

DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication and Education Tribal Consortium
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Sent electronically anita.personius@bia.gov

December 18, 2020

The Honorable Tara Mac Lean Sweeney
Assistant Secretary - Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

**Re: Department of the Interior Self-Governance Advisory Committee,
September 28, 2020 Virtual Meeting Follow-Up**

Dear Assistant Secretary Sweeney:

On behalf of the Department of the Interior Self-Governance Advisory Committee (DOI-SGAC), I write to request your attention to several issues and recommendations raised by Tribal leadership during the September 28, 2020 virtual meeting. As the Federal Co-Chair of the SGAC, we look to your leadership and value your participation as we work in partnership to achieve mutual understanding and endeavor to forge a coordinated effort to address these pressing issues which are impacting our citizens and communities.

SGAC Tribal leadership was deeply disappointed that you were unable to attend the meeting again due to a scheduling conflict after we had changed the date and time of the meeting to accommodate your schedule. Now, more than ever, AS-IA's presence at these meetings is critical as we strive to continue to work together to overcome the challenges brought about by the Coronavirus public health crisis. The success of our Tribal/Federal partnership is predicated on actively fostering collaboration through mutual respect, communication, and clear expectations. As we move forward, we would like to reaffirm AS-IA's commitment to working diligently to repair and solidify our government-to-government relationship.

As you are aware, our communities are still on the front lines responding to the Coronavirus pandemic. Protecting the health and welfare of our citizens from the virus has made it increasingly clear that Indian Country needs significantly more resources to protect and preserve human life and restart our Tribal economies that were brought to the brink of disaster as we were forced to close government operations and our economic enterprises to protect the health and well-being of our Tribal citizens and surrounding communities. We are a resilient people and we will overcome these significant challenges that this virus has brought upon us, but we are keenly aware it will take years for our Tribal economies to fully recover.

In this time of crisis, it is incumbent upon this Administration to implement measures to ensure that Tribes have the tools and resources needed to eradicate this virus and protect their communities. We urge you to continue to consider and adopt the following recommendations to accomplish these goals: (a) provide maximum flexibilities that support Tribal discretion to implement funding at the local level in a way that best supports the needs of their communities; (b) ensure that Tribes have a seat at the table with Administration senior representatives to provide meaningful input during decision making discussions that affect us; (c) revise program eligibility criteria to allow for greater Tribal participation; (d) implement ways to facilitate inter-agency collaboration and funding transfers; and, (e) disburse funding using existing mechanisms, to include Self-Governance compacts and contracts.

The additional recommendations outlined in this letter address critical funding and policy concerns that require your utmost attention:

1. Section 413(a)(1) of the PROGRESS Act for Indian Tribes Act provides “not later than 90 days after the enactment of the PROGRESS for Indian Tribes Act, the Secretary shall initiate procedures under subchapter III of Chapter 5 of Title 5, United States Code to negotiate and promulgate such regulations as are necessary to carry out this title. Section 413(a)(2) of the Act provides, “Proposed regulations to implement this title shall be published in the Federal Register not later than 21 months after the date of enactment of the PROGRESS for Indian Tribes Act”.
 - Time is of the essence to begin the negotiated rulemaking process and identify both Tribal and Federal members of the negotiated rulemaking committee. After nearly 18 years to get this Act enacted, Tribal officials and technical staff are concerned that the Department has not communicated its plan to recruit members of the Committee. We urge you to begin this process as required by statute 90 days of enactment of the Act (January 19, 2021).
 - We urge you to proceed to develop plans for virtual meetings rather than inhibit the rulemaking process by waiting for a face-to-face meeting.
2. Key Public Safety and Justice Legislation, S.227 Savanna’s Act and S.982 Not Invisible Act, passed Congress with the goal of addressing violent crimes, to include Missing and Murdered Indigenous Persons and Trafficking of vulnerable populations. The Department of Justice and the Department of the Interior are both charged with carrying out certain provisions under each of the respective Acts.
 - It is incumbent upon leadership of each Department/agency to work in a cohesive manner to carry out the legal mandates that each have been charged to implement as many of the requirements include shared responsibilities. We urge you to come together in a forum with Tribal

leaders to collectively develop a plan of action to further our shared goals and mission.

3. Executive Order 13898 established the “Operation Lady Justice Task Force” with the goal of making the criminal justice system work better for American Indian and Alaska Native (AI/AN) communities regarding Missing and Murdered Indigenous Persons (MMIP). While Tribes are supportive of taking actions to address MMIP, it does not dispense with the requirement to consult with Tribes regardless of whether the directive was initiated by Congress or the Executive Branch specifically with respect to the opening of the Cold Case Offices nation-wide.
 - Implement strong mechanisms to facilitate inter-agency collaboration and coordination. The agencies that provide justice services, Department of Justice, Department of the Interior, Homeland Security, etc., need to create a cohesive set of policies and procedures that apply across the board to ensure everyone is working together to address the issue(s) at hand. When different agencies follow different regulatory procedures it often creates more challenges and hinders an efficient and effective response.
 - Roles and responsibilities need to be clearly defined and consistent communication and coordination needs to occur, to include, the direct involvement of high-level leadership at both the Tribal and Federal levels of government providing meaningful input into the decision-making process.
 - Mechanisms need to be in place that allow for inter-agency transfer of funding and greater flexibility is needed to allow Tribes to utilize the funds in a way that best addresses their community’s public safety needs. Existing mechanisms for funding, such as, Self-Governance compacts and Self-Determination contracts should be used to the fullest extent and law enforcement funding should be part of a Tribe’s base.
 - The obligation of Federal agencies to engage with Indian Tribes on a government-to-government basis is based on the U.S. Constitution, Treaties, Statutes, Policies, and Executive Orders. Consultation is required on any decision affecting Tribal interests, including, the establishment of Cold Case Offices, their location, purpose, function, staffing and future operational costs. Instead, these offices were created without Tribal input and several regions, to include, the Northwest, Oklahoma, and Pacific were not included in the initial roll out.
 - Tribes are deeply concerned about funding for current and future cold case offices and staff. Tribes would like a full accounting of the costs to open and staff these offices, to include, current facility costs and staffing costs, as well as, projected future costs. Tribes also need to know what line item will fund these costs.

- Under Public Law 83-280 (P.L. 280), the state government rather than the Federal government has jurisdiction to prosecute certain crimes committed by or against Native Americans. Therefore, state law enforcement and state courts play a key role in arresting, investigating, prosecuting and punishing offenders and protecting public safety in P.L. 280 states. The State is also responsible for funding and other resources in support of public safety efforts. In Alaska, case law has determined there is a lack of “Indian country” which limits the ability of Alaska Tribes and Villages to exercise criminal jurisdiction. Many P.L. 280 states do not make funding or support for law enforcement for Native communities a priority. Tribes in P.L. 280 states also lack funding and support for law enforcement from the Department of the Interior because the Department has indicated that they do not have jurisdictional authority to provide such funding or support because it is a P.L. 280 state under state jurisdictional authority.

Yet, DOI opened a cold case office in Alaska. Now that a cold case office has been opened and staffed in Alaska, what is the jurisdictional authority of the Federal government in this and other P.L. 280 jurisdictions? What will be the primary duties for staff in these locations? Shouldn't it stand to reason now that Alaska Tribes and Villages and Tribes in other P.L. 280 states should also be able to exercise their own law enforcement authority and receive funding from DOI to support these efforts?

4. The *McGirt v. Oklahoma* decision ruled that, as pertaining to the Major Crimes Act, much of the eastern portion of the state of Oklahoma remains Native American lands of the prior Indian reservations of the Five Civilized Tribes, never disestablished by Congress. This decision has expanded the breadth of jurisdictional authority of the Tribes and obligations of the Federal government.
 - As a result of this decision, the Department of the Interior needs to take steps now to prepare for these additional jurisdictional and monetary obligations, including, coordinating with Tribes, the Office of Management and Budget (OMB) and Congress to submit a funding request that will provide adequate support to cover these obligations.
5. Congress created the Office of the Trustee (OST) for American Indians in 1994 to address the concerns about the mismanagement of billions of dollars in Indian trust funds. Tribes, however, grew increasingly concerned that OST had transformed into a massive bureaucracy taking a huge portion of the BIA budget and staff. Congress through the Indian Trust Asset Reform Act included a sunset provision to eliminate OST. However, certain essential accounting functions carried out by OST had to remain intact. As a result, the Administration has taken steps through Secretarial Order to “rebrand” OST as the Bureau of Trust Funds Administration (BTFA). The BTFA’s structure will

remain the same but they will be overseen by the AS-IA and the BTFA will be temporarily headed by the Principal Deputy Special Trustee until a Director is appointed.

- There has been a lack of transparency regarding how this transition will accomplish the goals originally requested by the Tribes. We urge you to provide an accounting of the steps and processes being taken to “sunset” OST and how these procedures align with the intent of the law and the goals established by Tribes.
6. OMB may grant Exception Apportionment Authority to agencies under a Continuing Resolution that provides the agency with authority to disburse a greater amount of funding up front to Tribes.
 - Tribes strongly advocated to urge DOI-BIA to request “Exception Apportionment Authority” from OMB so there was not a lapse in funding for Tribes who are already stretched thin on resources trying to address the challenges brought on by the COVID-19 pandemic. We appreciate that you acknowledged our request, supported and advanced this issue to OMB.
 7. Section 105(l) of the Indian Self-Determination and Education Assistance Act provides that Tribes and Tribal organizations carrying out Federal functions under a Self-Governance compact or Self-Determination contract may enter into a lease with DOI for a Tribally owned or rented facility used to carry out those functions.
 - We urge you to ensure you have requested the amount of funds needed from Congress to efficiently and effectively administer the Section 105(l) lease process.
 8. The lack of coordination and consistency across regions continue to raise concerns for Tribes. Some regions do a very good job communicating with Tribes to notify them of funding and other opportunities that are available but other regions are still struggling to effectively communicate with all Tribes residing within their regions. The availability of carryover, new funding opportunities, and additional CARES Act funding brought to light the stark disparities across regions with some Tribes not being aware of the opportunity to apply for additional funding.
 - Coordination and consistency across regions continue to raise concerns and needs to be addressed to ensure that all Tribes have an equal opportunity to apply for and access funding or other opportunities as they arise.

We urge you consider these recommendations and take appropriate measures to implement them.

If you have any questions and/or concerns I can be reached via email at rallen@jamestowntribe.org or by phone 206-369-6699.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO
Jamestown S'Klallam Tribes and
Chairman, DOI-SGAC

Cc: Sharee Freeman, Director, Office of Self-Governance
SGAC and Technical Workgroup Members