests

**Tribal Ask**: Exempt the SGAC and other vital DOI Advisory Committees (TIBC) that make recommendations on Indian programs and services from the requirements of this Executive Order because the US has a unique legal relationship with Tribal governments. It is the Agency’s policy to engage with Tribes on a government to government basis and consider maximum Tribal participation in federal decision-making. The EO allows the agency to request a waiver from OMB in certain circumstances and making sure Tribes have a seat at the table and that the Native voice is heard should warrant an exemption for all Committees that impact Tribal programs and services.

***Waiver of Federal Matching Funds*** –

Alaska Governor Dunleavy proposed $440 million in budget line item vetoes creating a dire situation for Alaska Tribes. AFN called for an override because of the state’s constitutional responsibilities to its citizens. In particular, the Governor vetoed crucial Village Public Safety Officer funding on the same day Attorney General William Barr declared a law enforcement emergency in rural Alaska. Head start and other critical programs were also impacted. There needs to be a strategy developed to assist the Alaska Tribes whose health, well-being, and safety are being compromised by these drastic funding cuts.

**Tribal Ask:** We request that the AS-IA reach out to her counterparts in the other agencies, specifically, HHS and DOJ and advocate on behalf of the Alaska Tribes for waivers to the Federal match requirements.

***Non-BIA Agreements*** –

Tribes are experiencing challenges negotiating and/or renegotiating Agreements in good faith with Interior non-BIA agencies. For example, the Alaska Region National Park Service Office has asserted that management of a program, the ability to plan, the ability to manage a budget or understand rules and regulations can only be done by a federal employee essentially locking the Tribe out of the process. It is paternalistic and inconsistent with Self-Governance and the intent of the Indian Self-Determination and Education Assistance Act (ISDEAA). Under the ISDEAA, the Secretary may enter into annual funding agreements under which a Tribe conducts certain non-BIA programs and activities.

* There have been approximately 20 non-BIA Agreements entered into with Tribes since 1994.
* The Tribe is seeking management of a couple of acres that has special geographic, historical and cultural significance to it.
* There is an inconsistent application of “inherent federal functions” as an example a county was allowed to take over complete management of a park.
* There needs to be education, greater transparency, consistency in application and good faith in the negotiation process.
* There seems to be a misunderstanding of the law, a lack of knowledge of how to engage with Tribes on a government-to-government basis, and a complete lack of respect.

**Tribal Ask:** We wanted to bring your awareness to this issue and strategize with you on ways we can improve the non-BIAs understanding of Self-Governance and the intent of the ISDEAA, to include, application of the law in a manner that will facilitate the inclusion of programs, services, functions and activities in non-BIA Agreements. In addition, when indirect is withdrawn after a Tribe enters into an Agreement with a non-BIA agency it appears as if Tribes are being penalized for exercising their authority and creates a disincentive for Tribes to enter into future agreements.

**Interdepartmental Coordination and Communication within the Bureau of Indians Affairs**-

Tribes have consistently expressed concerns to Indian Affairs leadership and management regarding the lack of coordination and communication across the various Bureaus and Offices. There are numerous instances where Self-Governance Tribes and the Office of Self-Governance have either not been notified or received late notification of funding opportunities, program and service opportunities and the exchange of general information on grants and training. In addition, notification of the availability of carry-over/one time/year end funds has been inconsistent across regions and there is a lack of accountability and transparency regarding the selection process or the funding mechanism being employed.

* The need for improved coordination and collaboration within Indian Affairs was also recently noted by the US Government Accountability Office (GAO) and the DOI Office of Inspector General.
* Lack of coordination and communication is one of the factors resulting in the GAO adding the Federal management of programs that serve Tribes and their citizens to the High-Risk List in 2017.
* In September 2018, the DOI Inspector General reported that poor coordination adversely affected the efficiency of business operations and had measurable effects on the Tribes.
* Self-Governance Tribes rely on the Office of Self-Governance (OSG) to relay critical information to them.

**Tribal Ask**: If there are not already communications protocols in place for Indian Affairs protocols need to be developed and implemented. Improved coordination within Indian Affairs that includes all Bureaus and Offices will improve efficiencies and effectiveness within Indian Affairs and will significantly benefit all Tribes. Regional Processes for one-time funding opportunities need to be streamlined and transparent to avoid the appearance of Offices and Departments engaging in favoritism. A centralized calendar of events that contains detailed information about trainings, funding opportunities, and other pertinent information for all Indian Affairs Departments and Offices should be posted on the website and accessible by all Tribes.

***477*** –

Tribes that have entered into 477 Agreements often do not receive their funding distributions from the Office of Indian Services until August. Late distribution of funding leads to an increased administrative burden for Tribes who often have to juggle two plans until the release of claims. It also impedes the delivery of programs and services such as youth summer programs that begin in June forcing Tribes to either front the money to implement the program or cancel the program altogether.

**Tribal Ask:** The Office of Indian Services needs to be staffed with a Finance person and other staff needed to ensure timely distribution of funding and proper implementation of the 477 and other programs within their portfolio.

***Relocation of Departments and Offices from DC into the Field*** –

Despite stating on numerous occasions that the Bureau of Indian Affairs is not involved in the reorganization effort, there has been a shifting of numerous departments from DC out into the field across the US. There has been no transparency regarding these relocations and Tribes only become aware of the changes after the fact.

* Tribal courts and OJS staff were relocated to Albuquerque
* Office of Trust Services was relocated to New Mexico and Colorado
* OST (portions thereof) are being moved under the Office of the Secretary

**Tribal Ask:** Provide us with an organizational chart that identifies all of the changes of staff and relocations of offices. Regarding OST, our desire is to have those functions back in the Bureau so we can compact them.

***AVSO*** –

Tribes need to know what legal basis AVSO has to require Tribes to include specific MOU language regarding real estate services in their Funding Agreements? There are no regulations and there is inconsistency in how these new requirements are applied with some Tribes being required to include the language in their Funding Agreements while others are not. Absent legal justification Tribes should not be forced to comply with unnecessary demands by AVSO.

**Tribal Ask:** Urge your assistance in addressing the concerns with AVSO requiring Tribes to include specific MOU language in their Funding Agreements.

***Self-Governance Reports to Congress*** –

The Self-Governance Reports to Congress are statutorily required but the last one published was the 2011 Report. Reports from 2012-2017 have yet to be submitted. The Office of Self-Governance has completed the reports, but it is hung up within the upper echelons of the Department waiting for final approval to be released and submitted.

* These Reports would have been helpful to our Title IV conversations with Congress and would assist us with our advocacy for funding increases for Tribal programs and services.
* The Bureau is impeding our ability to prove program success.

**Tribal Ask:** Working in coordination with Self-Governance Tribes, we ask that you complete and submit these required reports to Congress.

***Staffing Concerns*** –

There are essential positions throughout Indian Affairs that remain vacant and it is negatively impacting Tribes in a variety of ways to include late distribution of funding, delays in processing of documents, inability to connect with staff via email/phone or other means, resulting in lost opportunities and ineffective and inefficient federal performance.

* OSG has three vacant positions that need to be filled: Financial Manager; Financial Specialist; and Compact Negotiator. In addition, Tribes have been requesting a Deputy Director for OSG.
* Human Resources has a backlog of applications and document approvals. Certificates of eligibility that closed in October have yet to be approved. It has been almost a year.
* Departments that finally got approval to fill vacant positions are unable to fill them due to the backlog in HR.

**Tribal Ask:** Identify the reasons for the vacancies including whether Human Resources is properly staffed with individuals who can process the paperwork for new hires.

***Johnson O’Malley (JOM)*** –

Congress recently amended the JOM Act to clarify eligibility and other programmatic requirements. The trend we are seeing with JOM and other programs is the development of formulas that move the program out of our base funding.

* Tribes are concerned about funding methodologies and formulas

**Tribal Ask:** We would like an explanation as to why programs are being pulled out of our base dollars. Collaborate with Tribes on formula changes, data that is being used, the timeliness of the data that is used, and share the information with OSG so that Self-Governance Tribes are kept in the loop.

***2020 Census*** –

There are a series of challenges when it comes to accurate reporting within tribal communities in the Census. For various reasons, such as a general distrust of government, housing diversity, language barriers, and increased mobility of populations, response rates are declining.

The goal of the Census is to count everyone in the correct location and to optimize the self-response rate. The importance of the Census cannot be overstated as it influences both apportionment of congressional seats and allocations of federal funding.

Tribal communities have always experienced challenges with the Census and its history in our communities has resulted in minimal, if any, involvement. For instance, in 1860, American Indians and Alaska Natives were involved in the count but it was only by observation and it wasn’t until the 1960s that self-identification replaced observation. Congress provided $675 billion to the Department of the Commerce to ensure that everyone is counted in the Census. However, it is well-known that American Indians and Alaska Natives are undercounted and that Commerce has faced challenges improving accuracy of counts in our communities.

**Tribal Ask:** We ask that Indian Affairs work in coordination with the Department of Commerce to help increase accurate representation of American Indians and Alaska Natives in the 2020 Census.

***Budget Distribution*** –

The Department of the Interior’s process to disburse funds does not ensure that tribes receive funds in a timely manner. When funds are not disbursed in a timely manner, tribes may have to use funds from their general revenue accounts to cover expenses for federal programs or seek other sources, such as loans, to cover program expenses. When a tribe has to use its own funds for the administration of programs—even temporarily—it can adversely affect the tribe in various ways, including lost opportunities to use tribal funds for improving the tribes’ economic conditions, reducing other services provided to tribal communities, and furloughing tribal government employees. We understand there are a lot of factors that result in late payments to Tribes, including, CRs, apportionment, internal approval processes, etc. and we are pleased to hear that an in-house workgroup is working on gathering data and information to improve the budget distribution process.

**Tribal Ask:** We ask that improving DOI’s process to disburse funds remain a top priority and that we are provided updates on the status of these efforts in future meetings.

***Advanced Appropriations*** –

As reported by the GAO in September 2018, Budget uncertainty arises during continuing resolutions (CR)—temporary funding periods during which the federal government has not passed a budget—and during government shutdowns. Advance appropriation authority could mitigate the effects of this uncertainty. In addition, advance appropriation authority Insulates funding that helps to fulfill Federal Trust obligations from political pressures, allows for seamless operations of critical services across fiscal years, and assists Federal agencies and Tribal governments to incorporate long-term budget planning and procurement processes which reduce acquisition and construction costs.

**Tribal Ask:** We ask that Indian Affairs support legislation that, if enacted, extend this important authority to Indian programs within the Department of the Interior.

***TIWAHE*** – The TIWAHE Initiative has proven to be tremendously successful and we are excited that the House of Representatives budget restored all TIWAHE funding and provided for the addition of four (4) more pilot Tribes.

**Tribal Ask:** We ask that you ensure that all Tribes that administer this program through a Self-Governance agreement have received the total distribution of TIWAHE funding.

***Office of Special Trustee (OST) Trust Review and Audit*** -

In recent months, OST has requested that Tribes provide information on leases approved under authority the Tribe received through the the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) in order for OST to include the leases as part of its trust audit. As you know, through the HEARTH Act, Congress furthered tribal self-government by authorizing Tribal Nations to issue leases of restricted Indian lands for residential, business, agriculture, wind, and solar use without the approval of the Secretary of the Interior if such leases are executed under tribal regulations that have been approved by the Secretary. OST’s request to include a review of leases approved under this authority is not based on any statutory authority and threatens a Tribe’s inherent right to self-government.

**Tribal Ask:** We ask that you inform OST that, absent a specific request from a Tribe, the review and evaluation of leases approved under HEARTH Act authority is not permitted within the scope of its trust evaluations.