**DOI Self-Governance Advisory Committee (TSGAC)**

**Meeting Minutes**

**July 24 - 25, 2024**

**Embassy Suites**

900 10th Street NW

Washington, D.C., 20001

**Wednesday, July 24**

**Attendance:**

A quorum was established.

**Committee Business:**

The meeting minutes from the SGAC meeting held in February 2024 were approved.

**Office of Self-Governance (O.S.G.) Update**

***Sharee Freeman, Director, Office of Self-Governance, Indian Affairs***

The O.S.G. has several staff vacancies, and job descriptions are pending with B.I.A. Personnel. The O.S.G. has received approximately $897,497 in F.Y. 2023 funding and $779,321,958 in F.Y. 2024 funding for Self-Governance Tribes/Consortia.

The O.S.G. has released its annual C.S.C. Data Call letter. The O.S.G. has requested additional CARES and ARPA CSC from the Office of Indian Services (O.I.S.). Regarding the C.S.C. consultation, the consultation summary of comments is completed and ready for review by the Assistant Secretary – Indian Affairs. Self-Governance Tribes/Consortia are requested to email all C.S.C. documentation to OSG-CSC@bia.gov.

In the most recent Pay Cost data call, 95 O.S.G. Tribes/Consortia responded with current data, one reported salary under 638, and 41 did not provide an update. The data and reporting are important because they are the key to increasing T.P.A. funding.

**Tribal Leader Comment:** There is no need for the level of detail requested. The number of employees in your employee payroll figure is all that is necessary because if we are talking about a cost of living when I'm allocating a cost of living increase for my staff, we decide what that is, and we know how many employees we have and what our payroll is. So, whether they are full-time, part-time, or their salary range should not be relevant. My Tribe will continue to send in the minimum amount of data, but we are not going to provide much detail because it takes time away from my limited staff.

**Federal Response:** Let me raise that concern with the teamand have someone get back to you.

The Financial Assistance and Social Service Report (FASSR) submissions had a low response rate, so O.S.G. requested submissions twice. Only 51 Tribes submitted FASSRs and have received funding, which is of concern to the O.S.G. because 87 Tribes usually have completed their FASSR submissions by this stage of the process.

The O.S.G. is responsible for the negotiation and obligation of Tribal Climate Resilience, Electrification, and Fish Hatcheries funds. Regarding the construction workload, O.S.G. has developed a sample construction addendum. They are awaiting the designation of civil engineers, and they are moving quickly to get amendments in place to accommodate the Tribal Climate Resilience projects that are non-construction projects.

The Financial and Business Management System (FBMS) closes on September 20, 2024. The 4 HANA FBMS upgrade will then be installed. The anticipated reopening date for FBMS is November 2024. Tribes are encouraged to draw down all funds available ASAP before FBMS

closes.

The Bureau Standard of Assistance for 25 C.F.R. Part 20 Social Service Programs, including child assistance, burial assistance, and emergency assistance, has increased.

The Treasury will host a webinar regarding beneficial ownership reporting requirements on August 1, 2024.

**Tribal Leader Comment:** Concerning the ongoing issue regarding the awarding official, there needs to be a reserve awarding official to support the primary awarding official.

**PROGRESS Act Update**

***Geoff Strommer, Partner, Hobbs Straus Dean and Walker, LLP***

***Jordan Romero-Villanueva, Associate Attorney, Hobbs Straus Dean & Walker, L.L.P.***

***Matt Jaffe, Partner, Sonosky Chambers Sachse Endreson & Perry LLP***

***Brian Upton, Tribal Attorney, Confederated Salish and Kootenai Tribes***

The proposed rule was published in the Federal Register on Monday, July 15, 2024, for notice and comment. The rulemaking Committee worked from August 29, 2022, to April 2024 to develop a largely consensus draft rule. However, some non-consensus issues remain, covering five subparts of the Part 1000 regulations governing tribal self-governance. The non-consensus issues warrant a comment by Tribes. Comments are due on August 22, 2024. Please visit <https://www.tribalselfgov.org/progress_act_consultations/>.

**Executive Order 14112**

***Elizabeth Carr, Tribal Advisor, Office of Management and Budget***

The O.M.B. has recently held a tribal consultation on creating guidance from an O.M.B. perspective to send to agencies to assess the unmet federal obligations. The O.M.B. hopes to receive written comments that will help it develop the guidance in a much more tribally informed way. As part of the guidance, each agency will be asked to consult directly with Tribes.

The O.M.B. has also heard feedback regarding the implementation of the federal funding reform side of Executive Order (E.O.) 14112. The O.M.B. reiterated its commitment to ensuring the agencies implement the federal funding reform.

The O.M.B. recently had a WICNA principles committee meeting. It was an internal federal meeting with the cabinet-level secretaries and/or their designees. The main topic of discussion was E.O. implementation. The meeting resulted in a collection of outcomes and deliverables that they are currently reviewing and hope to share with the Tribes soon.

**Tribal Leader Comment:** Regarding access to funds, we heard that the FBMS decided to shut down the ASAP portal from September 20, 2024, to November 11, 2024. Do we have any idea why an agency would block the Tribe's access to its funding at the beginning of the fiscal year? We have not received formal notice regarding that matter.

**Federal Response:** I have no insight into that, but I will certainly relay the concern and try to figure out what is happening.

**Tribal Representative Comment:** I know we talked about other agencies, such as the USDA expansion and the H.H.S. expansion, and I think we are seeing a lot of progress within those agencies.We are still encountering a belief that the 477 program is somehow a substitute or equivalent to self-governance. That belief is false. Is there any way that you can keep getting the message out that these are two completely different mechanisms? What Tribes want is self-governance.

The other message we are hearing is a push for self-determination as an initial step. The agencies want self-determination because it will allow them to retain a certain level of control that they believe they lose under self-governance.

**Federal Response:** Thank you for both of those comments.I certainly hear you on the misinterpretation of the 477 program and what that means. We can work to educate the agencies on the difference between the two mechanisms.

**Section 105(l)**

***Cody Seaton, Chief, Office of Tribal Leases, Indian Affairs***

***Heather Washington, Self-Governance Director, Salt River Pima-Maricopa Indian Community***

**Cody Seaton**

The Office of Tribal Leases is working on a new 105(l) lease guidebook. They are also trying to simplify the process of funds distribution. They are exploring possibly hiring a full-time financial specialist to help process requests. Around $35 million in funds have been approved but have not been distributed to Tribes yet. The office is still about 1400 requests behind. The office currently operates with only three full-time employees, but they have requested two additional full-time employees for F.Y. 2025 and six additional for F.Y. 2026.

**Heather Washington**

Salt River entered into a 105(l) lease agreement during the second quarter of FY 2022, and they have recently received funding for their projects. Included in their lease packages were two B.I.E. school projects. Those projects were sent back, and Salt River was notified that they couldn't go through their compact and needed to go through their 297 grant. That has set them back, and they haven't received any funds for educational buildings.

**John Biof**

Mr. Biof recommended that the S.O.P. or guidebook include more specific information regarding what types of PSFAs the office accepts or does not accept as allowable.

**Budget Update**

***Sharon Omps, Division Chief, Division of Formulation & Financial Budget (invited) Management, Office of Budget & Performance Management Matthew Vogel, Policy Lead, Appropriations and Federal Budget, NCAI***

The House released its proposed allocations on June 27, and the full committee report was released on July 9. Indian Affairs is collectively funded at $4.4B (+$464.1M above F.Y. 2024 enacted and—$65.7M below the President's request). The B.I.A. budget has increased by $356.1M above F.Y. 2024, B.I.E. has increased by $102.7M, and BFTA has increased by $5.3M.

The bill does not address the Administration's proposal to reclassify Contract Payments for Tribal Leases as mandatory funding. It also doesn't address the proposed amendment to the I.R.A. to clarify the eligibility of federally recognized Tribes to take land into Trust.

The Committee directs agencies funded in the bill to publish decision rationale in the context of and in reasonable detail to the Tribal input received during the consultation. The bill does not provide funding for Indian Land Consolidation.

**TERRA Act**

***Hobbs Straus Dean and Walker L.L.P.***

The Tribal Environmental Resiliency Resources Act (TERRA Act) aims to create a federal program within the Department of Interior that establishes federal interagency coordination to support environmental and natural disaster prevention, mitigation, and relief efforts. The TERRA Act would streamline administrative resources by waiving statutory, regulatory, and administrative requirements for federal programs integrated into TERRA Plans.

**Tribal Leader Comment**: The bill's definition of an Indian Tribe uses the definition found in Section IV of the ISDEAA or 25 U.S.C. §5304. Typically, we like to see the Tribal List Act of 1994 as the definition of Indian Tribe. This bill requires that there will be Tribal programs for which Tribes will benefit due to their status as Indian Tribes.

**Farm Bill Update**

***Kayla Gebeck Carroll, Attorney, Holland & Knight L.L.P.***

The 2018 Farm Bill expired on September 30, 2023. In November of 2023, President Biden ratified the Further Continuing Appropriations and Other Extensions Act of 2024, which extends the Farm Bill through September 30, 2024. Congress has until the end of calendar year 2024 before it must pass another continuing measure.

The House Republican proposal does make one reference to compacts. Sixteen Tribes have negotiated 638 agreements with the USDA and Forest Service. The Native Farm Bill Coalition (NFBC) continues to advocate for making the 638 TFPA demonstration permanent. They also want to remove the "agency" requirement and secure the authorization of appropriations.

Thirteen Tribes have negotiated 638 agreements with USDA, Food and Nutrition Service. The NFBC asks Congress to make the 638 FDPIR pilot program permanent, expand 638 beyond procurement, and not provide separate budget lines for 638 v. non-638 FDPIR funding. The NFBC supports S. 2498, FDPIR Tribal Food Sovereignty Act of 2023.

The NFBC advocates for building institutional knowledge with the USDA and establishing an Office of Self-Governance within the USDA.

**Thursday, July 25**

**Public Safety and Justice**

***Glen Melville, Deputy Bureau Director, Office of Justice Services, Indian Affairs Daron Carreiro, Acting Director, Office of Tribal Justice, U.S. Department of Justice***

**Tribal Leader Question:** When we get funding increases, a formula or model is used to determine the distribution of funds to the Tribes regarding self-governance compacts or self-determination contracts versus the resources that go to the B.I.A. law enforcement program. Is that correct?

**Federal Response:** General increases from the Hill are factored into our methodology. The methodology considers population, crime rate, land mass, and need. All those are factored into our methodology, which is spread evenly according to our methodology, including self-governance compacts, 638 contracts, and direct service.

**Tribal Leader Question:** When was the last law enforcement methodology formula reviewed or updated?

**Federal Response:** We have been using the methodology for several years. We updated or adjusted to the certified tribal enrollment. We did that two years ago.

**Discussion with Assistant Secretary, Indian Affairs, DOI**

***W. Ron Allen, Tribal Chairman/C.E.O., Jamestown S'Klallam Tribe and Chairman, SGAC***

***Katherine Isom-Clause, Deputy Assistant Secretary – Indian Affairs, DOI***

***Members of the SGAC***

The DOI is still in the consultation phase of implementing the rules developed under the PROGRESS Act. The Progress Act rules are the number one priority on their regulatory agenda.

The DOI is implementing an access-to-capital initiative that commits federal agencies to collaborate and strategize on improving awareness and access to utilization of federal funding resources. This includes the creation of an online clearinghouse of federal funding opportunities.

The DOI has published new regulations that improve the implementation of the Buy Indian Act. They have also established a new Buy Indian Act information and tools website where users can find Native American-owned businesses and other useful information.

In December, the DOI announced the distribution of over $1.4 billion in contracts to Indian economic enterprises.

**Tribal Leader Question/Comment:** Is it possible to look at M.O.A.s or interdepartmental agreements to bring in additional FTEs where self-governance is growing and expanding? Because you might not have all the resources within the DOI.

**Federal Response:** Sheree and I can talk about it more and think creatively about increasing capacity. I appreciate that outside-of-the-box thinking. Thank you.

**Tribal Leader Comment:** The ASIA should help us with all the agencies under the Secretary's purview. We continue to find barriers that are inconsistent with EO 14112. EO 14112 empowers you, ASIA Newland, and the Secretary to guide the agencies into which self-governance is advancing.

**Tribal Representative Comment:** The Senate report to the PROGRESS Act underscores the importance of building capacity in Indian Country. The report discussed that Indian Tribes are like most local governments. It also talked about the importance of developing infrastructure and promoting community stability through the development of infrastructure. They meant clean water, wastewater systems, schools, clinics, job centers, and roads.

What Congress noted is that when infrastructure in Indian Country is in place, Tribes are in the best position to take advantage of their population capital and pursue economic development, and that is what community stability is all about. In this rulemaking and the proposed rule, tribal representatives and I have seen regarding the non-consensus issues that the department seems to have fallen back on old positions regarding the scope of inherent federal functions and the trusting of Tribes to administer these programs capably.

Reid Chambers, who himself was an associate solicitor at the DOI in the 1970s, noted then and has noted now that the department has not managed well the conflict of interest that exists between the priorities of the bureaus at Interior compared to the trust responsibility that the federal government has to federally recognized Tribes and individual Indians. So, I would ask you, Sam, and ASIA Newland, to please look at the tribal legal and policy rationale concerning the disagreement issues, especially concerning inherently federal functions as well as the authority under Section 407 of Title IV concerning NEPA.

The reason I say that is because if the department finalizes this rule later this year, it will lock in the proposed rule position on the non-consensus issues. Those regulations could well be in place for another 25 years, and I think it will undermine and impede the empowerment of Tribes.