

DOI Self-Governance Advisory Committee (SGAC)

Meeting Summary

February 20 - 21, 2024

Embassy Suites

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

Tuesday, February 20

Attendance:

A quorum was established for the SGAC meeting.

Committee Business:

- The December 2023 meeting minutes were approved.
- A motion was made by Quinault Nation and approved to appoint Cheryl Andrews-Maltais (Wampanoag Tribe of Gay Head (Aquinnah)) and Lieutenant Governor Adam Torres (Ysleta del Sur Pueblo) as co-vice chairs.

Office of Self-Governance (OSG) Update

Sharee Freeman, Director, OSG, IA

Megan Bishop has joined the Assistant Secretary of Indian Affairs (ASIA) office to fill the role left by Rose Petosky, who transitioned into a role at the White House. The OSG continues hiring efforts. They are working on hiring a deputy director of the OSG (based in the Washington, D.C. office). They are also hiring a financial specialist for Vancouver. The OSG recently relocated to a new office to accommodate a deputy director.

Director Freeman reminded the group that the deadlines for the Financial Assistance and Social Services Reporting (FASSR) are nearing. Director Freeman will rejoin the discussion later in the meeting to discuss contract support costs, program increases, and the PROGRESS Act.

Legislative/Administrative/Court Updates

Matthew Jaffe, Partner, Sonosky, Chambers Sachse, Enderson & Perry, LLP

Geoffrey Strommer, Partner, Hobbs, Straus Dean & Walker, LLP

Mr. Jaffe provided the group with an update on developments in the PROGRESS Act negotiated rulemaking process. Legislation to extend the PROGRESS Act rulemaking timeframe was included in the extension of the FY 2024 appropriations enacted on September 30. The law grants an additional fourteen months to complete PROGRESS Act work. The final rule must be

published no later than December 21, 2024. Eight of the fourteen months will be consumed by internal agencies vetting the draft rule. There will be a 60-day public comment period on the proposed rule when it is issued, then an additional two and a half months for the agency to vet the final rule. Six months will be devoted to active negotiation.

Mr. Strommer provided an update on contract support cost issues. The language that is essentially mandatory in the appropriations provides both Secretaries with such amounts as may be necessary to fund contract support costs fully. On the BIA side, the language is limited to the BIA. Non-BIA programs are mandatory; for example, in Alaska, Tribes have taken over mandatory programs from the Bureau of Land Management (BLM). Those funds have been transferred recurringly to Tribes through ISDEAA contracts and compacts. The way that the language reads is limiting access to that contract support line item to pay for discretionary non-BIA contract support cost needs.

Programmatic Increases for Self-Governance Tribes

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

Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, IA

Johnna Blackhair, Deputy Bureau Director, Office of Trust Services, IA

Trina Locke, Director, Environmental and Natural Resources, IA

Director Locke provided an update on FY 2022 and 2023 Tribal Priority Allocation Natural Resources General Increases. The FY 2022 omnibus provided a general increase of \$3M for Natural Resources TPA, an increase of \$3M for Forestry TPA, an increase of \$2M for Water Resources TPA, and an increase of \$2M for Wildlife and Parks Program TPA.

The Office of Trust Services coordinated with the Office of Budget and Performance Management, Office of Field Operations, and the Office of Self-Governance to determine an initial list of existing Tribes and program amounts and determine new Tribes seeking to establish a program or fund existing unfunded programs. The OTS program managers added many new Tribal programs and provided increases to several existing Tribal programs.

For Natural Resources TPA, forty-two new Tribes were added at \$25k each, and seventy-nine existing Tribal programs received increases up to \$26k. The amount was established to set a program baseline. Forestry TPA added seven new Tribes, and twenty-six existing Tribal programs received an increase. Water Resources TPA added sixty-two Tribal programs based on proposals. Wildlife and Parks TPA added forty-six new Tribes, and thirty-two existing Tribal programs received increases up to \$20K. The new Tribal program amounts were based on proposals.

The Office of Trust Services (OTS) transfers funds to appropriate Regions or OSG with instructions for distribution to new or existing Tribes. Once FY 2024 appropriations are obtained, the Office of Budget and Performance Management and OTS will coordinate to ensure amounts become a permanent part of the base. After two years, the funding becomes part of a Tribe's base and will no longer come through the Office of Trust Services (OTS).

The FY 2023 general increases consisted of the following:

- Natural Resources TPA (+\$1.3M)
- Forestry TPA (+\$2.5M)
- Water Resources TPA (+\$1.5M)

- Wildlife and Parks Program TPA (+\$2M)

Budget Update

Jeannine Brooks, Deputy Director, Office of Budget and Performance Management, IA
Melissa Fortney, Budget Analyst, Office of Budget and Performance Management, IA

Deputy Director Brooks mentioned that they attempt to secure advance appropriations each year; however, the reality is that the funding that it would take for them to do that does not come into play. She recommends that, at this time, Tribes keep fighting for what they have. She said she does not see Tribe securing advance appropriations anytime soon as it requires them to put up the total amount plus half to receive an advance.

Analyst Fortney engaged in discussion with the group regarding the paycost data call.

Tribal Leader Comment: The information that is being requested is far too detailed for what paycost is because if it is a percentage of your expenditures for your full and part-time employees, all that should be necessary is the dollar amount that the Tribe spent on full and part-time employees. That's a percentage, so it's a sliding scale.

Federal Response: What Melissa requests is just the total salary. We ask for what we ask for because we do not make up this money. It has to go to the department, and they calculate it as part of our fixed cost, which is based on total FTEs. For them to give us Tribal paycost, we have to give them the estimated Tribal FTEs to calculate against. That is how we determine what the estimated Tribal FTEs are.

Tribal Representative Comment: Providing the raw FTE data in a sort of de-identified way, especially if it rolls up into one line, is not a big administrative addition to what is already a significant requirement. Part of our role is to be concerned about out-of-the-blue data calls. Before this becomes mandatory, I would like to know the process. How do we go to the person deciding to make this a requirement to get an exception before implementing a new requirement? Who do we talk to?

Federal Response: I do not know if you can talk to them about it. I have not brought it up to them yet because I do not want to make them aware that this is not how we do it. We are not following the federal protocol to measure tribal FTEs. As soon as we advertise that, we open ourselves up. That is why we do not make ours mandatory. If you can do it, great. If not, we will stick to salaries until we are told otherwise.

Tribal Leader Comment: For the last topic of interdepartmental transfers, particularly with DOJ, we were briefed this morning about a piece of legislation that will connect the climate change monies in different departments and try to use the BIA as a vehicle.

Tribal Representative Question: Are awarding officials required across the federal government, or must they only be within the BIA?

Federal Response: All federal agencies are required to have awarding officials and warranted folks to push money out the door. We have a bigger problem because we do all of the 638 and self-

governance, and most don't. They usually have one entity to which they push money instead of individuals.

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

Liz Reese, Senior Policy Advisor for Native Affairs, White House Domestic Policy Council

Anthony Morgan Rodman, Executive Director, White House Council on Native American Affairs

Liz Reese

Liz Reese provided an overview of the intent of Executive Order 14112("EO"). The EO is a good policy because it comes from this era of tribal self-determination and self-governance, the most successful policy for tribal communities. Native people thrive when their tribal governments are strong and can make decisions for themselves. Implementing the EO attempts to uphold the trust and treaty responsibilities to Tribal Nations. The EO creates two other processes that will be run through the White House Council on Native Affairs that Morgan can discuss in more detail.

Anthony Morgan Rodman

Within EO 14112, the White House Council on Native American Affairs (WHCNAA) is named as one of the central organizing bodies in the EO to make sure that agencies are complying with the EO and that there is a sense of accountability with the implementation of this from here on out. The WHCNAA will facilitate the review and submission of annual reports moving forward.

Every topic that Indian Country encounters is addressed somehow within the council. The Office of Management and Budget and the Domestic Policy Council lead the EO committee. There are two subcomponents of the committee. One is the Budget Task Force that OMB will be leading, and the other is the Federal Reform Task Force, which looks at a list of mandates to the agencies to make federal funding easier.

Tribal Leader Question: When do you think you might be able to get a draft report out, and how much will we be involved in reviewing the recommendations?

Federal Response: As one of the folks working on this EO and its language, including things about the structure and the timing for implementation, I think we had a tough choice to make about whether we wanted to get something in the budget assessment space done quickly or if we wanted to take our time and do something right. We realized that it would take tremendous effort to do this right and to do it right by the Tribes. There is a calendar tied to every tribal consultation, and doing it right with the notice, the dear tribal leader letter, the time for comments, and then the time to process.

Federal Response: Adding to what Liz said, EO 14112, no matter where one falls on the political spectrum, is about sound, efficient governance; it is about the federal government living up to its trust responsibility and serving tribal nations in a genuine nation-to-nation relationship.

Contract Support Costs (CSC) Consultation Update

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

Linda Austin, Chief Operations Officer, Ysleta del Sur Pueblo

Linda Austin

There was a consultation last year that ended in December. The comments have been submitted, and we want to know where we are regarding the following steps; for example, we want to understand the timeline, where we are, and where the government is collating all of the comments. Additionally, we would like to know what involvement the Contract Support Costs Work Group will have in the process of changes.

Sharee Freeman

The OSG has been paying 100% of CSC for several years based on appropriated funding – up to 80% in one payment, and then a reconciliation consisting of 20% based on the tribal submission of current year data totaling 100% of current year funding. However, the point of this exercise is about being able to pay 100% upfront. The deadline for comment was December 29. The ASIA Regulatory Office assigned the OSG to complete the coalition of the comments and to produce a summary. We are currently finalizing the summary of comments. The summary will be posted on the ASIA consultation website. After that, the summaries will be presented to the Assistant Secretary for decision. The tribal-federal workgroup on CSC wanted to talk with the Assistant Secretary about the decision process at some point. It is unclear what happens at this point. If the Tribes or the workgroup requests another process, direction will be needed from the Assistant Secretary.

Office of Strategic Partnerships

Estakio Beltran, Native Americans in Philanthropy Partnership Advisor, Office of Strategic Partnerships, DOI (invited)

Kelly Dennis, Esq., Partnership Strategist, Office of Strategic Partnerships, DOI

Kelly Dennis

The Office of Strategic Partnerships (OSP) is working to increase public-private partnerships. They are trying to do that with Tribes and Native-led organizations. The OSP strives to highlight opportunities for philanthropic engagement and policy solutions with calls to action for funders to make direct investments and maximize and leverage federal funding. The program funds capacity technical assistance for Tribes to access and navigate federal programs. Their main areas of focus are conservation, economic development, and education.

Tribal Leader Questions: Tribes have refrained from working with the private sector because oftentimes they are not aware of what it takes to work with a Tribe – often asking Tribes to enter into agreements that compromise sovereignty. Has this been addressed with OSP's efforts?

Are the Native CDFIs able to help the Tribes that have the SSBCI funding?

Federal Response: We completely understand that tribal sovereignty is at the heart of everything. We prioritize educating funders about what that means. Native Americans in Philanthropy has been great about putting 101 webinars together to make sure that they are able to provide at least a basic overview to entities that are interested in working with Tribes.

SSBCI is something that often comes up, and they are working closely with the U.S. Department of Treasury to figure out how Tribes can better understand the program.

Tribal Leader Question: How many staff does the OSP have?

Federal Response: It is currently just Estakio and I.

Discussion with Kathryn Isom-Clause, Deputy Assistant Secretary – Indian Affairs

W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe and Chairman, SGAC

Kathryn Isom-Clause, Deputy Assistant Secretary– Indian Affairs, DOI Members of the SGAC

Kathryn Isom-Clause began the discussion by providing information regarding EO 14112. The EO directs all federal agencies and departments to eliminate bureaucratic barriers that block capital flow to Indian Country. The EO reinforces the administration’s commitment to supporting tribal self-determination. The President’s legislative achievements include the American Rescue Plan Act (ARPA), the Bipartisan Infrastructure Act, and the Inflation Reduction Act.

Tribal Leader Comment: We want to make sure that the system respects the Self-Governance Tribes when Congress approves increases. We have had numerous experiences over the years where we did not receive increases.

Tribal Representative Comment: I just have a comment about the regions being more involved. These meetings now are hybrid, so I think back to the Western Region, and they could jump on this call right now. It would be helpful if they could tune into these meetings as well.

Federal Response: I hear loud and clear that we need to do a lot of educating because I think some of these things folks just do not know.

Tribal Leader Comment: We have known for years that we were not receiving funding increases as we were supposed to, and regional directors at those times would always tell us that we were not entitled to it and we needed to go to Washington, D.C. We are trying to identify all of the funding that we have not received. I do not think there is a way to recoup that, but I just want to make sure that it is on the radar because we have been sustaining these losses for over twenty years in some cases. Regarding having the regional directors present at the meetings, we have been inviting them; however, I think that the regional directors have felt that it is not their place and that they should just attend the annual meeting. These meetings are more beneficial for regional directors because they will have more one-on-one time with tribal leaders.

Tribal Leader Comment: One of the issues raised here is that the system signing off on the authority to obligate is that the money can be in the system, but some Tribes will not draw it down unless they know what that money is for.

Tribal Representative Comment: A lot of times, this is how the funding hits the account. Tribes have other funding agencies that are sending funds, and we want to identify what self-governance funds are.

Federal Response: The terminology that we are using for the ATOs is from the old FSS system from around thirteen years ago. The SGDB system was not upgraded at the same time as the federal

system. We have been utilizing a workaround where a Tribe contacts us, and we will do a screenshot from the federal side that shows what the funds are for.

Federal Question: We are working on a longer-term solution, but there is money now that you need to draw down. If we provide a screenshot with Sharee's signature on it, would that be sufficient for those who need that signature?

Tribal Response: Yeah, because we need something that is signed. But if we are going to sign a screenshot, why wouldn't we just sign the ATO?

Federal Response: The ATO is from the old system. The old ATO forms are manually entered from the new system. That's why they take so long sometimes.