

DOI SELF-GOVERNANCE ADVISORY COMMITTEE

c/o Self-Governance Communication & Education Tribal Consortium
314 West 14th Place – Tulsa, Oklahoma, 74119
Telephone (918) 370-4258- Website: www.tribalselfgov.org

Sent electronically: bryan_newland@ios.doi.gov

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Bryan Newland
Assistant Secretary – Indian Affairs
Office of the Secretary
U.S. Department of the Interior
Room 4659
Main Interior Office Building
1849 C Street N.W.
Washington, DC 20240

Re: Self-Governance Advisory Committee (SGAC) Policy Recommendations and Requested Action on Issues Discussed During the December 11-12, 2023, Meeting with Federal Officials and Staff

Dear Assistant Secretary Newland:

On behalf of the Department of the Interior (DOI) Self-Governance Advisory Committee (SGAC), I write to provide Self-Governance Tribal Leader policy recommendations and to urge that our Federal partners take swift action to address the issues discussed during our tri-annual meeting held on December 11-12, 2023, at the Embassy Suites by Hilton Washington DC Convention Center 900 10th Street, NW, Washington, DC 20001.

The SGAC, comprised of Self-Governance Tribal Leadership and their designees, was formally sanctioned by the Assistant Secretary – Indian Affairs in 1998 and continues to serve a vital role in effectuating the policy recommendations to implement the Tribal Self-Governance authorities within the Department of the Interior under Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) P.L. 93-638 as amended. These meetings serve as a forum for strengthening our Tribal/Federal partnership by addressing issues of mutual concern, resolving issues of dispute, building trust, respecting, and strengthening communication and coordination between our respective governments. While we value the presence of your esteemed senior staff, we cannot stress enough how critical your presence and participation at these meetings is to Tribal Leadership.

Tribal Leadership prioritizes these meetings to take advantage of the opportunity to meet and engage with you face to face in a national forum that is convenient and easily accessible for you, which is why our meetings are held in the Nation's Capital, Washington, DC. We understand that your role as a political appointee is

challenging, and you have many competing interests and a small window of time to accomplish the Administration's goals and initiatives. However, we believe the SGAC meetings are an excellent opportunity for you to enlist the assistance of Tribal Leadership to support your endeavors, provide advice on policy refinements needed to advance your initiatives, and influence decisions to achieve goals of mutual interest. Setting aside a day and a half to attend the SGAC meetings will prove invaluable to solidifying this government-to-government relationship and give true meaning to the President's Executive Order 14112 of December 6, 2023, which states, "Tribal governments must be treated as permanent, equal and vital parts of America's overlapping system of government".

Please see below a summary of issues and action items from the December 11-12, 2023, tri-annual meeting:

1. Urge AS-IA to Prioritize Attendance at SGAC Tri-Annual Meetings:

Prioritize Attending Self-Governance Tri-Annual Meetings for the Full Day and a Half – The SGAC was formally sanctioned by the AS-IA and serves as the primary forum for Self-Governance Tribal Leadership to engage on a government-to-government basis with the AS-IA. Tribal Leaders prioritize these meetings because they view the opportunity to engage with AS-IA as holding significant value. We strongly urge our Federal partners to elevate these meetings on your list of priorities to show Tribal Leadership that the Federal Government holds these meetings in the same high esteem.

Leadership Attendance the Entire Meeting – We reiterate the importance of having you and/or members of your senior staff attend the entire SGAC meeting. If a meeting conflict arises, we request that you make every effort to attend the meeting for a couple of hours and then assign a senior staff member(s) to attend the meeting for the remainder of the time.

Goals and Issues of Mutual Interest - The SGAC invites you to use this forum as an opportunity to conduct abbreviated listening sessions or engagement sessions on initiatives, goals, and issues of mutual significance.

- 2. Executive Order 14112 Reforming Federal Funding and Support for Tribal Nations to better embrace our Trust responsibilities and promote the next era of Tribal Self-Determination – This Executive Order is budget centered and draws a direct correlation between Tribal Self-Governance/Self-Determination and positive economic growth in Tribal communities. We offer these initial recommendations with the caveat that there needs to be ongoing dialogue with Tribes to identify**

additional action that is needed to bring the intent of the Executive Order into fruition in a timely manner:

Expansion of Self-Governance Across the Federal Government - Endorse the expansion of Self-Governance across the Federal government and take concrete steps to achieve this goal by engaging with your Federal counterparts and educating them on the benefits of empowering Tribes to exercise Self-Governance.

Develop a Legal Mechanism to Allow Funding from Different Agencies to Flow Through Contracts and Compacts - Establish an inter-departmental MOU that allows government-wide funding to flow through Self-Determination contracts and Self-Governance compacts.

Adopt and Implement the Recommendations of the U.S. Commission on Civil Rights Reports – The U.S. Commission on Civil Rights issued two Reports: “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country” and “Broken Promises: Continuing Federal Funding Shortfall for Native Americans. The Recommendations outlined in these two reports should be implemented.

Conduct an Unfulfilled Federal Obligations Assessment and Fully Fund Tribal Programs and Services – A thorough analysis of unfulfilled Federal obligations for Indian country must be conducted and a plan of action on how to achieve full funding must be developed and implemented. Full funding of Tribal programs and services must include Contract Support Costs.

Dismantle Structural Barriers to Funding – Conduct a thorough review of regulatory policies and processes that impede the funding process to include updating computer systems and agency processes that delay funding disbursements to Tribes.

Provide Advanced Appropriations/Mandatory Funding for Tribal Programs and Services – Tribal programs and services are mandatory obligations and should be funded as such by working with Congress to transfer Indian programs and services from the discretionary to the mandatory side of the budget. In the interim, advanced appropriations must be provided for all Federal programs for Indian country.

Provide Direct Base Funding to Tribes – Grant funding does not align with the trust and treaty obligations. Funding for Indian country must be in the form of formula funded base dollars that pass directly to Indian country through Self-Determination contracts and Self-Governance compacts.

Reduce Administrative Burdens and Increase Funding Flexibility – Administrative burdens take a variety of forms to include competitive grants, overly burdensome regulatory and reporting requirements, restrictions on the ability to combine and use Federal funds, Federal match requirements, laws and policies that impede Tribal access to funding and resources, and other policies that dictate the form, use, and application of Federal resources at the Tribal level. Eliminate these regulatory barriers and increase funding flexibility for Tribes.

Tribal Tax Parity – Tribal tax parity is a key component of acquiring the resources Indian Country needs to address the unfulfilled Federal obligations.

Timely Implementation Solidified in Regulations – Time is of the essence to get these measures in place and to take concrete steps to implement them before the end of the Biden-Harris Administration. We also want to ensure that any measures that are adopted will be solidified in regulations and carry-over into future Administrations.

Continue to Engage with Tribes – Consistent and meaningful engagement with Tribes must continue to gather more information on actions that can be taken to respect, honor, and uphold the government-to-government relationship.

- 3. Annual Pay Cost Report – The importance of this Report has been raised in a number of forums as it is one of the only increases to Tribal base dollars that Tribes receive on an annual basis. However, there are a number of concerns with the required content of this Report, the last-minute notice, inconsistencies across regions, and the requirement that funding is contingent on Tribes submitting their data to Indian Affairs. Tribes offer the following recommendations:**

Establish a Report Deadline and Provide Adequate Time for Reporting – The Agency should provide Tribes with a list of all annual reports and their due dates prior to the beginning of the next fiscal year. This will establish a date certain and provide Tribes ample time to gather the data needed to complete this Report.

Provide Technical Assistance to Tribes - Regions and the Office of Self-Governance should be actively engaging with Tribes and offering technical assistance to any Tribe requesting assistance or that does not submit this Report by the deadline. Under-resourced Tribes often struggle to complete reports on top of their day-to-day workload and there needs to be additional concessions provided to these Tribes.

Communication and Coordination – There needs to be better forms of communication enlisted by the Agency to ensure that the proper Tribal staff responsible for reporting this data are informed and aware of the process for submitting this Report to the agency. Regions need to be more consistent concerning communication and outreach to the Tribes in their Region. The Self Governance Communication and Education Office should be utilized to assist with Department communication and coordination with Self-Governance Tribes.

Data – Tribes have raised concerns about the data requests for the Pay Cost Report being overly intrusive and unnecessary. Tribes are concerned that FTE data could be manipulated to determine pay rates for individual employees and used against Tribes. Further discussion is needed on the data elements that are currently required to complete this Report as well as the fact that the Bureau is mandating this data.

Making Funding Contingent on Data Submission – Tribes strongly oppose new requirements that make funding contingent on the agency receiving the Tribe's Paycost data. There needs to be additional engagement sessions with Tribes regarding this issue.

- 4. Self-Governance Tribes are not receiving programmatic increases they are legally entitled to receive and are being left out of funding opportunities that should be available for all Tribes. This is an ongoing issue that has been raised numerous times and in numerous forums. We suggest the following actions:**

Direct Involvement of Indian Affairs Leadership - We need the direct involvement of Indian Affairs with this issue. Concrete steps need to be taken to identify why Self-Governance Tribes continue to be overlooked with respect to programmatic increases and measures need to be immediately adopted to address this issue and make Self-Governance Tribes whole. Tribal Representatives would like to meet with AS-IA, OSG, OBPM, and OTS to discuss the issue and action needed to address it.

Update the Greenbook; This is a Time Sensitive Issue – At the last Tribal Interior Budget Council (TIBC) Meeting, the Bureau promised that the funding table would be updated in the FY2025 Greenbook to include the Self-Governance Tribes. Time is of the essence to address this issue before the next iteration of the Greenbook is finalized and published. Tribes will also be contacting Liz Carr at OMB to ensure that the Greenbook is updated as requested.

Update the Self-Governance Data Base – The Self-Governance Data Base needs to be updated so that other Indian Affairs Offices/Bureaus can easily determine which Self-Governance Tribes are entitled to receive programmatic increases for programs under their jurisdiction. The Aid to Tribal Government and Consolidated Tribal Government Program lines have created confusion for other Bureaus/Offices in the past and we need to find a way forward that will allow for easy access and determination. Tribes have been requesting a breakdown of funding per line item for years but to date no action has been taken on this request.

The Agency is not Complying with Congressional Intent and Directives – Congress enacted base increases for numerous Natural Resource and other Indian Affairs programs, but Self-Governance Tribes have consistently been passed over and have not received their share of the programmatic increases. Since at least 2013, Self-Governance Tribes have raised this issue with Indian Affairs leadership and staff but there has not been any resolution to date. We are talking about a substantial amount of base funding that Self-Governance Tribes have not received. This issue needs immediate attention and corrective action needs to be taken.

Failure of Indian Affairs Offices/Bureaus to Effectively Communicate and Coordinate – One of the major issues behind Self-Governance Tribes not being included in programmatic increases is the complete failure of Indian Affairs Offices and Bureaus to effectively communicate and coordinate. Indian Affairs leadership must act to correct this and ensure that an effective communication and coordination process is in place and followed by all staff.

RFPs for Competitive Grant Funding Must Include Self-Governance Tribes – Eligibility language in competitive grants must include Self-Governance Tribes. It has been brought to the Agency's attention on more than one occasion that language contained in numerous competitive grant announcements effectively exclude Self-Governance Tribes as eligible applicants by stating "Participants are encouraged to utilize 638 contracts...". Despite promises by agency staff to correct the language no action has been taken to date and the same language appeared in the RFPs for the upcoming grant cycle for certain natural resource program competitive grants.

Make Self-Governance Tribes Whole and Implement Changes Needed – The SGAC is deeply concerned that some Self-Governance Tribes have not received base increases that in some cases amount to hundreds of thousands of dollars. We need to discuss steps that need

to be taken immediately to make sure these Tribes are made whole. For example, establish a contingency fund that can be used for this purpose. We also need to discuss how to ensure that Self-Governance Tribes are not excluded from programmatic increases and other funding opportunities in the future.

5. There are concerns that Indian Affairs is developing stronger parameters regarding funding for Tribal Climate Resilience Grant Funds for Adaptation Planning and Community Driven Relocation.

Funding Flexibility – Tribes need the flexibility to use the Tribal Climate Resilience Grant Funds in ways that best address their community's needs. Indian Affairs should refrain from developing and adopting stronger parameters that could impose unnecessary restrictions on the use of these funds and delay their timely distribution. Many Tribes have been planning these projects for several years and do not need additional obstacles placed in their way when they are already dealing with the huge issues posed by climate change including the loss of their ancestral homelands.

6. Indian Affairs Workforce Capacity is concerning because Indian Affairs must be properly staffed to uphold their trust and treaty obligations.

Workforce Analysis – Indian Affairs should conduct a thorough analysis of workforce capacity to identify position vacancies that need to be filled, funding required for effective and efficient operations, and outdated technology that needs to be upgraded to properly administer their trust and treaty obligations to Tribes and interface with emerging technologies. Tribal leadership can utilize this data in their advocacy efforts with Congress when requesting funding to support the Bureau's fulfillment of trust and treaty obligations.

Recruitment and Retention Issues – We understand that the Federal government is dealing with recruitment and retention issues that currently plague many industries across the United States. On top of the workforce challenges posed by the COVID-19 pandemic, the Agency is facing an aging workforce that is retiring at an accelerated rate. However, Tribes urge you to continue to explore ways to attract upcoming talent and grow your workforce capacity. We stand ready to assist you in any way we can to ensure our Federal partners have the workforce needed to properly administer your fiduciary duties.

Additional Responsibilities Imposed on Indian Affairs Must be Funded – There have been a number of initiatives and additional responsibilities placed upon Indian Affairs (i.e., 477) that often entail

extensive coordination with other agencies and Tribes. These additional facilitation responsibilities require additional staff and funding. Tribes request that the Agency coordinate with them concerning the data needed to justify requests for additional funding for these initiatives in our advocacy efforts with the Hill.

Capacity Issues are Creating Challenges – Capacity issues are creating many challenges concerning the timely distributions of funding, approval of 105 (I) leases, and other agency functions. Tribes are not able to best serve their people when there are hindrances at the Agency level that impact processes and funding. Tribes need to know how many critical positions are vacant and how much funding is needed to properly staff Indian Affairs offices.

Rotating Individuals into Acting Positions – Due to numerous vacancies across Indian Affairs many individuals are rotating in and out of Acting positions and it is questionable whether these individuals are working within areas of their expertise. Additionally, some of these individuals are serving more than one Region and/or performing numerous job functions that should be divided into two or three different positions. Indian Affairs must conduct a proper assessment of their workforce to identify their management weaknesses and programmatic areas that need additional staff. Tribes need to be engaged in this effort so we can assist Indian Affairs in advocating for funding for additional staff to properly carry out trust and treaty obligations.

7. Office of Self-Governance Capacity Issues continue to be a huge concern for Self-Governance Tribes.

Hire a Deputy Director for OSG – The Agency Budget Request for FY2025 must include funding to hire a Deputy Director for OSG. A Director's key role is to make key decisions, whereas a Deputy Director's role is to oversee operational implementation of the Director's decisions. We expect these individuals will work closely together to ensure OSG is successful in carrying out its responsibilities to Tribes. We stress the urgent need to hire a second person in charge who can assume a leadership role in the Director's absence as well as serve as an additional Authorizing Official and carry out other duties and responsibilities as needed.

Technological Upgrades to the Self-Governance Data Base (SGDB) are Desperately Needed – Tribes and other Bureaus/Offices within Indian Affairs are unable to access important information in a timely manner without OSG staff assistance. The SGDB should be easily

accessible, user friendly, and contain all the information needed for Tribes and other IA Bureaus/Offices to make informed pragmatic decisions.

Concern that PROGRESS Act has been Prioritized to the Detriment of All Other OSG Responsibilities – While we agree that the PROGRESS Act must be prioritized so that the negotiated rulemaking is completed by the end of the current Administration’s first term, it cannot be the only priority for OSG. There are many other issues that require OSG’s attention and Tribes will not accept a 2–3-year delay in all other activities. If this is a capacity issue, we need to take immediate steps to hire new staff or produce other solutions to address it.

8. Budget Issues

Hold Tribal Programs Harmless from Sequestration – Tribes urge the Department to take steps now to ensure that Tribal programs and services are held harmless from any potential budgetary rescissions and reductions included in the Fiscal Responsibility Act cap on discretionary programs. If Congress fails to reach agreement and pass a full year spending bill before April 30th, an across the board 1% reduction of FY2023 budget levels will take effect. Tribal programs are a mandatory obligation and should be exempt from any proposed budget cuts. What steps is Indian Affairs taking to shield Tribal programs from these potential cuts?

Advanced Appropriations for BIA and BIE – Providing funding for Tribal programs and services is a mandatory obligation yet Congress continues to fund Tribal programs out of the discretionary side of the budget. Until Congress acts to shift Tribal programs and services to the mandatory side of the budget, BIA and BIE programs need to be provided advanced appropriations. We urge the Department and the Administration to request advanced appropriations for the BIA and the BIE in every Budget Proposal it puts forth to Congress.

Mandatory Funding for all Tribal Programs and Services – Tribal programs and services are a mandatory Federal obligation and need to be funded as such. The Administration should gather the data needed to support a request for mandatory funding for all Indian programs.

Change the Policy Regarding Awarding Officials – Until Indian Affairs is able to hire and train a sufficient number of Awarding Officials so that funding is distributed, and important documents are executed in a timely manner, exigent circumstances warrant changing the policy to allow other individuals temporary authority to carry out these duties.

We also urge IA to encourage current staff to become AO's by completing the necessary steps for certification.

Timely Requests for Contract Support Cost Funding – The Department has the authority to request additional funding from the Treasury out of the indefinite appropriations account for contract support cost (CSC) funding, yet many of these requests are delayed. It is unacceptable that some Tribes are still waiting for FY2022 CSC funding or that Tribes are having to supplement the Federal dollar. Indian Affairs should be making these requests instantaneously so that the Federal government is upholding their fiscal responsibilities and providing Tribes with these legally required administrative costs.

9. Contract Support Costs Consultation – The contract support cost consultation sessions have ended, and Tribes are eager to know the next steps in the process.

The CSC Workgroup Serves a Vital Role - Tribal leadership strongly desires for the CSC workgroup to be actively engaged in the process to evaluate the results of the consultation and to assist in the development of final recommendations. We strongly urge our Federal partners to provide Tribes with a timeline for filtering and aggregating comments, issuing a Report, and engaging with the CSC workgroup to review the Report and develop final recommendations.

10. The Section 105(I) Lease Program is extremely successful and continues to grow exponentially each year. The Department needs to take immediate steps to ensure the program continues to prove successful. We recommend the following:

Capacity Concerns for 105(I) Leases – There is a current backlog of approximately 1,300 leases and the number of applications for leases continues to grow annually. It is essential that the Department hire additional staff to address this backlog and to process new lease requests as received. While we agree with the Department's decision to hire outside contractors to process and approve Tribal lease applications in the interim, it could end up costing the Agency more in the long run. A concerted effort needs to be made to fill these FTE positions and invest in the Agency's workforce.

Include a List of the Types of Facilities that are Eligible for Inclusion in a Section 105(I) Lease on the Office of Tribal Leases Website – A list of types of facilities that are eligible for inclusion in a Section 105(I) leases should be posted on the Office of Tribal Leases and OSG

websites. Tribes understand the list is not considered to be all inclusive but will merely serve as a guide for Tribes.

11. Labor Force Report – The published Labor Force Report contains inaccurate and extremely outdated data. The Federal government’s continued reliance and use of this FY2010 data as a component in several funding formulas used to distribute funding is a dereliction of the Federal trust and treaty obligation.

Funding Constraints – Tribes are deeply concerned regarding the types of data the Department of Labor will be able to collect from Tribes due to funding constraints. Further discussions should be scheduled to address this concern and to develop a strategy to secure more funding. There should be an all of government approach to find a resolution. Indian Affairs needs to be engaged in these discussions.

Use of 2010 Data is a Disservice to Tribes – The Labor Force Report data is used by many Federal Agencies to develop formulas that are used to allocate Tribal funding. Tribes are deeply concerned about the continued use of extremely outdated (14 years) and inaccurate data that determines funding levels. In addition, Tribes are left without any recourse to try and challenge the data that is being used.

Data Sovereignty v. Data Sharing – Tribal data sovereignty must be respected, and Tribes must have a say in who has access to the data and how it is used. Too often, Tribal data has been used against them.

Need for a Published Report – Tribes continue to urge the Federal government to act to provide adequate resources to the Department of Labor and for inter-agency coordination and cooperation to continue to ensure that the best data sources are available and that the Report is released in a timely manner with data that is accurate and useful to Tribes and Federal agencies who use this data in their funding formulas.

Indian Affairs needs to coordinate and collaborate with the Department of Labor on the Publication of a Final Report - Despite responsibility for this Report shifting to the Department of Labor, Indian Affairs still needs to be engaged and ensure that the data they are using throughout the Department is accurate and timely.

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

Sincerely,

A handwritten signature in black ink that reads "W. Ron Allen". The signature is written in a cursive style with a large, sweeping initial "W".

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

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