

DOI Self-Governance Advisory Committee (SGAC)

Meeting Summary

August 29 - 30, 2023

Embassy Suites

900 10th Street NW
Washington, D.C., 20001

Tuesday, August 29

Attendance:

A quorum was established for the SGAC meeting.

Committee Business:

- The March 2023 meeting minutes were approved.

Discussion with Assistant Secretary Bryan Newland

Brian Newland, Assistant Secretary – Indian Affairs, DOI

Secretary Newland

Assistant Secretary Newland mentioned that Indian Affairs (IA) is drafting a second volume to the Boarding School Report that will lay out a more detailed version of findings from the investigation. IA continues to work on an extension of the PROGRESS Act. The bill has made it through the Senate side. Secretary Newland indicated that he has had several discussions with the House side regarding the extension.

Secretary Newland acknowledged the importance of law enforcement and that it is currently a top priority for Tribal Leaders and IA. The IA secured some funding (\$7 M) for P. L. 280 Tribes and law enforcement in last year's appropriation bill. IA has conducted a thorough review of law enforcement staffing levels. For the first time in a long time, the vacancy rate within the Office of Justice Services (OJS), the vacancy rate is below 10%, and the attrition rate is below 10%. That is in line with or exceeds the rate for other federal programs.

IA is making a record pace with 105(l) leasing, and they are doing it at the same staffing level as they have had. There are around 600 leases in the queue. They have gone from 0 proposals to around 600 within about four years and did it at the same staffing level. IA has requested additional staffing.

Chairman Allen

Chairman Allen mentioned that we appreciate the PROGRESS Act and the encouraging movement from the House to the Senate. He then reminded Secretary Newland of our concern with CSC. The group's concern is that they are not working well together in the workgroup. It is affecting progress towards ensuring more timely payments. It seems like the Tribes are being held hostage by audits and data collection requirements. However, Tribes acknowledge the importance of those two requirements, but the Tribes who are in compliance should not be punished for those who are not.

The Chairman notified Secretary Newland of the group's concerns regarding OSG staffing levels. The Chairman emphasized that a Deputy Director is needed at the OSG.

Tribal leaders are concerned about the indirect cost rate negotiations. They want reassurance that the IA and Secretary Newland are supporting Tribes regarding ensuring that recent one-time pandemic funding (e.g., ARPA, IIJA) is not considered when calculating base funding.

Office of Self-Governance (OSG) Update

Sharee Freeman, Director, OSG

Director Freeman provided an update on personnel changes within the Office of Tribal Self-Governance (OSG). Alexis Wagner has agreed to a detail assignment to OSG's Northwest Field Office in Vancouver, WA. Alexis will help coordinate the awarding of Tribal Climate Resilience projects through OSG. The OSG requested funding for a Deputy Director and an additional \$150,000 for SGCETC. Once negotiated rulemaking funding responsibilities are completed in 2024, salary funds will be available to hire an OSG Deputy.

There are currently 288 Self-Governance Tribes. There are 138 funding agreements for FY 2023. Spirit Lake Tribe joined Self-Governance in 2023. The Pawnee Nation of Oklahoma and Craig Tribal Association will join Self-Governance in FY 2024.

The OSG has received and obligated approximately \$808,399,136 in FY 2022 to Self-Governance Tribes and has received approximately \$757,640,334 in FY 2023 funding for Tribes.

Tribes are requested to email all correspondence and documentation regarding Self-Governance Contract Support, including CSC Data, to the following email address:

OSG-CSC@bia.gov.

Tribes are requested to email all correspondence and documentation regarding Self-Governance Financial Assistance & Social Services Report (FASSR) to the following email address: OSG-FASSR@bia.gov

Aggregate Net Reporting in the Self-Governance Database (SGDB)

Rufina Villicana, Finance Manager, OSG, DOI

The Tiwahe Initiative is a five-year demonstration project supporting American Indians and Alaska Natives to improve the health and well-being of families in tribal communities. The original methodology for across-the-board increases was initially calculated on the published 2014 Greenbook TPA base number. Several issues were identified that were not captured when determining distributions.

In FY 2018, the Office of Inspector General (OIG) raised the issue that some Self-Governance Tribes may not have received their total allocation for Tiwahe payments from 2015 to 2018. The OIG recommended that each Self-Governance Tribe program line must be published annually in the Greenbook and to consolidate tribal government program breakouts to be identified.

A federal/tribal workgroup made two recommendations (phase 1 in 2020 and phase 2 in 2021). A response letter from ASIA addressed the TPA allocation to implement a prorated allocation of Congressional increases and decreases to individual program lines for previous years. Congressional increases and decreases would be posted to the individual program lines in future years. Additionally, the Pay Costs Consolidated Tribal Government Program (CTPG) would be zeroed out, breaking the program amounts to the actual program line item. Finally, the Aid to Tribal Governments (ATG) and Other Aid to Tribal Governments (OATG) would be broken out into individual program line items – only program amounts, not true ATG funds, which would remain in that account.

The aggregate net or "ag net" includes all tribal accounts to ensure the most accurate depiction of tribal line items. They have established a 2019 TPA Base AG Net. The function is currently in development in the Self-Governance Database (SGDB). The overall ag net has been loaded into the SGDB module. Tribal presentations of the process have commenced. Tribes will have six months to review their ag net; the TPA base will be established into the SGDB. Finally, the 2025 numbers will be published in the 2026 Greenbook.

SGAC Title IV Amendments Implementation Workgroup Update

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

Title IV amendment implementation is paused because the authorizing legislation terminated the negotiated rulemaking process in April. However, the group is optimistic they will obtain a congressionally authorized extension. Once an extension is secured, work can continue in September. The objective is to complete the process this year.

Update from GAO Tribal and Indigenous Advisory Council (TIAC)

Jay Spaan, Executive Director, SGCEC

In 2022, the GAO began forming its first-ever Tribal and Indigenous Advisory Council to provide insights and recommendations on issues affecting Tribal Nations and their citizens. The Council comprises 16 members, including leaders from federally recognized Tribal Nations, a leader of a state-recognized Tribe, a leader of a Native Hawaiian organization, and experts on topics relevant to Tribal Nations and Indigenous people. SGCEC was selected to help administer and provide technical support.

The first few meetings were focused on establishing a role for the GAO TIAC, providing input into some GAO engagements, learning about GAO's process, and identifying areas for the GAO TIAC to provide valuable input.

The GAO TIAC developed the following list of priorities:

- Establish a Sr. Level Advisor to the Comptroller General for Tribal Nations.
- Provide GAO with the context needed to understand programs under its review.
- Identify areas in need of GAO review and attention.
- Evaluate criteria to determine if they align with Trust and Treaty obligations and responsibilities.
- Incorporate principles of data sovereignty in its process.
- Work collaboratively to develop a path forward for removing IHS, BIE, and BIA from its High-Risk list.

IA Budget Update

Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, BIA
Matt Vogel, Policy Lead – Appropriations and Federal Budget, NCAI,

Jeannine Brooks

The House and Senate released the 2024 proposed allocations. The House markup was released on July 12, and the full committee report was released on July 18. The Senate markup and committee report was released on July 28. The total reduction to the Interior and Environment bill is \$13.4B (-35%), and the Senate bill is \$1B (-3%) below Fiscal Year 2023. However, the House provides +\$141.4M above FY 2023, and the Senate provides +\$78.2M above FY 2023. On the BIE side, the House provides -\$1.9M below FY 2023, and the Senate provides +\$78.2M above FY 2023.

Matt Vogel

During the 2023 crisis, the federal debt reached its debt limit of \$31.4 trillion. To avert a default, lawmakers eventually agreed to raise the debt limit and passed P.L. 1185: Fiscal Responsibility Act of 2023. The act includes caps on discretionary funding and rescission of

unobligated funds. The CBO estimates that the title would permanently rescind \$27.1 billion over the 2023-2033 period.

Regarding FY 2024 appropriations, the committee report rejects the Administration's proposal to reclassify Contract Support Costs and Payments for Tribal Leases as mandatory funding. It accepts the proposal to move the Office of Hearing and Appeals (OHA) under the BIA. It does not provide funding for LWCF Tribal Land Acquisition.

The Next Tribal/Interior Budget Council (TIBC) meeting is scheduled for November 6-9, 2023. Spring meetings for TIBC are tribal budget submission meetings. This meeting will formulate the FY 2026 request for Indian Affairs programs. The preferred program ranking tool process is on an every-other-year schedule, and this is an off-year. TIBC data profile work is ongoing, with subcommittees considering programs that address unique data collection, privacy, or improvement concerns.

TIBC documents can be viewed at <https://www.ncai.org/initiatives/tibc/tibc-documents>.

Tribal Climate Resilience Program

John Mosley, TCR Branch Chief, DOI

The Tribal Climate Resilience Program (TCR) aims to provide technical and financial assistance to support climate preparedness and resilience for all federally recognized Tribes. The annual awards program aims to fund federally recognized Tribes to achieve their climate adaptation, planning, and implementation goals.

Requests for proposals will open from July 19 to October 13, 2023. Award announcements are expected in January 2024. The total amount available is \$120 million. Other entities may participate as sub-awardees. Project timelines should be no more than two years.

For additional information, please visit www.bia.gov/service/tcr-annual-awards-program.

DOI STAC Update

Heidi Todacheene, Senior Advisor to the Secretary, Office of the Secretary, DOI

The most recent two-day DOI STAC meeting was held in May 2023 at the Washington, D.C. office. The Secretary, Deputy Secretary, Assistant Secretary, and all Assistant Secretaries attended to address the STAC and answer policy questions. They plan to have the next meeting in conjunction with the Tribal Nations Summit.

Half of the twelve-member STAC's term limit has recently expired, so they finalized their call for applications – a turnover of leadership will be announced in September.

The STAC's primary focus has been on the Secretary's Tribal Advisory Committee Policy Recommendations. The policy recommendations are a 66-page document developed and voted on by the STAC.

Understanding the Current CSC Distribution Process for Tribal Nations with Self-Governance Agreements

Sharee Freeman, Director, OSG, DOI

Vickey Hanvey, OSG, DOI

Sharee Freeman

Director Freeman began the discussion by clarifying some earlier comments. When she was talking about 80% of CSC, she said that they calculate 80% based on the prior year and then pay that percentage out every CR. She did not mean that they were paying out 80% at the beginning of the year.

When she references the time when they are enacted and when they get the money from OIS, who gets the money from the Treasury, we pay out the 80% based on the prior year's calculation. The funds do not always come immediately after enactment.

Vickey Hanvey

Hanvey presented a spreadsheet showing hypothetical Tribes (Tribe A and Tribe B) to attempt to exhibit the process. Continuing resolutions are prorated when they come through based on the amount of money the regions and OSG receive. Then, after the enactment occurs, they pay the balance so that the payment of 80% to a Tribe is made early in the year. At the end of the year, the Tribes submit their data, and then they receive 100% allocation.

Hanvey then explained how an exception apportionment works and how the funds are allocated between the regions and OSG. OSG is putting out 47.48% of CSC. Based on last year's consumable amount, the OIS pro rates the CR funds among all the regions and OSG. They do the same thing for each CR and the enacted amount when it comes in.

CSC Discussion

Johnna Blackhair, Acting Deputy Director, BIA

Sunshine Jordan, Acting Division Chief, Office of Indian Services, BIA

Linda Austin, Chief Operations Officer, Ysleta Del Sur Pueblo

Since being detailed to Indian Services, Acting Deputy Director Blackhair has been working to automate the ISDEAA and the 477 process to manage the fiduciary relationship more effectively.

COO Austin provided an update regarding the CSC Workgroup. The workgroup has been somewhat inactive over the past few years because of COVID. However, the workgroup is

increasing activity and showing a renewed desire to progress with the work. The workgroup is convening the week of April 3 in Phoenix. They have been making strides in filling seat vacancies. The priority for the meeting will be to contemplate the recent letter and discussions that the workgroup has had concerning the contract support cost payment, the formulation strategy from the Office of Self-Governance, and establishing some pre-conditions for the release of funding. Additionally, the workgroup will allocate some time to review the handbook developed to be used as a guideline for Tribes and federal partners to utilize in conducting CSC activities.

Wednesday, August 30

Indian Affairs Single Audit Management Oversight

Karen Francis, Director, Division of Internal Evaluation and Assessment (DIEA)

The Single Audit Act drives the single audit oversight, OMB Compliance Supplement, and the Inspector General Act of 1978. Based on those federal regulations and legislation, the DIEA put together an Indian Affairs Single Audit Report Handbook as a policy to guide oversight. The DIEA will be monitoring and tracking every Single Audit Act report submitted. The DIEA also provides support to solicitors.

The Department of Interior Office of Inspector General provides oversight. Single audit firms perform audits. The IA IDEA, solicitors, BIA regions, OSG, and BIE perform federal agency management oversight and actions. The auditees are tribal entities and Tribes. The DOI OIG in this single audit ecosystem is responsible for ensuring that the single audit firms can perform quality audits based on the auditing standards, etc. Additionally, the OIG is looking at internal Indian Affairs to ensure agency management oversight is based on policy and federal requirements.

The DIEA receives reports, conducts report reviews, offers training sessions, and issues management reports. The DIEA does evaluate and perform analysis on audit reports submitted to determine if there are any additional issues based on audit findings that need to be flagged.

The Tribe's relationship with its auditor is direct. However, Indian Affairs requires that when a single audit report is submitted, it begins to track the report and reviews and monitor any findings. So, DIEA works closely with the OSG to ensure they have a global view of all the single audit reports and any findings.

DIEA Roles and Responsibilities are as follows:

- It is designated by the Secretary of Interior as the office to receive Single Audit Reports from Tribes and Tribal Organizations.
- Develops policy, provides guidance for overseeing Single Audit reports, and ensures Indian Affairs complies with the Single Audit Act and 2 CFR 200.
- The DIEA advises and assists with implementing the IA policies and procedures related to Single Audit management requirements, applicable laws, and regulations.
- Advises IA Awarding Official on making a final determination of resolving Single Audit findings. (Adequate internal controls, supporting documents, etc.)
- Advises IA management and provides regular management reports on IA Single Audit oversight status and actions.

The DIEA cannot advise Tribes on audits directly without going through Awarding Officials and cannot provide an extension to the due date for a Single Audit Report submission. **OMB is the only federal entity that can provide an extension regarding audit deadlines.** The DIEA does not have that authority, but it wishes it could. But what the DIEA can do is advise awarding officials and program managers regarding how to work with Tribes – for example, providing advice regarding a corrective action plan.

The IA Policy – Single Audit Handbook can be found at <https://www.bia.gov/directives-system>.

Remedies for Noncompliance (Sanctions)

The Single Audit Act and 2 CFR 200 provide the authority to implement remedies when recipients are delinquent in submitting their SARs. Specifically, recipients who fail to submit a SAR by the due date will be subject to remedies for noncompliance as documented in 2 CFR 200.339 – Remedies for Noncompliance. Draft audit reports or statements that the report is in the mail are not sufficient action to remove imposed remedies. A Tribe/Tribal organization must submit all delinquent SARs to comply with the regulations and be removed from remedies.

Vickey Hanvey, Program Policy Analyst, Office of Self-Governance

The BIA issued a memorandum to all of the Tribes, and there was a schedule that showed the original due dates and the due dates subsequent to the issuance of the OMB extension.

Tribal Leader:

Question: What division within OMB has authority concerning extensions?

Karen Francis:

Answer: I do not directly work with OMB. In my previous capacity, I worked with them all the time. However, to my understanding, and I can't speak on behalf of OMB, it will be coming from the financial management shop. And they also have a policy shop as well. So, I do not know who can grant an extension. The only extension that I am aware of is due to COVID.

These are the options for imposing remedies (sanctions):

- a. A request/warning letter
- b. A letter of Notice of Remedies for Noncompliance – Change in payment method
- c. A letter of Notice of Remedies for Noncompliance – Withholding of Contract Support Funds
- d. A letter of Notice of Intent to Reassume – approaching three years overdue in submitting the SAR

Tribal Leader

Question: If there is a withholding of base funding or CSC funding, and we remedy the finding, how long will it take withheld funds to be released to the Tribe?

Vickey Hanvey

Answer: We follow these procedures, so first, we send out a request letter, then a warning letter. So, in other words, if a Tribe doesn't submit an audit, we keep track of those, and a reminder letter goes out.

Each letter will have a contact person listed. If you are one year behind, you go on monthly drawdowns – you can draw down funding monthly.

We set the money out in ASAT, ready to go, and we put a hold on that and release funds once a Tribe remedies, the funds can be released.

Tribal Leader

Question: So, what are you saying that these regulations override the Self-Governance law? The Self-Governance law says that Tribes will receive lump sum funding up front.

Vickey Hanvey

Answer: The law also says we will comply with the Single Audit Act, so that's a legal question. But as far as the funding goes, you are on monthly drawdowns the first year you are behind. The second year you are behind, you have the withholding of CSC. At the 45-day mark before the three-year mark, we must include the Solicitor's Office.

Tribal Leader

Question: I am asking how long the Tribe waits for a release of sanctions.

Karen Francis

Answer: Normally, within one week, we will know if a Tribe submitted a Single Audit Report to us. Do not mail the report; email it or upload it to the clearinghouse.

Looking Ahead

- OMB plans to issue the draft Uniform Guidance (2CFR200) by September 15 with a 60-day public comment period.
- Ongoing audits/reviews by the Government Accountability Office (GAO) related to the IA's Single Audit Oversight program.
- DIEA plans to revise the IA Single Audit Handbook in accordance with the updated OMB guidance, regulations, and related laws.
- DIEA plans to partner with OSG to promote best practices.

477 Program Update

*Margaret Zientek, Assistant Director – Employment and Training and Co-Chair PL 477 Workgroup
Anthony Riley, Acting Division Chief, Division of Work Force Development, BIA*

Anthoney Riley

Under the 477 law, around 51.6% of the 574 federally recognized Tribes currently participate in the 477 Program. Approximately \$280 million has been transferred from various federal partners to date. Twelve federal partners are participating in the program. Around seventy-six 477 plans have been approved – 50% are 638 contracts, and the other 50% are OSG compacts. Five hundred eighteen individual federal programs are consolidated into seventy-six 477 plans.

Beginning in FY 2023, the program has implemented an interdepartmental memorandum of agreement. Prior to that, there were a few federal programs that were denied. Since then, those same programs have been reintroduced through the proposal process, and some have been approved. The Department of Commerce has the Minority Business Development Program (MBDA). From the Department of Education they have the American Indian Vocational Rehabilitation Program and the Alaska Native Education Program. Under Health and Human Services, they have LIHEAP. Under HUD, they have the Indian Housing Block Grant (proposed and currently under review).

Margaret Zientek

There was no way to revise the OMB 1076-0135 (version 2) reporting form without knowing what would change, so new programs and agencies always have a learning curve.

Regarding reporting, they are requesting the establishment of a workgroup to hold federal partners to the intent of Congress. Reminding federal partners that the 477 reporting form is a unified approach is essential. The timeline is anticipated to take more than one year to complete. They need to know what new programs are in 477 to accommodate the need to modify the current reporting structure.

TANF-ACF-IM-2 was issued to inform Tribes administering Tribal TANF programs under a 477 plan of Pandemic Emergency Assistance Fund Reallotment. This action was contrary to other HHS programs where 477 can participate in reallotment proceeds but not send back money. No monies were returned; however, no 477 Tribes participated in the reallotment.

Some agencies have cited the Applicability of Uniform Guidance Requirement (2 CFR Part 200) to suggest that they have a role in overseeing internal tribal hiring decisions. This is not the correct application of the rule.

The Tribal Work Group requested an update from the Census Bureau regarding the Labor Force Report.

Tribes are asking federal partners to reconsider how SNAP E&T can be awarded. Federal partners believe Tribes must be subgrantees of the state. Tribes assert that Tribes should be direct grantees from DC because of the government-to-government relationship between Tribes and the United States.

Tribal Leader Discussion with Indian Affairs Leadership

Wizipan Garriot, Principal Deputy Assistant Secretary, Indian Affairs, DOI

Wizipan Garriot

Principal Deputy Assistant Secretary Garriot stated that he believes the Indian Affairs leadership has demonstrated a commitment to work with Tribes. Last week, there was a treaty rights and sacred sites consultation. Garriot recommended that Tribes weigh in heavily with their comments. Additionally, there is an OMB budget consultation upcoming. Garriot encouraged Tribes to participate and submit written comments. He emphasized the importance of coordinating with TBIC and STAC because a unified approach to the comment process is important.

The vacancy rate at the BIA OJS law enforcement is probably the lowest it has been in years. Now that staffing has reached adequate levels, the focus has shifted to ensuring that adequate resources are available to effectively carry out operations in accordance with the Tribal Law & Order Act. They have

prioritized working with the regions on filling 120 key priority positions. The majority of those positions have been filled. The next key priority is on the awarding official side – the timely transference of funds is a top priority. There are currently 33 awarding official positions open. There is a discrepancy in the number of contracts per awarding official compared to the IHS.

Larger policy work often tends to taper down as we near the end of this administration's first term, allowing Indian Affairs leadership more time to focus on some of the fundamental elements of operations - for example, audit issues and contract support issues.

Chairman Allen

Chairman Allen expressed the Tribes' concern regarding the indirect cost rate base. The CARES Act funding is officially exempt from inclusion in determining indirect cost rates. However, Tribes are now concerned about how the ARPA and Inflationary Reduction Act funds may impact their indirect cost rate.

Wizipan Garriot

Garriot mentioned that he would reanalyze and work with Sharee Freeman to ensure they advocate for the IDC rate as much as possible to ensure Tribes are not penalized for receiving one-time funding from recent legislation. They are aware of the deficiencies reported by the GAO and are frustrated because they often do not have adequate resources to address them.

SGCETC Update

Jay Spaan, Executive Director, SGCETC

The 2023 Tribal Self-Governance Conference was held at the River Spirit Resort Casino from June 26 to 29 in Tulsa, OK. The conference had just under 1,200 people register; around 95% of registrants were in attendance. A survey was made available to conference attendees. 85% of attendees rated their overall impression of the conference as excellent or above average. Around 14% chose average. 85% of respondents said the topics were extremely or very relevant. 12% said the topics were moderately relevant, and 3% said the topics were slightly relevant. 94% of attendees said the conference was very well or well organized, and around 6% responded that the conference was fairly well organized.

The 2024 Tribal Self-Governance Conference will be held at Wild Horse Pass Gila River Resorts & Casinos in Chandler, Arizona, on April 15 – 18. Registration for the conference should open within the next month.

For Our People

For Our People, Stories of Tribal Self-Governance & Sovereignty is a docu-series that SGCETC created in partnership with Fire Thief Productions. Season one has been completed and consists of three episodes. All episodes are available on the SGCETC website at <https://www.tribalselfgov.org> under the *For Our People* tab. You can also view specific segments of the episodes at our new YouTube channel: @FOROURPEOPLE_TSG.

Four Our People seeks to change the narrative by illuminating the success of tribal nations & increasing knowledge about self-governance authority. Season 2 consists of three episodes and is expected to be released by the end of October.

Tribal Self-Governance Courses at ASU Indian Law Program

Executive Director Spaan has offered Tribal Self-Governance courses at the Arizona State University (ASU) Indian Law Program—Tribal Self-Governance I was offered in Fall 2021, Fall 2022, and Fall 2023. Registration has increased from 11 in 2021 to 21 in 2023. Tribal Self-Governance II was offered in Spring 2022 and Spring 2023 – hopeful it will be offered again in Spring 2024.