# 2015 Annual Report

Self-Governance Communication and Education Office



This 2015 Report has been prepared by the Self-Governance Communication and Education office, February 2016, and submitted to:

- The Office of Tribal Self-Governance, Indian Health Service, Department of Health and Human Services
- The Office of Self-Governance, Bureau of Indian Affairs, Department of the Interior

#### OUR VISION:

TO EXPAND KNOWLEDGE, GENERATE IDEAS AND DEVELOP STRATEGIES TO ADVANCE THE SELF-GOVERNANCE INITIATIVE.

#### **OUR MISSION:**

THE SGCE SERVES AS AN INFORMATION CLEARINGHOUSE ON HISTORICAL AND CURRENT SELF-GOVERNANCE LEGISLATION, POLICY AND IMPLEMENTATION SINCE 1988. TO SHARE INFORMATION AND KNOWLEDGE ABOUT SELF-GOVERNANCE WITH SELF-GOVERNANCE TRIBES, TRIBAL COMMUNITIES AND ALL OTHER INTEREST PARTIES. TO PROVIDE TECHNICAL ASSISTANCE TO THE OFFICE OF SELF-GOVERNANCE (DEPARTMENT OF THE INTERIOR) AND OFFICE OF TRIBAL SELF-GOVERNANCE (DEPARTMENT OF HEALTH & HUMAN SERVICES) WITH A FOCUS ON: WHAT SELF-GOVERNANCE MEANS TO TRIBES, DEFINING AND EXPLORING RELATIONSHIPS, AND THE KEY POLICY PROVISIONS AND INTENT OF THE SELF-GOVERNANCE STATUTES.

#### OUR OBJECTIVES:

CONDUCT WORKSHOPS: ASSESSING THE SERVICE NEEDS OF SELF-GOVERNANCE TRIBES AND PROVIDE ON-SITE TRAINING AND INFORMATION SESSIONS.

OUTREACH AND EDUCATION: INCREASE AWARENESS AND UNDERSTANDING OF SELF-GOVERNANCE AND PROVIDE INFORMATION TO TRIBAL NATIONS SEEKING TO EXERCISE THEIR RIGHT TO BE SELF-GOVERNING.

PROGRAM DEVELOPMENT: DEVELOPMENT AND DISBURSEMENT OF SELF-GOVERNANCE MATERIALS, INCLUDING HANDBOOKS AND RELEVANT MANUALS.

#### HOW WE ACHIEVE OUR OBJECTIVES:

- OBTAIN INPUT FROM SELF-GOVERNANCE TRIBES AS TO THEIR SERVICE NEEDS.
- DEVELOP, COLLECT, COLLATE, UPDATE AND DISTRIBUTE SELF-GOVERNANCE MATERIALS.
- CONDUCT INFORMATION SHARING SESSIONS (WORKSHOPS) ABOUT SELF-GOVERNANCE FOR NEW SELF-GOVERNANCE TRIBES, NEW SELF-GOVERNANCE COUNCILS AND NON-SELF-GOVERNANCE TRIBES AND OTHER INTERESTED PARTIES.
- COORDINATE AND CONVENE AN ANNUAL CONSULTATION CONFERENCE FOR SELF-GOVERNANCE TRIBES AND NON-SELF-GOVERNANCE TRIBES AND OTHER INTERESTED PARTIES.
- FACILITATE CONSULTATION WITH OTHER TRIBES ON SELF-GOVERNANCE AND FORWARD TRIBAL PERSPECTIVES TO THE DOI OFFICE OF SELF-GOVERNANCE AND THE IHS OFFICE OF TRIBAL SELF-GOVERNANCE.
- COORDINATE TRIBAL REVIEW AND COMMENTS ON ANNUAL REPORTS TO CONGRESS.
- MAINTAIN SELF-GOVERNANCE LEGISLATIVE, PLANNING AND DEMONSTRATION ARCHIVES.
- RESPOND TO INQUIRIES ABOUT TRIBAL SELF-GOVERNANCE UPON REQUEST.
- MONITOR EFFORTS TO EXPAND SELF-GOVERNANCE TO OTHER AGENCIES WITHIN THE FEDERAL GOVERNMENT AND KEEP SELF-GOVERNANCE TRIBES INFORMED AND UPDATED ABOUT THESE ACTIVITIES.

#### ACTIVITIES

# IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE AND DOI SELF-GOVERNANCE ADVISORY COMMITTEE MEETINGS 1, 2

The 2015 Advisory Committee meetings were held at the Embassy Suites DC Convention Center in Washington, D.C. Participation in the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) and Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC) has increased throughout 2015 with each committee filling several vacancies. Increased participation by Tribal Leadership is attributable to the development of quality agendas, timely presentations, and increased engagement by Federal partners. The Self-Governance Communication & Education (SGCE) office also made efforts to better publicize sleeping room deadlines and meetings to allow for greater participation.

The meeting schedule and attendance is noted below:

<u>TSGAC</u>			SGAC	
January 27-28	93 Participants	January 28-29	80 participants	
March 24-25	50 Participants	March 25-26	30 participants	
July 21-22	54 participants	July 22-23	48 participants	
October 6-7	60 participants	October 7-8	51 participants	

A complete listing of all documents distributed at these meetings can be found on the Tribal Self-Governance website www.tribalselfgov.org.

#### 2015 ANNUAL SELF-GOVERNANCE CONSULTATION CONFERENCE

The 2015 Annual Self-Governance Consultation Conference was held at the Grand Sierra Resort, Reno, NV April 26- April 30, 2015. The 2015 theme was "Tribal Self-Governance: A Legacy for Future Generations". The Consultation Conference benefits Self-Governance Tribes, the Federal partners and others with in interest about how Self-Governance works.

#### CONFERENCE HIGHLIGHTS

A Post-Conference Report was prepared and submitted to the Self-Governance Communication and Education Tribal Consortium (SGCETC). Some highlight excerpts from the Report:

- Total Registration 743 attendees including a 25-person delegation from New Zealand. There were 19 Vendors; 14 Arts & Crafts and 5 Exhibitors;
- Hosting the annual meeting on the west coast this year impacted the conference by the number of attendees from the Alaska region. Delegation numbers increased dramatically based on the availability of flights and proximity to the airport.

<sup>&</sup>lt;sup>1</sup> All documents for the DOI-IA-SGAC and DHHS-IHS-TSGAC meetings are available on the SGCE website, http://www.tribalselfgov.org

<sup>&</sup>lt;sup>2</sup> The approved meeting summaries for January, March, and July are included in this report. The October draft summary is also available but has not yet been approved by either Committee.

- Healthy walk participation was good however numbers could be increased with a change in time.
- General assembly attendance were nearly at 800 attendees, making it one of the highest attended conferences in recent years.

#### **EVALUATIONS**

Below are some general Tribal comments received from participants about the Consultation Conference and will be considered in future planning of the annual meetings:

- More time needed for breakout session discussion
- More classroom seating in breakouts and general assembly
- Variation of food items needed at breaks and request for lunch for all attendees at least once.
- More networking opportunities

#### 2015 IHS REGIONAL TRAININGS

The SGCE Office hosted three regional trainings last year. The training locations, agendas, and presenters were developed in coordination with the Office of Tribal Self-Governance. Information regarding dates, locations, and content of the trainings is available below.

#### Indian Health Service Tribal Self-Governance Financial Training

February 3, 2015 Date: Location: San Diego, CA

Participants: 100 Session Description:

During the first regional training, participants from all over the country heard from trainers and experts about the history of the IHS Self-Governance Program and negotiations best practices and processes. This training also provided a practicum for participants to read and understand a funding table from Headquarters to Tribal Levels. The trainer also described how the funds are determined and how Tribes can use them in their Self-Governance planning and preparation.

#### Indian Health Service Tribal Self-Governance 101

Date: June 2, 2015 Minneapolis, MN Location:

Participants: 30 Session Description:

In Minneapolis trainers provided in-depth information regarding the Self-Governance for attendees. Attendance at this training included current Self-Governance Tribes and Tribes who are interested in joining. Though the group was smaller than other trainings, participants meaningfully engaged with trainers during each training section. Trainers covered topics of greatest significance to new Tribes including a brief Self-Governance history, negotiations best practices, and Self-Governance funding agreements. This training also included a

#### Indian Health Service Tribal Self-Governance 101

July 8, 2015 Date: Location: Spearfish, SD

Participants: 65

#### Session Description:

SGCE and OTSG partnered with the Great Plains Tribal Chairman's Health Board during their annual health summit in Spearfish, SD. The presentation provided an overview of the Self-Governance, IHS OTSG, and SGCE resources available to Tribes. It also provided time for Tribes to meet with OTSG and SGCE individually to discuss their plans to join Self-Governance.

#### Indian Health Service Tribal Self-Governance Financial Training

August 19, 2015 Date: Uncasville, CT Location:

64 Participants: Session Description:

Hosted at The Mohegan Sun, OTSG and DOI OSG, joined together to provide a two-day training. During the training, IHS and Tribal trainers presented modules including Programs, Service, Functions and Activities (PSFAs), funding agreements, contract support costs calculation, and Tribal negotiations.

#### 2015 DOI REGIONAL TRAININGS

# U.S. Department of the Interior (DOI) - Self Governance 101 and Financial Training

Date: February 4, 2015 San Diego, CA Location:

Participants: 100 Session Description:

Staff from OSG provided an overview of Title IV, the Tribal Self Governance Act, review program eligibility requirements, the planning process for the self-governance program, the negotiation process, selfgovernance documents, reprogramming requests, Tribal shares, inherently federal functions, technical assistance buyback, and one-time only funding. Presentations also include DOI Self-Governance finance issues, Federal and Tribal finance systems, and contract support costs calculations. OSG also paired with Tribal experts to provide one-on-one training for attendees at the end of the day.

#### U.S. Department of the Interior (DOI) - Self-Governance 101

Date: August 18, 2015 Uncasville, CT Location:

Participants: Session Description:

During this training, OSG staff members and Tribal experts provided a series of presentations to prepare Tribes who are interested in joining the Self-Governance Program. The training modules included review of the application and Self-Governance eligibility, negotiations process and documents, and responsibilities. Tribal trainers also provided examples of planning and preparing for Self-Governance, transitioning to Self-Governance, and evaluating Tribal programs.

#### 2015 TRIBAL STRATEGY SESSION

In 2015 SGCETC hosted two Tribal Self-Governance Strategy Sessions for Self-Governance Tribal Leaders, Self-Governance Coordinators, and national partners. The SGCE provided the coordination to update the previous Tribal Self-Governance Strategic Plan. Self-Governance Tribes were contacted to collect priority issues and the TSGAC and SGAC Technical Workgroups and additional resource subject experts reviewed the priorities.

The first Strategy Session was hosted in Washington, DC on January 27, 2015. During this meeting, participants received short updates regarding budget, legislative, and policy priorities and discussed achievable goals for the remaining Administration.

The second Strategy Session was hosted at the Cherokee Nation Hard Rock Hotel and Casino in Tulsa, OK September 9-10, 2016. This is Tribal only session to allow Self-Governance Tribes to openly discuss legislative, policy and budget issues that protect Tribal Sovereignty, Self-Determination and Self-Governance during the implementation of Tribal Self-Governance under Title IV Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA).

The theme was "Celebrating Success, Shaping the Future." Tribal attendees worked together to review and update the goals, issues and priorities from the previous year's Self-Governance Strategic Plan. All Tribes were encouraged to share issue-specific position papers, including recommended actions. Following the September Strategy Session, SGCE updated the 2015-2017 Tribal Self-Governance Strategic Plan and *Legislative Priorities for the Administration and Congress* to reflect the discussion.

This revised Plan was posted to the SGCE website to allow Self-Governance Tribes to download briefing documents and assess the top priorities.

#### OUTREACH:

#### WEBSITE AND FACEBOOK

- The SGCE website is the most efficient way to disseminate information to Self-Governance Tribes and to allow others to learn about Self-Governance at their own pace.
- Last year, SGCE spent six months creating a new brand and launching a new website. Changes to the website were made to organization information, provide timelier update, search for events, and archive Self-Governance information.
- Meeting materials from the Advisory Committee Quarterly Meetings, the Annual Consultation Conference, Self-Governance Strategy Session workshops and trainings are posted to the site.
- SGCE on Facebook is active and gradually gaining more followers for informal updates and general news.

#### MATERIALS AVAILABLE

In a coordinated effort with OTSG and OSG, SGCE develops, maintains and distributes copies of the following materials (upon request):

- The Self-Governance Handbook
- **Introductory Folders on Self-Governance**
- American Indian Law Review: The History, Status, and Future of Tribal Self-Governance Under **ISDEAA**
- Self-Governance Accordion Brochure
- Tribal Self-Governance 2015-2017 Strategy Session

#### **UPDATES MAINTAINED**

- SGCE Brochure
- Lists of Self-Governance Tribes in DOI and IHS
- List of Membership on the Self-Governance Advisory Committees
- List of commonly used acronyms and definitions

#### **BROADCASTS**

- SGCE sends out "All Tribes Broadcasts" to keep Self-Governance Tribes update to date on priority issues as well as on emerging and urgent information released by monitored sources. These updates include information from agencies, including Federal Register notices and consultation notices, legislative updates, and event reminders.
- In coordination with the Self-Governance Affordable Care Act Implementation Team, SGCE shares regular updates and changes with a specific subscriber list of nearly 1000 people.

# THE SELF-GOVERNANCE COMMNICATION AND EDUCATION TRIBAL CONSORTIUM (SGCETC)

The Self-Governance Communication and Education Tribal Consortium is responsible for maintaining the management, administration and oversight of the SGCE. The SGCETC is currently comprised of representatives from nine Self-Governance Tribes most of whom were among the original Self-Governance Demonstration Tribes in 1988. These include:

#### **CHOCTAW NATION OF OKLAHOMA**

**Chief Gary Batton** Mickey Peercy, Executive Director of Self-Governance, Board Treasurer Rhonda Farrimond, Self-Governance Coordinator

#### HOOPA VALLEY TRIBE

Ryan Jackson, Vice Chairman Daniel Jordan, Self-Governance Coordinator

#### JAMESTOWN SLKLALLAM TRIBE

W. Ron Allen, Tribal Chairman/CEO, Board President Chairman, DOI Self-Governance Advisory Committee (SGAC) Jennifer McLaughlin, Self-Governance Legislative Associate

#### **LUMMI INDIAN NATION**

Julie Finkbonner, Councilwoman

#### MILLE LACS BAND OF OJIBWE

John Mojica, Self-Governance Coordinator

#### **MOHEGAN TRIBE**

Chief Marilynn Malerba, Mohegan Tribe Chairwoman, IHS Tribal Self-Governance Advisory Committee (TSGAC) Kitcki A. Carroll, Executive Director USET

#### **QUINAULT INDIAN NATION**

Tyson Johnston, Vice President, Board Vice Chair/Secretary Eugenia Hobucket, Self-Governance Coordinator

#### SAC AND FOX NATION

Kay Rhoads, Principal Chief Debbie Hicks, Self-Governance Coordinator

# **CONCLUSION:**

Self-Governance includes more than 60% of the Federal Recognized Tribes in the United States. It continues to grow as Tribes become more understanding of the benefits and flexibility it offers in the operations, management and administration of services and programs for their government, community and most important the citizens. Self-Governance empowered Tribes to develop strong, sustainable communities. The work of SGCE is key to the equation of success under self-Governance. We are excited to be a part of the most successful Tribal-Federal policy to ever exist in the United States.

# **CONTACT US:**

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# **Appendix I**

2015 Department of the Interior/ **Self-Governance Advisory Committee** (DOI-SGAC)



# 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.tribalselfgov.org

# DOI Self-Governance Advisory Committee and Technical Workgroup Quarterly Meeting and Tribal Self-Governance Strategy Session

# **Embassy Suites**

900 10<sup>th</sup> Street NW Washington, DC 20001

Phone: (202) 739-2001 ~ Fax: (202) 739-2099

# **Meeting Summary**

<u>January 29, 2015 (8:00 am to 5:00 pm)</u>
Meeting of the SGAC and Technical Workgroup Members

#### Governor Romero from Taos Pueblo provided the invocation.

#### Roll Call

Alaska: William Micklin, 1st Vice President, Central Council Tlingit and Haida

Indian Tribes of Alaska

Robert Keith, Chairman of the Board, Kawerak, Inc.

Albuquerque: Luis Romero, Governor, Taos Pueblo

Pacific: Ryan Jackson, Council Member, Hoopa Valley Tribe

Eastern Oklahoma: Mickey Peercy, Executive Director, Choctaw Nation of Oklahoma

Vickie Hanvey, Self-Governance Director, Cherokee Nation of

Oklahoma

Southern Plains: George Thurman, Principal Chief, Sac and Fox Nation

Rhonda Butcher, Director, Citizen Potawatomi Nation

Western: Delia M. Carlyle, Councilmember, Ak-Chin Indian Community

Virginia M. Sanchez, Chairwoman, Duckwater Shoshone Tribe

Northwest: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe

Tyson Johnston, First Councilmen, Quinault Indian Nation

#### **Opening Remarks**

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

Title IV amendments were introduced yesterday by Senator Barasso and SGAC is hopeful that Self-Governance Tribes will be able to push it through during this Congressional session. And SGAC appreciates the Administration's support in enacting this legislation.

Republicans have taken over but the President issued a strong statement of what he wants to achieve and what he wants Indian Country to be part of during the last two years of the Administration.

#### Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior

Anne Bledsoe-Downs spent her fourth quarter of 2014 leading the Tribal Nations Conference and we are glad she is joining again today. The meeting with Standing Rock

Sioux children and the Tribal Nation Conference has reinvigorated the President. Anne has been working to institutionalize the White House Council on Native American Affairs.

## BIA Update

In what may represent the Bureau's most important accomplishment during this Administration, the Bureau finalized the land into trust rule for Alaska. The rule will ensure that Alaska Tribes can put land into trust. There will be an informational session/listening session in Alaska in February to discuss the implementation.

Bureau continues to work on a myriad of issues including, Right of Way Regulations, ICWA Regulations, HIP Regulations, Secretarial Election Regulations, Transportation Regulations, and working with the IRS on Tax policy issues. Specifically the Bureau has have working on Tax policy with the IRS in developing policy.

Additionally, the Bureau has been focusing on the Bureau of Indian Education Reform using the Blueprint reform, shared previously.

# FY 16 Budget Request

We are embargoed from talking about the Budget but I think you will be pleased. There is a Native youth initiative in the budget, known as the Generation Indigenous Initiative.

Appropriators uphold the trust responsibility as they have done in the past.

A number of Congressional representatives visited the Hopi Reservation (Cole, Simpson & others) It is a good sign that members of the Appropriations Committee are visiting Indian country.

# **SGAC Committee Business**

MOTION:

Cherokee Nation made a motion to approve the October Meeting Summary without amendments.

Pueblo of Taos seconded the main motion.

The meeting summary was approved without objections.

#### Office of Self-Governance Update

Sharee Freeman, Director, Office of Self-Governance, DOI

#### New OSG Staff

- Finance team
  - Danny Santiago, Fina, Celeste, Thomas Gubatayo (NWFO slowly taking over Nic Longley's responsibilities), Nic Longley (working part time and training Thomas to take over)
- Shawna McCovey (NW Office will negotiate SG compacts and work with new Tribes)
- Lance Fisher (Expertise in IT will prepare fund transfers and postings for the SG database posting of announcements and regulations and consultation
- Michaela Intern

#### **Annual Reports**

The meeting materials included a document that provides dates and times for all Annual,
 Quarterly Reports Due, and Identify Points of Contact for Reports.

#### Funding Distribution

- OSG Provided a new streamline financial flow chart.
  - o Tommy Thompsons' is working with Mohawk, Inc to improve the process
- OSG also reported that the final base \$120 million was transferred on January 10th and was obligated yesterday (January 28, 2015). This week additional money for Law Enforcement (\$114 million), Detention (\$114 million) and 75% of Welfare Assistance (\$15 million) will be obligated this week.
  - All of the 638 are done
  - Welfare assistance
  - Transportation
  - o UDO's 26 Self-Governance Tribes have not pulled down their money.
  - CSC overpayment letters there are two
- Climate Change Funding was announced some time ago. OSG was able to get it so that these dollars could be included in AFA
- Law Enforcement Training
  - Law Enforcement Training there are free trainings being offered for Tribal law enforcement personnel.

# Superintendent Boot Camp

Superintendent Boot camp – OSG Director participated as well as Matt Kallappa to
provide them with one (1) hour fifteen (15) minute training and the Self-Governance film
was shown. The training overall was 40 minutes. New and old Superintendents
attended the session. There will be additional trainings in March & April. Feedback on
the curriculum was provided by a number of SGAC Tribal Representatives.

## Other DOI Updates

- Secretarial Order on Wildland Fire and Management and listening sessions.
  - Feb 4<sup>th</sup> Teleconference
  - o Feb 9<sup>th</sup> Portland, OR
  - o April 17<sup>th</sup> Reno, NV
- Tribal Transportation Regulations Consultation Dates
  - Seattle February 12th.
  - o Recommend that the dollars for transportation work through the FHA

#### Correspondence

 There are three letters still outstanding for responses, but are in the process for signature.

#### Tribal Comments

Alaska Rep - There was some discussion about DOJ & BIA OJS and which Department would be better to run our justice/court programs through. Federal Highway has done a good job. Is there anyway Justice could start working with SG Agreements with Tribes similar to Federal Highways?

OSG – Tribes have been asking who should run their Transportation programs and we recommend Federal Highways because they provide technical assistance and provide outreach to Tribes. Tribal Transportation Program at BIA doesn't always help SG Tribes. I know that Tribes are pursuing SG in Federal Highways. Department of Justice is a harder nut to crack. They have tried to capture all the grant funding for tribes and roll it up into one application. We can begin conversations with them. They are fascinated with SG. We will speak with Nicole Hannah – Tribal Liaison from BIA/OJS.

Tribal Rep – Tribes haven't fleshed out the pros and cons or identified the land mines. In conjunction with that we are also raising the issue of implementation of TLOA and VAWA in Indian country, including Alaska. The lack of law enforcement/court resources in Alaska, California and other PL280/Settlement Act states is an issue. Is Interior looking at ways to provide Tribes with resources? It is a complicated issue.

OSG – It may be best to be with Justice because they have more money than Interior. It is something to consider since Interior does not have a lot of funds left at the end of the day.

Alaska – Federal agencies are not required by Congress to enter into a SG Funding Agreement but they should encourage other agencies to look at what Federal Highways has done.

Tribal representatives requested that SGAC develop a report on the President's legacy with respect to Self-Governance since 2008. This Administration highlights that the President is pro SG so it would be good to see the initiatives that reflect this.

# Office of Bureau Director Update

Michael S. Black, Director, DOI-BIA

- Fee to Trust is still top priority we only have 18 months and 220,000 acres to go to meet the department goal.
- We completed a review of law enforcement programs in the field over a two week process. The intent of the review was to identify shortcomings and where improvements are needed. It can serve as a really good roadmap for Tribes.
  - However there's no funding tied to these reviews to make corrections.
- Darren or Mike Black can help direct resources
- Just came from a meeting with HUD, USDA, IHS, and EPA, BIA
  - Environmental review to improve housing developments process
  - Trying to improve the environmental report
- Another effort is improving the 184 loans
  - o There's a gap and obstacles in getting TSRs to the lending official
  - The program requires forms from us to the mortgage companies and there have been gaps and miscommunication and have found various stopping points in the process. We are taking a look at it with HUD to try and figure out a way to simplify the process.
- Internal improvements
  - DOI and BIA rank at the bottom of the best places to work in the Federal Gov't
  - Improve communication and reaching out to ground staff
  - He's learning about the experience of regional staff
  - Survey will go out to all BIA processes
- Three vacant regional positions tribes get to review the cert list and provide feedback and recommendations
  - Eastern region
  - o Eastern Oklahoma
  - Rocky mountain region
- SGAC is requesting that BIA take over the title insurance process for fee-to-trust property. The underwriters prefer not to work with us based on the Non-Intercourse Act from the 1700s and they believe they would be assuming too much risk. Request that the Solicitor put out a letter to explain fee to trust to Insurance Companies and take on negotiations with

industry on behalf of Tribal beneficiaries. US Government would be far more effective than Tribes.

- We aren't getting support for gov't support what is allowable when general functions are not allowable.
- There is a problem with moving correctional facility.
  - o We have taken some tribes down to the facility to see it. Most feedback is positive
  - They arrange transportation and provide additional programs that BIA does not provide.
  - o Even detainees prefer this facility over others.
- Problem with template cooperative agreements for wildland fire management going out with too little time for tribes to review the template.

#### **Budget Update**

Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management) Amber Ebarb, Legislative Associate, National Congress of American Indians Dave Conner, Self-Governance Coordinator, Red Lake Band of Chippewa Indians

Amber Ebarb, Legislative Associate, National Congress of American Indians

- There are a number of members on the Senate Committee on Indian Affairs that also sit on the Appropriations Committees.
- FY2015 Crominbus Bill the BIA and IHS received new money. We are still at the 2008 enacted level if you look at inflation and the impacts of sequestration.
- It is important to monitor the President's Budget Request on Monday. We will release an analysis of the President's Budget on Wednesday.
- We do not have a set cap so we will be watching the fights between the Administration and Congress on how to undo sequestration. We need to find other ways to reduce the deficit.
- Congressional Research Report released on HUD, DOE and Indian programs.
- Tribal Labor Force Report NCAI secured a grant with the National Science Foundation and are working with other researches and recruiting Tribes to be part of the project over a 3 year period. The goal is to improve Tribal data collection and document the impact on Tribal programs.

Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management)

- Distribution of dollars
  - Particularly around CSC
  - o It's a cash flow issue for some Tribes
- Budget Formulation
  - There is a pretty regulated process to develop the Interior budget through TIBC.
    - There are some SGAC concerns regarding ranking SG priorities at TIBC.
  - The President also gets to weigh in and we want to develop new programs to fund so that people get excited about the budget.
  - We do not have a set cap so we will be watching the fights between the Administration and Congress on how to undo sequestration. We need to find other ways to reduce the deficit
  - There should be more transparency in the budgeting process.
  - Can we get a report on how well the education programs are performing?
- Update Status of FY2015 Appropriations and FY2016 and FY2017 Budgets
  - There are several crossovers between the appropriations and SCIA so that sets us up well for the appropriations
  - House side also looks relatively positive

- Can you provide a trend analysis on line items that are funded?
  - o It's possible if we can limit it to general needs and issues to see what BIA is funding.
  - o These are the five categories that the organization should concentrate on.
- Update Internal Review Committee Streamlining Distribution of Funding
  - The analysis shows that there are 138 funding streams in Indian Affairs that go out to Tribes. But we're still using processes from the 40s.
  - There is a workgroup that will review the process and determine where the touch points have to be.
  - We have to get the protocols down for the Tribes. We need to streamline those processes.
  - o BIA is looking at modernizing the process and relationships.

# SGAC Leadership Executive Session with ASIA Kevin Washburn

# **SGAC Technical Workgroup Meeting**

# **Strategic Plan Discussion**

SGAC members continued working on the priorities identified during the Strategic Planning Session January 27, 2015. The top priorities identified were:

#### **Budget Priorities:**

- Restore Fiscal Year 2013 sequestration cuts and exempt Tribal funding from future sequesters.
- Authorize mandatory funding and fully fund Contract Support Costs and expedite payments to Tribes.
- Preserve authority to include one-time or short-term resources in Self-Governance Funding

#### **Legislative Priorities:**

- Amend Title IV of the Indian Self-Determination and Education Assistance Act.
- Reauthorize the Native American Housing Assistance and Self-Determination Act.
- Enact legislation that strengthens and reaffirms the original tenants of the Public Law 102-477.
- Expand Self-Governance to the Department of Transportation.

#### **Policy Priorities:**

- Revise and streamline each agency's Contract Support Costs policy.
- Expand Tribal consultation on allocation and formula distribution of Bureau of Indian Affairs (BIA).
- Foster greater transparency from the Department of the Interior in announcing new funding announcements.
- Institute a Tribal Advisory Committee for Office of Management and Budget.

# 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.tribalselfgov.org

# DOI Self-Governance Advisory Committee and Technical Workgroup Quarterly Meeting

Wednesday, March 25, 2015 (2:00 pm to 6:00 pm) Thursday, March 26, 2015 (8:30 am to 1:30 pm)

# **Embassy Suites Washington DC - DC Convention Center**

900-10<sup>th</sup> Street NW Washington, DC 20001 Phone: (202) 739-2001

#### **MEETING SUMMARY**

Wednesday, March 25, 2015 (2:00 pm to 6:00 pm)

**Meeting of the SGAC and Technical Workgroup Members** 

#### Invocation

Robert Keith, Chairman, Chairman of the Board, Kawerak, Inc. provided the opening invocation.

**Roll Call** 

Alaska Robert Keith, Chairman of the Board, Kawerak, Inc.

William Micklin, 1st Vice President, Central Council Tlingit and Haida Indian

Tribes of Alaska

California Ryan Jackson, Council Member, Hoopa Valley Tribe

Bradley Marshall, Council Member, Hoopa Valley Tribe

Eastern Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah)

**Eastern Oklahoma** Vickie Hanvey, Government Resources Self-Governance Administrator.

Cherokee Nation

Mickey Peercy, Self-Governance Executive Director, Choctaw Nation of

Oklahoma (Proxy for Chief Batton)

Southern Plains Kasie Nichols, Self-Governance and Grants Analyst, Citizen Potawatomi Nation

(Proxy for Chairman Barrett)

Southwest Shawn Duran, Tribal Programs Administrator, Taos Pueblo and Vice Chair, Self-

Governance Advisory Committee (SGAC)

Western Karen Fierro, Self-Governance, Contracts & Grants Director, Ak-Chin Indian

Community (Proxy for Vice-Chairman Carlyle)

#### Introductions – (All Participants and Invited Guests)

#### **Opening Remarks**

Shawn Duran, Tribal Programs Administrator, Taos Pueblo and Vice Chair, Self-Governance Advisory Committee (SGAC)

Secretarial Order on Rangeland Fire Prevention Listening Session was on February 4<sup>th</sup> and consultation was on February 19<sup>th</sup>. On Tuesday, April 17<sup>th</sup> there will be a teleconference call. The information will be on the Tribal Self-Governance website.

#### **SGAC Committee Business**

#### MOTION:

Kawerak, Inc. made a motion to approve the meeting summary from the January 29, 2015 meeting.

Choctaw Nation seconded the main motion.

Motion was approved.

SGCE Director reviewed the Annual Consultation Conference Agenda and requested volunteers to moderate and record breakout sessions.

#### Office of Self-Governance Update

Sharee Freeman, Director, Office of Self-Governance, DOI

- Negotiation Guidance
  - We have been working on the negotiation guidance. Even though it is a hundred (100) plus pages long we really only have 32 pages. The additional documents are for new Tribes.
  - We added Climate Change contacts for FY2015 because some Tribes received money.
  - Map 21 expires May 31<sup>st</sup> so there is language in the addendum that covers the program.
- OSG Finance Training
  - OSG and SGCE collaborated to offer a Self-Governance and finance training for Self-Governance Tribes, federal employees, and others.
  - The training was well attended (80 plus people)
  - OSG will offer similar modules during the Annual meeting on Sunday.
- Funding distribution
  - Rights Protection/Bolt Decision \$1.9 million has been obligated.
  - The second round of additional Contract Support costs went out on March 13<sup>th</sup> and 16<sup>th</sup>
  - This distribution included funding from OIP
  - TANF 2<sup>nd</sup> quarter funding was distributed on February 17<sup>th</sup>
  - TTP \$9 million was distributed on March 10<sup>th</sup>
- Contract Support Costs funding
  - A teleconference call was held to discuss the "calculation tool" We [OSG] was using a paper that was prepared by Nic Longley but we were foreclosed from using it because it did not have an OMB number on it. We have been gathering input from people on what it should look like.
  - OSG distributed seventeen overpayment letters to Tribes
  - Of the \$92 million sent to Tribes, OSG estimates that Tribes received nearly \$388,000 more than needed. We have reduced the number to ten and hope to get it down to zero before the Report goes to Congress. [Hankie Ortiz, Terri Parks, Sabrina, Tommy Thompson, Sunshine Jordan, Chris Jock, Tommy's Chief of Staff]
  - Every Friday the DOI/BIA internal Contract Support Cost policy workgroup meets to update the CSC policy
  - Tribes received 90% of CSC estimates for FY 2015
- Other funding
  - Welfare Assistance
    - April 13<sup>th</sup> is the initial deadline for financial and narrative information on Welfare Assistance [Ken Reinfeld is the lead]
    - May 1<sup>st</sup> last day to request additional funding [let Ken know if you run out of money]
  - Climate change adaptation funding will be available and the deadline is April 24<sup>th</sup>
  - Welfare Assistance Webinars March 25<sup>th</sup> at 1:00pm & March 26<sup>th</sup> at 11:00am. The training is on Welfare Assistance and their funding methodology.
    - Please thank them for hosting those webinars
    - This was the first time we've seen some of the formula distribution information.
    - There are still issues but nonetheless the presentation was the first time we have seen the funding methodology. The stuff that we looked at was great.

- Sharee Freeman (OSG) will work closely with them and ask them to run the webinar again.
- It is very confusing at the end of the year before you know what your amount will be.
- Law Enforcement free training is being offered
- Rangeland Fire Secretarial Order DOI will sponsor meeting with BIA, BOR, Fish and Wildlife and the Bureau of Land Management at the training center.
- Tribes are concerned about the interim policy, what and when will the proposed changes be shared with the workgroup?
  - o The workgroup will review the internal policy changes being developed soon.
  - We are waiting for Indian Services to give us more money; we only distributed 90%.
     Right now the Regions are reconciling and giving money back to Central Office.
  - Tribe We would all be in better shape if the agencies read the law and complied with it instead of making discretionary decisions.
  - Tommy did an analysis of CSC and he did pay-as-you-go. The worst scenario is pay as you go because it doesn't respect the lump sum concept. It is just not going to work. 90% distribution we run into problems with overpayments but the 85% distribution does not run into overpayments. It doesn't follow the law and policy either. Do we want to do what the law and policy says or change the policy? The agency does pay-as-you-go but it doesn't match up with the way Self-Governance does business. Every year we ask for more because we are 115 Agreements and larger than Alaska and California. We are always going to be reconciling.
  - Tribe Everyone should not be held hostage for one or two Tribes. We use to get 75% up front and the remainder at the end of the year. You indicated that the internal group was working on the policy. Is it going to be brought to the CSC Workgroup to review?
  - The interim policy will be brought to the CSC Workgroup.

#### **Budget Update**

Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management)

- FY2016 there has been Hearings and Testimony at every Committee level. All of my colleagues will be testifying today and tomorrow.
- The President put forward a respectable budget and everyone wants to talk about it.
- The House markup is this week and we have received positive feedback.
- Projections Spending Control Act is back in place. FY2014/FY2015, there was a two year moratorium. The House mark brings back the old trajectory and there will be a substantial reduction if it goes through.
- Funding levels from the House Budget would reduce Indian Affairs money by \$300 million, about a fourth of the IHS budget will be impacted
- There is still work to do on FY2016 Budget
- Policy Changes for FY2016 White House Convened a meeting on what they could do for Indian country (wrap around services for other agencies) The Greenbook references all these initiatives. The common thread is "What can we do for the next generation?" We are excited and ready for the challenge to meet this obligation.
- Greenbook delay
  - o The White House convened the cabinet to determine what they are doing for Indians
  - o Tied to Tiwahe and Generation Indigenous together
  - o Indian Affairs is the touchstone for many of those programs.
- There have been many conversations about converting CSC to a mandatory account. It is a
  heavy lift and balancing it against the House Appropriated Budget is difficult to achieve. It really
  comes back to Treaty obligations.
- DOI is providing as much data and back up information as possible
- They have made Tiwahe look more like wrap around services

- The President's Budget is positive but it relies on the assumption that the caps will be raised. This week the Senate and House are dealing with their budget resolutions, neither of which raise the statutory caps.
- NCAI is encouraging Tribes to meet with members not on the Interior subcommittee, members from your district, and members of your forefathers' district. Raise the profile for Indian programs.
- TIBC has had a lot of discussions about new proposals for data and one stop shop Tribal support center. They are also requesting to include child abuse and neglect funds in the Tiwahe initiative. They passed a Resolution to tighten up the evaluation of the budget formulation process for FY2017. Evaluate the programs at the Regional level and examine how well the priorities from the Regions are making it into the Budget Request. Where can Indian country have some wins?
- Presentations made in the hearing are important, but additional follow up is needed to continue to support Indian Country's budget requests.
- Is there a reconciliation bill that has to pass both of the committees to raise the caps?
  - Under the current allocations being considered, Congress does not have a plan to raise the domestic discretionary non-defense funds. It is a difficult Subcommittee to enact the President's increases.
- Congressman Cole presentations made in the Hearing are very important. We need letters of support and follow-up. In FY2014/FY2015, they favored the BIA over the other agencies.
- Where does that leave us with sequestration? We don't think there will be another across the board reduction but expect that there will be lower caps in the beginning.
- Lower caps at the beginning will result in hard choices between Indian Country's numerous requests.
- OMB estimates that \$19 billion [now \$21 billion] in Congressional funding goes to Tribes.
- Ten year estimates of the CBO budgets show a lot of cuts at the end of the 10 years. Best case scenario is to continue to be in no-growth/small growth. There is concern that the Budget caps will be long lasting.

#### **Tribal Discussion**

- We are currently experience historic lows of federal spending as a percent of GDP.
- TANF spending was frozen in 1996 to control welfare (\$923 month 1996 2015) We are worried they will use the same method to control spending on the SNAP program. A lot of spending has been frozen at certain levels while needs continue to grow. We need to quantify what it would mean if we brought TANF up to current and/or index it over five (5 years) to bring it current. Do we have any mechanisms or is the Administration prepared to look at these programs?
- The House Budget Resolution proposes to Block Grant SNAP dollars and cut the overall amount. NCAI is addressing the proposal. As for TANF, we need to check with the TANF workgroup to pull the data. There is a Democratic Alternative Chris Van Hollen released and it probably doesn't include dramatic decreases for the needy.
- If Tribes knew that they would see the increase in dollars, they may help the administration in advocating for additional dollars
  - We need to balance maintaining Tribal budgets and grant projects to continue Tribes to participate in the Congressional advocacy needed.
  - o If you look at the 12, 13, 14 budget, they were flat. There was nothing in any of those budgets that you could claim was a divisible piece of the pie.
- We've went back and reviewed each law to improve the process and have shown the deficiencies
- It may not be that there is a substantial increase for each and every Tribe; the core funding is there for Tribes.
- The budget formulation process is forward looking, not backward and Tribes are losing ground on Sequestration
- Service population data is skewed due to collection processes
- Relationship between consolidated program and cost centers for the funds (477 programs)
  - About 63% of the funding is pass-thru from HHS-Labor

- We need empirical evidence that operating consolidated programs is more efficient
- How can the BIA show consolidation and collaboration? Redesign for the BIA program?
- Additionally Tribes should consider how to build the President's legacy around Self-governance and other Tribes. Perhaps a report should be developed to detail this legacy.
- Data Initiatives How will it work and what information will be part of it? \$9 million would go to the Census and the rest would beef up program evaluation and needs assessment of the BIA overall. We will focus on the youth first and then consult with Tribes on the measures. We want to work hand and hand with TDE and Self-Governance. Partner with academics with specialties in certain areas. Help us get our arms around data. We need help prioritizing areas to address first. We need to quantify the effect of sequester as well. Defense put forward a forceful story is the same message being offered up to the Budget Appropriators/Congressional Members from Interior? If not, shouldn't it be a theme? It seems effective and is in wide use by others. Behind the scenes we are providing data and doing everything we can do. One thing we do not do is engage in compassionate speeches in front of the Committee. We try to put data together from the standpoint of here is what the impacts are. It is not only what we send up; it is the messages from TIBC and the White Papers. If we get before the Committee with conflicting statements the answer will be no.
- Concern with the data initiative is that the money is going to an outside agency, Census. We have a data subcommittee under TIBC but very little resources go to that effort. Census occurs every ten years but we need stats in hand.
- TIWAHE We tried to put a face behind the issue to make it more difficult to pull it apart. When we start to bundle services we get a better avenue to discuss the impacts.
- We have one more meeting the week after next.
- Tribes expressed concerns about TIWAHE, Generation Indigenous and other initiatives because at the Tribal level you may not see any of the money if it isn't distributed by way of a formula. While Tribal base budgets have been decreasing the BIA has been funding certain areas or grant programs. It is hard for Tribes to advocate for money if the money comes in and we never see it. However, when it comes to sequestration Tribes take the hit in funding. We need to balance this. Our concern is if the funding caps remain in place we will take another hit.
- BIA If you look at FY2012, FY2013 and FY2014 you will see flat budgets. The only way to get
  increases is to look at initiatives. We know it goes against the trust obligation. We are trying to
  find a path forward. We are trying to bring 5-6 groupings together in a package that will be
  easier to convince Congress to fund it. It starts as a pilot project but we intend to expand it. We
  have also been trying to collaborate with the other agencies to put a foundation in our budget.
- Tribe It was nice to get an increase in ICWA. Even though there is a big push to help the youth there is not a big increase to social services.
- BIA FY2015 is the demonstration year and then we should be able to move beyond that in FY2016.
- Tribe Small correction, in FY2012, FY2013 and FY2014 budgets \$75 million in resources were there but the Administration decided to fund the President's Budget Priorities. The Defense Hearings were impressive when it came to making the case to exempt Defense from Sequestration. We need Interior and BIA to do the same and tell Congress the impacts and damages of sequestration on Tribes.
- There are a lot of problems with flat budgets and we made a concerted effort to move BIA money. We can look at how we find a path forward to mitigate circumstances. Initiatives get other things funded. Once we can demonstrate the ability to successfully operate programs it brings other programs into it. We need a different method to market what we are doing. There are a lot of challenges to make it fair and equitable for 566 different Tribal entities. We have to keep everyone unified for Indian country and we hope the budget reflects this.
- Tribe The Office of the Special Trustee is taking part of the BIA budget. Where is the redesign plan for the Bureau? We have consolidated programs and services. We know how to do it at the Tribal level.
- Tribe Assistant Secretary says he strongly supports Self-Governance but some of the President's initiatives run counter to this. Policy changed in 1998 and we got more money. We are getting hit on the BIA side with policy resistance to Title IV. We should address it at the next

conference – the President's legacy with respect to the BIA/IHS losing money from sequester and inflation.

- BIA Rather than fight for money we want to engage the other agencies to work with us on integration of services. We haven't talked about the transfer of funds. We want a conduit of services and to break down the silos.
- We worked diligently to make the budget formulation process transparent and published the rules in October. We will publish the rules about FY18 budget process soon.
  - We received input from all 12 TIBC Regions
  - TIBC subcommittee will review, make recommendations, and match it up with ASIA recommendations
  - o In July OMB provides marching orders for the next Fiscal Year's preparation.
  - We negotiate in February when the budget comes out. It makes it easier when we have Tribal input on where you want to go.
  - We will evaluate each region's response and try to improve the process.
- It makes the DOI's job a lot easier if there is Tribal input through the TIBC budget development process.
- Tribe Why would Tribes request priorities when we don't receive the money?
- BIA There is always conflict with competing interests.
- Tribe We need to figure out the formula on how the law enforcement distributes the money.
- BIA Tribal courts and detention centers did resonate with TIBC. In the FY2016 budget we
  moved Tribal courts into TIWAHE. At first glance it doesn't look like a fit but if you look at the
  issues that are being brought before the court it is really family issues that are being addressed.
- Tribe There is a disparity between smaller and larger Tribes. Maybe you could give the money to OSG and then let OSG and Self-Governance Tribes come up with a process.
- BIA Challenge you to participate in the process.
- Tribe You ask Tribes to pick their top ten priorities out of 200 line items so there is a problem
  with the process. The more engagement we have the better it is because in FY2014/FY2015
  Natural Resources didn't rank high on the list of combined regional priorities but the ranking
  process is not the only consideration and Natural Resources still received an increase. The
  Bureau does pay attention to regional input. The numbers are not as important as what people
  are saying.
- Tribe Is there a possibility of rolling up into broader categories?
- BIA You will see some of it in FY2016 but we left the swim lanes there. We are laying the foundation by collapsing those in our write ups. We have been doing it this way since the 1800s and if we move line items then people go to the hill and say you can't let the BIA do this.
- Results included high level rankings for education and aide to Tribal governments.
- DOI has asked for unmet obligations. DOI needs to be able to support the unfunded mandates that Tribes are required to conduct in their communities.

#### **CSC Workgroup Update**

Rhonda Butcher, Self-Governance Director, Citizen Potawatomi Nation

- The workgroup has not met for a number of months and needs to meet soon to move things forward.
- The workgroup should get to see a preliminary copy of proposed changes to policy that the internal DOI/BIA workgroup has been drafting.
- We know there was a concern with overpayments but OSG did a good job mitigating these payments. Self-Governance Tribes continue to support OSG's efforts to mitigate overpayments.
- We sent OSG the template that the IHS is using. We have templates/tools we shared that may be helpful. We are willing to work with the tools to get an accurate prediction of CSC. We constantly meet with the IHS to discuss rates and then we reconcile it at the end of the year.
- We need to make sure funding is getting out as simply and efficiently as possible. Distributing 85% or 90% CSC funds is a compromise because we would prefer to receive 100% but we did compromise and are open to looking at the numbers. However, if you overpay a few Tribes by \$388,000 it should not hold back everyone's funding.

- BIA We want the process to be as simple as possible and for the money to out as fast as possible. There is no way that we should be holding Tribes to the same financial standards as states. Tribes do not have the necessary infrastructure to fill out indirect cost proposals. We have to do something different. We have to look at the policy. We need to be the facilitator because they do not understand all of the pass throughs and exclusions. Part of what we are doing is identifying deficiencies with the process and advocating for changes with OMB. We want to make it as simple as we can.
- The Workgroup recognizes the fact that you have recommendations but OMB comes down hard on us. One of the messages you need to include in your advocacy is that the process for securing a rate every year is ridiculous. OMB hasn't been too flexible in the indirect cost arena.
- The process with IBC is difficult, cumbersome, and completely out of our control
- DCSC increase from 15 to 18%
  - DOI is discussing this recommendation, but has not developed an opinion. At first blush, is it broke? If not, don't fix it. However, as we work through the models it is still on the table.
  - Tribe 15% rate has been in place for a decade and doesn't cover all of the fringe benefits and insurance costs. The rising costs of health care premiums are killing Tribes but the Bureau is able to add new budget authorities to cover these costs on their end.
     Tribes are strapped with a fixed rate to cover all costs including healthcare costs.
  - o BIA You don't include insurance costs?
  - o Tribe No, the IBC disallows us from doing it.
  - o Tribe The only fringe that is in there is for personnel but not program people.
  - o Tribe We are not allowed to include vehicle or building insurance either.
- Mandatory Contract Support Costs
  - Tribes appreciate the mandatory CSC proposal. It is a heavy lift and there has been some concern expressed about the three (3) year period but we really appreciate the Administration and OMB's support. It may require a few tweaks but it is the only solution so that Tribes don't have to eat into program dollars.
  - FY17 explanation
    - If we take it out of the discretionary budget and Congress does not agree to it this year, then there will be deficit in discretionary funding for 2016. We are trying to protect our flank by taking a defensive posture to make sure it doesn't erode program dollars.
    - Additionally it allowed DOI time to consult with Congress because one of the questions we got back was why we didn't consult congress.
  - Three year explanation
    - They have to score every bill going out and it allows for easier PAYGO discussion with Congressional members. There are advantages to having 3 years because you have X year with two (2) year money. Other programs such as the Special Diabetes Program for Indians uses a three year cycle and the program has been funded for fifteen (15) years. Will it be a lift in three (3) years? Sure but if it is there they will do it.
  - The Department does support x year
  - DOI did not provide a direct offset for the entire amount, but the President's budget does balance.
  - DOI has been telling the Committees if they leave the money in the discretionary budget we have to take it out of program money. Congress created this so we need a fix going forward. Revenue neutral on the BIA side is a little more of a stretch for the IHS side because they have a wider reconciliation issue than us. We do FY2014 forward and the IHS is still working through reconciliations. We think good projections for the three (3) years are the shortfall reports.
  - Tribe Tribes diligently behind this and we are trying to get one voice. Let the CSC workgroup help you.
  - DOI does solicit Tribal input on budget formulation.

- Present the issues related to the recent Cole Memo and request DOI assistance in preparing for the affects this may have in Tribal communities and pressure Tribal governments will likely experience as a result.
- Tribal leaders have raised concern recently that BIA employees feel they must only serve Direct Service Tribes
- Overview of Budget discussions and issues raised sequester significantly impacted Tribes;
  Although BIA initiatives are well intended they do not come with dollars and the prospect of
  additional dollars for base programs is getting weaker; Tribes want to move away from initiatives
  and grants because they are an additional administrative burden and starve Tribes of their funds
  and capacity. Tribes propose to give them the authority, jurisdiction and funds and they will see
  a better outcome.
- Request that BIA continue to present Tribal priorities included the effects of sequestration in Congressional testimony
  - o Emphasize that Tribes support the administration's proposals
- Request that the CSC workgroup meet again; get money out and don't hold up Tribal payments until OSG recoups a small percentage of overpayments; raise the issue of having to jump through hoops for rates; let CSC workgroup help DOI workgroup. Emphasize unanimous support for mandatory appropriations for CSC and if Congress proposes something better that we should support it.
- Share updates from the meeting with the OIG during the IHS TSGAC Meeting and Senator McCain's proposed amendments to Title IV. Request the Administrations continued support the Title IV amendments.
- Request support for the broadband initiative the administration put forward, but it effects
  governmental foundation, education, safety, and ability to apply for additional resources. DOI
  should recommend that additional resources be provided to support the initiative.
- Tribes are still experiencing issues with the drawdown process when there are no distinctions of what the money is to be used for after it is in the system.
- Self-Governance Tribes continue to recommend that DOI consolidate OST if there are not enough resources to support their work.
- We need to bring up the \$19 billion and should expect if BIA takes a cut we should have access to other agencies.

The meeting was adjourned for the day.

#### Thursday, March 26, 2015 (8:30 am to 1:30 pm)

Meeting of the SGAC and Technical Workgroup with Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior (AS-IA – DOI)

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

#### **Opening Remarks**

Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior Shawn Duran, Tribal Programs Administrator, Taos Pueblo and Co-Chair, Self-Governance Advisory Committee (SGAC)

#### Discussion of Issues with Assistant Secretary - Indian Affairs

What are the ramifications of the Cole Memo and what is DOI doing to help Tribes?

- Hoopa Valley Tribe is voting next month to overturn the cultivation/zero-tolerance policy. There
  is a great concern about potential threats and ramifications to the community.
- There is concern that Tribal members will not abide by Tribal Council's decision to prohibit the cultivation and sale of marijuana on Tribal lands.
- Tribes believe their federal funding from numerous agencies would be put at risk if there is cultivation and/or sale of marijuana
- Discussion

Many Tribes have raised similar concerns. BIA did not have a lot of input into it although the AS-IA agrees with the "gist" of the memo that wherever states have the authority to regulate Tribes should have the same authority. Even with respect to the state/federal scenario the sovereigns are clashing a bit. BIA has been struggling with it too.

- o There are Tribes on both sides of this controversial issue.
- It is going to be hard to provide clear guidance from the Department because of the controversial nature of the topic.
- Not many of these items directly affect DOI
- DOI needs/should provide the direction about how to spend money and balance demands of the FA/Compact under the new guidance from the Cole Memo.
- Hoopa Valley is in the middle of upgrading their irrigation system and is concerned that individuals will try and tap into it.
- Tribes receive limited funds for enforcement in California and the local county is not interested in enforcing it.
- USDA warned Hoopa if any of the funds awarded to the Tribe are associated with marijuana grow it will cut off funds.
- What about HUD homes that require drug free homes?
- Fee to Trust is another concern.
- This is basically early gaming problems on steroids, but the jurisdiction between states and Tribes are getting really complicated.
- State of California regulates the number of plants but they do not have jurisdiction on Hoopa land. The situation leads to a bunch of Indians being prosecuted by the Federal government.
- There are a lot of repercussions for individual Indians under current sentencing laws
- Media has caused a lot of confusion by misrepresenting the facts. The largest threats are for those rural areas, impoverished and inexperienced Tribes due to the possibility of "economic gains"
- In California the issue is that is a fair amount of prosecutorial discretion.
- This is a cross-agency issue and Tribes need DOJ and other agencies to work together to resolve the conflicts within the memo and Tribal action.
- There are a lot of potential implications for Tribes going down this path including mandatory criminal penalties and jail time.
- The potential loss in funding is significant and there hasn't been any clear guidance so Tribes are looking for a timeline for decisions.
- People are approaching Tribes about using their land base and offering millions of dollars. Some are even looking at Tribal land strips as an option to transport marijuana.
- Discussion:
  - To some degree part of Self-Governance is making hard choices. It seems this decision is about Self-Governance and sometimes part of being a Tribal leader is making difficult decisions. However, the Department can assist folks in thinking through the things.
  - A lot of agencies have spoken clearly; it is illegal. I'm not sure you will get clarity on this issue unless Congress decides it for us.
  - Your discussion is on point other than the fact that the resources management is a shared responsibility.
  - There is not a single federal law that allows marijuana cultivation and we have states that are unwilling to prosecute. All DOJ really said was that Tribes have the same rights that the states have. It is definitely something that needs further discussion.
- Contract Support Costs
  - o We want to add CSC for Tribal enrollment in the indirect cost pool
    - The decision, however, lies with IBC.
  - Workgroup would like to meet with IBC to discuss this and other issues.
  - Tribes are expected to do all the financial work that states and universities have to do.
  - Tribes have been hearing that an internal CSC workgroup has been drafting policy changes and Tribes want to work through it together. The workgroup can help because it has developed templates that we are using.

- DCSC is a priority for the workgroup
  - Discussion
    - We can increase the flat rate and makes it more simple
- Tribes are very supportive of the mandatory CSC funding. There are some concerns about the 2% and three (3) year period and Tribes would like it to occur sooner in 2016 than later in 2017.
  - AS-IA knows how important CSC is and is behind a mandatory approach
- There has been a major effort (on the IHS side) by the Tribes to simplify the CSC process
  - Reconciliation within 60-90 days
  - There is contract language to do this.
- The workgroup should meet on a quarterly basis but no one has been responding to our request to meet.
- BIA is allowed to include additional costs for fringe but Tribes are not allowed to do this
  and the 15% rate has been in place for Tribes since 2006. Tribes have to settle for the
  flat 15% rate where the federal employees have built in new authorities to cover these
  costs. We would like to see new authority for Tribes in the FY2016 Budget.
- CSC Workgroup Issues for Discussion
  - National Policy memo is outdated and needs to be revised because now that there is full funding it has to be changed.
  - It should be a joint effort
  - Compact language (what goes into the funding agreement) needs to be updated
  - 15-18% DCSC issue
  - Reconciliation process within 60-90 days.
- We have regular folks doing the work not accountants and auditors.
- The question is really about simplification. We have to base all of our conversation around simplification terms. OMB wants to be able to close the books. We are two years out and we still don't know what we owe people.
- Direct dollars are not getting to us in the current year.

#### Budget

- AS-IA on the Republican side there is a push for an increase in the Defense side of the budget but the President said if Defense receives an increase than non-defense receives a dollar for dollar increase as well. The Budget has been tight. Mark Trahant looked at this carefully and noted there are not a lot of huge increases in the budget and it is hard to find revenue when there have been no increases in taxes. Mandatory CSC would be helpful.
- There are assumptions that are unlikely to be realized on the revenue side
- It's unlikely to be remedied on anytime soon
  - 50% write off for Capital Corporations is not going to expire
- There will not be a whole lot of new dollars for spending in the future
- The emphasis that we have is that we need to prioritize tribal jurisdiction and tribal authority. To develop, oversee, and change programs to accurately reflect the needs of local citizens
- We understand the administration's desire to develop new initiatives.
- There's little funding targeted to these new initiatives
  - We always step up to support the initiatives and offer to provide education, etc.
- It's important that we continue to support Tribal sovereignty and governance to overcome the budget cuts or spending restraints that are likely to happen in the future.
- It would be helpful if you allow us to exercise jurisdiction to manage our trust resources and funds. There is a lot of mistrust that we are taking more money than we need and we are accumulating more funding than we can spend but this is not true.
- We need to defend our programs and the appropriations that we current have from further reductions and the best way to do that is to support it with data.
- o That data supports self-governance, self-determination and the tenets of each.
- We find that we are running our programs based on our indirect cost rate and we have so much need. Mandatory CSC, Title IV, and Data are all important to us.

- o AS-IA we are trying to get more money for Indians in the budgets of other agencies.
- We are a little disturbed with the initiatives and the agency collaborating with other agencies. Self-Governance deals with agencies.
- AS-IA I think maybe we were not clear. We are not pushing for more the view is if another agency can get more money for us than we should let them do it. What we are trying to do is to get more money for Tribes in other budgets (i.e. housing for teachers in the HUD budget). Early Childhood education worked on changing the rules so that Tribes can apply for this money. We know you are concerned about the initiative money and grants but with grants you can apply and have an equal shot at securing grant funding. When we get money for initiatives (i.e. law enforcement, we decided to do a pilot program)
- At the last SGAC meeting, OST reported they have no funding to do anymore evaluations. We need to look at consolidating Indian programs.
- When we do get an increase do you add 1% across-the-board or do you target important programs?
- How do we translate data into federal language? We need to have easily available accurate data.
- AS-IA I know we can trust Tribes but the appropriators want us to show them why they should allocate funds this way. We (BIA) need to be better at reporting it.
- We need to emphasize the need for general resources.
- o Is Interior putting forth the message about the impacts on sequestration on Tribes?
- Tribes have testified about the damages from sequestration and the fact that they have never recovered. As new Congressmen get elected they need to know what it is.
- The Secretary has said this is really a dumb way to make cuts by going across the board and is 100% for exemption of Tribes.
- o Except, they made some exemptions, for example, veterans are exempt.
- AS-IA You are making the right arguments. They can either apply cuts evenly or target them. When you have a 5% across the board cut and you get money in do you put 1% across the board or do you target a program?
- It is not a bad idea to put it back in because we had to reduce staff and programs. You got some of the money back and Congress that we got it all back. You have to balance it. The small increases add up over the years. Balance it by giving us a few increases in addition to grants.
- ODD is providing the impacts of sequestration and it is just like us. We let a lot of people go and we have 84% Native hire. We let people go who have been there for 20 years. If you lose a job in Southeast Alaska it is not like losing a job in other major cities. A return of any funding decreases has to go back into Tribal base budgets. We need help communicating this to Appropriators.
- AS-IA when we get yelled at about a kid dying at Spirit Lake we tell them we are addressing it by putting more money into social services. Law Enforcement and Social Services everyone can relate to but probate is a hard sell so we need a better sales pitch. We are the only agency that really funds Tribal government so we need your help selling it.
- It sounds like you are downsizing programs and building it back up on both sides.

#### • Title IV

- OIG was here and staff from the hill. McCain's Office proposed three amendments and Tribes are supportive of the amendments. We provided alternative language. We are still at an impasse regarding the technical amendments and it is the only issue that is outstanding. This may get the bill passed.
- AS-IA we think that you have to get it across the finish line this Congress. The
  Administration still supports it but if a new Administration comes in you may not be able
  to accomplish it.
- Departments within BIA and their support for Self-Governance
  - AS-IA Why should OSG be outside of BIA? Shouldn't the BIA be a huge office of Self-Governance? Gather that Tribes that have 638 contracts still receive technical

- assistance from the Regions but Self-Governance Tribes do not receive the same technical assistance?
- o It varies from Region to Region.
- AS-IA to me, Self-Governance and 638 are pretty similar. In some Regions we don't have the expertise because the function has been contracted or compacted.
- o It is not just a Regional problem. The problem exists at Central Office too. Self-Governance Tribes are excluded. When money for Trust / Natural Resources was increased by 25% the money only went to 638 and Direct Service Tribes. Self-Governance Tribes were left out because they said we don't deal with Self-Governance. There is still a perception out there where they don't understand that we are being excluded from consideration because someone doesn't get it.
- AS-IA we have to get on a better path right now. I have learned that there are a bunch
  of remedial problems that we have to address. It is a little structural.
- It is the separation of program issues. Once you separate a program into Self-Governance, they say you are on your own. Once we pull out we are not interacting with them anymore. We are working on it.
- If it varies Region to Region the issue is who is running the program.
- We attended the Regional Budget Formulation Process and ambiguous comments were made such as, "I don't really know what Self-Governance does"
- Discussion of OSG work with the Region
- AS-IA Indian Health Service has Self-Governance people in their regional offices should we have OSG spread across the Regions or in DC?
- We entered into an Agreement with the Pacific Office and they distribute our Self-Governance money. We don't need OSG there because the Regional Directors have the same authority. We should be able to decide whether funds should be distributed at the regional level.
- Someone in the regional office and headquarters office need to be educated enough to discuss the functions of the Self-Governance Tribes. I don't see moving OSG all over the country but get the regions in touch with the Self-Governance Office.
- We have asked that all money funnel through the Pacific Region. 98% of the money that goes through OSG comes out rapidly but we were in the 2% where it didn't.
- Self-Governance 2.0 concept is something we should think about. We need to take another step forward.
- AS-IA what are the specific tangible things I could do to improve this? Let us know. If it is more than education let us know.
- It sounds like the vision is that the Bureau is prioritizing Self-Governance but some Regions support Self-Governance differently. It seems that the needs of other Tribes rise to the top and Self-Governance is at the bottom.
- Regions take on the personalities of those Tribes involved. Other Tribes and staff think that we take more than we deserve.
- o AS-IA operational flows have a lot to do with it.
- o BIA (Ann Marie) There are three challenges
  - Vision/goal of commitment to Self-Governance
  - The structure within the BIA
  - Process of how things flow
  - Everything is people dependent and we can address the people but what other steps can we take to address it?
- All of us are individual Tribes with different approaches. The bigger issue is the relationship we have. We have a Treaty with the United States not with the BIA. The US has redesigned obligations in ways that are convenient to the Federal agencies.
- We 638 contract different programs on our own. Getting a 638 contract from the BIA was like pulling teeth. Recently, the BIA told us to hurry up and get a grant in because they are trying to move money. Self-Governance has had a positive impact on 638.
- We had the same problem in IHS with Title V. We need to bring in additional administrative improvements that are in Title IV. IHS Agency Lead Negotiators are more engaged at the regional level. We don't have that with Title IV.

- If we take the vision to the natural logical conclusion, what are we looking at? We need
  to promote Self-Governance across the Bureau. Inconsistency is a problem but is it just
  inconsistency or is there something else underneath? We want a comprehensive
  approach to this.
- Core of the matter is we want to institutionalize a culture that supports Self-Governance. We had to file a prompt payment act claim because the pattern of activity was not equal. We ultimately had to file a lawsuit to get the attention of the Department. There is unequal treatment and support for Self-Governance Tribes. Officials don't view it as their mission to support Self-Governance unless there are folks within the Region that support it. One or more persons within the Region should be designated with that obligation. Funds have been left there for the Federal government to do those things.
- At the Regional Budget Meeting our Regional Director told us to put in applications. We
  do it every year but to date we have never received year end funds.
- ASIA requests suggestions from Self-Governance Tribes about how to improve working relationships between BIA and Tribes.

#### **Legislative Update**

#### Caroline Mayhew, Associate, Hobbs, Straus, Dean & Walker

- Mandatory Funding CSC
  - Administrative proposal was for 3 years and 2% administrative support is carved out to begin in FY2017.
  - Lawyers and Tribal leaders are working to find consensus on legislative language to propose because there are different ways that it can be done.
  - Tribes want to ask for an indefinite solution but will support the Administration's proposal if that can't happen.
- 477
  - A bill is pending in the House that was introduced last session. There hasn't been a bill introduced in the Senate yet. Murkowski is gathering co-sponsors. Expect that it will move quickly through the Committee.
- Elementary and Secondary Education
  - There have been efforts to include the Tribal provisions in the Senate version. We hope to see the outcome from that effort soon.
- Map 21
  - There is a desire to adopt a long-term solution
  - Major concern is how to pay for the plan. The gas tax is not enough anymore. It is not clear how it will shape out. The current bill expires May 31<sup>st</sup>.
  - Self-Governance provisions would extend Self-Governance to the Department of Transportation. There has been push back from Federal highway so it wasn't included in the bill to date.
  - DeFazio and Young introduced a bill and the effort is ongoing. Ask Tribes to have their congressional delegates co-sponsor or support the bill.
  - SG provisions haven't been included in any reauthorizations

#### NAHASDA

- Expired October 2013
- NAIHC and NCAI have combined forces to try and get it reauthorized. The hang up is on the Senate side "Native Hawaiian provisions"
- O House Bill introduced by Pierce passed Monday and is headed to the Senate. It is not clear how resistance to the Native Hawaiians will be overcome in the Senate.
- o There has been no increase to the \$650 million in funds.

#### Title IV

- Memo went to Senate Committee on Indian Affairs last week proposed McCain Amendments.
- Following meeting OIG had a side bar with Senate staff and accepted the proposed language.
- The only outstanding issue is the technical amendments. McCain will give us language next week.

- o Hope to move the Bill out of Committee and to the full Senate after Easter.
- House side Bishop is trying to educate staff about Self-Governance and trying to seek other co-sponsors of the bill. It will likely be Congressman Young but trying to go elsewhere.

#### **Strategic Plan Review and Approval**

Proposed Amendment – add word "advance" MOTION:

Choctaw Nation made a motion to approve the Strategic Plan. Citizen Potawatomi Nation seconded the main motion. The motion passed and the Strategic Plan was approved.

SGAC adjourned by acclamation.

# DOI SELF-GOVERNANCE ADVISORY COMMITTEE

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# DOI Self-Governance Advisory Committee and Technical Workgroup Quarterly Meeting

Wednesday, July 22, 2015 (1:30 pm to 6:00 pm) Thursday, July 23, 2015 (8:30 am to 1:30 pm)

# **Embassy Suites Washington DC - DC Convention Center**

900-10<sup>th</sup> Street NW Washington, DC 20001 Phone: (202) 739-2001

#### **MEETING SUMMARY**

#### Wednesday, July 22, 2015 (1:30 pm to 6:00 pm)

Meeting of the SGAC and Technical Workgroup Members

#### **Invocation provided by Governor Loretto**

Roll Call:

Eastern: Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head

(Aquinnah)

Stephanie White, Treasurer, Wampanoag Tribe of Gay Head

(Aquinnah)

**Eastern Oklahoma:** Vickey Hanvey, Proxy for Bill John Baker, Principal Chief, Cherokee

Nation

Mickey Peercy, Proxy for Gary Batton, Chief, Choctaw Nation

<u>Midwest:</u> Annette Johnson, Treasurer, Red Lake Band of Chippewa

Northwest: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe, SGAC Chair

Tyson Johnston, Vice President, Quinault Indian Nation Julie Finkbonner, Councilwoman, Lummi Indian Nation Aliza Brown, 3<sup>rd</sup> Councilwoman, Quinault Indian Nation

Pacific: Danny Jordan, Proxy for Ryan Jackson, Chairman, Hoopa Valley Tribe

Scott Sullivan, Council Secretary, Tolowa Dee-ni' Nation

Rocky Mountain: Richard Sangrey, Vice Chair, Chippewa Cree Tribe

Beau Mitchell, Chippewa Cree Tribe

**Southern Plains:** Rhonda Butcher, Proxy for John Barret, Jr., Chairman, Citizen

Potawatomi Nation

George Thurman, Chief, Sac and Fox Nation

**Southwest:** Luis Romero, Governor, Taos Pueblo

Chris Gomez, Lt. Governor, Ysleta Del Sur

Raymond Loretto, DVM, Governor, Jemez Pueblo

Western: Louis Manuel, Chairman, Ak-Chin Indian Community, Proxy for Delia

Carlyle, Councilmember, Ak-Chin Indian Community

#### Introduction of all meeting attendees

#### **Opening Remarks**

W. Ron Allen, Tribal Chairman/CEO, Jamestown S'Klallam Tribe and Chairman, Self-Governance Advisory Committee (SGAC) provided opening comments and reviewed the agenda before beginning the SGAC committee business.

#### **SGAC Committee Business**

**MOTION** 

Taos Pueblo made a motion to approve the SGAC March 2015 meeting summary.

Choctaw Nation seconded the motion.

Motion was approved without objections.

#### **MOTION**

Wampanoag Tribe of Gay Head made a motion to approve nominations for the Billings, Pacific and Southwest Regions.

Choctaw Nation seconded the motion.

All nominations were approved without objection.

Regional nominations are as follows:

Billings: Richard Sangrey, Vice Chair, Chippewa Cree Tribe (Primary)

Beau Mitchell, Council Member, Chippewa Cree Tribe (Alternate)

Pacific: Scott Sullivan, Council Secretary, Tolowa Dee-ni' Nation (Alternate)

Southwest: Chris Gomez, Lt. Governor, Ysleta del Sur (Alternate)

#### Office of Self-Governance Update

Sharee Freeman, Director, Office of Self-Governance, DOI

- Director Freeman introduced Sydney Wahkinney the Self-Governance Intern. Her last day is Thursday, July 23, 2015, but she has done great work and has been an asset to the Office.
   Director Freeman encouraged Tribal leaders to continue sending their students to participate in the various Washington DC internship programs.
- The BIA has appointed a new eastern regional director, Eddie Streater. Director Freeman shared his contact information with the committee eddie.streater@bia.gov.
- Director Freeman also shared the contact information for those at the Department and Bureau who are the primary points for revising the Strategic Plan.
- Funding Distribution
  - Distributions Not Obligated
    - Real Estate Appraisals
    - Final Tribal Transportation Program
    - Final Tribal Transportation Planning
  - Tiwahe Distributions
    - 21.5% distributed using Greenbook
  - Tiwahe Initiative Meeting
    - Red Lack
    - AVCP
    - Spirit Lake
    - Ute Mountain
- BIA-Fish and Wildlife Service hosted a meeting in Polson, MT
  - o OSG and all BIA Regions were in attendance, except Navajo Region.
  - Outcomes of the meeting included:
    - Notification to SG Tribes up front of any reporting requirements related to awards
    - OSG requested that a copy of the Award letter be provided to the office when an SG Tribe is identified to receive an Award.
- 2016 Negotiation Guidance is available on the SGDB and SGCE websites.
- Percent of Tribes submitting Annual Data Reports
  - o 2010: 16.3%
  - o 2011: 18.8%
  - 0 2012: 24.3%
  - o 2013: 15.1%
- OSG and SGCE will co-host a Self-Governance 101 Training Session, August 18, 2015, in Uncasville, CT.
- OSG also attended the recent BIA Superintendent Boot Camp in June 2015. OSG provided background information to 60 superintendents at the training.
- FBMS Update

- OSG reported that FBMS has moved to the Cloud.
- FBMS Closes for FY 2015 on September 26, 2015. It is estimated that FBMS will reopen for FY2016 on October 13, 2015. Payments will most likely appear in ASAP 10 days later.
- BIA has several training and consultation opportunities coming up. These opportunities are
  posted on the SGCE website and SGDB. OSG also provided a listing to Committee members.
- Tribal Discussion
  - Tribes received 91% of Welfare Assistance Grants, is the final number unless you request additional dollars?
    - Yes, there is a reduction because of budget constraints and national need.
    - Tribes who want additional dollars will have to request.

#### Office of Justice Services

Kevin Martin, Office of Justice Services, Bureau of Indian Affairs

- Report Data has changed and some small Tribes feel it is not an accurate reflection of what their officers are doing day-to-day. How will this data impact funding for Tribes?
  - The Tribal Law and Order Act (TLOA) requires Indian Affairs to collect crime data from Tribes and report to the FBI.
  - Crimes have to be reported in a specific way and FBI requires that the data be reported accurately for later analysis.
  - Tribal Discussion:
    - Data timeline is difficult, five days is not enough for most Tribes. What is driving the timeline?
      - Mr. Martin will go back and request additional information about the 5 day and 10 day deadlines to submit data from regions and central office.
      - His assumption is that the timeline is driven by the FBI.
    - Is there additional funding to support the data requests?
      - No, OJS has not received an increase in several years and none were substantial enough to support new technology.
      - SG Tribes asked for additional information about how the data will be used in the future. In their experience, data submissions have changed the allocation of funding to Tribes previously.
    - Is there a plan to host additional webinars to assist Tribes?
      - Mr. Martin wasn't sure about additional opportunities for training, but will share that SG Tribes are interested in additional training/assistance to support data submissions.
    - SG Tribes are worried that the large data requests went to the wrong person and may have provided inaccurate or incomplete data.
      - The needs assessment is related to TLOA data requirements for their annual report.
      - They would like to use the data to estimate unmet need and current PL 280 state needs.
      - The report (130 questions) is available on <u>www.bia.gov</u>.
      - OJS only received 50 responses from Tribes.
      - Additional data requests will go out next year. OJS is working to edit
        the language of the data request to make sure they are identifying
        unmet need correctly.
    - SGAC members suggested that OJS consider engaging Tribal Advisory Committee or work group to go through some of these issues and discuss data requests, etc.
- Does OJS often have carry over?
  - It is mostly a timing issue related providing services at new or unused facilities or forgone services for Direct Service OJS Tribes.
  - o Any savings identified in HQ or Regions are swept.

- o SGAC requests that needs assessment from Tribes are used for carry over distribution
- Has the distribution methodology gone through Consultation?
  - o The Greenbook narrative describes the Tribal funding distribution.
  - It's been in place for a long time, but has not had public consultation. OJS does not plan
    to look at it, but SGAC requested that the agency might consider this a topic for the
    advisory committee or workgroup.
  - Provide a webinar on funding methodology and how funds are distributed to Tribes (future webinar/meeting)
- TLOA authorized Tribes in PL280 States to request the Federal government to reassume law enforcement responsibilities – how many Tribes have been granted re-assumption & does the Federal government have a responsibility to provide funding for these Tribes? When will the report of funding needs for PL 280 States be available?
  - OJS still needs to determine how we are going to address the jurisdictional issue, but there are limited funds to close the gaps in those states.
  - There are a lot of questions that need to be worked out before OJS move forward, for instance; would federal police officer in a federal reassumed jurisdiction be able to enforce state law?
- Status of Funding for Juvenile Detention Facilities (some Tribes have built facilities but there is no funding to operate them)
  - Mr. Martin wasn't familiar with the specifics from the Tribes present, but agreed to follow up individually and see what OJS could do to assist.

#### **Budget Update**

Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management)

- DOI continues to work with the Senate and the House to support the President's request that Contract Support Costs be moved to Mandatory funding. As it stands today the Department prefers the Senate version to the House language for optics and implementation purposes.
- Unlike the Senate version, the House version makes CSC X-year funding and the "prior to" language is unclear in the House version. The path of appropriations is clearer in the Senate version than the House and leaves less for the Administration to work out after passage.
- Unfortunately, there will not be much more discussion on the House side after this week since they are going out of session. The conversation is sure to continue after August recess as discussions for FY 2016 appropriations pick up.
- Mr. Thompson recommended that Tribal leaders continue to analyze the proposed language and ask questions of their Representatives, especially around the proposed House language and the availability of additional appropriations after the appropriated amount has been expended.

Dave Conner, Director, Natural Resources, Red Lake Band of Chippewa Indians

- The Department really needs to clarify the action it is taking to absorb sequestration caps and rescissions. An alert should be sent to Tribes regarding final FY 2015 budget.
- Was there a .55% recession across the board

#### SGAC recommendations:

- SGCE should send an alert to SG Tribes about what the strengths of each CSC bill, what we want and what the primary asks are prior to appropriations discussions in September.
- SGAC also recommends that OMB and IBC attend a CSC workgroup meeting in-person to discuss how their policy influence the Department's CSC policy and timelines

#### **Legislative Update**

Geoff Strommer, Partner, Hobbs, Straus, Dean & Walker, LLP Phil Baker-Shenk, Partner, Holland & Knight LLP

- Title IV
  - The Title IV amendments have passed out of the Senate, however the House side may take longer. Though the amendments have now been assigned to a committee yet, an

- oppositional group has already raised red flags and sent leaders to several members of the Natural Resources committee that could slow or change the vote.
- After reviewing the letter the oppositional group sent, advocates found several inaccuracies and are prepared to address each issue the raised point-by-point.
- They don't believe the letter will be anything but a distraction to the legislative process and currently seeking a champion for the bill to move things along.
- Mandatory Funding CSC
  - Much of this topic was covered earlier. It is clear that Tribes will have to be active in September and October as the appropriations discussions heat up in Congress.
- Tribal Labor Sovereignty (HR 511 & S 248)
  - This bill is likely to see movement quickly and has overwhelming Tribal and Congressional support.
- Update on Tribal Transportation/Map 21 (2 month extension) and Expansion of SG in DOT
  - The Senate DRIVE Act does not include the Department of Transportation Self-Governance Expansion despite requests from Tribes that it be included and support from TTUA.
  - It appears the House will not pick up the comprehensive, lengthy Transportation, but will
    enact a short reauthorization while they work out details between the House and the
    Senate bills. Tribes are encouraged to reach out to their House Representatives during
    the August recess to build support for the expansion of Self-Governance.

#### **Discussion of Issues in Preparation for Meeting with AS-IA**

- Generally the talking points need to advise the AS-IA of recommended changes to improve the problem. He specifically asked last time that we bring solutions paired with issues that we have noticed.
- Office Justice Services
  - Reiterate the recommendation to establish an advisory committee
  - Also consider allowing recommendations/tribal consultation on the funding methodology
- CSC
  - SGACE would like the Department to support the recommendation to increase Direct CSC from 15-18%
  - Also would like the Department to make sure that OMB and IBC are able to attend at least one in-person meeting with the Tribal-Federal Workgroup.
- Appropriations for the Department
  - SGAC would like to support the Administration's request. What can Tribes do to continue to support the request?
- DOI Strategic Plan
  - o Tribes would like to review provide input on the entire Departmental Strategic Plan.
  - Each Agency should consider the effect their actions have in Indian Country and the Strategic Plan may help keep them mindful of those decisions.

#### Adjourn for the Day

## Thursday, July 23, 2015 (8:30 am to 1:30 pm)

Meeting of the SGAC and Technical Workgroup with Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior (AS-IA – DOI)

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

#### **Opening Remarks**

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

 We continue to engage in Congressional battles with respect to Title IV, Appropriations, and Mandatory funding for CSC. We hope that the Department continues to support our causes as we move forward.

- We are aware of the hearings regarding federal recognition and land into trust process and support your continued action.
- Land-into-trust seems to be moving along quickly and appreciate the hard work.
- Advancing Self-Governance remains a priority for SG Tribes. Especially in DOT and EPA, neither of these can be successful without the support and assistance from DOI.
- We appreciate the support from the Administration to support the next generation, but want to emphasize that governance is just as important. Often they are also closely related. Youth cannot be successful without clean, safe communities with growing economies.

Kevin Washburn, Assistant Secretary – Indian Affairs, Department of the Interior

- Thank you for traveling here.
- Things over in the House are very troubling. Especially the significant challenges to Executive responsibility to recognize Tribes and then Land into Trust. The Department has taken over 303,000 acres into trust since the beginning of the Administration and is working hard to meet their 500,000 acre goal. With changes to the regulations the Department should be able to start taking land into trust for Alaska.
- Cobell Settlement Land Buy Back
  - The Department continues to use the Land Buy Back program to restore land to Tribes.
     To date, more than a million acres have been restored to Tribes.
- Mandatory Funding for CSC
  - It seems Congress is not quite ready to move forward. The Department continues to provide assistance when requested by members.
- Internally at DOI
  - Right-of-Way regulations
    - The new regulations allow for more deference to Tribes. However, States, Counties, and pipeline companies are rejecting the deference and continue to challenge the regulation.
  - Indian Child Welfare Act Guidelines
    - The adoption agencies are really fighting back, organizing a legal and media campaign against the Department. There were hundreds of comments on the guidelines and regulations. BIA is still working to consolidate the comments and move forward.
  - Indian Education transformation
    - The campaign to improve the BIE is moving forward especially under the President's Gen-I initiative. Monty Russell works daily to get the support of BIE employees and Tribes in the proposed changes. It is a challenge because the employees want to protect themselves and their jobs and Tribes sometimes misunderstand actions headquarters is taking to improve the system as a whole.
  - Federal Recognition Regulations
    - The new regulations aim to shorten the review process and make decisions more quickly when possible. The old regulations require genealogist to study and peer review and this process is lengthy.
    - In the fifty years since the initial regulations the Department has received 52 applications, 18 successful, and others were declined or removed their applications.
    - The DOI initially considered exclude a few of the seven criteria to speed up the review process, but received feedback from Tribes saying the process needed to remain somewhat rigorous.
      - Instead of excluding any, they made changes that were more Tribal friendly.
      - Criteria A change so that Tribes can use internal documents as well as external publications.
      - Change to proven date to 1900.

- If you fail to meet one of the seven criteria the Office of Federal Recognition can just fail you, they do not have to evaluate the other criteria slowing down those applications waiting behind you.
- The Department also issued two decisions under the old regulation recently
  - Duwamish Tribe was not approved, because the organization was founded in 1925 and however, in the Department's opinion, the community was one made up of members from various other Tribes in the region.
  - Pamonkey Tribe of Virginia was approved under the old regulation review.
- Recently the House attached a rider on the Appropriations bill that will prevent the implementation of the new regulations. However, it's unlikely they will be able to move the appropriations bill forward out of the house and the rider will have no effect.

#### Taxation

- DOI published a finding of state tax pre-emption under the HEARTH Approved Leases.
   (23 Tribal ordinances have been approved).
- DOI will continue to advocate that Tribal economies are developed as the answer to the social issues in Tribal communities.
- We need to look at leasing ordinances completed before the HEARTH act can meet standards and be included in the tax pre-exemption.

#### Office of Justice Services

- Reporting Requirements are excessive
  - SGAC proposes that DOI find a solution to extend the reporting deadline or streamline the process.
    - AS-IA Response:
      - I agree. We spend a significant amount of time reporting and storing data.
      - The facts we learn from the data are good for us.
      - What DOI really should do is make data collection easier.
      - Uniform crime reports doesn't ask the question, did this happen on an Indian Reservation.
  - TLOA Data Call
    - The data call asked Marshals to find data from police, courts, etc.
    - SGAC learned that DOI only received few responses, because it was greater than one division and should have been sent to a central, governance contact.
  - These reports should have impact on funding and should be used in conjunction to determine the funding if Tribes are going to take time.
- Request that OJS host an advisory committee
  - To assist in formula and funding distribution.
  - Working to provide transparency and better communication.
- Facilities construction coordination
- PL 280 Jurisdiction
  - What can we do to improve and assist tribes trapped in PL 280 states without certain jurisdiction?
  - Unfortunately this does come down to funding because the state is not working cooperatively.
  - We don't put the funding problem up from, put the solution on the table first, because we really need a solution.
- SURVIVE Act
  - o Allows for a tribal set aside and suggests that the money be transferred to OJS.
  - Passed out of committee yesterday and would total \$130 million for Tribes.
  - This would be a good time for the DOJ to do this as block grant, rather than three year competitively.

## **Contract Support Costs**

- SG Tribes believe the Senate version is a little better for Tribes.
- We want to increase 15-18% and want IBC and OMB at the CSC workgroup
- The challenge really is that we are trying to simplify a very complex process.
- We will develop a justification for the increase to 18% on direct contract support costs.

#### **DOI Strategic Plan**

- We want to make sure that the goals are infused across the entire strategic plan.
- We want to make sure that we are able to secure the Trust Responsibility across the agencies.
- The strategic plan doesn't guide the day-to-day work of the Department as much as the Secretary's priorities do.

#### **Adjourn Meeting**

SGAC adjourned the meeting at 12:30 Eastern time.

## DOI SELF-GOVERNANCE ADVISORY COMMITTEE

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## DEPARTMENT OF THE INTERIOR SELF-GOVERNANCE ADVISORY COMMITTEE AND TECHNICAL WORKGROUP QUARTERLY MEETING

EMBASSY SUITES – WASHINGTON DC CONVENTION CENTER 900 10TH STREET, NW WASHINGTON, DC 2001

MEETING SUMMARY October 7-8, 2015

Wednesday, October 7, 2015 (1:00 to 5:00 PM)

Meeting of the SGAC and Technical Workgroup Members

## Office of the Assistant Secretary – Indian Affairs Update

Ann Marie Bledsoe Downes, Deputy Assistant Secretary Policy and Economic Development, Office of the Assistant Secretary – Indian Affairs, DOI

- Prior to her current position, worked for Ho Chunk Inc. in economic development; served as President of Tribal college, Administered the Indian Legal Program at Arizona State University Law School
- Oversees the Office of Self-Governance and the Office of Indian Energy and Economic Development (including Climate Change)
- Coordinates the White House Council on Native American Affairs and the five (5) subgroups:
  - o Health,
  - Education
  - Energy
  - Economic Development &
  - Environment

Cabinet members meet 2-3 times a year.

• Assists with Planning the Tribal Nations Conference to be held the first week of November. It will be broken out into a half day and full day session. NCAI will host pre-meetings the day before. There will be a breakout session in the afternoon and the next day will be a full day conference. Speakers include Holder, Biden, Burwell and others. The focus will be on interaction with Tribes. There will be a call out for questions when the formal announcement is sent out. Members of the Department will participate in pre-conference breakouts and take notes at the Tribal Nations Conference which will be shared agency-wide. There will be a request for agency follow-up and themes involving interagency collaboration. There will be a formal press release early next week.

## Sovereignty and Tourism

The states are benefiting by marketing Tribal lands and stories. The goal is to take back our stories.

What can we do better?

Page 2 of 14

• Establish a Native American travel website where Tribes can contribute information and the site is driven by Tribal input.

- Visit American Indian Alaska Native Tourism Association <a href="http://www.aianta.org/">http://www.aianta.org/</a>
- Point of Contact is Ed Hall
- National and International create a package for when visitors come to the US.

#### Budget - Continuing Resolution

- We are in the middle of a Continuing Resolution.
- Contract Support Costs is an ongoing issue both as far as settlements and the policy going forward. The Agency is working toward closing the loop in each area.
- SGAC members expressed a concern that the Department is emphasizing grants over contract/compact funding. Where does the Administration think Self-Governance is headed with respect to Tribal shares?

## White House Council on Native American Affairs

• SGAC requests that a subcommittee be created to specifically address Natural Resource Management/Treaty Rights issues.

#### Advisory Group for Office of Justice Services (OJS)

- Self-Governance Tribes are not receiving updates and reports from OJS.
- There are gaps with communication and issues with consistency of services.
- TIBC endorsed the creation of a Tribal Advisory Group for OJS.

#### Trust Modernization Strategy

- At the core of Trust Modernization is Self-determination.
- SGAC hopes there is a willingness on the part of the Administration to look seriously at the Trust Modernization principles.

## Funding by Formula v. Grant

- Tribes who receive funding via grants do not receive indirect costs nor are they allowed to recover funds they have spent for staff and other expenditures for the project from the grant program.
- When the Federal Government farms out these services to contractors it impedes
  developing capacity at the Tribal level and limits the Tribal government's ability to
  grow staff and expertise.
- Question from DOI: Is this particular to the grant scenario or is it more general?
- SGAC Response:
  - It is more general. Most Government agencies are doing this now and we think it may be an Office of Management and Budget (OMB) directive. OMB favors grants because they think the reporting mechanism is better but we are not non-profits; we are governments so we operate differently.
  - SGAC requests greater flexibility without limitations on use and other administrative burdens that distract from delivery of services.
  - SGAC members agreed that a conversation at the White House Council on Native Affairs regarding inter-agency cooperation regarding leveraging different funding sources across the Federal government to solve crosscutting issues would be helpful and may encourage great coordination.
  - One concern is that some agencies are using Grants.gov as the vehicle for the application process and Self-Governance Tribes want to make sure that Tribes are not getting lost in the process. DOI does not go through grants.gov. Instead, the money is funneled through SG compacts. We need

Page 3 of 14

to be sure that compacts do not become a collection of grant funds. A compact is an agreement between two sovereigns. On the HHS side, all funds go through grants.gov and there is an application process whether it is tied to a funding agreement or not. We don't want it done this way at DOI.

## **Budget Update**

Thomas Thompson, Deputy Assistant Secretary - Indian Affairs (Management)

- The Budget is situation is difficult. We experienced a 2% reduction in FY2015.
- Democrats voted on the budget yesterday.
- President Obama indicated he will not sign another Continuing Resolution (CR) in December.
- Debt Ceiling is set to expire on November 10<sup>th</sup>.
- The new Speaker of the House will have a direct impact on the budget and debt ceiling.
- Senator McConnell is proposing a two year budget deal. If you recall, Murray/Ryan came up with a fix for FY2013/FY2014.
- At this point, it is difficult to project a sequester amount for FY2016 if Congress does nothing.
- There are three different budget numbers: OMB sets their mark in February;
   Congressional Budget Office proposes a number; and Congress has their own number.
- There is still hope for mandatory CSC. The House and Senate didn't give what the
  President had asked for but the Senate made it an indefinite appropriation so it
  wouldn't impact Tribal programs and services. The House side would make it X year
  funds and put the cap back on.
- CSC class action was presented to the judge. They are in the process of identifying all of the class members and giving folks who want to drop out of the class action the opportunity to do it. The expected timeframe for this process is 3-4 months. If there are no defectors, they can move through the process faster.
- SGAC Response: Once the settlement money comes out of the judgment fund, the main issue will be how we continue to implement 100% funding and try to get a handle on where the landmines are. We have been in discussions with folks on the Hill and have been engaging with appropriations staff. Mandatory appropriations are the target but we cannot transition to mandatory in 2016/2017 until the authorizing committee approves the concept. We are in a CR until December 11<sup>th</sup>. What is the timing for the Tribes to receive their funding allocations?
  - Response: Next Tuesday we will be loading into the system the budget allocations and make the sub-allocations to the regions and OSG. We are doing away with blame and looking at solutions to move forward. There are 119 lines in the comp table when we reprogram line to another line it takes time.
- SGAC Discussion: Understand that this happens at the Tribal level too. Who do we talk to so when we design the Tribal GPRA we can tie it into the Federal GPRA?
  - Response: George Bearpaw is developing "accountability measures" rather than GPRA measures.
- SGAC Discussion: In SG compacts we often have funding from BIA, BOR, Law Enforcement and others, SG Tribes want to report to the Federal government. How do we report it? We designed a system at the Tribal level to report it back and we are broadening it out into other agencies. We want to report without multiple reports.
  - Response: Grants.gov will come out with a policy. Notification will be on grants.gov but because we asked for an exemption we can get away from

Page 4 of 14

application issue as Indian Self-Determination Education Assistance Act awards and not contracts and grants. Some funding is asking for collaborate responses on research and activities. There may be an attachment to the Funding Agreement because they want to connect the funding to data. You should receive CSC on all of the funding because it is part of the annual funding agreement. We will do internal training so that it is applied equally across the board.

- SGAC Discussion: Regarding grant.gov notification for new funding, will Tribes have to search for it or will notice come to the Tribe?
  - Response: One of the initiatives out of the White House Council and TIBC is Native One Stop (a referral system for Tribes). It will link to any resources that are available across the government. Tribes will receive notification. It will address the Buy Indian Act. All procurement plans will be posted there and it will create a repository of Buy Indian vendors to address it in a more proactive manner.
- SGAC Question: Will it tie into the Crosscut?
  - Response: The dollar amounts will not be out there but the resources will be available. It will grow over time. We have asked our sister agencies for data calls. In the FY2016 Budget Request, we requested additional resources for the collection of data and community development technical assistance but neither the House nor the Senate authorized it in the first mark.
- SGAC Request: The Tribal Transportation Program High Priority Projects is important and we ask you to support Tribes in getting it funded. The Data Management Committee – we need new traction on this effort.
  - Response: We have to look at the matrix to see what we want the outcome to be so we can tell the story of Indian country to OMB, the Department and Congress. We need to focus on marketing.
- SGAC Discussion: SG Tribes feel as if there has been an effort by the Federal government to undermine the project.
  - Response: I don't know if we have a solution. If we throw enough mud on the wall, something will stick. We need to demonstrate progress and how we are meeting the metrics.
- SGAC Discussion: VPSO Program is important in Alaska because they are the First Responders for any accident. The VPSO, Tribal Police and Health Aids work in tandem. There has been a lot of discussion about opening up the Artic but they are leaving Alaska Natives out of the discussion. Major Industrial Nations are using that passage and there are public safety concerns. Our communities need staffing and housing.
  - Response: Have you done any outreach to Homeland Security? The Coast Guard reports to Homeland Security.
  - SGAC: We have had discussions about the needs of the coastal villages.
     We put in a proposal with the legislature about creating a Western Alaska Emergency Response Center.
    - Response: You should talk to Loudermilk about getting this on the agenda at the Providers Conference.
- SGAC Discussion: There are silos. How do we deal with those issues? There are too many boxes and lots of agendas to try and deal with the issues that come up. The Federal Government is not ready for Climate Change.

Page 5 of 14

## **SGAC Business – Priority Areas and Subcommittee Structure**

In order to support greater output from the SGAC the Technical Workgroup is proposing a formal/informal subcommittee structure. The subcommittees will:

- Identify Key Federal Partners
- Develop a list of issues and questions
- Prepare talking points
- Coordinate invitation to quarterly meetings when necessary

The subcommittee areas and involved individuals include:

- 1. Budget Equity Funding Charles (Dave), Terra, Kasie
- 2. Funding Program Matrix Cyndi, Karen, Vickie, Clyde, Danny
- 3. OJS/DOJ Workgroup Jennifer, Linda, John, Bruce, Liz Peterson, Eugena Hobucket, Shawn
- 4. Trust Review Robert Scabby, Brenda Golden, Eugena
- 5. Expansion of SG in EPA Pitt, Vickie, Tom, Karen, Jennifer
- 6. Transportation Jerry, Vickie

## Thursday, October 8, 2015 (8:30 to 1:30 PM)

Meeting of the SGAC and Technical Workgroup Members

## **SGAC Tribal Caucus**

## Title IV Update

Title IV legislation passed on the Senate side. The Bill is specifically BIA focused. Last couple of years, it has been challenging trying to address BOR concerns and we had to navigate through the language to make sure it didn't do any harm. Association of Fish and Wildlife Agency (State Agency) has an objection to the legislation. We met with them yesterday morning but their interest is a State Sovereignty Issue (State v. Federal Government) and whose sovereignty is greater. They were misreading the law. Bishop, Cole, McCullum and Kiel Weaver (staffer) are involved in the discussion. Kiel put a hold on the Bill due to water issues but we met with him to address his concerns. Bishop is in control of the bill and we want him to accept the Senate Bill but he wants to hold his own Hearing and wants a House Bill with someone other than Congressman Young as the sponsor. Our best chance for passage is if they accept the Senate version at the House. We have been trying to get Cole and McCullum to co-sign a letter to Bishop but McCullum is hesitant.

The Association of Fish and Wildlife (AFWA) sent letter after the bill passed the Senate on July 7<sup>th</sup>. Chairman Allen responded to the letter and sat down with the Committee on Indian Affairs to address their concerns last week. Chris Fleur email indicated he will meet with Geoff Strommer next week. They want a provision in the bill that Tribes/Feds would have to consult with the state agency before a funding agreement could move forward. They want to change existing law so that states have more of a role. Tribes are only trying to preserve status quo. Kiel is going to reach out to AFWA. Cole and McCullum meetings went well. They are supportive.

There is a vote for the House Speaker today but a final vote will take place at the end of the month. Debt Ceiling and Appropriations issues are looming. Looming is the AFWA issue and we don't want it to gain traction. Kiel Weavers issues have been addressed with the help of Cole and McCullum. The Bill has been referred to the subcommittee but we want it

Page 6 of 14

to be reported to the Full Committee and voted on the House Floor. Congress may extend their session because of critical issues (Continuing Resolution, Debt Ceiling, and Transportation). We have to get the Bill into one of their markups.

## <u>Tribal Transportation Unity Caucus</u>

Share link with other members. They said that the US Department of Transportation (DOT) doesn't understand Self-Governance. Tribes have been very clear about what they mean. In February, we had a meeting and discussion. Tribes need more meetings with the US DOT.

There are growing pains with the progression of moving things along. Self-Governance provisions are a step in the right direction. We need a technical workgroup.

## Tribal Data Exchange

Chickasaw has been engaging with Interior. Part of the problem is our fault because we only have a handful of Tribes involved. We are going to try to use TIWAHE as an area to get more Tribal involvement. TDE's purpose is to show that you are using the Federal money effectively. \$220,000 is the funding that is needed to support this effort.

Tribes need to unify and be passionate about these issues and support Tribal driven initiatives.

#### White House Tribal Nations Meeting

Sometimes Tribes lose energy and focus on their own issues. The White House meeting is the first week in November. On November 4<sup>th</sup> NCAI will lead the discussion on Strategy and in the afternoon we will go into breakout sessions. November 5<sup>th</sup> is the meeting with the President.

- We need a discussion paper on why Self-Governance is important for the White
  House meeting. Weave into it a discussion of our issues: Title IV and Title VI;
  Mandatory CSC; Desk at OMB; Consultation Policies government to government
  relationship including how the agencies are complying with the policy and reporting
  back on how they are implementing the policy.
- The technical team can pull together a list of issues that are important to us. (ICWA, Taxation, NLRB, etc.)
- We need to keep working on the Title IV legislation but if there are things that we can
  do administratively to address some of the issues, it is important that we try to go
  that route. Public Safety/TLOA/VAWA capacity to implement the legislative
  authority, the requirements and needs of Tribes and concerns of Tribes in PL280
  states are all issues to consider.
- This is the last year the President will hear and try and execute something. There
  are a lot of issue areas but what are the overarching principles? Have a Secretary
  and Assistant Secretary who are very supportive of Tribes. Provide ideas for a
  longer term vision for the future of Self-Governance for the next Administration.
  Obama needs to up the anti so we can get closer to the vision. Ask them to take
  Affirmative Action.
- Make permanent the White House Council on Native American Affairs. We need an Indian desk at OMB. Focus on the top level issues and then we can start to pick things off. Describe what we want, what we think we can do and challenge them.

Page 7 of 14

## Meeting Called to Order at 8:25

## **Invocation**

Delia Carlyle, Councilmember, Ak-Chin provided the invocation.

Roll Call

Alaska: Robert Keith, Chairman of the Board, Kawerak, Inc.

William Micklin, 1st Vice President, Central Council of Tlingit and Haid

Indian Tribes of Alaska

Eastern Oklahoma: Vickie Hanvey, Self-Governance Coordinator, Cherokee Nation

Mickey Peercy, Executive Director, Choctaw Nation

Midwest: Jessica Burger, Councilor, Little River Band of Ottawa Indians
Pacific: Danny Jordan, Self-Governance Coordinator, Hoopa Valley Tribe

Scott Sullivan, Council Secretary, Tolowa Dee-ni' Nation

Phoenix: Lindsey Manning, Chairman, Shoshone-Paiute Tribes of the Duck

Valley Indian Reservation

Delia Carlyle, Vice Chair, Ak-Chin Indian Community Rhonda Butcher, Director, Citizen Potawatomi Nation

Southern Plains: Rhonda Butcher, Director, Citizen Potawa Southwest: Louis Romero, Governor, Pueblo of Taos

Chris Gomez, Lt. Governor, Ysleta del Sur Pueblo

Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe

Tyson Johnston, Vice President, Quinault Indian Nation

## **Committee Business**

#### MOTION

Chairman Robert Keith (Alaska Representative) made a motion to approve the July 2015 SGAC Meeting Summary as submitted.

Lt. Governor Chris Gomez (Southwest Representative) seconded the main motion.

Motion was approved without objection.

#### **Opening Remarks**

Kevin K. Washburn, Assistant Secretary – Indian Affairs, Department of the Interior

#### CSC: Ramah Settlement

- DOI has a proposed settlement and if it goes through it will save 10-15 years of litigation with each Tribe. We hope Indian Country agrees to mandatory funding for CSC. We asked for it but the House and Senate have not provided it yet.
- SGAC Response:
  - We received an update yesterday from Tommy Thompson on CSC. We understand the court issues need to be sorted out. If everything goes well, we will receive our checks sometime in the spring. We are excited about this. The negotiations were challenging. We are aware of the desire for mandatory funding for CSC but we are also seeking another route and have proposed transitional language. We are engaged on the CSC issue and do not want the obligation to fund CSC 100% to infringe on program needs. We appreciate the work you have been doing to update the CSC policy. The BIA is leading the way in this area.
  - The Indian Health Service may approach the BIA looking for direction because we keep saying that the BIA has it right.

Page 8 of 14

#### Budget

- We are under a CR until early December. We continue to look for opportunities in the Budget. We will consider the Budget again in December. The President asked for a \$300 million increase for Indian Affairs.
- SGAC Request: We ask that you continue to champion and support our request for an exemption from sequestration.
  - Response: Every agency of the government wants an exemption from sequestration. Frankly, it is up to Congress and I would encourage you to keep up the advocacy efforts on this. We cannot meet our trust responsibility if the budget is cut.

#### **Native Hawaiians**

DOI proposed rule for Native Hawaiians will give the Hawaiians a path to follow similar to the Tribes if they choose to go down that path. There are people in Hawaii who do not want to be recognized as a Government, they just want Hawaii back. Currently, there is no government-to-government relationship with the Native Hawaiians but there are more than a dozen statutes that deal with Native Hawaiians.

#### Carcieri Fix

The 2009 decision leaves some Tribes out of the land-into-trust process. Only Tribes that were under Federal Jurisdiction in 1934 can take land into trust. We tried to take administrative action by developing the Patchak Patch and we are working on a Solicitors Opinion on how to interpret the Carcieri Case. We recently took land-into-trust for the Mashpee Tribe. We are continuing to work on a Carcieri fix. Senator Barrasso introduced the Interior Improvement Act but the administration has taken no formal position on the bill. We have taken 304,000 acres of land into trust. Cobell restored more than 1.4 million acres to Tribes. Some Tribes are not able to take land into trust (Narragansett Tribe has houses sitting empty because of this issue).

- SGAC Response: Tribes have been very vocal about their support for the Barrasso Bill. It provides too much authority to local governments and diminishes Tribal authority. We know that he is trying to do the right thing. It is not helping in that it will slow down land-into-trust. The closer we can get to a clean fix the better. We feel a clean fix is the solution. Trying to address other issues is not the answer.
  - ASIA Response: The Interior Improvement Act codifies what is already in practice. We have been trying for six (6) years to fix this. We believe in a clean fix but a compromise may be in order.

## White House Tribal Nations Conference

This will be the 7<sup>th</sup> White House Tribal Nations Conference. What do all of the agencies need to be focused on so the positive aspects of Obama's legacy carry forward? What other kinds of things can we push across the finish line? We need broad participation across Indian country. During the Clinton Administration, the land-into-trust regulations were issued during the Lame Duck Session but they were not effective for 30 days. The first thing that George Bush did was to issue an Executive Order that all regulations that were not in effect were put on hold indefinitely. We want to make sure that everything that we worked hard to accomplish happens. Ongoing work includes:

- Indian Child Welfare Act we faced a lot of opposition and survived the first major motion in the court.
- Tribes are unified over protecting Indian children. ICWA dramatically improved things. We are trying to tighten up the loop holes. Since that time, there has been backlash in Congress on Indian programs as evidenced in the Hearings held last

Page 9 of 14

spring. Our efforts to take 304,000 acres of land into trust have caught the attention of some members of Congress who are opposed to this. We may see members of Congress who oppose ICWA.

- SGAC suggests that the BIA staff that deals with the documentation of the effectiveness of ICWA try to spin this in that way. In Washington State, the law requires the state to comply with ICWA. Interior should be proactive on this and expect a bill to emerge. The public relations perspective is difficult. We have been employing NCAI and NICWA to help us. We need your help too.
- Right of Way Regulations drawn fire from the states, public utilities, telecom companies. They are opposing it because the proposed rule defers to Tribal sovereignty. The regulations are at the White House for final review and we hope to issue those within a matter of weeks.
- Leasing Regulations and Hearth Act Regulations we are trying to get finished have a broad theme to promote greater Tribal self-determination and Tribal sovereignty by expanding and protecting Tribal sovereignty.

SGAC is reflecting on our recent Tribal Strategy Session and how we prepare against the backdrop of issues that Self-Governance would like to highlight. We need to collaborate on how we envision progressive growth of Self-Governance for this Administration and tee up for the next Administration. We know that you are actively involved in shaping the agenda and messages – this issue (Self-Governance) has to stay front and center as one of the success stories.

- SGAC Question: What is the most important Self-Governance issue the big thing that the Administration can accomplish?
  - Response: We got full funding \$940 million. Mandatory funding would be perfect. It is a big one to try and get across the finish line. We are still working on the CSC process.
- SGAC Discussion: Just give us the tools to do for ourselves. If you last 17 months
  (as AS-IA) will you be breaking any records? There was a period during the last
  Administration when we didn't have an AS-IA forever.
  - Response: I think the President had a ball in Alaska. He really enjoyed it. There is nothing better than when the President spends time in Indian communities. Appreciate the Alaska Natives making it a positive experience for him. We always do a conference in November/December and one thought was to do it earlier. Would propose Hawaii but given the logistics it is important to do it in Washington DC. We want the other agencies at the table, the cabinet secretaries and important staff. Longest serving AS-IA in 15 years, Kevin Gover served slightly longer. We are getting a lot of things across the finish line.
- SGAC Discussion: We appreciate the consistency of leadership. In the last Administration, the team kept changing. Staying for the long haul is important. We know that you are trying to fill key leadership positions. We want to make sure to move Self-Governance forward (EPA, HUD, Transportation and other agencies). We need help to get Title IV passed. Send a strong message that we are in a new frontier of strengthening the capacity of Tribes. We need a report on what we have achieved in eight years.

#### CSC Policy

Data Call needs to be better for CSC final 2015 amounts Funding Agreement. There was a total of \$88 million in CSC distributed as of September 25, 2015.

Page 10 of 14

SGAC Question: What kind of breakthrough did you have for facilities?

- Response: We have had discussions about Operation and Maintenance square footage formula.
- SGAC Question: We never received facilities money from OJS. There are different kinds of facilities: education, detention, etc. Is there a special facilities formula?
  - DOI: The National Distribution Methodology is used for law enforcement, Tribal courts, etc. Buildings have been built and some Tribes have base square footage in there.
    - SGAC: Many have Tribal courts but we don't receive anything relative to the formula. Our Tribe did it at our own expense.
      - DOI: All of the Federally owned buildings that Tribes are using nationwide are part of the formula funding. FY2015 Budget the Tribes were funded about 48 cents to the dollar. It is all based on whether it is federally owned. If it is a Tribally operated facility it can go into the indirect cost pool or you can directly charge it to the program. If the Tribe builds it for their own exclusive use they should enter into an Agreement. Allocation of costs will be negotiated based on the origin of the funding.
- SGAC Question: We have been negotiating our position but our fringe benefits are only 15%. Why is it so low?
  - DOI Response: Fringe should raise it to about 35%.
    - The Portland area said 15% is the standard that they have been using.
    - DOI Response: If you count service employee it is less but if it is new it is about 35%. Cost information for pay costs includes fringe benefits for health insurance. The cost for FY2016 is going up about 7.5 % so it will go into our calculation. It is important to report current staffing levels.
- SGAC Discussion: Our FY2015 AFA is held up on our Tribal name. It is finished, signed and ready to go. We filled out the worksheet for CSC and sent it in. We submitted comments to Nic Longley. The table is a good tool but some areas need further definitions.
  - DOI Response: At the next meeting of the CSC workgroup we can take it up.
  - SGAC Discussion: The spreadsheet is pretty onerous. We need to come up with a one pager with precise information. We need to do this so it is easier for Tribes to provide the information.

## <u>Update on Contract Support Costs (CSC) Ramah Settlement</u>

Don Simone, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP Settlement

- The case was filed as a class action in 1990 and has been pending for twenty-five years. In 2012, the class won the claim in the Supreme Court by a 5-4 decision. Finally, the Class Action Suit has reached a settlement, which was filed three weeks ago.
- Proposed settlement of \$940 million is the projected payment to the class.
- There were approximately 12,000 separate contracts and each of which had their own damages calculation. To individually assess each contract would have taken ten plus years so the method used was sampling.
- There is a strong correlation between the amount the class received and the amount owed. Able to allocate money over all class members.

Page 11 of 14

 There is a listing of the percentage for each class member by name. Go to the class website RWCSettlement.com (estimated dollar amount) the percentage of fees will be applied to the net amount after. There are attorney fees, reserve account administrator and litigation fees that will be deducted from settlement.

## Process for Settlement Approval

- Three weeks ago we submitted to the District Court with a request for preliminary approval. The Judge held a Hearing and granted preliminary approval of the settlement. It triggers formal notice to the class regarding the terms of the settlement. The notices were mailed out last Friday by class counsel, the BIA and it was published in major newspapers.
- Class members have a forty-five (45) day period to file comments or objections with the court. Then, there is a month (mid-December) for class counsel and the government to respond.
- The judge set a fairness hearing for February 20<sup>th</sup> and objectors can argue support for their objections.
- After the Fairness Hearing, there will be a decision of the court on whether to grant final approval of the settlement. (estimate that this will take about two months mid-March 2016)
- If the court grants final approval, there will be another sixty (60) day period and if there is no appeal then the final decision will be issued within 10 days.

## **Payment Process**

- The Department of the Treasury will pay the settlement to the class and start the distribution process. (next spring April/May)
- An Administrator will be appointed by the court and will send out the claim form with a specific amount.
- The class member has to sign the form and send it back.
- The process will be supervised by the class monitor.
- The dollar amounts are a percentage of the net estimate.

#### Discussion

- SGAC Question: Is there any expectation of any objectors? Do you think that it will be minimal if there are objectors?
  - I think the settlement is very good and the alternative is not good. The government will argue that the class will be decertified.
- SGAC Question: Does every Tribe has the option to opt out?
  - No. The vast majority of class members had two opportunities to opt out in 1993. In 2002, there were additional claims so the opt out is really right at the beginning when the class is formed. A subset of class members (Alaska became a class member in 2002) will be given the opportunity.
- SGAC Question: Will there be communication regarding no good alternatives?
  - We are trying to do as much outreach as we can do. Notices were sent directly to class members and are posted on the class website.
- SGAC Question: Will class council make work papers available on Tribal shares?
  - No, because it is covered by the confidentiality of the court. We have made a
    percentage available for review.
- SGAC Question: How does the Tribe evaluate the number?
  - The theory is the more CSC the Tribe received, the greater their settlement.
     Navajo received the largest amount.

Page 12 of 14

 SGAC Question: The case was based on the framework of self-determination so it applies to BIA and IHS?

- No, it only applies to the BIA. Due to the case, Congress and the Administration changed their position on fully funding CSC.
- SGAC Question: It flows to the IHS because it dealt with the cap issue last year.
   With regard to the amounts, is there a comparison of the funding levels in the Green book?
  - \$4 million in reserve has been set aside for Administrative costs.

## **Legislative Update**

### Mandatory CSC

The President's Budget proposed mandatory funding for CSC. However, we have to work with the Appropriators and Authorizers to get it passed in Congress. There are two versions in the House and Senate. The Senate side has language establishing a CSC line item that would not be capped but it would still be under the discretionary budget. The House said the final bill will reflect the Senate language. Some language that needs to be discussed is the IHS "incurred cost" approach but decided to wait on it to allow the Self-Governance group to work with the IHS on it first. Discuss strategy for active advocacy on the hill which involves the Budget Committee and need to have conversations with the Majority and Minority staff. It will be an education process. We have appropriators who are supportive of making this mandatory. They have already accounted for it with offsets.

## Sequestration/Rescissions/Reductions

Budget Control Act (BCA) 2011 made a series of cuts to the tune of about a \$500 million impact on the BIA and IHS. The 2013 Budget Agreement offered temporary relief but it is set to expire in 2016. Tribes need to consider how sequestration will impact their programs. The Budget is below 2015 enacted levels. Tester/Udall introduced S.1497 which would exempt BIA and IHS from sequestration. Before 2011, the IHS was exempted from sequestration. In 2011, the IHS was taken out of the excepted programs. It is very difficult to get back into the exempted programs because the money would have to come from somewhere else so it would be robbing Peter to pay Paul. We need to keep hammering away at this. Why are any Tribal programs subject to sequestration? Tribes need to plan for the worst case scenario. The leader of the Republican Party wants a Budget deal. If there is no deal we are left with FY2015 levels with a 2% off the top cut. Encourage Tribal CFO to plan for a 2% cut.

## Tribal Labor Sovereignty Act

Labor Unions and the National Labor Relations Board (NLRB) are of the position that Tribal sovereignty is less important than employee bargaining. We have an opportunity to pass the legislation in the House and think that a vote will happen anytime now. We have a real chance in the Senate if it is framed as a sovereignty issue. Shakopee sent a letter to the White House asking them to support it as a matter of sovereignty. We may be able to push this through if we frame this as a self-governance issue. Tribes' set terms of employment issues with employees not some outside organizer. It only has to be one aggrieved employee in any sector of government to go to the regional office of the NLRB and they can file an unfair labor practice against the Tribal government. The NLRB is saying prove it is a government and prove that you spend money on government functions. It is an intrusive subpoena of records. The NLRB is questioning the Tribal preference provisions, the basis for Tribal ordinances and the fairness of Tribal courts.

Page 13 of 14

## Interior Improvement Act

Tribes have engaged in dialogue with the Committee for a clean fix to Carcieri. Bills in the House and Senate have bipartisan support and like Cacieri any parcel in trust is confirmed to be held in trust.

#### Tribal Transportation

Expiration of the Highway Reauthorization the issue is about finding offsets. In order to do an extension, they will need to find an offset. Shuster wants to get this done.

## 477 Update

There was a good Hearing in the House. The Administration (HHS) opposes the Bill. The BIA has been a terrific advocate and has been working hard with the Authorizers in the House and Senate to move it forward. Hopeful to get it out of the House Committee.

#### **Tribal Capital Improvement**

Change the IRS code to have Tribe as members of an S Corp.

## Voting Rights

Tester has introduced a Bill. Murkowski has joined Leahy staff's approach but this is a low not high priority for the majority on the Senate. It is a tough battle. Alabama just shut down their DMV and you need the DMV to register to vote. Legislative approach is one aspect but there is an effort to get more litigation. In 2016, this will be a critical issue. There is litigation in Indian country in Alaska on bilingual and remote access.

## NAHASDA

The Senate wants to move their bill. The House passed their version. There are some differences. NAHASDA reauthorizes the Native Hawaiian Block Grant and the Senate objects to the reauthorization. Barrasso kept it in the Bill. He is a leader and well respected in the Republican caucus. There is no funding for it in the budget this year because there is a backlog in spending and this is a difficult obstacle. Young has no intention to drop it. Murkowski is supportive of it. Hawaii remains a significant issue. Mike Andrews came from HUD and worked in ONAP and has made this one of his highest priorities.

#### ESEA

Bills have been passed in the House and Senate and it is ready to roll depending on how the stars line up.

#### Budget

McCarthy withdrew so the Speaker position is wide open. FY2016 Continuing Resolution 19.67% of sequestered amount from FY2015. Across the Board Reduction off of 2015. \$2.6 Billion of FY2015 enacted sequestered amount is 5.843 million which would lower the 2016 amount to \$2.59 million. \$510 million for all operations comp table will be loaded on Tuesday. There are 130 lines, 130 protocols times 567 Tribes. There may be 3-4 protocols for a singular fund. FY2016 forward will depend on who is the House Speaker. Treasury has indicated that the first week of November they will be out of funds. OSG needs to get the money out before the first week of November. If Congress doesn't address the BCA, we are looking at Across the Board Cut for the entire year. Hopefully, they will come up with a Budget deal so we can plan accordingly. \$2.9 Billion President's Budget Request. The CR money will go out two weeks from Tuesday to Tribes. FY2017 the priorities and initiatives are the same as they were for 2016. TIWAHE – need to work on metrics that shows it is a viable option and ties into President's Gen-I initiative. In 2018, Tribes need to be engaged

Page 14 of 14

at the regional level. 10% needs based initiative form at the regional level to justify your numbers. After the regions complete their meetings, the 12 proposals will be consolidated together. Under the need issue, you can identify the agencies who need to participate. We are working on changing the silo model.

# **Appendix II**

2015 Indian Health Service/Tribal Self-Governance Advisory Committee (IHS-TSGAC)



## IHS TRIBAL 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.Tribalselfgov.org

# INDIAN HEALTH SERVICE TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE AND TECHNICAL WORKGROUP QUARTERLY MEETING AND TRIBAL SELF-GOVERNANCE STRATEGY SESSION

## **Embassy Suites**

900 10<sup>th</sup> Street NW Washington, DC 20001

Phone: (202) 739-2001 ~~~ Fax: (202) 739-2099

## **Meeting Summary**

Wednesday, January 28, 2015 (8:00 pm to 5:00 pm)

Meeting of TSGAC and Technical Workgroup

#### **Tribal Caucus**

Facilitated by: Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC)

## **Invocation, Roll Call and Introduction of All Participants**

Alaska: Jaylene Peterson-Nyren, Executive Director, Kenaitze Indian Tribe

Albuquerque: Luis Romero, Governor, Taos Pueblo

California: Glenna Moore, Health Director, Hoopa Valley Indian Tribe

Nashville: Lynn Malerba, Chief, The Mohegan Tribe

Oklahoma: Jefferson Keel, Lieutenant Governor, Chickasaw Nation of Oklahoma

Rhonda Butcher, Director, Citizen Potawatomi Nation

Mickey Peercy, Executive Director, Choctaw Nation of Oklahoma

Vickie Hanvey, Self-Governance Director, Cherokee Nation of Oklahoma

George Thurman, Chief, Sac and Fox Nation

Phoenix: Virginia M. Sanchez, Chairwoman, Duckwater Shoshone Tribe Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe

Tyson Johnston, First Councilman, Quinault Indian Nation

## **Opening Remarks**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC

Welcomed Tribal leadership and thanked those in attendance for work during the Tribal Strategic planning. She also thanked Dr. Roubideaux and IHS for supporting the 2014 IHS Budget Summit. She discussed some of the outcomes and said the workgroup would begin working with the Administration to consider the Summit recommendations.

Dr. Yvette Roubideaux, Acting Director, Indian Health Service

Dr. Roubideaux reported that leadership appreciated the IHS Budget Summit recommendations and looks forward to working collaborative to implementing recommendations through coordination with the workgroup.

Dr. Roubideaux also asked presented the Self-Governance National Indian Health Outreach and Education workgroup with the IHS Tribal Organization and Tribal Leader Director's award.

#### **TSGAC Committee Business**

**MOTION:** Chief Malerba requested approval of the October TSGAC meeting summary.

The meeting summary was approved by unanimous consent.

Chief Malerba requested that TSGAC nominate a representative to provide testimony at the HHS Budget Consultation on February 26, 2015. The TSGAC appointed Melanie Fourkiller, Tribal Technical Co-Chair as the TSGAC representative.

TSGAC also appointed Gloria Simmeon from Alaska to become a Self-Governance representative for the NIH Tribal Advisory Committee.

## Office of Tribal Self-Governance Update

P. Benjamin Smith, Director, Office of Tribal Self-Governance

## New Tribes

OSG reported that in 2015 there are 86 Self-Governance Compacts and 111 Funding agreements. 40% of the Indian Health Service budget, and when combined with contracting Tribes, Tribes control more than 50% of the IHS budget. Nearly, 350 Tribes are currently participating.

## Staff Changes

Mary Beardsley is currently serving all of the administrative functions within OTSG and OTSG is currently seeking a new staff assistant to relieve some of her responsibilities.

#### Payment to Tribes

OTSG finance staff is working to get payments out the door this week and will not be in attendance at the TSGAC meeting due to the more pressing matter. These payments will only reflect the services apportionment. When the facilities apportionment is approved additional payments will go out. OTSG believes that will be within 30 days.

OTSG is working to improve its responsiveness and communication.

Chairman Allen noted that IHS is still one of the fastest in getting money out the door.

#### Recent delegation meeting

During recent delegation meetings OTSG has heard a few recurring discussion items, including patient safety, health care access and health care services expansion.

## **IHS Listening Sessions**

IHS Director is scheduling listening session in all twelve areas. Please check the IHS calendar and area correspondence for the IHS listening session in your area.

## **Discussion and Update on Budget Issues**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC

Chief Malerba briefly reviewed the full set of recommendations in the meeting materials and asked Tribal leaders to review and consider them during their testimony, listening sessions, and delegations meetings.

She noted that one thing Self-Governance Tribes need to think about is how the IHS Director gets the best data for Congressional testimony, etc.

Dr. Roubideaux request TSGAC's assistance in developing and collecting study stories and examples of successes including improving patient care program, GPRA measurements, and ACA implementation.

She particularly needs information about denied and deferred care to support legislative initiatives and Administrative budget priorities.

She also recommended that TSGAC participate in the National Budget Formulation Process during the last week of February.

## **Medicare-Like Rates Proposed Rule**

TSGAC is developing comments for the proposed rule. The committee is concerned about balancing efficiency and flexibility for Tribes. TSGAC comments will include recommended changes to the rule to allow maximum flexibility.

Dr. Rouideaux also requested that the TSGAC also way in on the question below:

- o Do Tribes prefer that IHS issues an interim final rule or a simple final rule?
- o The interim final rule will extend the timeline and allow for additional comments.

#### Lack of Medicaid Expansion

TSGAC would like IHS to consider what it can do assist in continuing to pursue a fix to the Medicaid expansion issue.

Dr. Roubideaux encouraged TSGAC to keep this issue on the agenda for the STAC and reported that Secretary Burwell is meeting with Governors in states where there are opportunities to change the state legislation.

## **Contract Support Cost Workgroup Update and Discussion**

Andy Joseph, Councilman, Colville Indian Tribe

CSC Workgroup Co-Chair reported that the meetings are helping and the technical workgroup has been critical in proposing solutions. However, he hopes that decisions can be made quickly as action is needed soon.

Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members The Self-Governance representatives recommended that the CSC Workgroup meet more often and regularly to help the Agency make changes to the policy more quickly. The also recommended that IHS provide access to the CSC Data to allow tribal representatives to project FY 2016, 2017, and 2018.

Additional recommendations included:

More consistency between DCA and NBC

- Setting a deadline be to submit negotiated rates
- Make changes to the policy sooner rather than later

Dr. Yvette Roubideaux, Acting Director, Indian Health Service IHS is working to make sure CSC claim settlements are fair and consistent across regions. However, they are relying on TSGAC and other workgroups to provide feedback when it seems things are off track.

She was looking forward to more discussion and the data issue needed a little debate before moving forward to make projections. She recognized that TSGAC leadership is very helpful and provides critical, direct, constructive feedback.

#### **ACA Implementation and Update**

Mim Dixon, Health Care Consultant, Tribal Self-Governance Advisory Committee
Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee
Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated
Webinars are scheduled throughout the year. There is a webinar scheduled for February and hearing discussion from TSGAC it will focus on latest ACA Implementation.

Instead of doing a separate training at the 2015 Annual Consultation Conference, all of the ACA topics will be covered during breakout sessions.

#### Collecting Success Stories

The group members have identified three Tribes to participate in the success stories piece for the final project.

## **Qualified Health Plans**

Each health plan has to create a document to explain coverage for Indians. However, there's no mechanism to review and evaluate the efficiency of these contracts. IHS is collecting data about offers to contract and "Indian" plans for IHS facilities, but CMS is not collecting this data from Tribes so there is no data to support pieces of the project.

TSGAC should request the CMS provide the state level data that is collected about QHPs and enrollment.

#### **Clinical and Preventive Services Update**

Dr. Jeff Salvon-Harmon, Director for the Improving Patient Care Program, Office of Clinical and Preventative Service, Indian Health Service

The Improving Patient Care Program encourages IHS, Tribal and Urban Health Programs to implement a quality model, which encourages a patient-centered medical home.

#### IPC focuses on:

- The patient-centered medical home, which began around 2007 and focuses on care for the patients desires and needs vs. standard medical practices for care.
- Reduce inefficiencies in care and access.
- Provide better primary care and access to care to transition from care to health of the entire patient.
- IPC teams work with the community and Tribal leaders to address community care as whole. Engage the entire community regularly. Community engagement includes

participation with Tribal council to determine needs, share standards of care to meet those needs, and find middle ground between needs, ability, and willingness.

There are 179 Tribes who have adopted and continued to their improvement journeys. Additional opportunities to enroll will be open in the future.

## **Ability to Integrate Data**

Dr. Yvette Roubideaux, Acting Director, Indian Health Service

- Tribes can now integrated their data into the National Data Warehouse.
- The functionality to integrate data into RPMS is coming.
- IHS is working to upgrade RPMS so that it works better with other private entities.
  - In the future Tribes should be able to share internally and externally with greater ease.

## **Executive Session with the Acting Director and TSGAC Members**

## **TSGAC Technical Workgroup Meeting**

## Strategic Plan Discussion

TSGAC members continued working on the priorities identified during the Strategic Planning Session January 27, 2015. The top priorities identified were:

## **Budget Priorities:**

- Restore Fiscal Year 2013 sequestration cuts and exempt Tribal funding from future sequesters.
- Authorize mandatory funding and fully fund Contract Support Costs and expedite payments to Tribes.
- Enact Advanced Appropriations for the Indian Health Service.

#### **Legislative Priorities:**

- Permanently reauthorize and provide full funding for the Special Diabetes Program for Indians.
- Enact Medicare-Like Rates for IHS outpatient services for IHS, Tribal and Urban facilities.
- Amend Title VI of ISDEAA to expand Self-Governance to other Health and Human Services agencies and programs.

#### **Policy Priorities:**

- Revise and streamline each agency's Contract Support Costs policy.
- Include Purchase and Referred Care in all VA-IHS reimbursement agreements.
- Institute a Tribal Advisory Committee for Office of Management and Budget.
- Update an IHS Facilities Policy that includes broad Tribal input.
- Evaluate the Indian provisions of the Affordable Care Act and continue consultation to implement outstanding provisions.

## IHS TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE

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INDIAN HEALTH SERVICE TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE
AND TECHNICAL WORKGROUP QUARTERLY MEETING
Tuesday, March 24, 2015 (8:00 am to 5:00 pm)
Wednesday, March 25, 2015 (8:30 am to 2:00 pm)

**Embassy Suites Washington DC - DC Convention Center** 

900-10<sup>th</sup> Street NW Washington, DC 20001 Phone: (202) 739-2001

## **Meeting Summary**

## Tuesday, March 24, 2015 (8:00 am to 5:00 pm)

Meeting of IHS Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Acting Director Robert G. McSwain

## **Tribal Caucus**

 TSGAC hosted a Tribal Caucus prior to the March quarterly meeting. During the caucus the TSGAC prepared for a meeting with the Office of Inspector General and discussed other caucus issues in preparation for the meeting with Acting Director McSwain.

#### Invocation

Chairman Vanderhoop of Wampanoag of Gay Head (Aquinnah) provided an opening invocation.

#### Roll Call

Alaska: Jaylene Peterson-Nyren, Executive Director, Kenaitze Indian Tribe

Oklahoma 1: Rhonda Butcher, Self-Governance Coordinator, Citizen Potawatomi Nation,

Proxy for Chairman Barret

Oklahoma 2: Vickie Hanvey, Self-Governance and Government Resources Coordinator, Proxy

for Chief Baker

Mickey Peercy, Self-Governance Executive Director, Choctaw Nation, Proxy for

**Chief Batton** 

**Albuquerque:** Luis Romero, Governor, Taos Pueblo

Shawn Duran, Tribal Administrator, Taos Pueblo

Nashville: Tobias Vanderhoop, Chairman, Wampanoag of Gay Head (Aguinnah)

Stephanie White, Treasurer, Wampanoag of Gay Head (Aguinnah)

**Portland:** Jennifer McLaughlin, Self-Governance Analyst, Jamestown S'Klallam Tribe,

Proxy for Chairman Allen

#### **Opening Remarks**

Mickey Peercy, Self-Governance Executive Director

Mr. Peercy provided welcoming remarks and reviewed the TSGAC agenda.

#### **Opening Remarks**

Robert G. McSwain, Acting Director, Indian Health Service

Acting Director McSwain expressed appreciation for the opportunity to meet with TSGAC and explained that he would only be present for the first day of the meeting due to other commitments.

During his opening remarks the Acting Director also shared that the President's Fiscal Year 2016 (FY16) request continued to prove his commitment to Indian Country and health care for American Indians and Alaska Natives. Congressional members were also interested in the request because for the first time in history IHS presented during four separate hearings on the President's FY16 Budget Request. Despite the recent change to Dr. Roubideaux's role within the Department of Health and Human Services (HHS), she acted as lead witness during the hearings.

The Acting Director reassured TSGAC members that he was up-to-date on IHS issues and priorities and did not foresee a drastic change in the agency's future.

#### **OIG Alert and Congressional Dialogue**

Greg Demske, Chief Counsel, Office of Inspector General, Department of Health and Human Services Melinda Golub, Senior Counsel, Office of Counsel to the Inspector General, Department of Health and Human Services

Amitava "Jay" Mazumdar, Senior Counsel, Office of Counsel to the Inspector General, Department of Health and Human Services

- Ms. Golub and Mr. Mazumdar provided a short presentation about the role the Office of Inspector General (OIG) plays within HHS and explained how the audit alert was generated and released. Below are a few notes from their presentations.
  - o OIG is Responsible for conducting audits and investigations to protect HHS programs.
  - There are twenty-four OIG field offices
  - The report to Congress twice a year and ultimately try to promote the prevention of fraud and abuse
  - There are five components within OIG
    - Office of audit services
    - Office of evaluation & inspections
    - Office of investigations
    - Office of counsel to the inspector general
    - Office of management and policy
  - OIG publishes regular reports and an annual work plan
    - One item in the work plan is on the quality of care in the IHS hospitals
    - They also share many resources on their website for those operating HHS programs.
    - The Tribal alert was posted on the website in an effort to raise awareness about possible fraud and abuse.
  - The Tribal alert grew out of the fraud and alert process. Which has a long history of providing information on how to comply with HHS regulations around using those funds.
    - They provide resources including
      - Compliance guidance documents
      - Interpretation legal regulations
      - Guidance for oversight responsibilities
      - Testimony and speeches provided by OIG

- Special fraud alerts
  - Issued to the public
  - Identify problems and go into a fair amount of detail that providers need.
- Other guidance
  - Alerts to physicians and Tribal alerts
  - These are shorter and explain general trends that may be at risk for continued abuse
- The Tribal Alert falls into the "other guidance" provided.
  - OIG plans to conduct many more investigations, under the guardian project looking very deeply into the use of HHS grant dollars in Tribes.
    - They do not believe there are any systemic problems, however, they've noted there are not always internal controls to oversee their use.
    - Additional compliance programs may be necessary.

## What effect might this have on other Self-Governance legislation?

Nick Matiella, Legislative Assistant, for The Honorable John McCain, U.S. Senate

- McCain's amendments were meant to protect the integrity of the Self-Governance program
  - Add additional site visit opportunities for review
  - Keeps the threshold for audits low at \$500,000
  - Required IHS to provide Tribes with technical assistance to build internal control standards

Mike Andrews, Majority Staff Director & Chief Counsel, SCIA

Rhonda Harjo, Majority Deputy Chief Counsel, SCIA

Brandon Ashley, Majority Senior Policy Advisory, SCIA

Anthony Walters, Minority Staff Director & Chief Counsel, SCIA

- The US Senate Committee on Indian Affairs is trying to move the bill forward before Memorial Day.
- This is great opportunity to get S. 286 plus the amendments to move forward. Having support from OIG is a great sign that things are moving forward.

#### **Tribal Discussion**

- Can you provide some examples of how there was abuse in the past?
  - o OIG
    - There was no systemic audit to share examples now.
    - ACA allows the Secretary to retrocede ability to direct bill Medicare, Medicaid, and CHIP.
      - They did notice that some Title I Tribes did not know they are supposed to use reimbursements
      - Some Tribes did not have internal controls, which allows employees to redirect or syphon money.
    - They were hearing from Assistant US Attorneys that Tribes did not know about the regulations.
    - There was no robust education process in Indian Country either.
- Is there are particular part of Indian Country where you are seeing the frequency is higher?
   OIG
  - They are seeing issues in both Title I and V Tribes
  - The often conduct an audit and investigation
- Are there specific resources on the OIG website that are helpful to Tribes?

- o OIG
  - Are there other ways that they can be helpful in providing tools for compliance?
  - Evaluate the website resources
  - Video, training materials, and compliance guidance resources.
- TSGC Members proposed that some technical advisors and IHS need to work together to prepare resources about reimbursement policies and requirements for Tribes
- Rhonda Butcher noted that Tribes have been starved of Contract Support Costs (CSC), which
  would support the audits and development of internal controls and is likely leading to some of
  these issues. This really is an example of why full CSC funding is necessary to correctly
  support HHS programs.
- Were the McCain proposed amendments proposed by OIG?
  - Nick Matiella
    - Amendments from McCain were not proposed by OIG, but do try to get to the heart of protecting the integrity of the program.
    - The other alternative considered was allowing for a negotiated rulemaking process where the agency to develop internal control standards
- Acting Director committed to try and standardize internal controls and do more to support Title I Tribes.
- TSGAC members encouraged OIG to utilize the regional and national network of organizations to provide training and share best practices.
- TSGAC members also expressed sizeable differences between the funding levels provided to CMS and IHS and that the alert did not seem to match the concern that OIG is currently expressing. Members also recommended stronger partnerships to avoid future unintended consequences
- OIG recognized that the release may not have been the most effective way to get to the substance of the discussion.
- OIG responded that they desired to get the best information to the public in the most effective
  way and committed to making sure that the direction is coming from the Tribes and providing
  the same messages.
- OIG suggested that Tribes meet more often to provide compliance information for hospital billing, etc.
- Is there way for us to work together and find solutions so that OIG could be supportive of Self-Governance Expansion?
  - OIG would not comment directly on Title IV or V expansion.
  - They did suggest that if Tribes are considering expansion, that internal controls be adopted or recognized to support the Title V expansion program. They also stated they may be willing to provide guidance on proposed internal controls.

#### Office of Tribal Self-Governance Update

- P. Benjamin Smith, Director, Office of Tribal Self-Governance
  - The Director reported that three Tribes officially entered into Self-Governance in 2015:
    - Southern Indian Health Council
    - Cow Creek Band of Umqua Indian
    - Santa Ynez Band of Chumash Indians
  - To date the Self-Governance Tribes have 87 compacts and 112 funding agreements representing nearly 1.8 billion dollars transferred from IHS control to Tribal control.
  - Together these funds support over 350 Federally Recognized Tribes.
  - When combined with Title I Tribes, more than half the IHS budget, 2.5 billion dollars, is being transferred to Tribes.

- The theme for this year's conference is "A Legacy for Future Generations" could not be more
  indicative of the growth in policy and maturity of the government-to-government relationship
  since passage of the Indian Self-Determination and Education Assistance Act (ISDEAA) forty
  years ago.
- OTSG has responded to a number of requests for technical assistance, including interest in entry to Self-Governance and training new staff and leadership about the program.
- OTSG co-hosted a training with the DOI in California in February to provide training and technical assistance in financial aspects of Self-Governance, particularly around funding tables.
- OTSG is also conducting interview to hire a staff assistant to support the office.
- OTSG is working to update the database and plans to have the update completed by summer time.

#### **Discussion**

- Why do Office of Environmental Health and Engineering dollars come later than others? What is causing the delay?
  - OTSG has brought the delay to the attention of Mr. Hartz and his staff and is tracking the issues they've heard about through other negotiations.
  - Liz Fowler agreed to look into the issue and report back what she learned.
  - She mentioned that some of the delay is likely related to the process needed to update the workload and determining final allocations.
  - She agreed that IHS would look at the possibility of sending money by category versus project.
- The tables for facilities is not entirely transparent and it is difficult to determine what are the residuals withholdings and Tribal share determinations from the table. You cannot follow the appropriations process from beginning to the table provided. Can we take a look clarifying the table and providing a more transparent process to determine the final table?
  - o Liz Fowler agreed to follow up on the issue and report back.
- What will/has the role been for Acting Director?
  - He will continue the same agenda and consultation agenda as previously set forth.
- What is the new HHS Role for Dr. Roubideaux?
  - She advises the Secretary regarding several agency priorities, including
    - Representing the Secretary in hearings regarding the President's FY16 Budget request;
    - Overseeing Al/AN advising to the Secretary;
    - Continuing implementation of ACA and several aspects of the law;
    - Promoting behavioral health; and
    - Assisting in the launch of Generation Indigenous.
- OTSG has posted the planning, negotiation and management grants for Tribes pursuing Self-Governance Compacts. The applications are due June 1, 2015.

#### **Discussion and Update on Budget Issues**

Elizabeth Fowler, Deputy Director for Management Operations, IHS Melanie Fourkiller, TSGAC Technical Co-Chair and Policy Analyst

- Fowler shared a few updates about FY 2015
  - o PRC increase allocation was made to the areas on February 13, 2015
  - o Everyone should have received their increase in their funding agreements
  - Pay cost increase of 2.5 million. Those were allocated on March 11, 2015 to the area offices.
- Status of FY 2017 Budget Formulation
  - o Completed the national work session in February for HHS and IHS

- The next step is to evaluate that process and start planning for FY 2018
- Budget Summit Recommendations and Implementation
  - Should be included in the formulation process and the planning meeting at Annual Conference

## <u>Lunch and TSGAC Members' Executive Session with IHS Acting Director and HHS Senior</u> Advisor to the Secretary for American Indians and Alaska Natives

## **Contract Support Cost Workgroup Update and Discussion**

Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives. HHS

- Update from February CSC Meeting
  - IHS is requesting new and expanded requests come in by March 31<sup>st</sup>
  - Workgroup has adopted the ACC template
  - IHS will roll out the template in a Dear Tribal Leader Letter (DTLL), they also recommended that standardized pass-through and exclusions be included in the DTLL
  - The workgroup requested a clarification of reconciliation process.
- Comments on the FY2016 Presidents Budget CSC Mandatory on February 9<sup>th</sup>
  - o The comments are being compiled and will be shared with the CSC workgroup group
  - The Administration has provided all the information to the Hill
  - We need Tribal support
  - The Administration is still trying to find a champion
- CSC for Methamphetamine and Suicide Prevention and Domestic Violence Prevention Initiatives
  - Tribal members of the workgroup believes that the need to get as much as possible is more important than ever.
  - They also believe that because litigation is over CSC for these two programs creates a win-win situation for everyone.
  - o The agency has had conflicting positions and should clarify before other action is taken.

## Joint TSGAC and IHS Acting Director Discussion

- Medicare-Like Rate
  - IHS received 54 comments regarding the proposed regulation.
  - They will share comment if they are able.
  - They are trying ascertain the timeline in publishing the final rule and implementation.
  - There will be a briefing at the PRC meeting in the upcoming weeks.
- Expansion of Title V
  - HHS still believes a formal process via legislation is needed before adoption and expansion of Title V.
  - Though the workgroup was going to talk about principles to inform legislation, Congress will have to propose legislation and then talk to the administration about the proposal.
  - There are legal provisions in the law that need to be changed before agencies feel comfortable moving forward.
  - Secretary Burwell is asking that HHS leads find a solution and officials are asking if it has to the full-blown Self-Governance model or another model could be considered.
  - o The outcomes are already defined, maybe we need to identify additional pathways

- All of the agencies are starting their FY17 proposals, perhaps TSGAC should consider meeting with agencies to request legislative proposals to support expansion.
- The basic concern is that SG Tribes are unsure of the forum to talk about expansion, but Dr. Roubideaux is happy to try to facilitate a few meetings on this in the future. And will try to make sure Tribes are at the table.
- OEHE
  - Working on the funding tables to create more transparency

## **Closing Remarks**

Robert G. McSwain, Acting Director, Indian Health Service

• The Acting Director thanked the committee for their feedback, agreed to follow up on notes and to stay attentive to the issues.

Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives. HHS

- HHS remains committed to making progress, even with changes in the Administration.
- She explained she is trying to figure out how to leverage her opportunities and prioritize or efforts with the Secretary.

## Review strategic plan document and prepare for DSTAC/TSGAC joint meeting.

## Wrap Up and Preparation for Wednesday, March 25, 2015

## Wednesday, March 25, 2015 (8:30 am - 2:00 pm)

Meeting of TSGAC and Technical Workgroup

#### Welcome

Melanie Fourkiller, Policy Analyst, Choctaw Nation; and Tribal Technical Co-Chair, TSGAC

#### Invocation

Clyde Romero of Taos Pueblo provided the morning invocation.

#### **TSGAC Committee Business**

- Approval of Meeting Summary (January 28, 2015)
  - MOTION: Approved by acclamation
- Approval of the Strategic Plan
  - MOTION: Approved by acclamation
- DSTAC-TSGAC Inaugural Joint Meeting
  - TSGAC Members proposed the following ideas for the upcoming meeting:
    - Smaller delegation and a more informal meeting test
    - Identify shared priorities
    - Discuss future joint meetings together
    - Teleconference availability for additional meetings
    - Determine action and/or follow up items
    - Share ideas about Tribal Sponsorship Models under the ACA

- Confirmation of Alaska Alternate Representative
  - MOTION: Alternate Representative, Gerald "Jerry" Moses, was approved by acclamation
- SGCE provided updates about the Annual Consultation Conference, recruited additional moderators and recorders, and sought approval for the final Conference agenda.

## Interfacing Resource and Patient Management System (RPMS) with Proprietary Systems and OIT Survey Results

CDR Mark Rives, MBA, MSCIS, Director, Office of Information Technology, IHS Yvette Roubideaux, M.D., M.P.H., Senior Advisor to the Secretary for American Indians and Alaska Natives, HHS

- IHS conducted a survey as part of the operational analysis for RPMS, infrastructure, and National data warehouse
- It's a survey of stakeholders, not really a systemic review and included end users, technicians, and developers
- There were in-person surveys and interviews.
- Themes from the survey included:
  - Negative feedback:
    - Feasibility
    - Usability
    - Interoperatability
    - Interface was antiquated
  - Positive Feedback:
    - Eye care and population tracking makes the system stand out from other commercial programs
  - Improve communication around RPMS and future work was necessary from participant's perspectives.
- Paid for service model to be included to create stakeholders and survey data about those users.
- Developers stated that the organization is getting more complicated and training when developers leave the work is left hanging a bit
- Four contractors work on four RPMS development and that has created friction
  - o IHS is replace all contracts this year to emphasize the demarcation of work.
- Tribal discussion
  - o Do you have a handout that summarizes all of those issues?
    - There are slides that will be shared with the committee.
  - o Is there a timeline to address some of those?
    - The office is working through a number of issues as quickly as possible and some is tied to Meaningful Use required updates.
- Interoperability?
  - Meaningful Use (MU) has been the driver of the need to be interoperability
  - o Incentive payments resulted in significant revenue for Indian Country
  - o Patient Summary and records can now connect to a larger network
  - IHS is ahead of the game the challenge is meeting the new regulations and requirements
  - IHS is reviewing alternative delivery models
  - Meaningful Use is to create quality measurement and provide patient data at the appropriate time
  - o IHS has met MU 1 & 2

- Once IHS achieves interoperability they have to make sure that data is secure, that is the part that seems to be holding up the process for developers.
- o There is good news out that IHS may be able to meet the next step in MU 2
  - Steep curve for 2015 calendar year
- Tribes may want to provide comments to the MU Part 3 rules currently out for comment to allow RPMS users to meet the requirement.
- Dear Tribal Leader Letter on the Multi-purpose user is coming out soon and should provide an opportunity for comment.
- o Is there funding available to support updating third party system?
  - Not for Tribes searching for interoperability of third party systems.
- o How do Tribes connect to the federal network for local needs?
  - ONC is trying to layout a network that meets these more complicated need.

## Patient Protection and Affordable Care Act (ACA) Implementation and Update

Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated

- The team continues to host regularly scheduled webinars
  - January VA Agreements
  - February Hot current issues for ACA [will continue quarterly]
  - March Tribal sponsorship
- Webinars are recorded and questions are summarized for archival purposes
- Success Stories
  - Two site visits and two stories have been completed
    - Two remaining are Fond du Lac and Southcentral Foundation
  - o The goal is to share the first two stories at the Annual Conference.
  - Then finally, a glossy magazine for waiting rooms that will be accessible from the SG website.
- o Premium Sponsorship Webinar
  - IHS sent out a notice to Direct Service Tribes (DST) and resulted in great interest.
  - The team will focus on how IHS will make sure that premium sponsorship is available across the spectrum of IHS facilities.
  - Medicaid expansion remains a critical for Tribal health facilities, if expanded to every state roughly a billion dollars additionally each year.
  - A negative decision in the King v. Burwell case could result in some states without federal tax credits.
  - 26,000 Al/AN reported enrollment in the marketplace in March reporting
  - Return on sponsorship enrollment is approximately 100% on average. However, Tribes are flagging some problems in recouping payments...requiring additional work to improve those systems.
- The ACA Team is working on a Special Project: Qualified Health Plan (QHP) Contracting with Indian Health Providers (IHPs)
  - They are trying to measurer the extent to which the QHPs are offering contracts to IHPs
  - In the Federal Marketplace each health program has to offer a contract with an Indian addendum.
    - Results are mixed, however where active health boards exist health plans are offering contracts
  - o Those states where it's not required results are significantly different.
- Materials are available on SGCE information
- o TTAG workgroup report is also available in the meeting materials
- Tribal Discussion

 The collaboration that has developed over the last couple of years has been helpful for advocacy and policy priorities.

## **Annual CSC Calculation Tool Demonstration**

- CSC workgroup has made suggestions to improve the template to simply the CSC policy options
- Feedback from TSGAC
  - We need to make sure there is agency history that can explain the tool
  - Communication to all the Tribes about this tool is required
  - Should live within Self-Governance offices
  - The tool that has been used on the BIA side required an OMB number, because it is a form
  - Update on the needs report is necessary, because the last one included 2011 data
- Has IHS submitted the needs report to the Departmental clearance process?
  - The clearance process can be protracted and long so it is unclear when the next needs report will be released.

## **Adjourn TSGAC Meeting**

**MOTION** 

Wampanoag Tribe of Gay Head (Aquinnah) made a motion to adjourn the meeting. Cherokee Nation seconded the motion.

The motion to adjourn was approved and the meeting was adjourned at 11:59 AM Eastern.

## IHS TRIBAL 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: <u>www.Tribalselfgov.org</u>

INDIAN HEALTH SERVICE TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE
AND TECHNICAL WORKGROUP QUARTERLY MEETING
Tuesday, July 21, 2015 (8:00 am to 5:00 pm)
Wednesday, July 22, 2015 (8:30 am to 1:30 pm)

**Embassy Suites Washington DC - DC Convention Center** 

900-10<sup>th</sup> Street NW Washington, DC 20001 Phone: (202) 739-2001

## **Meeting Summary**

## Tuesday, July 21, 2015 (8:00 am to 5:00 pm)

Meeting of Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Deputy Director Robert G. McSwain

Chief Lynn Malerba, TSGAC Chairwoman, called the TSGAC meeting to Order at 9:10 AM Eastern.

#### Invocation

Vice-President Johnston provided the opening invocation.

TSGAC members and guests introduced themselves.

**Roll Call** 

Alaska: Jerry Moses, Senior Director, Intergovernmental Affairs, Alaska Native Tribal Health

Consortium

<u>California:</u> Shane McCullough, Councilman, Hoopa Valley Tribe

Nashville: Marilynn "Lynn" Malerba, Chief, Mohegan Tribe

Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah)

Stephanie White, Treasurer, Wampanoag Tribe of Gay Head (Aquinnah)

Navajo: Carolyn Drouin, Proxy for Vice President Nez Oklahoma 1: Rhonda Butcher, Proxy for Chairman Baker

George Thurman, Principal Chief, Sac and Fox Nation

Oklahoma 2: Mickey Peercy, Proxy for Chief Batton, Choctaw Nation

Vickey Hanvey, Proxy for Principal Chief Baker

Phoenix: Lindsay Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian

Reservation

Portland: W. Ron Allen, Chairman, Jamestown S'Klallam Tribe

Tyson Johnston, Vice President, Quinault Indian Nation Julie Finkbonner, Councilwoman, Lummi Indian Nation Aliza Brown, 3<sup>rd</sup> Councilwoman, Quinault Indian Nation

Albuquerque: Raymond Loretto, DVM, Governor, Pueblo of Jemez

Shawn Duran, Tribal Administrator, Taos Pueblo

## TSGAC Opening Remarks

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC Chief Malerba welcomed TSGAC Member and thanked everyone for traveling. She also thanked everyone for their hard work and continued partnership.

## **IHS Opening Remarks and Update**

Robert G. McSwain, Deputy Director, Indian Health Service

- Deputy Director thanked attendees for traveling to DC and looks forward to his second meeting with Self-Governance.
- Mr. McSwain also highlighted the first DSTAC/TSGAC meeting in May. During the meeting the two groups discuss commonalities.
  - Mr. McSwain feels that the meeting worked towards improving the relationship between DSTAC/TSGAC and hopes to see additional meetings in the future.
- Change in title to Deputy Director
  - o Mr. McSwain's "Acting" status expired in early July and he had to return to his prior title.
  - Though his time as the Acting Director ran out, the Secretary has given him full authorities to act as the Director of IHS.
- FY 2017 Budget Request
  - IHS has moved the 2017 budget forward and things look good from the Secretary's
    office.
  - The request still needs to clear OMB and will be shared with the full Presidential budget in February 2016.
  - o IHS continues to advocate for Indian health care and budget increases to support need.
- Joint Ventures are moving ahead and scoring summaries will be going out to Tribes.
- Contract Support Costs
  - Leadership agreed that the issues raised in the TSGAC letter regarding CSC will referred to the CSC Workgroup for discussion and further input.
- Medicaid Expansion
  - Alaska just announced they are going to expand Medicaid. This will continue to support expanded services in Alaska.
- Gen I Initiatives
  - IHS has allocated \$25 million to support Generation Indigenous Initiatives including Suicide and Meth Prevention
  - SAMHSA also has \$25 million to support similar prevention programs.
  - Pathways Internships
    - IHS already has 28 pathways internships across the Nation.
- Staffing and Housing
  - o Mr. McSwain has charged the FAAB to look at the need for residency housing.
- Mr. McSwain values his partnership with TSGAC and plans to move forward. He has identified several outstanding issues on which he hopes to move forward in the near future.

#### Office of Tribal Self-Governance Update

- P. Benjamin Smith, Director, Office of Tribal Self-Governance
  - Self-Governance Tribes are setting a path for the future...Tribes are changing the interaction with the Federal government, encouraging greater consultation and taking over more of federal responsibilities.
  - OTSG has hosted two regional trainings thus far and both were very successful. An additional training is being hosted at the Mohegan Sun in August.
  - OTSG is hosting internal training this week on writing clarity, internal procedures, and the importance of fundamental contract principles to ISDEAA negotiations.

- OTSG Staff Update
  - Alexandria Smith is the new OTSG Staff Assistant
    - She has experience in the Marine Corp for four years and will work with all the analysts to keep the analysts and office running.
  - o Jennifer Cooper will return to OTSG on 7/27/15 as the Deputy Director full time.
  - The office will be recruiting for a program management and policy analyst soon.
- OTSG Database
  - Will be changed to the Office of Tribal Self-Governance Funds Management (OTSGFM)
     System and is being updated to meet the standards of modern technology.
  - The new system will continue to provide access to funding agreements, provide information for budget justification.
  - It will also meet USA Spending requirements.
- Planning and Cooperative Agreements Update
  - o Over seventeen applications were received this year; seven agreements were awarded.
  - Five planning cooperative agreements
    - Two of these went to the Great Plains (one of the areas without current representation in SG) – Rosebud and Winnebago
    - Otoe Missouria
    - Ponca Tribe of Oklahoma
    - Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan (Gun Lake)
  - Two negotiation cooperative agreements
    - Seminole Nation of Oklahoma
    - Osage Nation of Oklahoma
- ACA Update
  - o TSGAC has been able to provide substantial policy analysis, outreach and education.
  - OTSG will be doing another year of implementation of NIHOE.

## <u>Information Technology: Meaningful Use and ICD-10 Update</u>

CDR Mark Rives, MBA, MSCIS, Director, Office of Information Technology, IHS

- There have been substantial changes in the Office of Information Technology.
- The Information Systems Advisory Committee met via teleconference last week, ushered in some new members, and have filled several vacancies.
  - o There's been a selection of Tribal and Federal Co-Chairs.
  - o A number of positions were filled with sites that are non-RPMS systems.
- ICD-10 Roll Out
  - Rolling out ICD-10 upgrades to RPMS has gone fairly smoothly; no major problems.
  - o A number of change requests were submitted for issues uncovered during beta testing.
- Meaningful Use Stage 2
  - Install 2014 Certified EHR
  - Signed Data Sharing Agreements
  - Onboard data to RPMS Network
  - And conducted patient outreach
- Participation Agreements
  - Interim MPA and network policies went into place on June 22, 2015.
  - There were revisions to the MPA and joinder agreement based on comments.
    - There were some concerns about the adoption of IHS policy from Tribes, and OIT will respond to the concerns quickly.
- RPMS Network
  - The focus is to ensure that sites can attest for Meaningful Use Stage 2, full functionality will not happen until afterwards.

- The Sequoia Project
  - o IHS is participating with the Nationwide Health Information Network (third party process)
  - More information <a href="http://sequoiaproject.org/">http://sequoiaproject.org/</a>
- IT Security
  - o In order to be more pro-active and prevent any breaches, IHS made network changes to increase security. However, IHS has NOT experienced any breaches.
  - Changes for users and system administrators mandated by OMB and HHS.
  - o Changes reflect modern security practices (e.g. two-factor authentication).

#### Contract Support Cost Workgroup Update and Discussion

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut Chairman W. Ron Allen, Jamestown S'Klallam Tribe Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members

- Meetings
  - IHS needs to make meetings more productive and there should be clear outcomes from the August meeting.
  - TSGAC requests more regular/rapid follow up meetings to move decisions forward. This
    will avoid using extra time in the meeting to review previous workgroup meetings.
  - There has been a lot of staff turnover; new staff should know CSC well and be able to negotiate with Tribes on solutions.
  - There has been very little discussion between IHS and workgroup to effect decisions, and the technical workgroup products have not progressed thru the full workgroup or used to make decisions.
  - TSGAC also requests additional follow up to discuss the incurred costs methodology.
     Tribes and Federal policy should work together to find decisions that are good for Tribes and the IHS.
- Negotiations
  - TSGAC needs ALNs to work more collaboratively and from a common sense perspective.
     Continually denying Tribes is not productive.
- IBC Rate Determinations
  - Only 5% of Tribes have a current IDC rate.
  - If you change methodology and/or choose not to recognize the rate, it affects all other rates, including those not related to IHS.
  - Almost 60% have Tribes have a 2013 or earlier IDC rate, which will affect the incurred costs methodology.
- Cost Incurred Approach
  - Incurred costs is not included in the policy and the agency has variance in its definition.
  - o There's been no discussion between the workgroup and IBC to determine the effect that the cost incurred approach will have on CSC.
- TSGAC recommends that IHS bring someone who is knowledgeable about IDC and CSC negotiations to update the CSC policy. They also recommend that IHS work more closely with the DOI CSC Workgroup.
- Deputy Director McSwain Response:
  - o IHS has sent an invitation to the August CSC Workgroup meeting to IBC and DCA.
  - He will charge the group to come up with a workplan that clearly identifies outcomes at the next CSC meeting.
  - o He will also ask that the committee set a schedule for meetings.
  - IHS is continuing to educate the new OMB examiner.
- Admiral Sandra Pattea

- CSC workgroup spent time reviewing CSC policy for new Tribal leaders and members on the workgroup.
- One request from the workgroup that has been a great success is the development of the ACC tool which has created consistency between Tribes.
- o In February the CSC workgroup considered the mandatory proposal.
- o The CSC leads have also provided training and updates in nearly 8 regions.
- o IHS recognizes that staffing levels play a role in slowing down the process.

#### **Discussion and Update on Budget Issues**

Caitrin Shuy, Director of Congressional Relations, NIHB

- Ms. Shuy extended an invitation to the NIHB Annual Consumer Conference
  - Deadline to submit proposals for breakout session is August 14<sup>th</sup>
  - o NIHB will also host a Congressional Reception.
  - She also requested that TSGAC nominate individuals for NIHB awards banquet and gala.
  - Update from the National Tribal Budget Formulation Workgroup requested additional funds to implement IHCIA provisions in FY2017.
- The national budget formulation meeting is on February 17-18, 2016 in Washington, DC
- TSGAC would like to start to advocate for long term care services in particular.
  - We need to provide the economics of access or lack thereof to support funding requests.
- Appropriations
  - o President recommend 5.1 billion (Tribal rec was 5.4 billion)
    - House 4.787 billion
    - Senate 4.777 billion
  - There is still an impasse about how the democrats and republicans will solve the appropriations issue.
- House appropriation language includes a request for HHS to clarify the definition of Indian and to create authorizing legislation to authorize Medicare-like rates.

#### TSGAC Members' Executive Session with IHS Acting Director

#### Patient Protection and Affordable Care Act (ACA) Implementation and Update

Mim Dixon, Consultant, Tribal Self-Governance Advisory Committee

Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated

- Six Month Update of the NIHOE Project is included in the packet and highlights the work that has occurred through the year.
- The webinars have been very popular and all materials are uploaded post-webinar training.
- Positive stories about Tribal Sponsorship have been uploaded to the new website.
- The technical group has also initiated a joint project with DSTAC to make sure all Tribes have access to premium sponsorship.
- The group has also completed a report on Qualified Health Plans. The report included five regions and identified potential improvements to the system.
  - The report found that while some QHPs did offer contracts to ITUs, there are very few ITUs in contract with QHP. Furthermore, number of QHPs did not offer the Indian Addendum.
  - During the TTAG meeting last week, the CMS Center Director agreed to respond to the report and do additional research across the country.

#### **Behavioral Health Topic Discussion**

Dr. Alec Thundercloud, Director, Office of Clinical and Preventive Services, IHS

Dr. Beverly Cotton, Director, Division of Behavioral Health, OCPS, IHS

**Special Diabetes Program for Indians** 

- A two year reauthorization in April 2015.
- TLDC reviewed Tribal and Urban comments on May 14, 2015 and made recommendations to the Director for future SDPI distribution.
- The decision from IHS was sent on June 29, 2015 based on recommendations from TLDC.
  - SDPI set aside funds formerly assigned to CDC will now be assigned to the community directed grant
  - New and competing continuation funding opportunity announcement plans
  - No changes to the national funding formula
  - More recent data (FY2012) will be used in the funding formula
- DP/HH will be merged with the SDPI Community-Directed (C-D) grant program
  - o Current DP/HH grantees are funded through September 29, 2016
  - No-cost extensions until September 2017
  - o 3-month grant close-out period up to December 2017
- C-D programs that would like to implement activities/services similar to those done as part of the DP/HH initiatives can do so by either:
  - Selecting an appropriate best practice
  - Proposing DP/HH activities or services as part of "Other Activities/Services not related to selected Best Practice".
- Funding Opportunity Announcement (FOA)
  - o Will be posted on Federal Register and available in Grants.gov soon.
  - 5-year project period (contingent on funds availability)
- Funds will be awarded to all applicants who successfully meet application criteria. Competition is to achieve a fundable score on the objective application review (not against each other).
- Applications must be completed on time.
- New Tribes will be able to join this round.
- FY16 C-D Grant Amounts
  - \$25.4 million from merging DP/HH into C-D plus \$1m formerly assigned to CDC
    - 1 million will go to increase the Urban set-aside
    - 25.4 will go into C-D to provide funding for
      - Tribes not currently funded
      - More current data
      - Increase funds to all areas
- Budget Period for FY 2016
  - One budget cycle starting in FY 2016
    - January 1-December 31, 2016
    - Use carry-over funds in the fourth quarter for October fiscal year.
      - If you don't have carry-over funds then they will find supplemental.
  - o TSGAC recommended that IHS consider a different fiscal year solution.

### Methamphetamine and Suicide Prevention/Domestic Violence Prevention Initiatives

- Dear Tribal Leader Letter issued June 22, 2015 to provide an update on how IHS will move forward with MSPI and DVPI over the next five years.
  - Funding formula will not change for either
  - Overall amount will be decreased for MSPI and DVPI.
  - o MSPI
    - \$13.6 to \$12.5 million
    - \$1.88 million to \$1 million available to Urbans
  - DVPI
    - There was a little increase that did not set off the MSPI decreases.
    - \$600,000 available for future grantees

- In response to National Tribal Advisory Committee on Behavioral Health recommendations, change to Regional Project Officers and Evaluators
  - o 7 area offices will have regional project officers
  - 5 others will stay at HQ
  - Will be available for all ITUs who are awarded MSPI/DVPI funding
  - o Recipients will longer be required to use up to 20% of the budget for local evaluation
- IHS facilities will receive funding through program awards
- Application Process: all ITUs will submit the same application and undergo the same eligibility and selection criteria.
- MSPI will have four purpose areas for eligible applicants to apply:
  - Community and Organizational Needs Assessment and Strategic Planning/Data Sharing Systems
  - o Suicide Prevention, Intervention, and Postvention Services
  - Meth Prevention, Treatment, and Aftercare Services.
  - Native Youth Focused Generation Indigenous Initiative Support
- DVPI Program Components
  - Domestic and Sexual Violence Prevention, Advocacy, and Coordinated Community Responses
  - Forensic Healthcare Treatment Services
- No new data will be used in funding distribution

## Generation Indigenous (Gen I)

- Youth Engagement
  - Native youth network
  - Native youth challenge
  - Cabinet secretary youth listening tour
  - White House Tribal Youth Gathering (July 9)
  - White House Tribal Youth Convening at 2015 Tribal Nations Summit
- IHS Gen I Activities
  - Development of Youth Steering Committees
  - Pathways Internship Program
- IHS Gen I Funding Opportunities
  - o MSPI
  - o DVPI
  - o SDPI
- Future Plans: FY16 budget request includes an additional \$25m
  - Expand Let's Move Indian Country
  - Increase direct youth engagement by incorporating Gen I Activities
  - Tribal Behavioral Health Initiative
- Tribal Action Plans: conducted several trainings and created a learning community to assist Tribes in developing a Tribal Action Plan
- Learning Portal is available through Bureau of Justice Affairs (DOJ)

### Joint TSGAC and IHS Deputy Director Discussion

- Grant Funding
  - Area offices are hiring new 7 FTEs to monitor and evaluate the MSPI/DVPI, TSGAC is concerned that IHS is transferring money that could be spent at the tribal level to increase the administration.
- Recent Program Decisions
  - IHS has been really good about following up on comments from Tribes that summarize the comments and provide action items based on comments.

- o IHS commits to respond to the comments provided on the MPA and Joinder Agreement.
- SDPI Grant
  - o IHS will review the concerns regarding the effect on Tribes on other fiscal years.
- OEH&E
  - Mr. McSwain agreed with TSGACs request to make the office and their funding more transparent so the Tribes can follow the appropriations.
- Contract Support Costs
  - TSGAC would like the workgroup to commit to two calls before the August in-person meeting, and Mr. McSwain agreed to ask that the workgroup conduct two calls.
  - o TSGAC will develop a proposed workplan for the workgroup and submit it for review.
  - TSGAC also would like the group to continue its work on multi-year funding agreements.
- FQHC Designation and MOU
  - McSwain is working with the CMS Acting Administrator to make sure the rule will correct and grandfather provider-based ITUs appropriately.
  - TSGAC suggests that IHS encourage CMS Acting Administrator to tour in Indian Country so he can understand the system better.
  - o CMS' actions on this rule may indicate the Tribal consultation reminders are necessary.
- TSGAC would like IHS support during the waiver CMS processes where Tribes are involved.
- Joint Venture Feedback
  - o TSGAC has requested that IHS provide feedback on the Joint Venture Applications.
  - o Mr. McSwain committed to follow-up on feedback.
- Employee Settlement
  - IHS will make the first series of payments in August.
  - IHS is evaluating the effect the loss of funds, however they won't know until after August 14<sup>th</sup>
  - TSGAC Discussion:
    - Why hasn't there been any significant change to the system?
      - There is mandatory training going on for supervisors
      - IHS is also reviewing an option called "premium pay" which allows IHS to pay a percentage over their salary to work overtime.
    - Does this affect Tribal facilities?
      - No because their right to bargain is extinguished when the Tribe takes over the facility.

#### **Closing Remarks**

Robert McSwain, Deputy Director, Indian Health Service

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC

# Wednesday, July 22, 2015 (8:30 am - 1:30 pm)

**Meeting of TSGAC and Technical Workgroup** 

#### Welcome - Call to Order at 8:35 AM Eastern

#### Roll Call

Alaska: Jerry Moses, Senior Director, Intergovernmental Affairs, Alaska Native Tribal Health

Consortium

<u>Billings:</u> Beau Mitchell, Council Member, Chippewa Cree Tribe <u>California:</u> Shane McCullough, Councilman, Hoopa Valley Tribe <u>Nashville:</u> Marilynn "Lynn" Malerba, Chief, Mohegan Tribe Tobias Vanderhoop, Chairman, Wampanoag Tribe of Gay Head (Aquinnah) Stephanie White, Treasurer, Wampanoag Tribe of Gay Head (Aquinnah)

Navajo: Carolyn Drouin, Proxy for Vice President Nez Oklahoma 1: Rhonda Butcher, Proxy for Chairman Baker

George Thurman, Principal Chief, Sac and Fox Nation

Oklahoma 2: Mickey Peercy, Proxy for Chief Batton, Choctaw Nation

Vickey Hanvey, Proxy for Principal Chief Baker

Phoenix: Lindsay Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian

Reservation

Portland: W. Ron Allen, Chairman, Jamestown S'Klallam Tribe

Tyson Johnston, Vice President, Quinault Indian Nation Julie Finkbonner, Councilwoman, Lummi Indian Nation Aliza Brown, 3<sup>rd</sup> Councilwoman, Quinault Indian Nation

Albuquerque: Raymond Loretto, DVM, Governor, Pueblo of Jemez

Shawn Duran, Tribal Administrator, Taos Pueblo

#### **Opening Remarks**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC

#### **TSGAC Committee Business**

- Approval of Meeting Summary (March 2015)
  - MOTION
    - Citizen Potawatomi Nation made a motion to approve the March meeting summary.
    - Taos Pueblo seconded the main motion.
    - Motion passed with one abstention.
  - Approval of 2016 Quarterly Meeting Calendar
    - MOTION
      - Taos Pueblo recommended a correction to the Strategy Session year in 2016
      - Choctaw Nation made a motion to accept the 2016 Calendar with proposed corrections.
      - Taos Pueblo seconded the motion.
      - Motion passed without objection.
- Approval of Representatives
  - Navajo Nation Representatives
    - Primary: Jonathan Nez, Vice President, Navajo Nation
    - Alternate: Nathaniel Brown, Honorable Delegate of the 23rd Navajo Nation Council
  - Albuquerque Representative
    - Alternate: Raymond Loretto, DVM, Governor, Pueblo of Jemez
  - Phoenix Representative:
    - Primary: Lindsay Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation
  - o Billings Representative:
    - Primary: Beau Mitchell, Council Member, Chippewa Cree Tribe
  - Nashville Technical Representative:
    - Hillary Andrews, Policy Analyst, United South and Eastern Tribes
  - MOTION
    - Choctaw Nation made a motion to approve all the representatives.
    - Taos Pueblo seconded the motion.
    - The motion was approved without objections.

#### **ISAC** Representative

- Chief Malerba reiterated how important it is to engage with the ISAC and that without Carolyn Crowder we haven't had a representative on ISAC.
- Self-Governance representation is important because of the ICD-10 catalogue roll out in FY 2017.
- Floyd Thompson
  - o ISAC has representation from a diverse backgrounds.
  - You do not necessarily need a technical background to participate in ISAC.
- OIT committed to host a webinar to learn more about ISAC and help recruit a qualified candidate.

## <u>Centers for Medicare & Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG) Update</u> Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, Indian Health Service (IHS) Tribal Self-Governance Advisory Committee (TSGAC)

- Thirty-seven States have expanded Medicaid. However, several states with large Indian populations have not expanded, for example Oklahoma and South Dakota.
- Choosing not to expand is becoming an equity issue.
- Failure to expand also leaves out care for young men.
- Options that Tribes are pursuing in place of expansion include the waiver process, which TSGAC has requested IHS support.

#### Mim Dixon Consultant, Tribal Self-Governance Advisory Committee

- Proposed Rule for Medicaid Managed Care
  - o Important because more than half of the states use managed care.
  - Any changes will affect the interest of tribal patients and tribal facilities.
  - However, there are some coordination issues that TSGAC is concerned about and technical advisors are working on comments to CMS to address these concerns.
  - Comments are due on the 27<sup>th</sup> of this month and will be distributed to TSGAC beforehand so Tribes can submit their own comments.
  - There are particular states where this comment is more important than others because of their managed care rules.
  - TSGAC will send a letter to support TTAG comments.
  - o Rural and Urban definition in the rule will make more folks eligible.

#### Kitty Marx, Director, Tribal Affairs Group, Office of External Affairs, CMS

- CMS is working on rules to address several issues important to Tribes:
  - Managed Care
  - Across State Borders Issue
  - Eligibility Regulations
    - Give Tribes more leverage to make decisions
- Reorganization to move the Tribal Affairs Division to the Medicaid Center
  - This move enables the Division to comment earlier on policies CMS is proposing.
- CMS Tribal Consultation Policy
  - In 2011 Tribal Consultation Policy was signed by Dr. Burwick, and the policy has empowered the Tribal Affairs Division to educate CMS office and divisions.
  - One issue that came up in TTAG was a balance between administrative regulatory rules and the Tribal consultation executive order.
  - TTAG has two smaller workgroups to assist Tribal comments on two proposed rules
- Managed Care Proposed Rule
  - This rule hasn't been updated in over two decades. It needed to be updated to match the current system of delivery under the Affordable Care Act.

- If AI/AN patients are enrolled in a Medicaid Managed Care plan, the provider recieves a supplemental payment from the state to make up any difference between the provider rate and the state Medicaid available rate.
- o If you are out-of-network, and the Tribal patient is referred, where are they referred? Do they have to go back to the MCO or can the I/T/U provider refer directly to the specialist?
  - Comments are needed to respond to this question.
- The addendum needs feedback as well.
- o Comments are due July 27, 2015 on the proposed rule.
- The regulations are on a fast track to be concluded before the Administration transitions.
- New Mexico audit issues.
  - The issues found during the audits in New Mexico was never shared with Tribes.
  - o The organizations were all driven out of business; not many repayments were available.
  - o Tribes are interested in the results.
- Medicare Provider Based Clinics Proposed Rule
  - Last regulations were issued in 2007.
  - The rule limited the mile radius to 35 miles to keep providers outside the area from billing Medicaid under the hospital. However, IHS worked with CMS to grandfather the clinics under the hospital to make an exemption for rural areas.
  - Only a small number of tribal clinics are currently affected by this rule (3 nationwide). It applies to clinics that were billing as a provider-based department of a hospital in 2000 when the regulations were first changed and are in the situation where the hospital and the clinic have a split operation between IHS and tribal operation (i.e. where a Tribe has assumed operation of a clinic that previously billed as provider-based).
  - o CMS is proposing to grandfather IHS clinics, so they can keep their Medicaid rate.
  - o The greatest concern is when a Tribal facility bills under an IHS hospital.
  - o There should not be any issues for those facilities that are governed solely by the Tribe.
  - Comments on the rule are due on September 8, 2015. Sample comments are being developed by TTAG.
  - Tribal Discussion:
    - If you are an FQHC you don't get paid full amount sometimes for three years after the initial billing? Will this rule work to improve the process?
    - Will the rule make sure the co-payment is paid?
    - Kitty is unsure if the rule addresses either of these concerns, however she will make sure both answers are available during the All Tribes' Call next week.
- Medicaid Expansion
  - CMS is currently considering three concept proposals
    - Waiver from Oklahoma
      - The state is opposed to add a third option to extend Medicaid eligibility to 200% of FPL to allow ITUs to pay sponsorships from Tribes
      - Proposal under review; CMS has hosted a session to hear from OK Tribes.
    - SD Proposals (x2)
      - Expanding how 100% FMAP is applied to areas such as telehealth.
      - Extending 100% FMAP to some CHR services (e.g. non-emergency transportation, well baby visits).
    - Alaska Waiver
  - CMS is interested in looking at innovative ways to use 100% FMAP to benefit Al/AN communities. Not looking to restrict or pull back.

## **Adjourn TSGAC Meeting**

# IHS TRIBAL 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.Tribalselfgov.org

INDIAN HEALTH SERVICE TRIBAL SELF-GOVERNANCE ADVISORY COMMITTEE AND TECHNICAL WORKGROUP QUARTERLY MEETING Tuesday, October 6, 2015 (8:00 am to 5:00 pm) Wednesday, October 7, 2015 (8:30 am to 1:30 pm)

**Embassy Suites Washington DC - DC Convention Center** 

900-10<sup>th</sup> Street NW Washington, DC 20001 Phone: (202) 739-2001

## MEETING SUMMARY

#### Tuesday, October 6, 2015 (8:00 am to 5:00 pm)

Meeting of Indian Health Service Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Deputy Director Robert G. McSwain

Jessica Burger, Councilor of Little River Band of Ottawa Indians, provided the opening invocation.

#### **TSGAC Opening Remarks**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC Thank you for participating and representing Tribal nations

Roll Call:

Alaska: Alberta Unok, Deputy Director, Alaska Native Health Board, Proxy for Jaylene Peterson-

Nyren

Albuquerque: Louis Romero, Governor, Pueblo of Taos

Raymond Loretto, DVM, Governor, Pueblo of Jemez

California: Maybeline Peterson, Financial Analyst, Hoopa Valley Tribe

Danny Jordan, Self-Governance Coordinator, Hoopa Valley Tribe

Jessica Burger, Councilor, Little River Band of Ottawa Indians Bemidii:

Nashville: Marilynn (Lynn) Malerba, Chief, Mohegan Tribe of Indians of Connecticut

Jonathon Nez, Vice President, Navajo Nation Navajo:

Oklahoma 1: Rhonda Butcher, Director, Citizen Potawatomi Nation

Oklahoma 2: Mickey Peercy, Executive Director, Choctaw Nation of Oklahoma

Melissa Gower, Senior Policy Analyst, Chickasaw Nation

Phoenix: Lindsey Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian

Reservation

Delia Carlyle, Vice Chair, Ak-Chin Indian Community

Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe

Tyson Johnston, Vice President, Quinault Indian Nation

#### **TSGAC Committee Business**

#### MOTION

Citizen Potawatomi Nation made a motion to approve the July 2015 TSGAC Meeting Summary. Pueblo of Taos seconded the motion.

Motion was approved without objection.

#### MOTION

Quinault Indian Nation made a motion to approve Jessica Burger, Councilor, Little River Band of Ottawa Indians as the Bemidji Area Alternate Representative.

Shoshone-Paiute Tribes of the Duck Valley Indian Reservation seconded the motion. Motion was approved without objection.

#### **MOTION**

Jessica Burger was appointed as the Self-Governance Representative to the IHS Information Systems Advisory Committee by unanimous consent.

#### **IHS Opening Remarks and Update**

Robert G. McSwain, Principal Deputy Director, Indian Health Service (IHS)

- Mary Smith starts today as the Deputy Director for IHS. She and HHS Secretary Burwell have agreed to a set of priorities that will Mary fill in on and take on additional responsibilities.
- IHS is encouraging Centers for Medicare & Medicaid Services (CMS) to conduct Tribal Consultation to ensure that there is a continuation of services.
- The four priorities set by the previous Director are still being used, but revisions are also being made to reflect the new Urban Indian Health Care facilities confer policy.
- IHS Area Listening Sessions
  - The IHS Principal Deputy Director is calling on the areas to report to the Tribes including budget, revenue, services, etc.
  - They have finished all of the listening session
    - They've asked the Area Directors to address concerns with grant programs and access issues
    - IHS will put together a complete list of actions that were taken as a result of the listening session.
- IHS has found that the Affordable Care Act is allowing Tribes to get down to the priority four, elective services.
- Information Technology for MU 1 and 2, with 3 looming working through third party use issues
- IHS is working to address personnel shortages and long-term openings by allowing job announcements to remain open until filled.
- IHS has found that 60% of obligated providers through the loan repayment programs are staying on beyond two years.
- Generation-Indigenous Initiative
  - o Every area has talked about suicides during the listening sessions.
  - o IHS believes hiring young people through the pathways program is one of many new options for young people.
  - IHS is looking for other solutions that are concrete and create safe zones.
  - o LGBTQ Youth have particular needs and IHS is seeking solutions for those needs.
- FY 2017 Budget
  - The IHS Budget requests have been presented to HHS and the Office of Management and Budget (OMB).
  - o IHS has reported the Tribal budget formulation ideas to HHS.
  - Secretary forwarded those proposals to OMB and was very supportive of the Tribal priorities.
- FY 2018 Budget
  - o Formulation will start at the region in late October.
  - o New national and regional instructions were improved from last year.
- Contract Support Costs

- o IHS is still making good progress on \$721 million in the CSC claims settlement process.
- o 1,273 offers have been made on the 1,412 claims.
- o The CSC Workgroup is moving forward toward policy development as well.
- IHS Methamphetamine and Suicide Prevention Intiative (MSPI) and Domestic Violence Prevention Initiative (DVPI) grants have been completed.
  - \$13 million were granted to 117 MSPI programs.
  - \$21 million grants were provided to 136 Tribes and Tribal Organizations serving 274
     Tribes to promote domestic violence prevention.
- Special Diabetes Program for Indians (SDPI)
  - Has a new distribution methodology based on shared resources for Healthy Heart and SDPI funding.
  - Tribal Response:
    - Thank you for finding a solution to last quarter funding for tribes not on a fiscal year.
    - There are still concerns that the budget doesn't actually meet the need. There
      are disparities and we need to determine the level of need funding.
- Water Contamination on the Navajo Nation Reservation
  - We need better and cleaner drinking water where the Gold King Mine spill occurred.
  - Clean up is needed for mining sites and IHS has requested collaboration with the Environmental Protection Agency (EPA).
  - There is a request to build additional water wells.
  - o IHS is working to fix some flooding issues in the Santa Fe facility.
- Identifying unmet need in the IHS budget.
  - IHS has learned that Mr. Cliff Wiggins is leaving.
  - This is an example of how IHS needs to find solutions to transition successors to highly technical information.
  - Tribes requested that IHS share information regarding the unmet need calculations currently utilized by IHS so that Tribes can participate in continued analysis.
- Tribal Discussion:
  - Tribes are continuing to seek an exemption from sequestration for IHS funding.
  - The Continuing Resolution process causes Tribal issues when they are looking for retention, recruitment, and long-term decisions.
  - The IHS is still approaching funding shortfalls and health care solutions with siloed solutions. The agency should consider more comprehensive solutions to meet the needs of American Indians and Alaska Natives.

#### Office of Tribal Self-Governance Update

- P. Benjamin Smith, Director, Office of Tribal Self-Governance, IHS
  - Osage Nation joined the Self-Governance Program on October 1, 2015. Bringing the Self-Governance numbers to:
    - o 351 Tribes
    - o 88 Compacts
    - 113 Funding Agreements
  - OTSG Cooperative Agreements
    - 5 planning agreements
    - 2 negotiation agreements
  - OTSG Staff
    - Program analyst interviews are moving forward this week.
  - Self-Governance funding disbursements.

- o IHS will follow what has been included Funding Agreements.
- Should expect 19.67% of the enacted level after a .2108% reduction.
- OTSG has coordinated Tribal delegation meetings that have provided great feedback beyond area listening sessions. Additionally, input from TSGAC is extremely important to the agency.
- Affordable Care Act National Indian Health Outreach & Education funding through Jamestown S'Klallam Tribe will continue in FY 2016. The group is planning several webinar and electronic training sessions.
- The Self-Governance Database has been updated and is now the OTSG Financial Management System.
  - Should be able to generate additional reports.
  - Kevin Quinn can assist in using the database if there are questions.

## Contract Support Costs (CSC) Workgroup Update and Discussion

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut Chairman W. Ron Allen, Jamestown S'Klallam Tribe Mickey Peercy and Rhonda Butcher, IHS Contract Support Costs Workgroup Members Roselyn Tso, IHS CSC Team Lead

- Tribal Discussion
  - Negotiated rates with Interior Business Center (IBC).
    - The policy discussion process has been frustrating because the Department of the Interior (DOI) is not taking this position.
    - Tribes believe the decision is being driven by the settlement and claims issues.
    - IHS needs to accept the procedures Tribes and IHS has already agreed too.
    - Categorical duplication of costs is also an issue that must be addressed.
  - o The policy needs to provide for a range of options to Tribes.
  - o Tribes request that IHS try to interpret the law to benefit Tribes as much as possible.
  - There is no way to make money on the Indirect Cost (IDC) rate.
  - The position of Tribes has been that the detailed changes proposed by the Agency are a direct result of the claims process.
- Workgroup will meet tomorrow to discuss incurred costs.
- Tribes believe the IHS Agency Lead Negotiators (ALNs) are not consistently negotiating across all Areas.
  - o IHS has agreed that they are working to train ALNs to create more consistency.
- IHS has provided CSC training in 2014 and 2015 (9 of the areas have received training) on the Annual Cost Calculator (ACC) tool.
- IHS believes they are honoring the IBC rate
  - The agency is looking at the statute and the interpretation of the statute is different.
  - o The Tribe's rate is not the only document that includes CSC.
  - IHS is trying to get out of the claims process, so they are trying to develop a streamlined approach to be able to appropriately calculate the exact costs of CSC.
  - o IHS is trying to get better at calculating the actual rates and treating all Tribes fairly
- What other documents are used to calculate CSC
  - o Is only calculated on dollars are paid to the Tribe
  - Look at the IBC rates and the duplication of costs

#### **Budget Update**

Elizabeth Fowler, Deputy Director for Management Operations, IHS Melanie Fourkiller, Policy Analyst, Choctaw Nation and TSGAC Tribal Co-Chair Caitrin Shuy, Director, Congressional Relations, NIHB

- Preparing for FY 2017 Budget Formulation
  - There will be different instructions this year to try and include a greater number of areaspecific recommendations.
  - We do need to keep strengthening how we engage stakeholders together.
  - o Information from tribes justifying increases has been very helpful.
  - o However IHS has not done a great job of aligning dollars with program improvements.
  - This year the formulation team will try to answer "What improvements will you make with this amount of money?"
    - Performance measures and can we point to the changes that will occur as a result of increases.
    - Could Tribes track unfunded services instead of disease programs?
      - Purchased/Referred Care (PRC) and Catastrophic Health Emergency Fund (CHEF) is the only places we track that are unmet needs
- We've always heard that HHS uses a different inflationary rate than IHS uses for health care services. Is that true?
  - o We need to have more in-depth discussions regarding inflation rates.
- Tribes reiterated that their preference is not to put increases into grants or short-term funding.

### Patient Protection and Affordable Care Act (ACA) Implementation and Update

Mim Dixon, Consultant, Tribal Self-Governance Advisory Committee Cyndi Ferguson, Self-Governance Specialist/Policy Analyst, SENSE Incorporated Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee

- IHS will continue to fund ACA Outreach and Education for TSGAC
- Tribal sponsorship through Marketplace
  - Making sure any Tribe can do sponsorship.
  - o Initial data is very favorable.
  - Tribes are currently adding language to the contracts and Funding Agreements (FAs) to allow for this.
  - There will be case studies to follow up on the effectiveness of the sponsorship programs.
- Introduction of Laura Bird as the new technical representative to TSGAC.
- There is a survey to collect feedback about the types of trainings that will be hosted under the ACA work plan.
- The final ACA outreach magazine and success stories were distributed at the National Congress for American Indians (NCAI) annual meeting.

#### Tribes as Employers under the ACA

Doneg McDonough, Consultant, Tribal Self-Governance Advisory Committee Elliott Milhollin, Partner, Hobbs Strauss Dean & Walker Laura Bird, Legislative Associate, National Congress of American Indians

- Cadillac Health Care Plan "Tax"
  - o Tribal Discussion
    - The notion and calculation of what is considered a Cadillac plan, invoking the tax penalty, is incorrect
    - Tribes should be exempted as governments
    - What can be done administratively in terms of IRS' interpretation
    - Is this a tax on Tribal Government?
      - Yes, effectively because you are purchasing the insurance plan
- Employer Mandate Exemption
  - o Our request is to delay implementation while we try to work out another issue

# <u>Centers for Medicare & Medicaid Services (CMS) Tribal Technical Advisory Group (TTAG)</u> <u>Updates</u>

Chairman W. Ron Allen, Jamestown S'Klallam Tribe

Terri Schmidt, Acting Director, Office of Management Services, IHS

Kitty Marx, Director, Division of Tribal Affairs, CMS

- Pending rule for grandfathered Federally Qualified Health Centers (FQHC)
  - It is very burdensome administratively.
  - o Tribes will get about a third of the payment IHS is currently getting.
  - The grandfathered plan was put in place to address the unique position of the Tribal systems.
- 100% Federal Medical Assistance Percentage (FMAP) Proposals
  - Alaska expanded Medicaid.
  - South Dakota submitted a proposal for FMAP.
  - o Working with Tribes and Tribal organization to expand FMAP under consultation.
  - Using contractual arrangements between Tribes and IHS to allow billing back up through the program, clinic, and hospital.

#### IHS Updates on ACA and IHCIA

Terri Schmidt, Acting Director, Office of Management Services, IHS Francis Frazier, Acting Director, Office of Public Health Support, IHS

- IHS Medicare-Like Rates Regulation status and measurement of outcomes
  - HHS is Proposing to call the rule PRC rates
  - o They are in the third re-write and fourth round of interviews.
  - o Estimated timeline?
    - It may go through the department this time?
    - Maybe January 1, 2016
    - It will probably take a long time to get through OMB
- Aligning Quality Data Requirements for Medicare, Medicaid and Government Performance and Results Act (GPRA)
  - o They are working to get on the technical level to determine what can be integrated
  - Additional variable that to be considered is other integrated methods and ability to run reports through the National Data Warehouse.
  - Interface between proprietary and non-proprietary systems.
  - We need to know how best to pull data that communicates real changes and improvements.
  - o The essential part of this is to create consistency in reporting data.
  - IHS is trying to figure out how and where to make the measurements the same while respecting the budget process.
    - It is tiresome to go through the HHS process to move GPRA measures around.
- Updating the Resource and Patient Management System (RPMS) system to accept third party data systems
  - Tribes want one database system that can extrapolate many measures and share information from across the board.

#### **Joint TSGAC and IHS Deputy Director Discussion**

- Facilities
  - The IHS Facilities Appropriation Advisory Board (FAAB) will prepare statement for March with top five priority clinics.

- \$185 million budget and defense will be easier
- When is the next FAAB meeting?
  - o November 18-19 in Phoenix, AZ
- Joint Venture Construction Program apps will be approved for the remaining four of the top seven.
- MLR Regulation
  - HHS has had the rule four times. OMB has not reviewed it yet
  - o Per the regulatory agenda IHS is 109 days late
  - Nothing has been signed to change the name of the rule
- Update on IHS/VA PRC inclusion
  - o Mr. McSwain is pursuing this discussion now with the Secretary of VA.
  - VA Secretary McDonald was amenable to open discussions. IHS Chief Medical Officer Dr. Susan Karol will lead the negotiations from this point.
  - Tribal Discussion:
    - How well are IHS-VA MOUs represented?
      - All 128 service units are reporting on the IHS side.
    - Can the VA provide a report on the agreements?
      - IHS will work to create something.

## Wednesday, October 7, 2015 (8:30 am - 1:30 pm)

Meeting of IHS Tribal Self-Governance Advisory Committee (TSGAC) and Technical Workgroup with IHS Deputy Director Robert G. McSwain

## Chairman Lindsey Manning provided the invocation.

Roll Call:

Alaska: Alberta Unok, Deputy Director, Alaska Native Health Board, Proxy for Jaylene Peterson-

Nyren

Albuquerque: Louis Romero, Governor, Pueblo of Taos

Raymond Loretto, DVM, Governor, Pueblo of Jemez

California: Maybeline Peterson, Financial Analyst, Hoopa Valley Tribe

Danny Jordan, Self-Governance Coordinator, Hoopa Valley Tribe

Bemidii: Jessica Burger, Councilor, Little River Band of Ottawa Indians

Nashville: Marilynn (Lynn) Malerba, Chief, Mohegan Tribe of Indians of Connecticut

Navajo: Jonathon Nez, Vice President, Navajo Nation

Oklahoma 1: Rhonda Butcher, Director, Citizen Potawatomi Nation

Oklahoma 2: Mickey Peercy, Executive Director, Choctaw Nation of Oklahoma

Melissa Gower, Senior Policy Analyst, Chickasaw Nation

Phoenix: Lindsey Manning, Chairman, Shoshone-Paiute Tribes of the Duck Valley Indian

Reservation

Delia Carlyle, Vice Chair, Ak-Chin Indian Community

Portland: W. Ron Allen, Chairman/CEO, Jamestown S'Klallam Tribe

Tyson Johnston, Vice President, Quinault Indian Nation

#### **Introductions – All Participants & Invited Guests**

#### **Opening Remarks**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC Robert G. McSwain, Deputy Director, Indian Health Service

#### **Joint TSGAC and IHS Deputy Director Discussion**

- IHS Deputy Director Mr. McSwain provided the following opening remarks and updates to the TSGAC
  - o Pharmacy and Medically Underserved Areas Enhancement Act
    - TSGAC requested support for the Pharmacy Enhancement Act to open a medical billing stream as health providers. Because Pharmacists provide health service this would allow I/T/Us to increase third party revenue.
    - IHS Response:
      - Agrees that IHS relies on pharmacists to provide consultation and health services to users.
      - IHS will look to support this and determine if there are additional benefits to I/T/Us
      - Legislative affairs and others will track this issue.
      - Is there a place where we are billing as providers?
        - Geoff will ask Carl Harper to determine if there is a place where IHS is billing for pharmacists as providers.
        - There was a time in IHS was doing it Arizona, but this legislation would be different.

#### OTSG Report to Congress

- TSGAC provided comments to the Annual Report Congress and leaders would like to know what the next step in the process.
- IHS Response:
  - The law requires that the comments be included in the report to Congress
  - There were some strong recommendations from TSGAC and four others and they are looking to incorporate the changes in the report.

#### Class Action Employee Unions Settlement

- TSGAC requested an update regarding the settlement. There was also a request about the guidance IHS is providing to ensure the opportunity for future lawsuits are minimized.
- IHS Response:
  - Status of the case is the on August 14, 2015 \$80 million dollars was transferred to Unions
  - IHS is matching the claims to clinics, hospitals, and areas. IHS is also
    having additional conversations with the arbiter because they are seeing
    claims in areas that were not originally discussed.
  - IHS will provide the following information:
    - Number of employees per service unit
    - Amount of resources per service unit
    - o Why they were holding back resources?
  - Mr. McSwain has seen the initial information from the Areas and requested additional detail before sharing with Tribes.
  - IHS is missing a satisfactory response from Areas about why they are holding funds back from previous years.
  - Suits are being filed against other Operating Divisions with regard to overtime and FLSA
    - Mandatory training for all supervisors throughout the system

- IHS went back through all of the position descriptions to make sure they are properly coded
- Biggest disadvantage is that IHS has clinical providers who are managers balancing patient care and administrative functions.
- HHS is watching the agency so that they can replicate processes if necessary.
- TSGAC wants to make sure that we have processes and policies in place to ensure this doesn't happen again.
- Are the FLSA standards changing?
  - IHS Response:
    - OPM left interpretation of each positions status as exempt or nonexempt.
    - IHS has reviewed all their positions descriptions to determine which are exempt and non-exempt.

#### RPMS

- Self-Governance Tribes in many areas are having trouble access the technical assistance needed to stay in the RPMS system. Tribes are finding that many of the experts are retiring.
- IHS Response:
  - There has been a lot of distraction because of other federal requirements related to Meaningful Use I and II and ICD-10.
  - There are difficulties implementing help desk and every level unit, area, and headquarters.
  - IHS recognizes that there are additional needs because of changes to meet federal requirements.
  - There have also been difficulties because of the data center moving from Albuquerque. The transition has been suspended, so that people can continue to oversee the center and servers.
  - This is the only federal EHR system that is certified.
  - OIT did conduct a survey last year with 66% response rate and TSGAC requested an aggregated report of the findings from the survey.
  - IHS also still needs to close the loop on the MPA letter sent to Tribes.

#### Staffing within the Bureau of Indian Affairs and IHS

#### TSGAC Discussion

- The average age at the two agencies is much older and about 60% are due for retirement in the near future.
- We should discuss this at future conference or meeting.
- Perhaps as the agency loses its workforce, we need to discuss how those positions will be filled with Tribal positions and sustaining the agencies at a level that makes sure the trust responsibility is fulfilled.
- The reverse IPA is a model to consider.

#### <u>Title VI Expansion and/or Crosscutting</u>

- There's a real inconsistency between the Department's adversity to Title VI and the President's willingness to promote the crosscutting budget.
- Tribes are not seeing more flexibility or contracts, but the \$21 billion actually represents primarily competitive grants. Grants require Tribes to use staff to seek out funding.
- Tribes have interest in leveraging funding from other agencies with IHS to provide professional housing and ancillary programs to enhance health systems.

- Failing to promote more consistent funding and flexibility is resulting in a
  perpetuation of more sophisticated Tribes being successful, while smaller Tribes
  with less capacity to plan, apply, and receive grants to support their community
  needs.
- Some agencies are actually designing grants so that Tribes are not eligible or cannot qualify because the qualifications are too great for Tribes.
- Youth Suicide as a Crosscutting Issue
  - This is another crosscutting issue where there are barriers because of the funding mechanisms across numerous agencies.
  - Central Council of Tlingit and Haida volunteered to assist in breaking down the barriers and creating a more seamless system.
  - This may be an example of a crosscutting issue on which Tribes could make significant progress.
  - IHS Response:
    - Mr. McSwain agrees with the Tribal comments on crosscutting budget.
    - He also restated the Tribal position to be that the government-togovernment relationship is with the Federal government, not only the IHS.
- Navajo Feasibility Study
  - The report indicates that it is feasible for Navajo to operate its own Medicaid program.
  - It takes statutory and legislative authority for CMS to fund directly.

#### **ACA Employer Mandate Exemption and Cadillac Tax Discussion**

Chief Marilynn (Lynn) Malerba, Mohegan Tribe of Indians of Connecticut and Chairwoman, IHS TSGAC Dr. Elaine Buckberg, Deputy Assistant Secretary for Policy, Office of Economic Policy, Department of Treasury

- Employer Mandate
  - We are asking the Internal Revenue Service (IRS) to either make a determination to exempt Tribes or delay implementation in those communities while we work out issues.
  - IRS has determined the issue must be legislatively fixed.
    - Tribes did not comment on this issue during the proposed rules
    - 4988-H does apply to Tribal governments
  - o It would be valuable to share comments both orally and in written form.
- Cadillac Tax
  - o Deadline for comments on Excise tax were due on October 1, 2015
  - The Tribal request is that Tribes be exempted because we believe the law already excludes us.

#### TSGAC Adjourned at 1:30 PM