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

**Virtual Meeting – Talking Points**

**July 14, 2021**

**TOPICS AND QUESTIONS FOR THE DISCUSSION WITH PDAS Bryan Newland:**

*DOI’s SGAC is a Tribal/Federal partnership and is most effective with full participation from both Tribal and Federal leadership. In recent years, participation from the Assistant Secretary for Indian Affairs was minimal, if at all. We urge the new leadership at Indian Affairs to join us at the SGAC table to discuss issues and develop solutions.*

*Staffing Levels and Succession Planning*

SGAC previously raised concerns that Indian Affairs does not have the right number of people with the right skills to fulfill its trust and treaty obligations. Also, the lack of comprehensive workforce and succession planning has been a long-standing management challenge. SGAC is encouraged that DOI took initial steps to conduct workforce planning activities within the Office of Trust and hopes Indian Affairs will expand those efforts across all offices under Indian Affairs.

**Questions/Action Items:**

* Is the workforce study still expected to be complete in FY 21?
* Will Indian Affairs expand workforce planning efforts to all offices under its authority, including BIA and OSG?
* Why doesn’t OSG have a Deputy Director? When can we expect this approved position to be filled?

*Communication with Tribal Governments*

Effective communication is an integral component of the success of our Tribal/Federal partnership. For years, SGAC has shared concerns that communication with Tribal governments is inconsistent (often based on the Region) or, in some cases, non-existent. The Department needs to do a better job sending Tribe’s notifications and courtesy responses, updates of staff changes, etc. Telework and staffing challenges have added another layer to challenges with communication.

**Question/Action Items:**

* Take actions to ensure there is consistent communication with Tribal governments.

*Coordination between Departments and Offices within Interior*

Self-Governance Tribes that have concerns with different offices within the Bureau are often given the run-around when an issue arises—with various offices pointing the finger at each other as the reason for funding logjams. In one example, a Self-Governance Tribe has not received JOM funding for three years and no one has been able to resolve the issue, so the Tribe has had to move funding around to provide supplies and backpacks for students returning to school. This is not the only example, and the issue is not limited to one office.

**Questions/Action Items:**

* Indian Affairs should evaluate why the disbursement of funds is continuously delayed and take actions to streamline the process.
* All Indian Affairs offices need to be reminded that they still have an obligation to assist Self-Governance Tribes with their programmatic or funding concerns and it does not all fall on OSG.

*Contract Support Costs*

*Distribution of CSC-* Tribes want to engage in an in-depth discussion with the agency to discuss the distribution of CSC funds.

**Questions/Action Items:**

* We need to convene a meeting in the next two weeks that includes SGAC Tribal leaders, the Assistant Secretary of Indian Affairs, the BIA Director, the OIS Director, and the OSG Director to identify the root causes and solutions to address concerns with the disbursement of CSC funds.
* Changes to current practices should not be made without prior Tribal consultation.

*Indirect Cost Rates*

There is a concern that the large influx of funding intended to assist Tribes in mitigating the impacts of the COVID-19 pandemic will negatively impact Indirect Cost Rate calculations in the coming years. Covid stimulus funds are one-time sources of funding and including these dollars in the calculation of a Tribes IDC rate will be detrimental to Tribes and destabilize their IDC rates.

**Questions/Action Items:**

* Tribal governments urge DOI to provide an option for Tribes to exempt stimulus funds as part of the Tribal base dollars when applying the indirect rate.
* More than ever, it is crucial that OMB understands how important it is for Tribes to recover the cost of performing contracted and compacted services, functions and activities previously provided by the Federal government. There is a major Tribal effort, along with the Indian Health Service, to educate OMB in coordination with the Interior Business Center (IBC) on how Tribes negotiate and set their indirect costs rates and receive 100% CSC. DOI needs to weigh in on this effort post haste.
* Reverse the authority of Tribes to not apply the indirect rate and accept payments in the cost pool because it will have a significant impact on their indirect rate. Exclude these allocations from the cost pool. The additional accounting and compliance requirements associated with the influx of relief funding is overly burdensome and Tribes who lack capacity to perform these functions are having to use this critical funding to hire outside accounting firms.
* Support the Biden Administration’s proposal to create a mandatory appropriations account to fully fund CSC.

*Reporting Requirements*

Tribes are being inundated with reporting requirements for programmatic and COVID-related activities with short notice and quick turn-around deadlines for information.

**Question/Action Items:**

* Are Tribal funds being held by DOI pending the submission of programmatic reports? Are these actions a direct result of legislation?
* DOI should afford Tribal governments a reasonable amount of time to submit programmatic and other reports.

*Section 105(l) Leases*

There needs to be greater collaboration and coordination between the BIA and Tribes in developing the policy and estimates of the appropriate level of funding for Section 105(l) leases.

**Question/Action Items:**

* SGAC previously requested that Indian Affairs establish a Tribal/Federal Workgroup to coordinate and collaborate on policy and funding levels for Section 105(l) leases. What is the status of this request?

*Understanding and Respecting Tribal Sovereignty and Tribal Government’s Inherent Right to Self-Govern*

Interior should encourage all employees and sister agencies to seek and participate in training that educates them on Tribal sovereignty and Self-Governance, including the annual Tribal Self-Governance conference. Currently, DOI participation in the conference is limited to OSG and a handful of additional employees.

*Welfare Assistance*

Welfare Assistance is a critical program for Indian Country but as the need continues to rise throughout Indian country the level of funding continues to be subject to caps which only fund Tribes at 80% or less of actual need. The funding methodology assumes Tribes will spend at or below what they spent in prior years, but Tribes are asked to report their funding needs without having received their full allocation. Self-Governance Tribes redesign certain programs and services to meet their local needs but if the Tribal program does not fit within the BIA definition of welfare assistance some Tribes do not receive funding. There are also situations where some Tribes are receiving a windfall of dollars while others are receiving very minimal dollars.

**Questions/Action Items:**

* Examine the Reporting Process for Welfare Assistance to make sure it aligns with the funding distribution process so that Tribes can receive their full allocation and report on their actual expenditures and assess additional unmet needs for funding.
* How can we streamline the reporting process?
* Indian Affairs needs to push for fully funding the welfare assistance program and removal of the congressional cap.
* What is the status of the Tribal/BIA workgroup findings for child assistance funding?
* The Welfare Assistance funding formula and methodology need to be revisited to include factors that vary by location to ensure all Tribes are being treated equitably.

***Trust Evaluations of Leases* *Approved by Tribal Nations under HEARTH Act Authority* (DISCUSSION WITH ELIZABETH)**

The Hearth Act provides Tribal governments with the option to negotiate and enter into leases without Secretary approvals once their leasing regulations have been approved by the Secretary. The law was passed in the spirit of Self-Determination and Self-Governance to allow Tribes to exercise more control by entering into business, agricultural, residential, recreational, religious, or educational leases under their own terms and authority.

We recently learned that some trust evaluations conducted by DOI included a review of leases that Tribal governments signed under HEARTH Act authority. There are concerns that DOI may second-guess a Tribal government’s leasing decision—undermining the intent of the HEARTH Act authority and negating the benefits provided under the Act.

**Questions/Action Items:**

* What is DOI’s basis for including leases approved by a Tribal government under HEARTH Act authority in its trust evaluations?
* What are the parameters of the lease review?
* If DOI has authority to review leases approved under a Tribe’s HEARTH Act authority, the Department should engage with Tribal Nations to establish clear parameters for conducting such reviews.

***CyberSecurity* - (DISCUSSION WITH JASON FREIHAGE)**

Increasing cyberattacks across the country highlight the need for Tribal governments to protect their data and ensure the integrity of the services that they provide is more important than ever. Yet tribal governments continue to be largely left out of federal opportunities to build critical cybersecurity infrastructure and internal protocols that keep tribal data safe.

In October of 2020, the BIA issued a Dear Tribal Leader Letter (DTLL) alerting Tribes to take special care in selecting telecommunications and video surveillance equipment and infrastructure. The DTLL also indicated that the Federal government is prohibited from initiating or continuing contracts with entities who use telecommunications, video surveillance or other equipment or services from five specific Chinese companies due to

national security concerns. The letter further stated that this means that the Federal government may not enter into, extend, or renew a binding agreement with any organization including Tribes that use equipment from these companies.

**Questions/Action Items:**

* Is DOI undertaking efforts to ensure funding is available for cybersecurity is available to Tribal governments?
* Does DOI have any plans to assist Tribal governments with developing the capacity and expertise to identify, manage, respond, and recover from cyber security threats and attacks?
* What is the status of the DOI Directive that prohibits the agency from initiating or continuing contracts with entities who utilize telecommunications, video surveillance and other equipment or services from banned companies due to national security concerns? Are there resources available to Tribes to address this at the local level?

Some additional questions related to the DTLL:

* What is the timeline for replacing the equipment?
* What Guidance is available from Defense or other agencies on how Tribes should conduct an assessment?
* Will our Federal contracts be held up or not renewed until all the equipment is replaced?
* How will the Government know which Tribes are using this equipment?
* Are the same rules being imposed on state and local governments?
* At what point will Tribes be required to share this information?

*Census/Labor Force Report*

The Indian Employment, Training and Related Services Demonstration Act of 1992 (PL 102-477) requires the BIA to publish reports “every two years” on Indian population by gender, income level, age, and availability for work. The agency missed three cycles of reports from 2005-2013 and is again behind almost four cycles of reports. The last report published by the BIA was in 2014 (2013 Labor Force Report) containing 2010 data. So, the 2013 data in the report was already four years old. In 2018, the Department of Labor was tasked with issuing the Tribal Labor Force Report.

**Question/Action Item:**

* There needs to be better coordination between DOI, the Department of Labor, Census and OMB to address the data problems that Tribal governments face.

***Budget -* (DISCUSSION WITH JEANNINE BROOKS)**

*Advance Appropriations for the Bureau of Indian Affairs*

Providing appropriations one year in advance to Indian Affairs will mitigate the adverse financial effects of Federal budgetary uncertainties on Tribes and enable the BIA to uphold their fiduciary obligations and more adequately and effectively serve Tribal governments.

**Question/Action Item:**

* Is DOI working with appropriators to ensure they receive all needed information to move forward with advance appropriations authority for BIA?

*Budget Equity for Self-Governance Tribes*

Self-Governance Tribes continue to experience inequitable access to BIA funds for new programs, programmatic increases. There is inconsistency in the process of notifying Tribes of programmatic increases – some offices notify Tribes and OSG of funding increases while others do not. Often, Tribes are told it is a Self-Governance issue and they do not handle SG funding.

**Question/Action Item:**

* A policy directive needs to be instituted that informs all offices of their responsibility to ensure all Tribes, including Self-Governance Tribes, are treated equitably when funding increases are available for distribution.

*TIWAHE*

The TIWAHE program has proven successful for the pilot Tribes because it supports a comprehensive and integrative approach to supporting family stability and strengthening Tribal communities by addressing inter-related issues associated with child welfare, domestic violence, substance/alcohol abuse, poverty, and incarceration. Focusing on coordinated service delivery that integrates Native American tradition and culture into service delivery, supports Self-Governance and Self-Determination, and creates models for other Tribes to utilize for program and justice system development. These unique Tribal approaches address the health, safety and well-being of their citizens and communities while at the same time improving local economies and economic opportunity through job training and employment to meet these needs. The pilot project includes six Tribes from different regions across the United States implementing a comprehensive program that includes social services, ICWA, housing program, job placement and training and Tribal courts.

**Question/Action Item:**

* Request $15 million to expand TIWAHE to 10 new pilot sites and include TIWAHE success stories in the President’s Budget Request to Congress. The budget request should identify at least $5 million of the requested increase for social services (TPA) and $5 million of the requested increase for ICWA and it should be applied across the board to any Tribe that operates these programs.

**Public Safety & Justice – (DISCUSSION WITH JASON O’NEAL)**

*Coordination among Federal Agencies*

Numerous agencies, including DOI, DOJ, and DHS, have shared responsibilities related to public safety and justice matters. Fragmentation within the Federal government, when not properly coordinated and managed, creates significant challenges for Tribal governments that are seeking to address local public safety issues.

**Question/Action Item:**

* DOI, DOJ, and DHS should work with Tribal governments to develop a plan of action to further our shared goals and mission.
* The WHCNAA Subcommittee on public safety and justice could work with Tribal Nations, SGAC, and SGCETC to explore opportunities for expanding Self-Governance or establishing a 477-like program for Public Safety & Justice programs government-wide.

*McGirt Decision*

The McGirt decision restored significant jurisdictional authority for 5 Tribal Nations in Oklahoma. In restoring this authority, obligations of the Federal government in both DOJ and DOI were expanded. Additionally, the opening of new MMIP cold case offices will require additional resources.

**Question/Action Item:**

* How is BIA coordinating with OMB and the Administration to ensure adequate funding is provided for the additional jurisdictional and funding obligations resulting from the McGirt decision and the opening of the MMIP offices?

The *Not Invisible Act* calls for the establishment of a DOI/DOJ Joint Commission that includes Tribal representatives from diverse geographic areas and of diverse sizes.

**Questions/Actions Items:**

* Who is included on the Commission? Are Self-Governance Tribes represented on the Commission?

***White House Council on Native American Affairs* – (DISCUSSION WITH MORGAN)**

Tribes want to engage more with the WHCNAA as subject matter experts that can guide policy development. President Biden committed to launching a budget task force under the WHCNAA and OMB in consultation with Tribes to understand the chronic funding shortfalls and deliver recommendations to fully fund the Federal government’s trust and treaty obligations. He indicated this work would include reviewing the ability to make Indian Country funding advanced appropriations or mandatory to provide Tribes with certainty and predictability.

**Questions/Action Items:**

* What steps are being taken to ensure Tribal engagement with the WHCNAA?
* What is the status of Biden’s commitment to establish a budget task force under the WHCNAA and OMB in consultation with Tribes to understand and address the chronic funding shortfalls and deliver recommendations to fully fund the Federal government’s trust and treaty obligations to include advanced appropriations or mandatory funding for Tribal programs and services?