

***TRIBAL / INTERIOR BUDGET COUNCIL
MEETING BOOKLET***



All In-Person Meeting

August 4-7, 2025

***8330 Riverside Parkway
Tulsa, Oklahoma 74137***

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Tribal/Interior Budget Council
August 4-7, 2025
All In-Person Meeting
River Spirit Casino Resort
8330 Riverside Parkway, Tulsa, OK 74137

Sunday, August 3 – Travel Day

Monday, August 4 – Subcommittee Meetings

9:00 – 12:00 **Education Subcommittee**
 Land, Water, and Natural Resources Subcommittee

12:00 – 1:30 Lunch

1:30 – 4:30 **Transportation Subcommittee**
 Data Management Subcommittee

Tuesday, August 5 – Subcommittee Meetings/Tribal Caucus

9:00 – 12:00 **Budget Subcommittee**

12:00 – 1:30 Lunch

1:30 – 4:30 **Public Safety & Justice Subcommittee**
 Economic Development Subcommittee

4:30 – 6:30 **Tribal Caucus**

Wednesday, August 6 – TIBC Main Session

9:00 – 9:15	Call to Order	Tribal Co-Chairs
	Opening Prayer	Tribal Member – TBA
9:15 – 9:30	Roll Call	Tribal Co-Chairs/NCAI TIBC Coordinator
	Approval of Agenda/Minutes	
9:30 – 10:45	Opening Remarks	Tribal Co-Chairs & AS-IA
10:45 – 11:00	Break	
11:00 – 11:30	Legislative Updates	Matthew Vogel, NCAI
11:30 – 12:30	Lunch	
12:30 - 1:30	BIA Update	Director - BIA Deputy Director, Field Ops - BIA
1:30 - 2:30	Budget Update/Open Forum	Sharon Omph, Chief, Div. of Formulation Full Body

2:30 – 3:30	OBBB Discussion	TBD
3:30 – 3:45	Break	
3:45 – 4:05	BIE Subcommittee Update	Full Body/Subcommittee/Director, BIE
4:05 – 4:25	Land & Water (Nat. Resources) Subcommittee Update	Full Body/Subcommittee/Director, OTS
4:25 – 4:45	Data Subcommittee Update	Full Body/Subcommittee/Chief Data Officer
4:45 – 5:05	PS&J Subcommittee Update	Full Body/Subcommittee/Director, OJS

Thursday, August 7 – TIBC Main Session

9:00 – 9:30	Opening Remarks/Recap	Tribal & AS-IA Co-Chairs
9:30 – 9:50	Transportation Subcommittee Update	Full Body/Subcommittee/Director, OIS
9:50 – 10:10	Economic Development Subcommittee Update	Full Body/Subcommittee/Director, OIED
10:10 – 10:30	Break	
10:30 – 12:00	Budget Subcommittee Update and Possible Budget Strategies	Full Body/Subcommittee/DASM/OBPM
12:00 – 1:00	Lunch	
1:00 – 1:30	BTFA Update	Director, BTFA
1:30 – 2:00	BIE Update	Director – BIE Deputy Director - BIE
2:00 – 2:30	National Johnson O’Malley Assoc.	TBD (NJOMA President)
2:30 – 2:45	Break	
2:45 – 3:30	ASAP System Changes/Updates	J. Spaan, SGCETC
3:30 – 5:00	Old Business/New Subcommittee Membership (vacancies)	Matthew Vogel, NCAI
5:00	Adjourn	

Friday, August 8 – Travel Day - Have a Safe Journey Home

TRIBAL/INTERIOR BUDGET COUNCIL MEETING



**Tribal, Central, and Regional Members
TIBC Subcommittee Members
August 4-7, 2025
(In-Person)**

**River Spirit Casino Resort
8330 Riverside Parkway
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TRIBAL/INTERIOR BUDGET COUNCIL – March 2025 Meeting Minutes (DRAFT)

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Executive Summary

All presentations, handouts, and attachments are posted to the [TIBC Webpage](#) under [Meeting Materials](#).

The Tribal/Interior Budget Council (TIBC) convened in-person on March 10-13, 2025.

- All six subcommittees convened from March 10-12, 2025.
- On March 12-13, 2025, a quorum was present and official business was conducted.
- A motion to adopt the March 2025 Agenda as a guide passed.
- A motion to adopt the November 2024 meeting minutes passed.
- A total of three actions were approved by the full TIBC body; those actions can be found in the New/Old Business section of the minutes.

Opening Remarks

Tribal Co-chairs Opening Remarks

The meeting opened with an invocation from Charlene of the Yakima Nation, who shared a traditional warrior's song and prayer emphasizing the sacred trust between tribal nations and the Creator, and the need for protection of tribal lands, resources, and future generations. The prayer highlighted the sacrifices made by ancestors and the ongoing responsibility to preserve tribal sovereignty and cultural traditions.

Co-chairs Ron Allen, Rick Harrison, and Lisa White Pipe welcomed tribal leaders from across the country, emphasizing the critical importance of the Bureau of Indian Affairs workforce to tribal sovereignty and self-determination. Allen stressed that BIA employees "work for us" whether through direct service, 638 contracts, or self-governance compacts, and called for unity in protecting these essential services from proposed budget cuts and workforce reductions.

Chairman Allen outlined the meeting's primary objectives: to assess the current status of BIA operations under the new administration, understand the impact of recent workforce reductions, and develop a unified strategy to protect treaty obligations and trust responsibilities. He emphasized that with a current budget of approximately \$4 billion against identified needs exceeding \$30 billion, maintaining existing capacity while advocating for increases is crucial for tribal communities' survival and prosperity.

Office of Assistant Secretary for Indian Affairs (AS-IA) Opening Remarks

During the first full session of the TIBC meeting, Exercising the delegated authority of the Assistant Secretary for Indian Affairs(AS-IA) Bryan Mercier thanked TIBC for their hard work over the years, and said he is very optimistic about the opportunity to get positive work done for



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Indian Country with this Administration. Director Mercier acknowledged the challenging transition period under the new administration while expressing cautious optimism about opportunities for tribal self-determination and regulatory reform. He reported that approximately 40 probationary employees were successfully reinstated after advocacy efforts, and emphasized that future workforce changes would involve tribal consultation. Mercier highlighted the administration's interest in reducing bureaucratic barriers and allowing tribes greater control over their own affairs, though he stressed the need to frame tribal priorities within the new administration's language emphasizing economic development, regulatory reduction, and local control. He committed to protecting direct service positions while looking for efficiencies in upper management and administrative functions.

During the second day of the full TIBC meetings, Scott Davis, recently appointed as Principal Deputy Assistant Secretary and currently exercising the delegated authority of the Assistant Secretary for Indian Affairs, brought a unique perspective as an enrolled member of the Standing Rock Sioux Tribe with extensive experience in North Dakota's Indian Affairs Commission. Davis emphasized his commitment to maintaining the government-to-government relationship while working to streamline bureaucratic processes that hinder tribal self-determination. He stressed his belief in tribal innovation over federal regulation, advocating for removing barriers that prevent tribes from managing their own lands and communities effectively. Davis shared his personal connection to tribal communities and his understanding of the challenges facing Indian Country, having worked with tribal leadership for over a decade in various capacities.

Davis outlined his vision for the next four years as a continuation of the 50-year journey toward tribal self-determination that began with the Indian Self-Determination and Education Assistance Act. He emphasized the administration's goals of reducing federal bureaucracy, promoting economic development, and supporting energy initiatives that align with tribal priorities. Davis committed to visiting tribal communities regularly and maintaining open communication with tribal leadership, stressing his availability as a resource for tribes navigating federal processes. He acknowledged the administration's focus on efficiency while pledging to protect the unique trust relationship between the federal government and tribal nations, emphasizing that any workforce reductions should be done strategically to minimize impacts on direct services to tribal communities.

Legislative Update from Matt Vogel, Policy Lead, NCAI

FY25 Appropriations are currently funded through a Continuing Resolution (CR) that funds the government through Friday, March 14, 2025. The House passed H.R. 1968, Full-Year Continuing Appropriations and Extensions Act of 2025 on March 11, 2025, a relatively “clean CR,” with a vote of 217 to 213 along party lines. This bill would fund the government until September 30, 2025, and has \$1.6 trillion in total discretionary funding, \$893 billion for defense and \$708 billion in non-defense spending. It adheres to the FY25 caps on base discretionary funding under the Fiscal Responsibility Act (FRA) and would have an estimated \$8 billion in deficit reduction through FY34.

Using budget reconciliation, the House passed H. Con. Res. 14 on February 25, 2025. It extended the Tax Cuts and Jobs Act of 2017 (TCJA), which would cost \$6 trillion over a ten-year period. The bill calls for \$1.7 trillion in deficit reduction through the following spending cuts: \$880 billion



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from Energy & Commerce, \$330 billion from Education & Workforce, \$230 billion from Agriculture, \$50 billion from Oversight, \$10 billion from Small Business, \$1 billion from Finance Services, and \$1 billion from Natural Resources. It calls for the following deficit increases: \$100 billion for Homeland, \$100 billion for Armed Services, \$110 billion for Judiciary, and \$4.5 trillion for Ways & Means, and the bill increases the debt limit by \$4 trillion. It also calls for mandatory spending cuts of \$2 trillion over ten years.

Workforce Reductions and Administrative Changes

Tribal leaders expressed deep concern about recent workforce reductions affecting approximately 350 employees across Indian Affairs through probationary terminations and deferred resignation programs. The reductions have particularly impacted direct service delivery to tribal communities, with some regions losing critical positions in enrollment services, transportation, irrigation, and other essential functions. Leaders emphasized that these cuts undermine treaty obligations and trust responsibilities, as tribes depend on federal employees to process land transfers, manage trust assets, and deliver vital services. Several tribal leaders called for exemptions from future workforce reduction initiatives, arguing that Indian Affairs should be protected due to the unique government-to-government relationship and legal obligations to tribal nations.

Budget Strategy and Legislative Priorities

The discussion centered on developing TIBC's FY 2027 budget request, which totals approximately \$31 billion—a significant increase from the current \$4 billion appropriation. Tribal leaders used a deliberative process to allocate discretionary funding increases across priority areas including strengthening tribal communities, public safety and justice, natural resources management, and economic development. Key priorities included increased funding for tribal courts, law enforcement, education infrastructure, road maintenance, burial assistance programs, and the Tiwahe initiative for comprehensive family services. Leaders emphasized the need for full funding of existing programs rather than continued flat-line budgets that fail to meet growing tribal populations and needs.

Education and School Choice Concerns

Significant discussion focused on Executive Order 14191 regarding school choice for Bureau of Indian Education students, with tribal leaders expressing strong opposition to voucher programs that could undermine tribal education sovereignty. The BIE currently serves approximately 48,000 students across 183 schools, but the executive order could potentially affect all 640,000 BIE-eligible children nationwide. Tribal leaders argued that voucher systems would not work in remote tribal communities where no alternative schools exist, and emphasized that tribal-controlled education is a matter of sovereignty, not just service delivery. They called for meaningful consultation and protection of current BIE funding structures while opposing any movement of education funding away from tribal control.

Public Safety and Justice Challenges

Tribal leaders highlighted the severe public safety crisis in Indian Country, including inadequate law enforcement staffing, jurisdictional complications, drug trafficking by cartels, and rising rates of missing and murdered Indigenous relatives. With only 200 police officers serving the Navajo Nation's 200,000 residents (compared to the national standard of 2.8 officers per 1,000 people), many communities face critical public safety gaps. Leaders reported specific challenges including federal and state courts refusing to recognize tribal jurisdiction, the need for additional detention



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facilities, and the devastating impact of fentanyl trafficking on tribal communities. They called for increased funding for tribal courts, law enforcement, detention facilities, and better coordination between federal, state, and tribal law enforcement agencies.

Bureau of Indian Affairs Update

Director Mercier acknowledged the challenging transition period under the new administration while expressing cautious optimism about opportunities for tribal self-determination and regulatory reform. He reported that approximately 40 probationary employees were successfully reinstated after advocacy efforts, and emphasized that future workforce changes would involve tribal consultation. Mercier highlighted the administration's interest in reducing bureaucratic barriers and allowing tribes greater control over their own affairs, though he stressed the need to frame tribal priorities within the new administration's language emphasizing economic development, regulatory reduction, and local control. He committed to protecting direct service positions while looking for efficiencies in upper management and administrative functions.

To view the Office of Budget and Performance Management (OBPM), Budget Formulation and Financial Management's detailed update, click [here](#). To view the FY27 Regional vs. National Tribal Ranking by Category, click [here](#). To view the FY27 National Tribal Priority Program Ranking by Category and Program, click [here](#). To view the FY27 Education Ranking Tribal vs. BIE Funded Schools, click [here](#). To view the Congressional Research Service's presentation on BIA: Budget Overview and Potential Issues, click [here](#); for the report itself, click [here](#).

To view the latest BIA Comp tables, comparing enacted spending to TIBC Recommendations, click [here](#); for the BIE Comp table, click [here](#).

BIA budget justifications aka "Greenbook" for FY25 can be found [here](#).

Bureau of Indian Education Update

BIE officials reported significant staffing challenges with approximately 60% vacancy rates for non-school employees following recent workforce reductions, including the loss of 112 staff through resignations and terminations. Despite these challenges, schools received exemptions from travel card restrictions, allowing continued operations for essential services like school transportation and supplies. The bureau faces additional uncertainty regarding the school choice executive order and potential reorganization proposals. Officials emphasized their continued commitment to serving tribal students while working to address infrastructure needs, including a \$6.7 billion construction backlog and \$1 billion in deferred maintenance across BIE facilities.

To view the full detailed update and discussion from the Bureau of Indian Education, please click [here](#) (BIE Education Subcommittee Presentation) and [here](#) (BIE Education Facilities Presentation).



Bureau of Trust Fund Administration Update

BTFA leadership outlined their modernization efforts, including new online account access systems and improved beneficiary services through automated phone systems. The bureau manages over \$9 billion in trust assets for 395 unique beneficiaries across 360 tribes, processing more than \$1 billion annually in transactions. Despite budget constraints and staffing reductions, BTFA committed to maintaining essential services including trust fund management, land consolidation activities, and beneficiary account services. Williams emphasized their preparation for potential government shutdowns through enhanced self-service capabilities and on-call staffing arrangements to ensure continued access to tribal trust funds and essential services.

To view the full detailed update and discussion from the Bureau of Trust Fund Administration, please click [here](#).

Office of Indian Economic Development Update

To view the full detailed update and discussion from the Office of Indian Economic Development, please click [here](#).

Subcommittee Report Outs

Public Safety and Justice Subcommittee

- Discussion regarding a Letter or Resolution to support the Badges Act (ran out of time)

Transportation Subcommittee

- Quorum was not reached, no official actions were taken.

Budget Subcommittee

- No action items.

Data Management Subcommittee

- No action items.

Land, Water, and Natural Resources Subcommittee

- Quorum was not reached, no official actions were taken.

Education Subcommittee

- MOTION: Recommend to the full TIBC, a letter of support to Congress for the FY26 Indian education funding levels identified within the FY26 TIBC Budget recommended amounts - motion passed subcommittee
- MOTION: Recommend a resolution to the full TIBC, Asserting Bureau of Indian Education (BIE) Schools are Schools of Choice and Opposing Voucher Program Proposed under BIE through Executive Order - motion passed subcommittee



TRIBAL/INTERIOR BUDGET COUNCIL – March 2025 Meeting Minutes (DRAFT)

- MOTION: hold an education subcommittee work session between the March 2025 and Summer 2025 TIBC meetings - motion passed subcommittee

New/Old Business

TIBC Actions:

- A motion was passed to adopt [TIBC Resolution #25-001](#) Asserting Bureau of Indian Education (BIE) Schools are Schools of Choice and Opposing Voucher Program Proposed under BIE through Executive Order
- A motion was passed to adopt [TIBC Resolution #25-002](#) Calling on the Administration to Limit Impacts of Federal Hiring Freezes and Reductions in Workforce on Tribal Nations
- Request for the technical lead to compile a list of attendance at past TIBC meeting to determine which representatives have been repeatedly absent and should be replaced
- Education Subcommittee Co-chair Buster Atteberry and voting member Hermina Frias reported to the full TIBC body that they are stepping down from their roles within the Education subcommittee.
- Next Meeting Dates: (Subject to Change)
 - 2025:
 - o Summer 2025 – August 4-8, 2025 (Oklahoma Region)
 - o Fall 2025 – November 3-7, 2025 (Washington, DC)
 - 2026:
 - o Spring 2026 – March 9-13, 2026 (Washington, DC)
 - o Summer 2026 -July 20-24, 2026 (Northwest Region)
 - o Fall 2026 – November 16-20, 2026 (Washington, DC)



Tribal/Interior Budget Council

Budget Subcommittee Meeting Agenda

August 5, 2025

9:00 a.m. - 12:00 p.m.

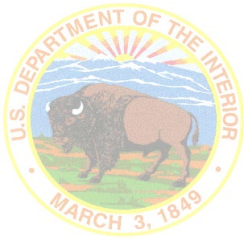
Tribal Subcommittee Co-Chairs:

W. Ron Allen, Jamestown S'Klallam Tribe

Federal Subcommittee Co-Chair:

Randi Adams, Director OBPM

- Welcome and Opening Remarks
 - Tribal Co-Chair: W. Ron Allen
 - Federal Co-Chair: Randi Adams
- Voting Member Roll Call
- Issues/Updates
 - Federal Co-Chair: Randi Adams, Director OBPM
- General Tribal Leader Discussion
 - FY 2026 Budget Justifications “Greenbook”
 - Expiring Funds
 - Advancing self-governance and self-determination
 - FY 2027 Budget Request
 - Indian Affairs - Workforce Efficiency and Planning
- Summary of Action Items for Full TIBC
- Adjourn



Tribal/Interior Budget Council

Data Management Subcommittee Meeting Agenda

August 4, 2025

1:30 p.m. – 4:30 p.m.

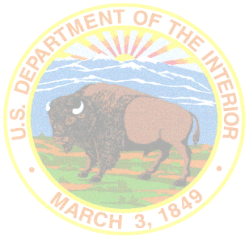
Tribal Subcommittee Co-Chairs:

Rick Harrison, Chickaloon Village

Federal Subcommittee Co-Chairs:

Nia Carty-McDonald, Division Chief of AS-IA Administration

- Welcome and Opening Remarks
 - Tribal Co-Chair: Rick Harrison
 - Federal Co-Chair: Nia Carty-McDonald
- Voting Member Roll Call
- Issues/Updates
 - Federal Co-Chair: Nia Carty-McDonald, Division Chief of AS-IA Administration
 - Indian Country Data Working Group
 - Tribal Data Exchange
- General Tribal Leader Discussion
 - Current Staffing Levels
 - Current Vacancies
 - Indian Affairs – Workforce Efficiency and Planning
- Summary of Action Items for Full TIBC
- Adjourn



Tribal/Interior Budget Council
Economic Development Subcommittee Meeting
Agenda

August 5, 2025

1:30 p.m. - 4:30 p.m.

Tribal Subcommittee Co-Chairs:

Courtney Two Lance, Oglala Sioux Tribe

Kitcki Carroll, United South and Eastern Tribes (USET)

Federal Subcommittee Co-Chair:

K. Denise Litz, Director, Office of Indian Economic Development (OIED)

By proxy: Kennis (Ken) Bellmard, Deputy Assistant Secretary for Policy and Economic
Development

- Welcome and Opening Remarks
 - Tribal Co-Chair: Courtney Two Lance
 - Tribal Co-Chair: Kitcki Carroll
 - Federal Co-Chair *by proxy*: Kennis (Ken) Bellmard
- Voting Member Roll Call
- Issues/Updates
 - Federal Co-Chair *by proxy*: Kennis (Ken) Bellmard
- General Tribal Leader Discussion
 - OST FS Economic Survey - Courtney Two Lance
 - Inherent Federal Functions | Plans to Reinterpret 1996 DOI Leshy Memo | Impacts on Economic Development
 - Tribal Land Leasing | S1322 & HR1532 Reintroduction | RoW Permitting to Complement Tribal Land Leasing and Development | Need for DOI Support
 - EO14315 | Solar & Wind Projects on Tribal Lands
 - Indian Loan Guarantee Program Updates
 - Indigenous Tourism Collaborative of the America's Partnership Updates
 - Indian Business Incubators Program Updates

- Native American Business Development Institute (NABDI) Program Updates
 - 477 Program Expansion and Resource Development
 - Buy Indian Act Modernization (including DOI OSDBU Collaboration) Updates
 - Opportunity Zones
- Summary of Action Items for Full TIBC
- Adjourn

ECONOMIC SURVEY

Date: _____

What is your gender? Female Male **What is your age?**

What is your tribe?

What is your community?

Are you an enrolled member of the Tribe? Yes No

What is your zip code?

How long have you resided in that zip code?	0-5 years
	5-15 years
	15+ years
	N/A Visitor

Do you think your local community's economy is getting:

Better

Worse

About the same

In the next 5 years, do you think your local community's economy will get:

Better

Worse

About the same

What are the greatest assets in your area? What makes your community stand out? List your top 3.

- _____ Quality of Life
- _____ Affordable housing
- _____ Schools/Education
- _____ Opportunities for small business
- _____ Safe Community
- _____ Restaurants/Entertainment

_____ Tourism businesses

_____ Agriculture

_____ Other (please specify): _____

What are the biggest needs in your area? Pick your top 3.

_____ Help retaining and expanding businesses

_____ Better local infrastructure (including transportation, water/sewer, etc.)

_____ Better access to health care services

_____ Better and/or more educational opportunities

_____ Better housing options

_____ Better programs/services for seniors

_____ More programs/activities for kids

_____ More entertainment for all ages

_____ Have more job opportunities

_____ Fill empty storefronts/revitalize downtown

_____ Provide more parks and recreation options

_____ Public transportation access/options

_____ Better public safety

_____ Tourism business

_____ Telecommunications/Broadband

_____ Other (please specify): _____

Which business industries have the most growth potential in your area? Pick your top 2

_____ Agriculture

_____ Healthcare

_____ Energy

_____ Tourism

_____ Retail

_____ Manufacturing _____ Service industries

_____ Other (please specify): _____

Based upon your choices above, what TYPES of business would you like to see?

_____ Traditional Agriculture (farming and ranching)

_____ Value added Agriculture (meat and grain processing, distilling, brewing, etc.)

_____ Agriculture equipment and supplies (retail)

_____ Specific healthcare providers (dental, eye, therapies, etc.)

_____ Small manufacturing (components, welding, metalworks, etc.)

_____ Main street retail/service (cosmetology, clothing, pet grooming, hardware, home improvement)

_____ Entertainment/Activities (movies, indoor recreation, music)

_____ Legal, engineering, architectural

_____ Construction, plumbing, electrical

_____ Restaurants/Coffee shops

_____ Energy businesses (wind, solar, natural gas, oil, business support)

_____ Remote work space/Co-working opportunities

_____ Other (please specify): _____

What do you see as some of the obstacles for new businesses to open in your community?

_____ Lack of local infrastructure or utilities

_____ Local/state/federal regulations (red tape)

_____ Lack of community support

_____ Population and/or location

_____ Local taxes

_____ Lack of commercial real estate

_____ Workforce challenges

_____ Startup capital

_____ Not knowing where to go and who to contact

_____ Other (please specify): _____

What changes would you like to see in your area?

Please provide any additional comments on the growth and development of your community.

Thank you for your input



United States Department of the Interior

OFFICE OF THE SOLICITOR

May 17, 1996

MEMORANDUM

To: Assistant Secretaries and Bureau Heads
From: Solicitor *Stuart Lesly*
Subject: Inherently Federal Functions under the Tribal Self-Governance Act

This memorandum analyzes and provides general guidance on the meaning of the term "inherently Federal function" as used in Title IV of the Indian Self-Determination and Education Assistance Act (ISDEA), as added by Pub. L. 103-413, Title II, 108 Stat. 4250 (Oct. 25, 1994) ("Tribal Self-Governance Act").

This memorandum cannot, and is not intended to, provide a definitive answer regarding how the inherently Federal function provision applies to a tribal request to perform a specific activity under an annual funding agreement. Each request must be individually analyzed in terms of the specific function sought to be performed by a tribe, the applicable Federal law governing the activity at issue, and the amount of authority to be retained by the Department. This memorandum outlines the analysis that an agency must conduct, in consultation with the Solicitor's Office, when a tribe submits such a request.

I. INTRODUCTION

A. Impact on Previous Opinions

This opinion supersedes the December 16, 1994 opinion signed by the Associate Solicitor for General Law on this subject. The Associate Solicitor had relied upon a 1990 opinion issued by the Department of Justice's Office of Legal Counsel (OLC), which concluded that the Appointments Clause of the U.S. Constitution prohibits assigning certain Federal functions to individuals who are not officers of the United States. On September 7, 1995, OLC modified its previous view to conclude that the Appointments Clause rarely prohibits the delegation of Federal functions to non-Federal parties. See also OLC, "The Constitutional Separation of Powers between the President and Congress," May 7, 1996, at 20-28. The recent OLC opinions require, in turn, amendment of our earlier advice on the Appointments Clause.

This opinion also amends three other previous opinions from this Office. Based upon the now withdrawn December 16, 1994 opinion on inherently Federal functions, the Associate Solicitors for Conservation and Wildlife and for Energy and Resources issued opinions on May 8, 1995 on how the inherently Federal function restriction would impact the ability of the National Park Service, the Fish and Wildlife Service, and the Bureau of Land Management to enter into self-governance agreements for their programs. I forwarded these memoranda to the Assistant to the Secretary with an explanatory memorandum also dated May 8, 1995. The May 8, 1995 opinions by the Associate Solicitors are superseded to the extent they rely upon the December 16, 1994 opinion by the Associate Solicitor for General Law. Their analysis of the Tribal Self-Governance Act in respects other than the inherently Federal function restriction remains in effect.

B. Overview and Summary

Under the Tribal Self-Governance Act, the Secretary may enter into annual funding agreements under which a tribe conducts certain non-Bureau of Indian Affairs (BIA) programs and activities. Specifically, the Secretary is authorized to contract to tribes non-BIA programs and activities that are (a) otherwise available to Indian tribes or Indians or (b) are of special geographic, historical, or cultural significance to a tribe. 25 U.S.C. §§ 458cc(b)(2) and (c).

Under section 403(k) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc(k), the Secretary is specifically prohibited from contracting out to tribes any function involved in these non-BIA programs or activities that is inherently Federal. This memorandum interprets the meaning of section 403(k)'s inherently Federal restriction from the language of the Tribal Self-Governance Act, its legislative history, guidance produced by the Office of Management and Budget (OMB) that was in effect at the time the statute was drafted, and Federal case law.

Based on the statutory text and the legislative history, the agencies should use guidance on government contracting prepared by OMB and in effect at the time section 403(k) was adopted. That guidance is attached.

There are, however, some important qualifications in applying that guidance. First, federal law makes clear that tribes are not analogous to private contractors because they possess a substantial measure of independent sovereign authority. Agencies must therefore take into account, in applying section 403(k)'s restriction, the relation of the function being sought in a contract to the tribal sovereign power.

The Tribal Self-Governance Act leaves it to the informed discretion of the Secretary to decide whether and on what terms

to grant a request,¹ but it also directs the Secretary to apply federal law "in a manner that will facilitate ... the inclusion of programs, services, functions and activities" in self-governance compacts. 25 U.S.C. § 458cc(i). Moreover, the OMB guidance must yield to the extent it conflicts with specific provisions in the Tribal Self-Governance Act. Finally, agencies should bear in mind that section 406(b) of the Act, 25 U.S.C. § 458ff(b), specifically disclaims any intent to "diminish the Federal trust responsibility" with respect to Indian affairs.

II. STATUTORY LANGUAGE

The statutory provision we are here concerned with, section 403(k) of the Tribal Self-Governance Act, provides, in pertinent part²:

Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal

Nothing in the section 403(k) or anywhere else in the Tribal Self-Governance Act defines or explains what constitutes "functions that are inherently Federal." Nor does the term have a freestanding meaning that can readily be applied to or incorporated into the Tribal Self-Governance Act.³

¹ See 25 U.S.C. § 458cc(b)(2), disclaiming any intent to "provide any tribe with a preference . . . [for administering] programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law."

² The remainder of this provision, which prohibits the Secretary from entering into agreements "where the statute establishing the existing program does not authorize the type of participation sought" by the tribes, was addressed in my May 8, 1995 memorandum. See also the last paragraph before the conclusion, below.

³ The term "inherently federal responsibilities" was discussed in a January 20, 1994 notice of proposed rulemaking (NPR) by the Departments of the Interior and Health and Human Services under the Indian Self-Determination and Education Act Amendments of 1988 involving P.L. 93-638 contracts. See 59 Fed. Reg. 3166, 3181-82 (1994) (proposed January 20, 1994). Congress a few months later interrupted and reformulated the rulemaking of which this provision was part, limiting the areas in which rulemaking could be undertaken and requiring repromulgation through negotiated rulemaking. Pub. L. No. 103-413, § 105; 25 U.S.C. §

Federal court opinions that refer to "inherently Federal functions" are not helpful in the context of the Tribal Self-Governance Act. See, e.g., Caban v. United States, 728 F.2d 68, 77 (2d Cir. 1984) (Cardamore, J., concurring) (referring to the inherently Federal function of "border protection" without analysis); Anderson v. Gladden, 293 F.2d 463 (9th Cir. 1961) (police power over Indians was not so inherently Federal as to limit Federal Government's ability to relinquish jurisdiction to States -- a different matter from delegating authority to States to implement federal law).⁴

Without guidance from the language of the Act, we turn to the legislative history. See, e.g., Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984).

III. LEGISLATIVE HISTORY

Section 403(k) was added to the Tribal Self-Governance Act late in its journey through the legislative process. Its inclusion was explained by one of the Act's principal sponsors, Senator McCain, on the Senate floor shortly before final passage:

Mr. President, title II of H.R. 4842, the Tribal Self-Governance Act of 1994, is identical to H.R. 3508 and reflects the various agreements negotiated by the Senate Committee on Indian Affairs and the House Subcommittee on Native American Affairs with the Department of the Interior, Self-Governance tribes and the Senate Committee on Environment and Public Works. In addition, a new subsection (k) has been added which addresses further concerns raised by the International Association of Fish and Wildlife Agencies.

450k(a)(1); see S. Rep. No. 103-374, 103d Cong. 2d Sess. 3, 14 (1994). The January 1994 Notice was thereafter withdrawn. 60 Fed. Reg. 19,387 (1995). This NPR is not referred to in either the Tribal Self-Governance Act or its legislative history. All of this **makes** the NPR's discussion of "inherently federal responsibilities" of doubtful relevance to the meaning of § 403(k).

⁴ The federal courts have occasionally used the term "inherently Federal" to describe either the supremacy of Federal law over state law or for the purpose of determining Federal court jurisdiction. See, e.g., Newberry v. United States, 256 U.S. 232 (1921). This is not applicable to the issue before us.

Mr. President, in recent weeks concerns have been raised by the International Association of Fish and Wildlife Agencies [IAFWA] about the potential impact of self-governance legislation on the existing jurisdiction and authority of the tribal, State and Federal governments over natural resources, including fish and wildlife resources. . . .

Consequently, I asked Secretary Babbitt to review H.R. 3508 in light of IAFWA's concerns. . . .

I fully agree with the Secretary's construction of H.R. 3508--which also applies to title II of H.R. 4842--that the bill is not intended to change the jurisdictional authorities of the tribal, State and Federal governments over natural resources, including fish and wildlife resources.

Concerns have been raised as to the scope of non-BIA programs, services, functions and activities that are subject to compacts pursuant to sections 403(b)(2). Because National Parks and National Wildlife Refuges, for example, and programs such as the Endangered Species Act and the Marine Mammal Protection Act were established by Congress to benefit the general public, including Indians, a question could arise as to what elements, if any, of the Park and Refuge programs fall within the scope of section 403(b)(2). It is not intended that the Secretary's authority to enter into compacts under section 403(b)(2) permit the transfer of inherently Federal responsibilities vested by Congress in the Secretary which are determined by the Federal courts not to be delegable under the constitution.

It is not possible at this time to list all the elements of Federal programs which may not be subject to self-governance compacts, but such a list certainly could include discretionary administration of Federal fish and wildlife protection laws, promulgation of regulations, obligation and allocation of Federal funds, the exercise of certain prosecutorial powers, and other discretionary functions vested in Federal officials. . . .

To make clear that nothing in H.R. 4842 is intended to permit the Secretary to enter into a compact for the performance of responsibilities which are inherently Federal, that is, Federal responsibilities vested by the Congress in the Secretary which are determined by the courts

not to be delegable under the constitution, section 403 is amended by adding a new subsection (k)

140 Cong. Rec. S14678-79 (daily ed. Oct. 7, 1994) (statement of Senator McCain).⁵

Senator McCain describes two somewhat different types of limitations flowing from the concept of "inherently Federal." The first type concerns "discretionary functions vested in Federal officials," and the Senator lists several examples in the penultimate paragraph quoted above. The second type of limitation consists of those functions that have been determined by the courts not to be delegable under the Constitution.

If these two types of limitations were coterminous, the meaning of this part of section 403(k) would be clear -- inherently Federal functions would simply be those programs or activities that constitutionally cannot be delegated outside the Federal government. But, as explained further below in this memorandum, these two are not exactly congruent. The Constitution does not, as currently applied by the Executive Branch and the Supreme Court, prohibit the Secretary from delegating certain discretionary functions currently vested in the Federal government. That being the case, the question arises whether section 403(k), as explained by its sponsor, Senator McCain, incorporates only constitutional limits, or something broader.

It is possible to read section 403(k)'s reference to "inherently Federal" as incorporating only constitutional limitations. In parts of his floor statement Senator McCain seemed to refer only to constitutional limitations, by describing the restriction as applying to "Federal responsibilities which are inherently Federal, that is, Federal responsibilities vested by the Congress in the Secretary which are determined by the Federal courts not to be delegable under the constitution" Id.

Nevertheless, for three reasons, we reject such a reading. First, the text of section 403(k) does not refer specifically to the Constitution or any recognized constitutional doctrine. Used alone, the word "inherently" might suggest a constitutional principle, because the Constitution might be said to establish the most **basic**, or "inherent," aspects of the Federal system. But "inherently" is used here as part of a disclaimer of any intent to "alter" the Secretary's "existing statutory

⁵ In another part of his floor statement, Senator McCain discussed the second part of section 403(k), which prohibits the Secretary from contracting out programs where the statute establishing the program does not authorize the participation sought by a tribe. This discussion is not applicable to the inherently Federal function restriction.

authorities" regarding certain functions (those "that are inherently Federal"). If the intent was merely to preserve the applicability of the Constitution, this is quite a long-winded way to say it.

Second, constitutional limitations automatically apply under the Supremacy Clause, regardless of whether a statute or its legislative history specifically refers to those limitations. See, e.g., Panama Refining Co. v. Ryan, 293 U.S. 388, 433 (1935). Thus, interpreting section 403(k) to set out only constitutional limits makes it superfluous. This is not the ordinary way to interpret a statute; to the contrary, statutory provisions are ordinarily read to give each part genuine meaning. See, e.g., Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992).

Third, the chief sponsor's floor explanation for section 403(k) seemed plainly to contemplate that it made non-delegable certain Federal program elements -- such as "discretionary administration of Federal fish and wildlife protection laws . . . [and] obligation and allocation of Federal funds" -- where constitutional barriers to delegation are doubtful.⁶

For these reasons, we believe Congress intended the inherently Federal function restriction in section 403(k) to prohibit some delegations that would be acceptable under the Constitution.

IV. CONSTITUTIONAL RESTRICTIONS

The principal constitutional restriction that might come into play here is the so-called non-delegation doctrine.⁷ This

⁶ At the time the Secretary and Senator McCain were addressing this issue, the OLC's 1990 published guidance considered the Appointments Clause of the Constitution to be a significant constitutional barrier to the exercise of substantial authority under federal law by non-federal actors. See Section I(A), supra; see also footnote 7, infra. It is not clear whether this influenced the Senator to characterize rather broadly what § 403(k) protected against delegation.

⁷ As noted in part I(A) above, the Associate Solicitor for General Law's December 16, 1994 advice was based in part upon earlier OLC guidance on the Appointments Clause. Under that view private individuals (i.e., individuals who are not officers properly appointed under the Appointments Clause) were not able to determine the policy of the United States or interpret and apply Federal law in any way that bound the United States or affected the legal rights of third parties. OLC's September 7, 1995, opinion, by contrast, concludes that the Appointments Clause "simply is not implicated when significant authority is

doctrine holds that there is some constitutional limit on the ability of Congress to delegate its legislative powers. The Supreme Court has only rarely (twice in two centuries) used the doctrine to strike down federal statutes. See Panama Refining Co. v. Ryan, 293 U.S. 388 (1935); Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). The Court has, however, applied the doctrine in ways short of finding statutes unconstitutional, such as in narrowing the interpretation of statutes. See, e.g., Greene v. McElroy, 360 U.S. 474, 507 (1959); National Cable Television Ass'n Inc. v. United States, 415 U.S. 336 (1974). See also Laurence H. Tribe, American Constitutional Law 365-66 (2d ed. 1988). While the doctrine remains viable, the extent to which it may place any genuine limits on implementing the Tribal Self-Governance Act is not very clear.⁸

To the extent the doctrine contains limits, the courts, starting with the Supreme Court, have determined that those limits are relaxed where the delegation is to a tribe in an area where the tribe exercises sovereign authority. In United States v. Mazurie, 419 U.S. 544 (1975), a unanimous Supreme Court, speaking through then Justice Rehnquist, upheld 18 U.S.C. § 1161, a statute authorizing Indian tribes to regulate the introduction of liquor into Indian country. The statute had been challenged by non-tribal members who operated a tavern on non-Indian fee land within the reservation. The Court rejected the argument that Congress could not delegate such authority to tribes, explaining:

This Court has recognized limits on the authority of Congress to delegate its legislative power. Panama Refining Co. v. Ryan, 293 U.S. 388 (1935). Those limitations are, however, less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319-22 (1936). Thus it is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, Worcester v. Georgia, 6 Pet. 515, 557 (1832); they are "a

devolved upon non-federal actors." Id. at 5. See also OLC's May 7, 1996, opinion, at 20, 24-26. Accordingly, we do not consider the Appointments Clause to be applicable here.

⁸ The September 1995 OLC Opinion discussed in Part I(A) and footnote 6, above, suggests in a footnote that "the delegation to private persons or non-federal government officials of federal law authority . . . can raise genuine questions under other constitutional doctrines, such as the non-delegation doctrine and general separation of powers principles," id. at 6, n.7 (citations omitted), but provided no elaboration.

separate people" possessing "the power of regulating their internal and social relations" United States v. Kagama, 118 U.S. 375, 381-2 (1886); McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 173 (1973).

Cases such as Worcester, supra, and Kagama, supra, surely establish the proposition that Indian tribes within "Indian country" are a good deal more than "private, voluntary organizations" These same cases, in addition, make clear that when Congress delegated its authority to control the introduction of alcoholic beverages into Indian country, it did so to entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life. Clearly the distribution and use of intoxicants is just such a matter. We need not decide whether this independent authority is itself sufficient for the tribes to impose Ordinance No. 26. It is necessary only to state that the independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority "to regulate Commerce . . . with the Indian tribes." Cf. United States v. Curtiss-Wright Export Corp., supra.

419 U.S. at 556-57. See also Rice v. Rehner, 463 U.S. 713, 721-24 (1983) (describing Mazurie's holding as hinging primarily on the tribe's status as governing body of the reservation).

Although Mazurie pertained specifically to a congressional delegation to tribes, it has been relied on to support Executive Branch delegations of a governmental function to a tribe. In Southern Pacific Transp. Co. v. Watt, 700 F.2d 550, 556 (9th Cir. 1983), the applicable statute authorized the Secretary to issue rights of way through Indian reservations, but made no mention of tribal approval. The Secretary's implementing regulations required tribal approval of all right of way applications. Id. at 552. The Court of Appeals viewed the Secretary's action as a subdelegation of his authority to disapprove the grant of a right of way, but upheld it because of the tribe's jurisdiction over the affected lands and the Mazurie decision. Id. at 556. Similarly, in Nance v. Environmental Protection Agency, 645 F.2d 701, 714 (9th Cir. 1981), the EPA Administrator promulgated regulations that allowed tribes with reservations to initiate a process under the Clean Air Act to raise regulatory protection for air quality on their reservations. The plaintiffs argued that if such a delegation were permitted by the Clean Air Act, as the court held it was, the delegation would be unconstitutional because it would give "the Indian tribes authority to affect land use by non-Indians outside the reservation area." Id. at 714. The court rejected the argument, relying on Mazurie, and upheld the EPA action. 645 F.2d at 715.

In both of these post-Mazurie cases upholding executive branch delegations to tribes, the courts relied to some extent on the agency's retention of ultimate authority for the delegated activity or decision. The court in Southern Pacific upheld the Secretary's delegation to the tribe in part on the ground the Secretary retained final authority to approve the right of way, see 700 F.2d at 556; and the court in Nance upheld EPA's delegation to the tribe in part because EPA retained certain checks on tribes' exercise of this authority, see 645 F.2d at 715. See also Krent, Fragmenting the Unitary Executive: Congressional Delegations of Administrative Authority Outside the Federal Government, 85 Nw. U. L. Rev. 62, 95-101 (1990).

These authorities stand for the proposition that contracting out programs under the Tribal Self-Governance Act cannot be seriously questioned under the non-delegation doctrine, at least, or especially, where the Secretary retains responsibility for the management, oversight and resumption of programs for which he has statutory responsibility. Because the degree of retained responsibility will be determined through the terms of specific agreements negotiated between agencies and tribes, we must await further implementation of the Tribal Self-Governance Act to address whether any delegation problem might arise.

V. DISCRETIONARY FUNCTIONS VESTED IN FEDERAL EMPLOYEES

In Part III above we concluded that section 403(k)'s prohibition on contracting inherently Federal functions under the Tribal Self-Governance Act is not limited to constitutional restrictions. We therefore must address the scope of these additional limits. The best place to start the analysis is Senator McCain's floor statement. The Senator disclaimed any attempt to "list all the elements of Federal programs which may not be subject to self-governance compacts," but said such a list "certainly could include" the following:

- o discretionary administration of Federal fish and wildlife protection laws;
- o promulgation of regulations;
- o obligation and allocation of Federal funds;
- o exercise of certain prosecutorial powers.

While this is useful guidance, it hardly provides a precise directive. The Secretary is still left with the task of arriving at a reasonable construction of this ambiguous statutory provision. Chevron U.S.A. v. NRDC, 467 U.S. 837 (1984).

Because there is nothing more than Senator McCain's statement in the legislative record, we have looked elsewhere for guidance and have decided to follow, except as qualified further below, the policy guidance issued by the Office of Management and Budget (OMB) on inherently governmental functions. OMB prepared this guidance in addressing what functions of government may be contracted out to private entities, and it was in effect at the time section 403(k) was drafted and enacted into law. OMB Policy Letter 92-1, Inherently Governmental Functions (September 23, 1992) (hereafter, OMB guidance) (copy attached).

The OMB guidance expressly "does not purport to specify which functions are, as a legal matter, inherently governmental, or to define the factors used in making such legal determination." Id. at 2. Nevertheless, there is considerable symmetry between some of its principles and Senator McCain's characterizations on the Senate floor. Given this background, we believe the OMB guidance is an appropriate tool for determining what an "inherently Federal" function is in the context of the Indian Self-Governance Act.

By way of summary, the OMB guidance defines such a function as involving,

among other things, the interpretation and execution of [U.S. laws] so as to:

- (1) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order or otherwise;
- (2) determine, protect, and advance its economic, political, territorial, property, or other interest by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (3) significantly affect the life, liberty, or property of private persons;
- (4) commission, appoint, direct, or control officers or employees of the United States;
- (5) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include . . . functions that are primarily ministerial and internal in

nature, such as building security . . . or other routine . . . services.

Id. at 2. The OMB guidance includes, as an Appendix A (also attached), an illustrative list of functions considered by OMB to be inherently governmental and not to be contracted outside the Federal Government. The OMB guidance is necessarily quite general, and will not answer all the questions that may be raised. Still, we believe it is a useful tool for addressing, in the context of specific tribal requests, the limitations of section 403(k).

In applying the OMB guidance, however, we must keep in mind the idea that it was prepared in the context of government contracting with essentially private entities. Indeed, it was issued pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C. § 405(a). Under the Tribal Self-Governance Act, by contrast, we are dealing with agreements with Indian tribes that generally possess sovereign authority. This creates an important limitation on how the OMB guidance ought to be applied here.

As discussed in the previous section, the Supreme Court's decision in United States v. Mazurie and its progeny relax the non-delegation doctrine in the tribal context. While these cases did not arise in the context of the Tribal Self-Governance Act, we believe the principle they apply is appropriate to apply in this context. This means, in turn, that the OMB guidance should not be applied as strictly in the tribal context. This is particularly true since the OMB guidance was developed in the context of contracting out functions to private entities, which tribes are not.

In addressing tribal requests for Self-Governance agreements, then, Departmental agencies should consider requests in relation to the extent of tribal sovereignty over the nature and scope of the functions sought to be delegated. The more a delegated function relates to tribal sovereignty over members or territory, the more likely it is that the inherently Federal exception of section 403(k) does not apply. This is so, moreover, even in circumstances where the OMB guidance would counsel against delegation.

While tribes have considerable sovereign powers, these powers are not unlimited, and their outer boundaries are not well-defined. See, e.g., Montana v. U.S., 450 U.S. 544 (1981); Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation, 492 U.S. 408 (1989). We caution, therefore, that it may not always be possible to reach definitive conclusions on the extent of tribal jurisdiction and how it should influence the application of section 403(k).

Four other cautions are necessary as we conclude this discussion of the general principles that should guide implementation of the act. First, close calls should go in favor of inclusion rather than exclusion, because section 403(i) of the Tribal Self-Governance Act directs the Secretary to "interpret each Federal law and regulation in a manner that will facilitate . . . the inclusion of programs, services, functions and activities in the agreements." 25 U.S.C §458cc(i). See also S. Rep. No. 205, 103d Cong., 1st Sess. 6, 11 (1993).

Second, apart from the Mazurie principle, the OMB guidance must yield to specific terms of the Tribal Self-Governance Act itself. For example, section 406(c) of the Act directs the Secretary to provide liability insurance and to take into consideration "the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act (FTCA)." 25 U.S.C. §458ff(c).⁹ Similarly, section 406(c) authorizes the Secretary to acquire excess Federal property that can be transferred to a tribe under a self-governance agreement. 25 U.S.C. §458ff(c).¹⁰ To the extent these things may be relevant in applying the OMB guidance, they must be taken into account.

Third, agencies should bear in mind that section 406(b) of the Act, 25 U.S.C. § 458ff(b), specifically disclaims any intent to "diminish the federal trust responsibility" with respect to Indian affairs. Thus, agencies' decisions to contract out functions to tribes related to the management of trust assets must be undertaken with the same level of care the trust responsibility demands of the agencies when they perform the function themselves. The terms of the particular contracts or annual funding agreements may need to define with some care how the federal trust obligations are being addressed.

Finally, as noted in footnote 2 above, this memorandum does not analyze the second clause of section 403(k), which prohibits the Secretary from entering into agreements where the statute establishing the existing program does not authorize the type of participation sought by the tribes. Agencies may need, with help from the Solicitor's Office, to analyze the statutes they administer to determine whether this second provision restricts

⁹ Section 406(c) mandates that 25 U.S.C. § 450f(c) applies to self-governance agreements. 25 U.S.C. § 450f(c) requires that the Secretary obtain or provide liability insurance and in doing so take into consideration the extent to which liability is covered by the FTCA.

¹⁰ Section 403(c) provides that 25 U.S.C § 450j(f)(3), which authorizes the Secretary to acquire excess or surplus Federal property for donation to a tribe, applies to self-governance agreements.

their ability to contract with tribes under the Tribal Self-Governance Act.

VI. CONCLUSION

The OMB guidance and the Mazurie line of cases state some general principles, but section 403(k)'s inherently Federal restriction can only be applied on a case-by-case basis. Agencies considering contracting out a function which may be non-delegable under the attached OMB guidance should closely consult with the Solicitor's Office, including Regional and Field offices.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

September 23, 1992

Policy Letter 92-1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Inherently Governmental Functions.

1. Purpose. This policy letter establishes Executive Branch policy relating to service contracting and inherently governmental functions. Its purpose is to assist Executive Branch officers and employees in avoiding an unacceptable transfer of official responsibility to Government contractors.
2. Authority. This policy letter is issued pursuant to subsection 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. § 405(a).
3. Exclusions. Services obtained by personnel appointments and advisory committees are not covered by this policy letter.
4. Background. Contractors, when properly used, provide a wide variety of useful services that play an important part in helping agencies to accomplish their missions. Agencies use service contracts to acquire special knowledge and skills not available in the Government, obtain cost effective services, or obtain temporary or intermittent services, among other reasons.

Not all functions may be performed by contractors, however. Just as it is clear that certain functions, such as the command of combat troops, may not be contracted, it is also clear that other functions, such as building maintenance and food services, may be contracted. The difficulty is in determining which of these services that fall between these extremes may be acquired by contract. Agencies have occasionally relied on contractors to perform certain functions in such a way as to raise questions about whether Government policy is being created by private persons. Also, from time to time questions have arisen regarding the extent to which de facto control over contract performance has been transferred to contractors. This policy letter provides an illustrative list of functions, that are, as a matter of policy, inherently governmental (see Appendix A), and articulates the practical and policy considerations that underlie such determinations (see § 7).

As stated in § 9, however, this policy letter does not purport to specify which functions are, as a legal matter, inherently governmental, or to define the factors used in making such legal determination. Thus, the fact that a function is listed in Appendix 1, or a factor is set forth in § 7(b), does not necessarily mean that the function is inherently governmental as a legal matter or that the factor would be relevant in making the legal determination.

5. **Definition.** As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) monetary transactions and entitlements.

An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

- (a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (c) significantly affect the life, liberty, or property of private persons;
- (d) commission, appoint, direct, or control officers or employees of the United States; or
- (e) exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

[Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials.] They also do not include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of cafeterias; housekeeping; facilities operations and maintenance, warehouse operations, motor vehicle fleet management and operations, or other routine electrical or mechanical services.

The detailed list of examples of commercial activities found as an attachment to Office of Management and Budget (OMB) Cir. No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions. These functions therefore may be contracted.

6. Policy.

(a) Accountability. It is the policy of the Executive Branch to ensure that Government action is taken as a result of informed, independent judgments made by Government officials who are ultimately accountable to the President. When the Government uses service contracts, such informed, independent judgment is ensured by:

(1) prohibiting the use of service contracts for the performance of inherently governmental functions (See Appendix A);

(2) providing greater scrutiny and an appropriate enhanced degree of management oversight (see subsection 7(f)) when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see Appendix B);

(3) ensuring, in using the products of these contracts, that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors who may have interests that are not in concert with the public interest, and who may be beyond the reach of management controls otherwise applicable to public employees; and

(4) ensuring that reasonable identification of contractors and contractor work products is made whenever there is a risk that the public, Congress, or other persons outside of the Government might confuse them with Government officials or with Government work products, respectively.

(b) OMB Circular No. A-76. This policy letter does not purport to supersede or otherwise effect any change in OMB Circular No. A-76, Performance of Commercial Activities.

(c) Drafting of Congressional testimony, responses to Congressional correspondence, and agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity. While the approval of a Government document is an inherently governmental function, its drafting is not necessarily such a function. Accordingly, in most situations the drafting of a document, or portions thereof, may be contracted, and the agency should review and revise the draft document, to the extent necessary, to ensure that the final

document expresses the agency's views and advances the public interest. However, even though the drafting function is not necessarily an inherently governmental function, it may be inappropriate, for various reasons, for a private party to draft a document in particular circumstances. Because of the appearance of private influence with respect to documents that are prepared for Congress or for law enforcement or oversight agencies and that may be particularly sensitive, contractors are not to be used for the drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity.

7. Guidelines. If a function proposed for contract performance is not found in Appendix A, the following guidelines will assist agencies in understanding the application of this policy letter, determining whether the function is, as a matter of policy, inherently government, and forestalling potential problems.

(a) The exercise of discretion. While inherently governmental functions necessarily involve the exercise of substantial discretion, not every exercise of discretion is evidence that such a function is involved. Rather, the use of discretion must have the effect of committing the Federal Government to a course of action when two or more alternative courses of action exist (e.g., purchasing a minicomputer rather than a mainframe computer, hiring a statistician rather than an economist, supporting proposed legislation rather than opposing it, devoting more resources to prosecuting one type of criminal case than another, awarding a contract to one firm rather than another, adopting one policy rather than another, and so forth).

A contract may thus properly be awarded where the contractor does not have the authority to decide on the course of action to be pursued but is rather tasked to develop options to inform an agency decision maker, or to develop or expand decisions already made by Federal officials. Moreover, the mere fact that decisions are made by the contractor in performing his or her duties (e.g., how to allocate the contractor's own or subcontractor resources, what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, what conclusions to emphasize, how frequently to test) is not determinative of whether he or she is performing an inherently governmental function.

(b) Totality of the circumstances. Determining whether a function is an inherently governmental function often is difficult and depends upon an analysis of the facts of the case. Such analysis involves consideration of a number of factors, and the presence or absence of any one is not in itself determinative of the issue. Nor will the same emphasis necessarily be placed on any one factor at different times, due to the changing nature of the Government's requirements.

(1) Exercise of approving or signature authority. Official responsibility to approve the work of contractors is a power reserved to Government officials. It should be exercised with a thorough knowledge and understanding of the contents of documents submitted by contractors and a recognition of the need to apply independent judgment in the use of these work products.

3. Responsibilities.

(a) Heads of agencies. Heads of departments and agencies are responsible for implementing this policy letter. While these policies must be implemented in the Federal Acquisition Regulation (FAR), it is expected that agencies will take all appropriate actions in the interim to develop implementation strategies and initiate staff training to ensure effective implementation of these policies.

(b) Federal Acquisition Regulatory Council. Pursuant to subsections 4(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. §§ 405(a) and 421(f), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this policy letter is published in the Federal Register. Issuance of final regulations within this 210-day period shall be considered issuance "in a timely manner" as prescribed in 41 U.S.C. § 405(b).

(c) Contracting officers. When requirements are developed, when solicitations are drafted, and when contracts are being performed, contracting officers are to ensure:

(1) that functions to be contracted are not among those listed in Appendix A of this letter and do not closely resemble any functions listed there;

(2) that functions to be contracted that are not listed in Appendix A, and that do not closely resemble them, are not inherently governmental functions according to the totality of the circumstances test in subsection 7(b), above;

(3) that the terms and the manner of performance of any contract involving functions listed in Appendix B of this letter are subject to adequate scrutiny and oversight in accordance with subsection 7(f), above; and

(4) that all other contractible functions are properly managed in accordance with subsection 7(e), above.

(d) All officials. When they are aware that contractor advice, opinions, recommendations, ideas, reports, analyses, and other work products are to be considered in the course of their official duties, all Federal Government officials are to ensure

(1) developing carefully crafted statements of work and quality assurance plans, as described in OFPP Policy Letter 91-2, Service Contracting, that focus on the issue of Government oversight and measurement of contractor performance;

(2) establishing audit plans for periodic review of contracts by Government auditors;

(3) conducting preaward conflict of interest reviews to ensure contract performance in accordance with objective standards and contract specifications;

(4) physically separating contractor personnel from Government personnel at the worksite; and

(5) requiring contractors to (a) submit reports that contain recommendations and that explain and rank policy or action alternatives, if any, (b) describe what procedures they used to arrive at their recommendations, (c) summarize the substance of their deliberations, (d) report any dissenting views, (e) list sources relied upon, and/or (f) otherwise make clear the methods and considerations upon which their recommendations are based.

(g) Identification of contractor personnel and acknowledgement of contractor participation. Contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties must be required to identify themselves as such to avoid creating an impression in the minds of members of the public or the Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. All documents or reports produced by contractors are to be suitably marked as contractor products.

(h) Degree of reliance. The extent of reliance on service contractors is not by itself a cause for concern. Agencies must, however, have a sufficient number of trained and experienced staff to manage Government programs properly. The greater the degree of reliance on contractors the greater the need for oversight by agencies. What number of Government officials is needed to oversee a particular contract is a management decision to be made after analysis of a number of factors. These include, among others, the scope of the activity in question; the technical complexity of the project or its components; the technical capability, numbers, and workloads of Federal oversight officials; the inspection techniques available; and the importance of the activity. Current contract administration resources shall not be determinative. The most efficient and cost effective approach shall be utilized.

that they exercise independent judgment and critically examine these products.

9. Judicial review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

10. Information contact. For information regarding this policy letter contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street, N.W., Washington, DC 20503. Telephone (202)395-7209.

11. Effective date. This policy letter is effective 30 days after the date of publication.

Allan V. Burman

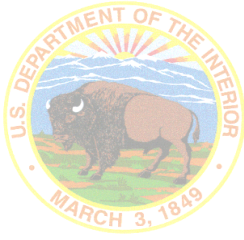
ALLAN V. BURMAN
Administrator

APPENDIX A

The following is an illustrative list of functions considered to be inherently governmental functions:¹

1. The direct conduct of criminal investigations.
2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).
3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support role.
4. The conduct of foreign relations and the determination of foreign policy.
5. The determination of agency policy, such as determining the content and application of regulations, among other things.
6. The determination of Federal program priorities or budget requests.
7. The direction and control of Federal employees.
8. The direction and control of intelligence and counter-intelligence operations.
9. The selection or nonselection of individuals for Federal Government employment.
10. The approval of position descriptions and performance standards for Federal employees.
11. The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

¹ With respect to the actual drafting of Congressional testimony, of responses to Congressional correspondence, and of agency responses to audit reports from an Inspector General, the General Accounting Office, or other Federal audit entity, see special provisions in subsection 6(c) of the text of the policy letter.



Tribal/Interior Budget Council

Education Subcommittee Agenda

August 4, 2025

9:00 a.m. – 12:00 p.m.

Tribal Subcommittee Co-Chairs:

Juana Majel-Dixon, Pauma-Yuima Band of Luiseño Indians

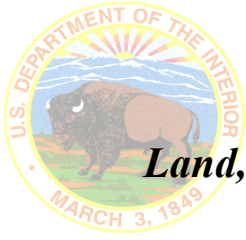
Federal Subcommittee Co-Chair:

Tony Dearman, Director, BIE

Sharon Pinto, Deputy Bureau Director, BIE

- Welcome and Opening Remarks
- Voting Member Roll Call
- Issues/Updates
 - NIEA Update - Julia Wakeford, Policy Director, NIEA
 - AIHEC Update - Ahniwake Rose, President
 - BIE Report / Status Updates - Tony Dearman, Director; Sharon Pinto, Deputy Director
 - General Budget Update
 - BIE Staffing Update
 - Executive Order 14191, Section 7
 - BIE-ED MOU
 - Inclusion of Employee Fixed Costs for All TCS Employees in FY27 Budget Request
 - Johnson O'Malley: Updated Student Count and Funding Implications
 - Next Steps: Graduation Rate and Student Performance
 - DFMC Update:
 - DFMC Roles and Responsibilities re: BIE School Facilities
 - Updates to the Education Facilities Operations and Maintenance Formula

- General Tribal Leader Discussion
 - Budget/Funding:
 - Methodology for BIE Cost Estimates
 - Letter re: BIE Budget Shortfalls and Need for Increased Funding
 - Policy, Legislative, and Programmatic Ideas, Questions, Concerns
 - Next steps for shifting administrative responsibility for 297/638 school construction and deferred maintenance from DFMC to BIE to improve efficiency and local responsiveness
 - Next Steps: Tribal Grant Support Costs
 - Recommendations for BIE Service Delivery, Implementation, Process Improvement
- Summary of Action Items for Full TIBC
- November Agenda Recommendations
 - National Fund
 - Graduation Rates / Student Performance
- Adjourn



Tribal/Interior Budget Council

Land, Water, and Natural Resources Subcommittee Meeting Agenda

August 4, 2025

9:00 a.m. - 12:00 p.m.

Tribal Subcommittee Co-Chairs:

Russell (Buster) Atteberry, Karuk Tribe

Timothy J. (TJ) Greene, Sr., Makah Tribe

Federal Subcommittee Co-Chair:

Peter Wakeland, BIA, Chief Forester, Division of Forestry

- Prayer/Invocation
- Welcome and Opening Remarks
- Voting Member Roll Call
- Issues/Updates
 - Federal Update - Peter Wakeland, BIA, Chief Forester, Division of Forestry
- General Tribal Leader Discussion
 - Probate backlog
 - FY 2025 Grant Funding Status
 - FY2025 THPO Funding Status
 - Co-Management & Co-Stewardship
- Summary of Action Items for Report Out
- Adjourn



Tribal/Interior Budget Council
Public Safety & Justice Subcommittee Meeting
Agenda

August 5, 2025

1:30 p.m. - 4:30 p.m.

Tribal Subcommittee Co-Chairs:

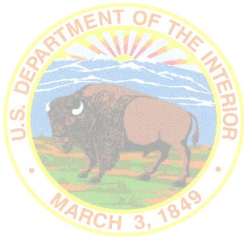
Eugenia Charles-Newton, Navajo Nation

Juana Majel Dixon, Pauma-Yuima Band of Luiseño Indians

Federal Subcommittee Co-Chair:

Glen Melville, Deputy Bureau Director, Justice Services

- Prayer/Invocation
- Voting Member Roll Call
- Welcome and Opening Remarks (2 min limit)
- Updates
 - Federal Update - Richard (Glen) Melville, Deputy Bureau Director, Justice Services
 - Update on federal positions; plan for addressing issues.
- General Tribal Leader Discussion
 - List of facilities on BIA Facility Replacement Listing
 - OJS Priority locations for housing to be built.
 - What does the H.R. 1 Reconciliation Bill mean for Indian Country?
- Summary of Action Items for Report Out
- Adjourn



Tribal/Interior Budget Council
Transportation Subcommittee Meeting
Agenda

August 4, 2025

1:30 - 4:30 p.m.

Tribal Subcommittee Co-Chairs:

Dakota Longbrake, Cheyenne River Sioux Tribe

Otto Tso, Navajo Nation

Federal Subcommittee Co-Chair:

LeRoy Gishi, Chief, Division of Transportation, BIA

- Welcome and Opening Remarks
- Voting Member Roll Call
- Issues/Updates
 - BIA DOT Update- Leroy Gishi, Chief, Division of Transportation, BIA
 - Road Maintenance Study
- General Tribal Leader Discussion
 - TTP Construction formula
 - Road Maintenance Pilot Project
 - Maintenance Funding Levels
- Summary of Action Items for Full TIBC
- Adjourn



— BUREAU OF —
**TRUST FUNDS
ADMINISTRATION**

Budget Strategy

Janel Perry, Regional Trust Director

August 2025

*We Excel,
Native America Prospers.*

Margaret Williams

Acting Director

Previous Role: Senior Advisor to the BTFA Director since August 2018.

Federal Career: Began in 1992, Accountant for the Branch of Investment Accounting within the Office of Trust Funds Management. 30+ years in federal service; with BTFA since its inception.



Areas of Expertise:

- Risk management; Trust operations; Regulatory drafting and implementation; Project management

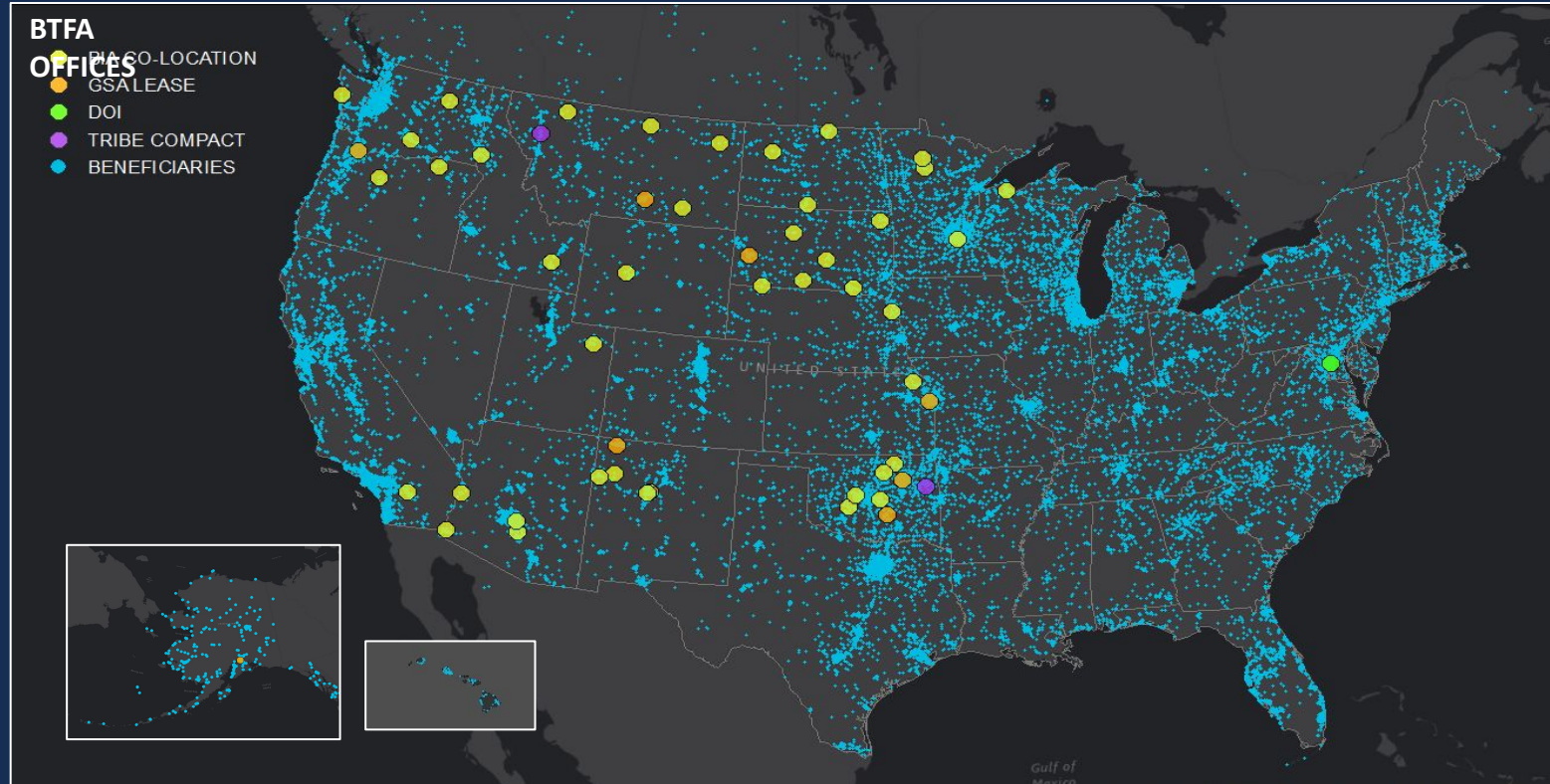
Awards: Distinguished Service Award and Service to Citizens Award, 2023

Cultural Background: Enrolled member of Sisseton-Wahpeton Oyate in South Dakota; raised in Arizona on the Navajo Reservation; affiliated with the Keweenaw Bay Indian Community. IIM account holder.

Family: Proud mother of three and grandmother of one

Bureau Snapshot - August 2025

- Support 395K Unique Beneficiaries
 - Across 50 States
 - 3 U.S. Territories
 - 27 Countries
- 67k Whereabouts Unknown
- Currently served by 296 federal staff - 28% reduction since Jan 2025





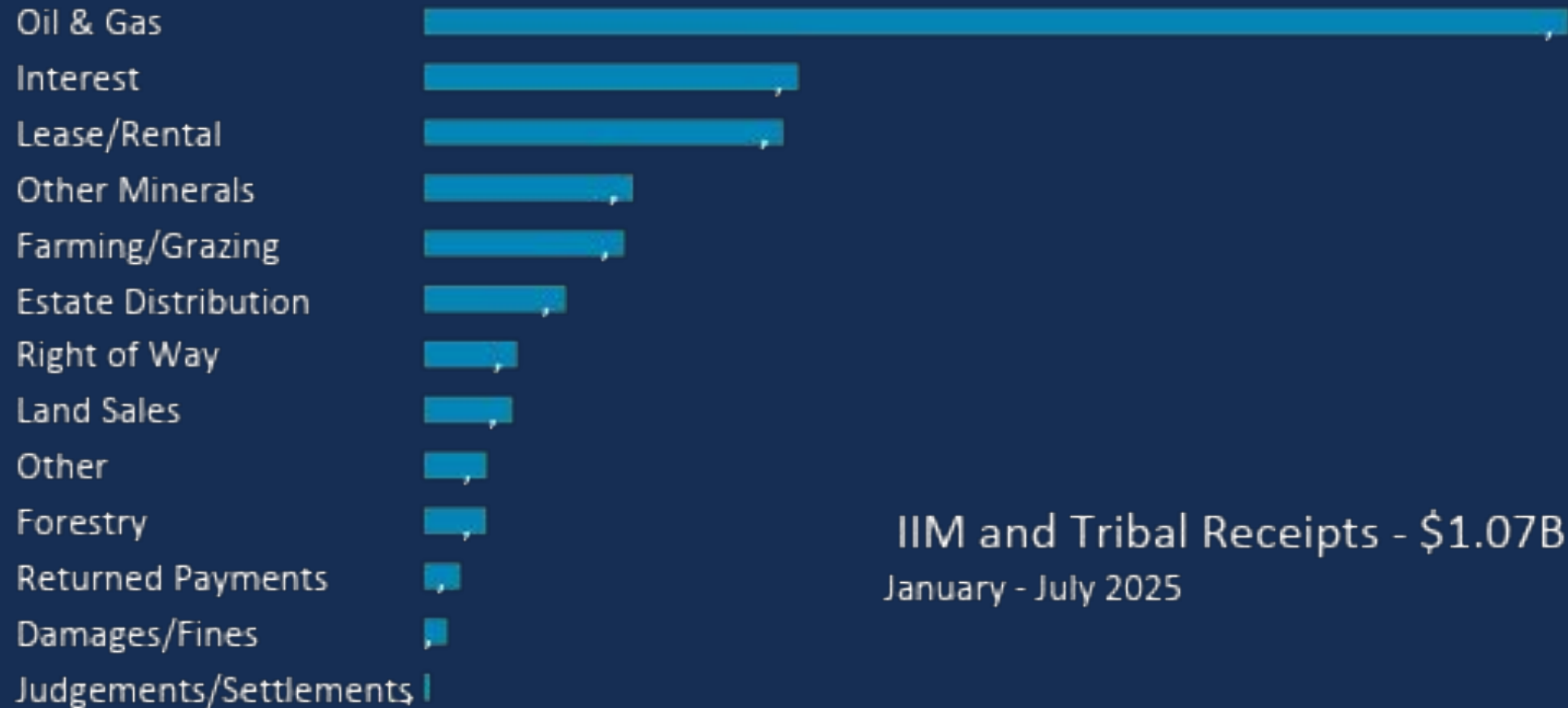
BUREAU OF
**TRUST FUNDS
ADMINISTRATION**

BTFA Budget Overview

	2025 Enacted	2026 President's Budget	2026 House Mark	2026 Senate Mark	2026 House Mark vs. 2026 Request	2026 Senate Mark vs. 2026 Request
BTFA	\$100,009	\$100,009	\$108,077	\$100,009	\$8,068	\$ 0

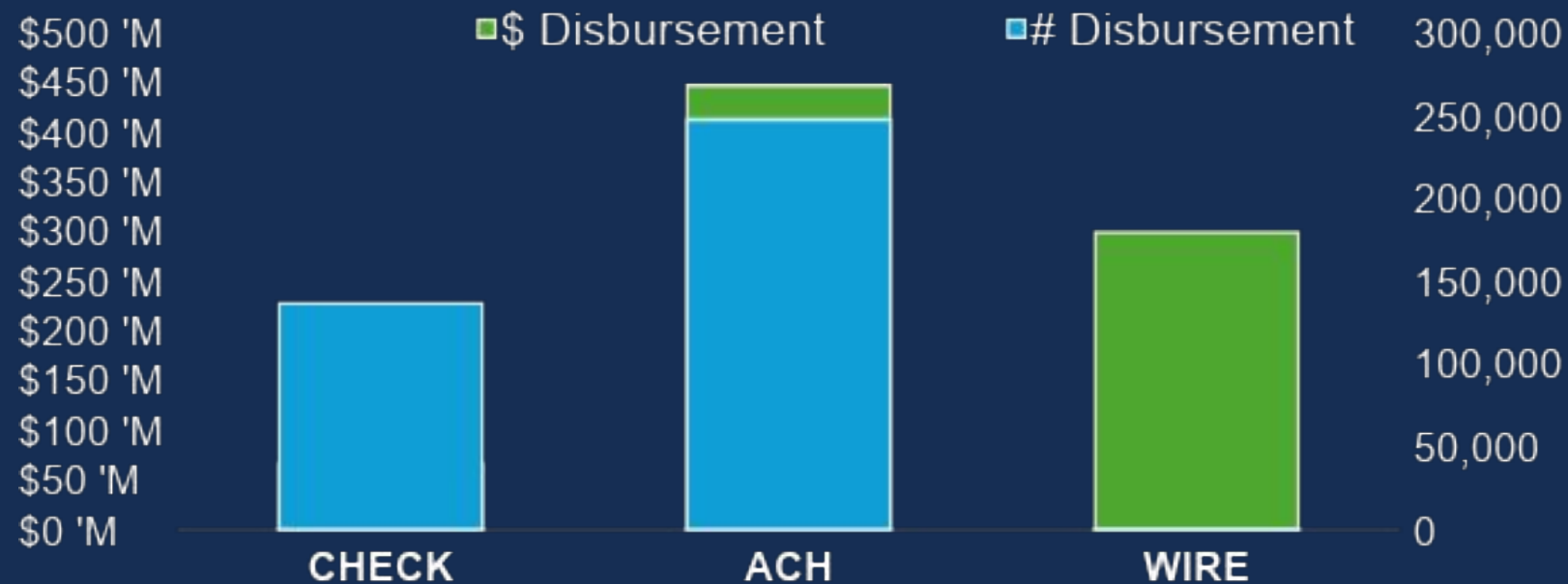
*We Excel,
Native America Prospers.*

Accounting Operations



IIM and Tribal Receipts - \$1.07B
January - July 2025

Accounting Operations



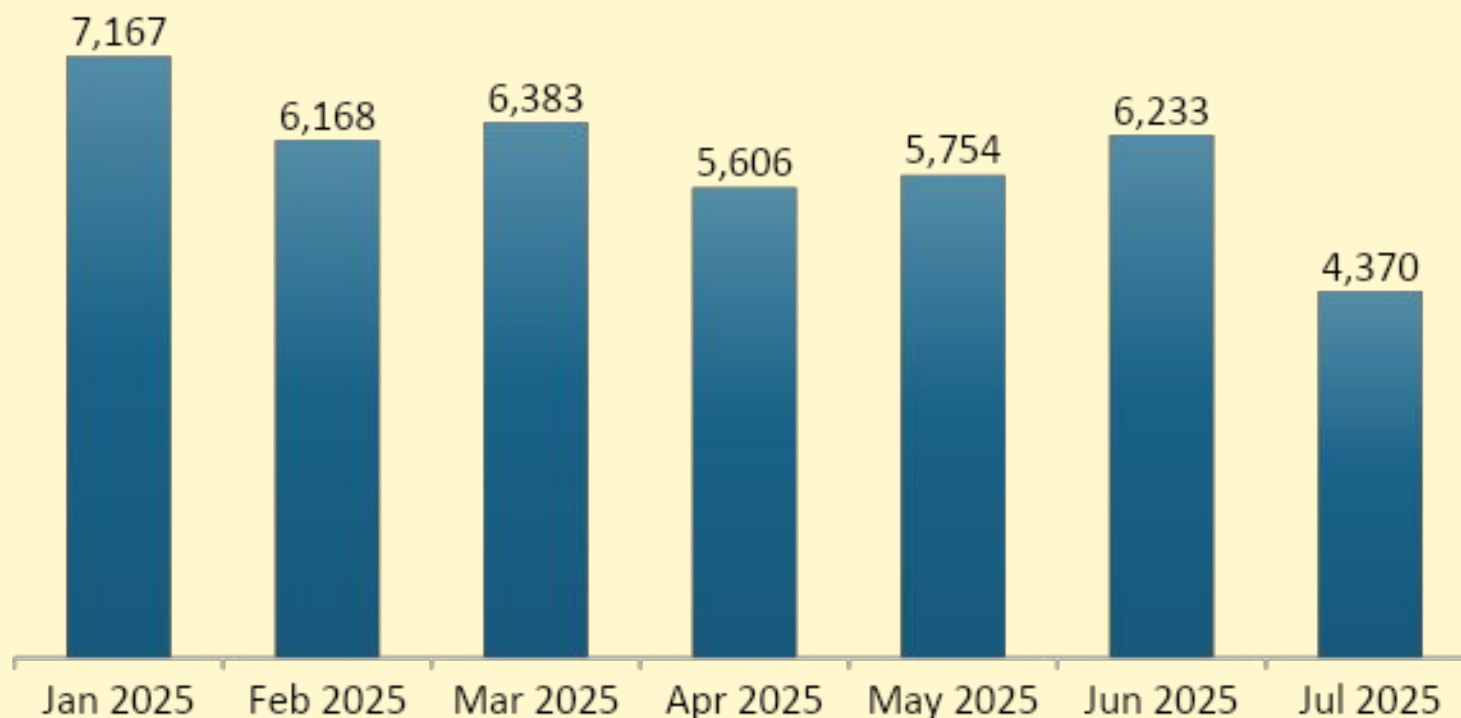
Type	\$ Disbursements		# Disbursements	
CHECK	\$66 M	8%	136,805	36%
ACH	\$447 M	55%	247,541	64%
WIRE	\$299 M	37%	156	0.04%
TOTAL	\$813 M	100%	384,502	100%

Beneficiary Experience

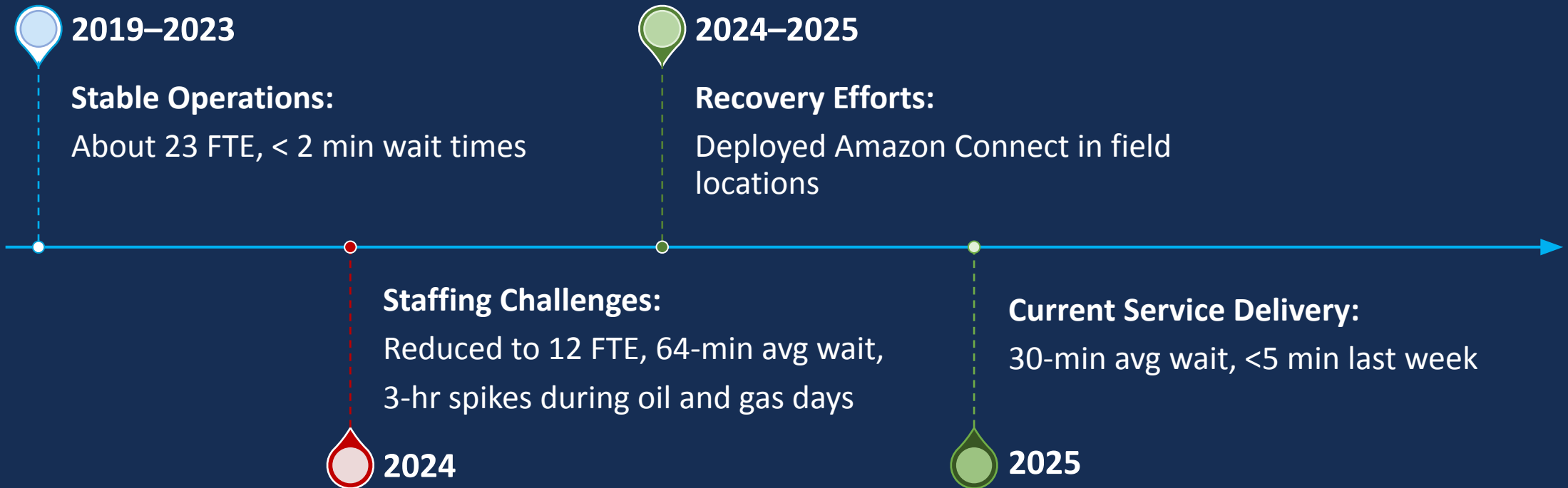


93% First Line Resolution Rate

Trust Beneficiary Call Center January - July 2025 Calls Handled

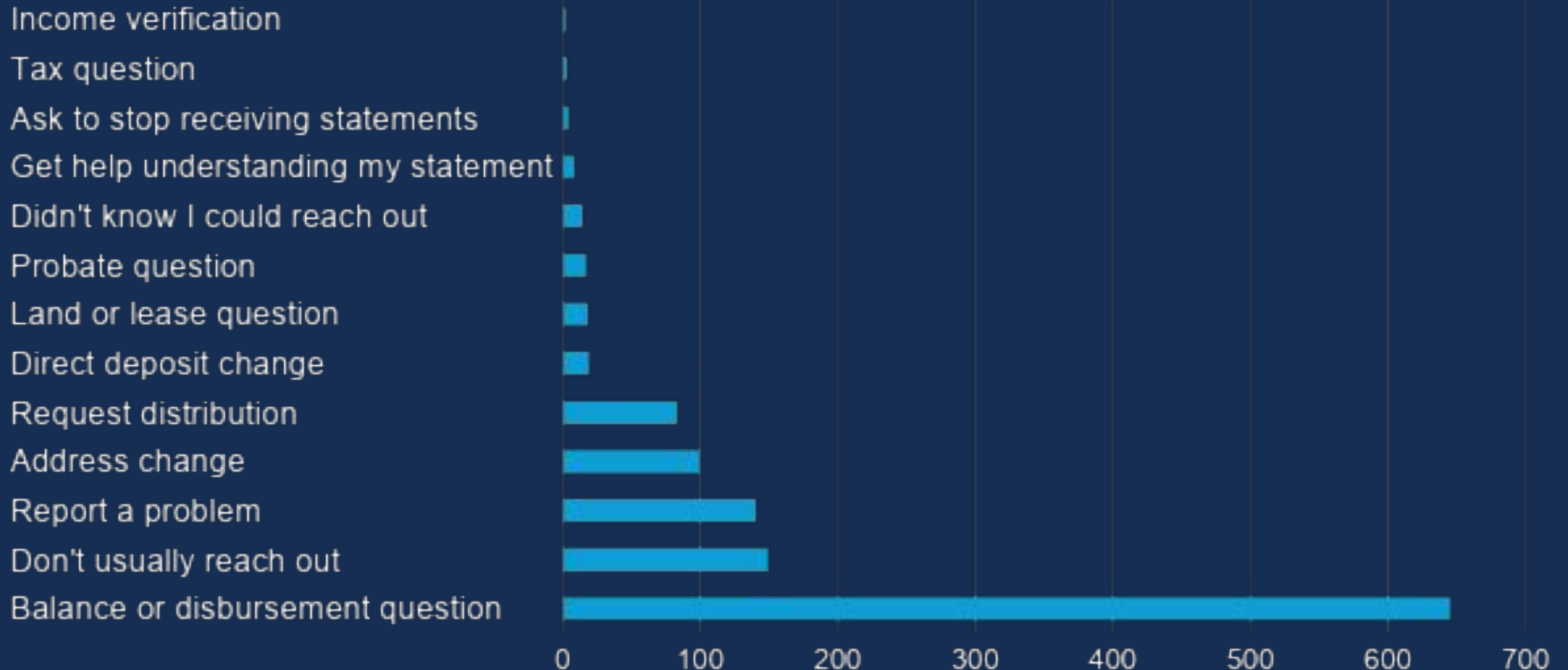


Call Operations



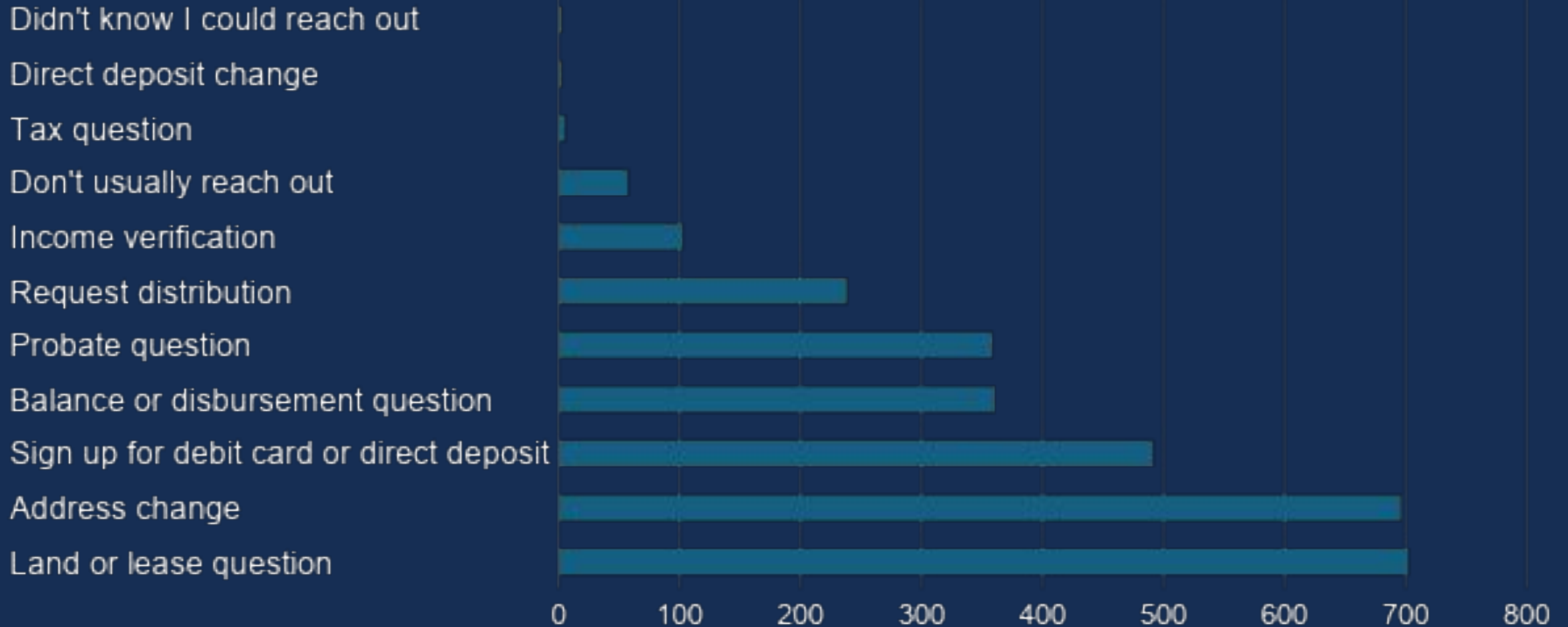
Beneficiary Call Survey

What is the most common reason you contact us about your account?



Beneficiary Call Survey

When you've reach out to us over the lifetime of your account, what have you asked about?



Modernization and Beneficiary Experience Updates

- **Trust Information Analysis and Reporting Tool (TIART):** An integrated, enterprise technology solution for securely indexing, organizing, locating, viewing, analyzing, reporting on, and producing trust-related records (data and digitized documents).
- **TMF Pilot Program:** recommendations implemented
- **24/7, Self-service:** Launched voice response at Call Center
- **Online Account Access:** Testing for Tribes; estimated by end of FY25
- **Digitization:** Transition to electronic records management within Indian Affairs

Thank you

Margaret Williams, Acting Bureau Director
margaret_williams@btfa.gov



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Office of Trust Services

August 4, 2025

BIA - OFFICE OF TRUST SERVICES

PROGRAM UPDATES/INITIATIVES/OPPORTUNITIES

Priorities and Notices of Funding Opportunities



Office of Trust Services

Energy and Permitting

Critical Minerals

Probate

Timber

Buffalo

Agriculture and Rangeland Management

Wildland Fire



Office of Trust Services

Notices of Funding Opportunities

Forestry, Portable Infrastructure

Agriculture – Buffalo

Workforce – Indian Youth Service Corps

Land Consolidation – Land Acquisition



BIA - Division of Forestry

Caleb Cain




Timber Team Accomplishments

Travel Overview May 2024 – May 2025

- ✓ **Weeks Traveled:** 24
- ✓ **Tribes/Agencies Served:** 14
- ✓ **States Visited:** Arizona, Montana, Washington, Oregon, Oklahoma, North Carolina, New Mexico, and Alaska
- ✓ **Remaining FY 25 Schedule:** Uintah and Ouray, Metlakatla, Wind River, Yakama, Navajo Nation, & Quinault

Work Overview May 2024 - 2025

- ✓ 84 CFI plots measured
 - ✓ 311 stand exams completed
 - ✓ 123 Cruise Plots taken
 - ✓ 3,128 acres of timber sale units prepped (layout, marking, GPS)
 - ✓ 2,037 woodland species inventoried
 - ✓ 154,525 GIS acres of Forest Cover Types updated
- 

Tribal Forestry Summer Youth Camps – 2024 & 2025

- ◆ \$812,423 supporting 24 camps
- ◆ Over 600 students participating
- ◆ Inspiring the next generation of Tribal Foresters!



2024 CTCLUSI Forestry Field Camp
participants

Opportunities

Co-Management

- ◆ GNA
- ◆ FOFA
- ◆ TFPA
- ◆ Draft Bills
- ◆ Nurseries/Seed Banks
- ◆ Restoration

Demonstration Projects

- ◆ White Oak (5 pilot projects)
- ◆ Biomass
- ◆ Biochar
- ◆ Tribal Sawmill

EO-14225 Immediate Expansion of American Timber Production

Wood For Life

NASP

Youth Camps

AI

Portable/Small Infrastructure

Tribal Interior Budget Council – Action Tracking
Page 1

Date	Summary of Action	Responsible Party(s)	Comment/Progress
March 2025			
March 2025	Recommend to the full TIBC a letter of support to Congress for the FY26 Indian education funding levels identified within the FY26 TIBC Budget recommended amounts	Education Subcommittee	
March 2025	Recommend a resolution to the full TIBC asserting Bureau of Indian Education (BIE) Schools are Schools of Choice and Opposing Voucher Program Proposed under BIE through Executive Order	Education Subcommittee, BIE	
March 2025	Request to hold an Education Subcommittee work session between the March 2025 and Summer 2025 TIBC meetings	Education Subcommittee	
March 2025	Discussion regarding a Letter or Resolution to support the Badges Act (ran out of time)	PS&J Subcommittee	
November 2024			
November 2024	Request to continue to invite Census to future meetings	Data Management Subcommittee, Census	Census invited to Summer 2025 meeting
November 2024	Request DHS provide funding and technical assistance to help Tribal Nations transition into using Real IDs	Data Management Subcommittee, DHS	
November 2024	Request BIE FY26 budget reclassifies Tribal Grant	Education Subcommittee, BIE	

Tribal Interior Budget Council – Action Tracking

Page 2

	Support Costs from discretionary to mandatory funding		
November 2024	Education Subcommittee Work Session to be held prior to the March TIBC meeting to address updating the Tribal Grant Support Costs Formula and other issues	Education Subcommittee	Education Subcommittee Work Session held
November 2024	Motion to support Julian Guerrero as the Director of the Office of Indian Education in the US Department of Education.	Education Subcommittee	
November 2024	Request to invite Larry Palmer to the next TIBC meeting to present on the current Tribal Grant Support Cost model	Education Subcommittee	Larry Palmer invited to March 2025 meeting
November 2024	Request to invite someone from Jason Frihege's office at BIA to present on the current Contract Support Cost model	Education Subcommittee, BIA	Jason Frihege invited to March 2025 meeting
November 2024	Discuss in full TIBC a proposed resolution concerning USDA compacting and contracting authority and funding	LW&NR Subcommittee	Resolution was adopted by the full TIBC
November 2024	Request Bureau of Ocean Energy Management attend next meeting to answer questions about projects,	LW&NR Subcommittee, Bureau of Ocean Energy Management	On the March 2025 agenda for discussion.

Tribal Interior Budget Council – Action Tracking
Page 3

	project permitting, and tribal consultation procedures		
November 2024	Request every federal department publish a report on available funding and grants for Tribal Nations	PS&J Subcommittee	
November 2024	Request for TIBC to write a letter to DOJ with the following requests: 1) Request for DOJ to organize a forum to share public safety & justice data and information, not a consultation, with a goal of holding this after the 2024 WHTNS; explain how cases are processed; 2) Request for DOJ to schedule meetings to review internal office structure within DOJ, with the goal of tribal leaders familiarizing themselves with staff assigned to tribal interests, and to learn about federal grant opportunities; 3) Request for DOJ to provide a roster of relevant employee positions related to tribal interests and contact information; 4) Request for DOJ to continue to	PS&J Subcommittee, DOJ	DOJ-OTJ was invited to meet with the Full TIBC body at the March 2025 meeting.

Tribal Interior Budget Council – Action Tracking
Page 4

	attend TIBC meetings to present; 5) Request for training on NIBRS and crime statistics sites; 6) Request for an introduction to all attorneys who prosecute cases		
November 2024	Request information on the role of the Solicitor's Office	PS&J Subcommittee	
November 2024	Request BIA explain their methodology for determining when vehicles are serviced or replaced	PS&J Subcommittee, BIA	
November 2024	Request that information on the upcoming DOJ consultation be posted on the TIBC website	PS&J Subcommittee	Information was posted on the TIBC website
	At next PS&J subcommittee meeting, discuss current ranking tools used in determining funding priorities within the scope of PS&J	PS&J Subcommittee	On agenda for March 2025 PS&J meeting
July 2024			
July 2024	Formula funding methodologies to be explained by OJS at next subcommittee meeting.	PS&J Subcommittee, BIA-OJS	On the November 2024 PS&J Subcommittee agenda.
July 2024	Request for OJS to provide the Public Safety and Justice Subcommittee with a citation of the requirement of at least 21 years of age to become a	PS&J Subcommittee, BIA-OJS	On the November 2024 PS&J Subcommittee agenda.

Tribal Interior Budget Council – Action Tracking

Page 5

	certified officer.		
July 2024	Presentation and discussion of EPA Clean School Bus Program impact on Indian Country at next subcommittee meeting	Transportation Subcommittee Chairs	On the November 2024 Transportation Subcommittee agenda.
July 2024	Request that Indian Affairs continue to educate Congress and White House Council on Native American Affairs (WHCNA) on existing negotiated IDC rates by Tribal Nations, and that those negotiated rates be applied across all applicable agencies.	Indian Affairs- BIA	
July 2024	Standing request that Indian Affairs provide updates and analysis on carry-over and expiring funds at the Summer TIBC meetings and a follow up report in the subsequent Fall TIBC	Budget subcommittee, BIA	
July 2024	Request for the Division of Realty and Estate Services to attend the TIBC Land, Water, and Natural Resources Subcommittee Meeting in November 2024 to discuss Succession Planning on agricultural land use leasing.	Land, Water, & Natural Resources subcommittee, Division of Realty and Estate Services	On the November 2024 LW&NR Subcommittee agenda.

Tribal Interior Budget Council – Action Tracking
Page 6

July 2024	Request to draft a Memorandum of Understanding between Co-Management and Co-Stewardship agreements between Tribal Nations and the US Fish & Wildlife Service, the U.S. Park Service, and the Bureau of Land Management – the MOU shall reference appropriate provisions within Executive Order 14112 such as but not limited to Sec.5; and that the MOU requires equitable funding for all tribal co-management and co-stewardship programs.	Land, Water, & Natural Resources subcommittee, USFWS, NPS, BLM, BIA	
July 2024	Requesting BOEM to find direct funding for Tribes to select their contractors instead of BOEM. If this is unattainable, then can BOEM expand the scope of the affected area to incorporate more Tribal concerns; Expressed concerns related to BOEM's processes.	Land, Water, & Natural Resources subcommittee, BOEM	
July 2024	Request BIE provide an updated explanation on the funding of new facilities construction, including the detailed identification of needs: i.e. remodeling,	Education Subcommittee, BIE	

Tribal Interior Budget Council – Action Tracking

Page 7

	replacement schools, teacher housing. This should include data on schools in poor condition and provide an update on the ages of all school buildings.		
July 2024	Link Contract Support Costs conversations with Tribal Grand Support Costs, including for Mandatory Appropriations and updated formulas. Outline next steps recommendations to revise the Tribal Grant Support Costs distribution formula at the next meeting.	Education Subcommittee	
July 2024	Request BIE share details of the refined ranking tool for Tribal Priority Allocations	Education Subcommittee, BIE	
July 2024	Continue to work toward defining full funding for Indian Education.	Education Subcommittee	
July 2024	Request BIE IT funds to be allocated to tribally controlled schools, and request clarification on purposes of the line item	Education Subcommittee, BIE	
July 2024	Request BIE share the methodology for calculating full funding for the JOM Benchmark Report at the next TIBC meeting.	Education Subcommittee, BIE	

Tribal Interior Budget Council – Action Tracking

Page 8

July 2024	Request the consideration of CTE in funding weight distributions	Education subcommittee	
July 2024	The education subcommittee resolves to provide parity for SIPI with Haskell Indian Nations University, as outlined by Delegate Shije and supported by the All Pueblos Governors Council	Education subcommittee	
July 2024	Request for an education subcommittee workgroup meeting during the 2024 NIEA Convention in Palm Springs, CA	Education Subcommittee, NIEA	TIBC Education Subcommittee Field Session was held on October 9, 2024 during the NIEA Annual Convention in Palm Springs, CA.
July 2024	Motion approved to appoint Jacque Hostler-Carmesin as voting member of the Transportation subcommittee as a replacement for Misty Rickwal.	TIBC	TIBC Directory has been updated to reflect this.
July 2024	A motion was passed to appoint in total six voting subcommittee members to the Economic Subcommittee as follows: Dillon Shije, Manuel Heart, Karen Linnell, Herminia Frias, Otto Tso and Nathan Notah. The economic subcommittee tribal co-chairs are Courtney Two Lance and Kitcki Carroll and federal co-chair Onna LeBeau.	TIBC	TIBC Directory has been updated to reflect this.

Tribal Interior Budget Council – Action Tracking
Page 9

July 2024	Motion approved to adopt TIBC Resolution #TIBC-24-002, <i>Request the Administration to create a line item that would provide at least \$93 million annually to fund School Resource Officers at every BIE-funded school.</i>	TIBC	
March 2024			
March 2024	Motion approved to establish PS&J working group to meet with the Deputy Bureau Director and OJS to discuss lowering the minimum hiring age of Police officers from 21 to 18.	PS&J Subcommittee, BIA-OJS	On the July 2024 PS&J Subcommittee agenda.
March 2024	Conservation Law Enforcement Officers (CLEO) discussion be added to next subcommittee meeting.	PJ&J subcommittee co-chairs	Moved to the November 2024 PS&J subcommittee meeting.
March 2024	Transportation subcommittee to hold a field working session before the July TIBC Meeting to focus on: <ul style="list-style-type: none"> a. Funding Formula Education b. BIA ROW process c. Potential solutions for funding issues. 	BIA-DOT, Transportation subcommittee	Field Working session was held in Albuquerque, NM on July 11, 2012 in the BIA Region Office Bldg.

Tribal Interior Budget Council – Action Tracking
Page 10

March 2024	Motion approved to draft a resolution to recommend to the administration to include in the President's budget to Congress to move water settlement monies into mandatory funding	NCAI Technical Staff with approval by the TIBC body.	A draft resolution was drafted for TIBC body to approve during the July 2024 meeting.
March 2024	Motion to add to the full TIBC agenda a discussion regarding the development of a process evaluating the possibility of creating and housing a database within the data management subcommittee to collect and protect tribal data	Full TIBC body	On the July 2024 Data Management subcommittee agenda
March 2024	Invite Freedom of Information Act Officer (FOIA) to future TIBC Meeting	Data Management Subcommittee	FOIA officer unavailable to attend July 2024 meeting, tentatively scheduled for Fall 2024 meeting.
March 2024	Offshore Wind Energy - request for information from Federal Agencies (DOI and DOE) regarding consultation process	LW&NR Subcommittee	BOEM scheduled to attend LW&NR subcommittee, BSEE is unavailable for July meeting.
March 2024	Draft a Memorandum of Understanding (MOU) regarding the transition from Co-Stewardship to Co-Management.	LW&NR Subcommittee	On the July LW&NR Subcommittee agenda.
March 2024	Add grazing and fire issues to the upcoming Land, Water, and Natural Resources Subcommittee	LW&NR subcommittee co-chairs	On the July LW&NR Subcommittee agenda.

Tribal Interior Budget Council – Action Tracking
Page 11

March 2024	Motion for TIBC to make a programmatic request for 93 million dollars for SROs - School Resource Officers and all funded amounts.	TIBC Full Body	Included in the TIBC FY26 Budget Recommendations
March 2024	Motion made to request that the Education Subcommittee request for the Johnson O' Malley program be forward funded for FY2026 based budget requests be calculated at fully funded levels in anticipation of increased student enrollment.	Full TIBC Body, BIE	Full funding calculation needed for JOM estimated student enrolment
March 2024	Draft a letter of support to the BIE for the competitive grant for state assessments.	Education subcommittee, NCAI technical staff	Draft LOS to be considered by Education subcommittee for Full TIBC approval at the July 2024 meeting.
March 2024	Request made for documentation that clarifies which regions were consulted in the development of the BIE funding formula.	BIA, BIE	Update will be included in the BIE update during the July 2024 Education Subcommittee meeting
March 2024	Derick Leslie officially instated as a voting member of the TIBC Education Subcommittee	Full TIBC Body	Derick Leslie was appointed to the education subcommittee during the Fall 2022 TIBC meeting and required action to increase the subcommittee voting members to include this appointment.
November 2023			

Tribal Interior Budget Council – Action Tracking
Page 12

November 2023	Recommendation that TIBC meeting be increased to five meeting days, the increase would allow subcommittee's more time to discuss issues before the Full TIBC meeting.	Co-Chairs, NCAI, BIA, AS-IA	March 2024 meeting agenda has been revised to 5 days.
November 2023	TIBC election for 1 of 3 Co-chair positions.	TIBC full membership	W. Ron Allen was elected by majority vote. Each subsequent Fall meeting will hold an election for a single co-chair position until 2026. After 2026 election, an election will be held at the conclusion of each co-chairs 3 year term.
November 2023	Motion approved requesting BIA-OJS hold orientation webinars sessions covering P.L. 93-638 and Self-Governance Programs before the 2024 Spring TIBC meeting.	BIA-OJS	
November 2023	Motion approved to support the "Public Safety in Indian Country" provisions within the August 2023 DOI-STAC Policy Recommendations.	Tribal Co-Chairs	
November 2023	Motion approved to start discussions re: amending or changing 25 U.S.C. § 5325 (a)(1) Secretarial Amount; specifically updating the baseline funding provisions within.	PS&J Subcommittee	On the March subcommittee agenda.

Tribal Interior Budget Council – Action Tracking
Page 13

November 2023	Motion approved to draft a position statement regarding the NIBRS Report, specifically a vote of “no confidence” in the database reporting system.	NCAI Technical Staff with approval by the TIBC body.	A letter was drafted for TIBC body to adopt position statement.
November 2023	Motion approved to support coordination with the Data Management Subcommittee to identify metrics and data points within the PS&J programs to use for adequate program funding.	PS&J and Data Management Subcommittee Co-Chairs	On the March PS&J Subcommittee agenda.
November 2023	Motion approved requesting Indian Affairs separate the Criminal Investigations and Law Enforcement sub-activities and list them individually within the Greenbook.	AS-IA, BIA	This change was not included in the FY25 Greenbook.
November 2023	Motion approved to draft and adopt a resolution requesting that AI/AN program funding be held harmless with regards to reductions in funding within any future Executive and Congressional debt ceiling limit negotiations.	NCAI Technical Staff with approval by the TIBC body.	A draft resolution was drafted for TIBC body to approve during the March 2024 meeting.
November 2023	Motion approved to draft and adopt a resolution requesting the DOI-Indian Affairs allowance to exceed annual OMB budget guidance in order	NCAI Technical Staff with approval by the TIBC body.	A draft resolution was drafted for TIBC body to approve during the March 2024 meeting.

Tribal Interior Budget Council – Action Tracking

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	to fulfill its fiduciary trust obligations to AI/AN's.		
November 2023	Motion approved to draft and adopt a resolution requesting continuation of the President's budget proposal to shift Contract Support Costs and Payments for Tribal Leases from discretionary to current mandatory funding.	NCAI Technical Staff with approval by the TIBC body.	A draft resolution was drafted for TIBC body to approve during the March 2024 meeting.
November 2023	Motion approved requesting to the Department of Interior for equitable funding amounts needed to implement Joint Secretarial Order 3403- Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters, for FY 2025 and subsequent years.	LW&NR Subcommittee	On the March LW&NR subcommittee agenda.
November 2023	Motion approved to authorize three types of work sessions/ meetings to be held between Bureau of Indian Education (BIE) and TIBC Education Subcommittee and to meet between the November 2023 and March 2024 meetings and to report back during the March 2024 meeting.	BIE, Education Subcommittee work group	A hybrid work session was held on February 14 th , 2024 between BIE, OBPM, and DFMC.
November 2023	Motion approved requesting Bureau of Indian Affairs -	BIA-DOT, Transportation subcommittee	On the March Transportation subcommittee agenda.

Tribal Interior Budget Council – Action Tracking

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	Division of Transportation to work with the TIBC Transportation Subcommittee to hold three regional working sessions, and to report these findings back to the transportation subcommittee a future TIBC meeting.		
November 2023	Recommendation made from within the subcommittee to include a Tribal Data Advisory Group Update, as a standing agenda item and designates Veronica Lane, Chief Data Officer, Office of Budget and Performance Management (OBPM) to provide those updates to the subcommittee.	Data Management subcommittee	On the March Data Management Subcommittee agenda.
August 2023			
August 2023	Upcoming Meetings and Information	Co-chairs, NCAI, BIA, AS-IA	<u>Spring 2024 meeting.</u> Date: March 18-21, 2024. Location: TBD-Washington, DC. <u>Summer 2024 meeting.</u> Date: July 29-Aug. 1, 2024. Location: Pala, CA. <u>Fall 2024 meeting.</u> Date: October 28-31, 2024. Location: TBD-Washington, DC.
August 2023	Send a letter to the House and Senate to support a request to	NCAI Technical Staff with approval by the TIBC body.	A letter was sent to House and Senate Leadership and

Tribal Interior Budget Council – Action Tracking
Page 16

	Congress to fully fund BIA Road Maintenance at fiscal year 2024 authorized level.		Appropriations Leadership on Oct. 18, 2023.
August 2023	Send a letter to House and Senate to support a request to Congress to fund BIE ISEP at \$950 Million for fiscal year 2024	NCAI Technical Staff with approval by the TIBC body.	A letter was sent to House and Senate Leadership and Appropriations Leadership on Oct. 18, 2023.

TRIBAL/INTERIOR BUDGET COUNCIL PROTOCOL

Approved by Tribal Representatives on: 11/05/21

Mission: To provide a forum and process, consistent with the Indian Self-Determination and Education Assistance Act, Section 450 a-1 and Executive Order #13175 and Department of the Interior's (DOI or Department) Government to Government policy, whereby Tribes and the Department work together to develop policy and budgets that promote:

- 1) DOI to fulfill its Trust responsibilities and Treaty obligations; and
- 2) the fulfillment of Tribes' inherent sovereign rights of self-determination, self-governance, and self-sufficiency, as well as securing levels of funding necessary to strengthen Tribal governmental capacity to serve their Tribal citizens and communities.

I. Introduction

The Tribal/Interior Budget Council (TIBC) is established to provide a forum for the Tribes and Tribal organizations to work with DOI officials in the formulation of the Indian Affairs annual budget requests and performance plans in the spirit of the President's Government-to-Government consultation and collaboration policy.

II. Purpose

Tribal representatives will advise and make recommendations to DOI and Indian Affairs on:

- a. development of Indian Programs within DOI and Indian Affairs (IA) budget requests relative to the priority needs of Indian Country and the Department, Tribal governments, and individual American Indian and Alaska Native (AI/AN) beneficiaries;
- b. strategic planning and data collection processes and systems to justify budget increases to meet Federal treaty and trust obligations and fully fund budget priorities;
- c. budget formulation, fund distribution, program management, and statutory and regulatory reporting requirements, including Government Performance and Results Act (GPRA) and Program Assessments as they apply to the federal and Tribal systems;
- d. policy and performance measure changes that improve the budgeting policy for the long-term, including development of standards and criteria for GPRA and Program Assessments and the DOI Strategic Plan measures;
- e. establishment of meaningful and effective relations and communication with all Federal officials that influence the Indian Affairs and their respective budgets, including the Office of Management and Budget (OMB) and the White House; and
- f. assist in facilitation with other federal agencies to ensure a coordinated budget strategy for Tribal programs.

This protocol document provides the formal framework for TIBC meetings, activities,

and actions and for any subgroup(s) authorized to perform activities as authorized by these TIBC protocols and policy.

III. Membership

Membership on the TIBC includes the following (or the equivalent thereof):

- a. Indian Affairs Representatives:
 - 1. Assistant Secretary - Indian Affairs (AS/IA)
 - i. Principal Deputy Assistant Secretary
 - ii. Deputy Assistant Secretary-Management
 - a. Chief Financial Officer
 - b. Associate Chief Information Officer – Indian Affairs
 - c. Director, Office of Budget and performance Management
 - d. Director, Office of Facilities, Property, and Safety Management
 - iii. Deputy Assistant Secretary-Policy and Economic Development
 - a. Director, Office of Indian Energy and Economic Development
 - b. Director, Office of Self Governance
 - iv. Director, Bureau of Indian Affairs
 - a. Deputy Bureau Director, Field Operations
 - b. Deputy Bureau Director, Indian Services
 - c. Deputy Bureau Director, Justice Services
 - d. Deputy Bureau Director, Trust Services
 - e. Regional Directors
 - v. Director, Bureau of Indian Education
 - a. Deputy Bureau Director, School Operations
 - b. Chief Academic Officer
 - c. Associate Deputy Director Division of Performance and Accountability
 - d. Associate Deputy Director Bureau Operated Schools
 - e. Associate Deputy Director Navajo Schools
 - f. Associate Deputy Director Tribally Controlled Schools
 - vi. Bureau of Trust Funds Administration Representatives
 - a. Director
 - b. Principal Deputy Bureau Director
 - c. Budget Officer
- b. White House Representatives
 - 1. Office of Intergovernmental Affairs
 - 2. Office of Management and Budget
 - 3. Executive Director of the White House Council on Native American Affairs, or equivalent
- c. Tribal representatives:
 - 1. Twenty-four elected or appointed Tribal officials will be nominated and selected to serve on the TIBC, two from each of the 12 BIA Regions. Tribal officials may formally designate a non-elected representative by written notification.
 - 2. Selection criteria: Each Region will establish a transparent process to nominate and select two Tribal officials to serve on the TIBC and a third Tribal official to serve as an alternate. These three names will be forwarded to the Regional Director. The Regional Director may help

facilitate the nomination process. Each region should ensure that all Tribes have an opportunity to provide input on the nomination and selection process.

d. TIBC Leadership:

1. There shall be three Tribal Co-Chairs who shall be elected by a vote of the Tribal representatives of the TIBC. The Chairs shall be elected in a manner that is representative of direct service, self-governance, and contracting Tribes.
2. The Tribal Co-Chairs shall serve three-year terms. If a sitting Tribal Co-Chair is unable to continue to serve in that capacity for any reason, or is unable to meet the attendance requirements of the TIBC, appointment by the Tribal representatives of TIBC of a Tribal Co-Chair to complete the current term can be held at any other full TIBC meeting and may be decided by a majority vote of the Tribal representatives. The Tribal Co-Chairs may serve multiple consecutive terms.
3. So that Tribal Co-Chair terms are staggered by one year, the first election of the Tribal Co-Chairs will elect one Tribal Co-Chair for a term of one year, one Tribal Co-Chair for a term of two years, and one chair for a term of three years. After this initial election, Tribal Co-Chairs will serve three-year terms, subject to III(d)(2) above.
4. The Assistant Secretary – Indian Affairs serves as the federal Co-Chair and the Principal Deputy Assistant Secretary will serve in the Assistant Secretary's absence. The AS/IA may delegate his/her duties to another senior DOI/BIA official.

IV. Length of Service

- a. Tribal representatives are appointed for three-year terms. Tribal representatives may be appointed for multiple terms. In the event that a TIBC representative can no longer serve on the TIBC, or cannot meet attendance requirements, the BIA Regional Director shall—in consultation with Tribes in their Region—appoint a new Tribal representative to complete the current term.

V. Responsibilities

- a. The Tribal representatives from each region will advocate on behalf of Tribes in their region.
- b. Tribal representatives serving on the TIBC and officials from the Indian Affairs regional offices are responsible for coordinating input from Tribal leaders within their respective Regions, as well as providing a report of recommendations and actions to their respective region's Tribes and ensuring thorough communication about the activities and actions of TIBC.
- c. Tribal representatives, NCAI and BIA Regional directors should work together to ensure that Tribal representatives have an opportunity to present updates to relevant intertribal gatherings in their region prior to and at the end of the budget formulation process.
- d. DOI Indian Affairs staff members serving on the TIBC are responsible for facilitating the active participation of Tribal representatives in the formulation of the Indian Affairs budget request and annual performance plan.
- e. DOI Indian Affairs is responsible for working with TIBC Tribal representatives

- prior to the budget formulation season to secure a calendar hold on the appropriate DOI and OMB officials' calendars to attend the spring TIBC meeting.
- f. DOI Indian Affairs will develop a draft agenda in consultation with the Tribal Co-Chairs and send it to Tribal representatives no later than 30 calendar days before the meeting.
 - g. The TIBC Co-Chairs will moderate TIBC meetings and ensure TIBC objectives are acted upon.
 - h. TIBC Tribal representatives should make every effort to participate in all in-person and webinar/phone TIBC meetings. Each Representative can backfill their participation at in-person/remote TIBC meetings with their alternate Representative once per budget formulation cycle (except in extenuating circumstances conveyed to and approved by the TIBC co-chairs). If a Tribal Representative is unable to meet their attendance obligation, the TIBC Co-Chairs will ask the BIA Regional Director to consult with Tribes in their region to designate a different TIBC Tribal representative. Before action to replace a TIBC member is taken, TIBC Tribal Co-Chairs will attempt to make direct contact with the member. This attendance standard will ensure that Tribal representatives at each meeting are up-to-date and actively engaged in the work of the TIBC.
 - i. TIBC shall identify its representative who shall testify before any Congressional Committee for TIBC-related invitations.

VI. Meetings

- a. TIBC will meet for official business at least three times per year: once in the Spring, once in the Summer, and once in the Fall.
- b. TIBC meeting dates, time, agenda topics, federal participants, and location will be decided at a previous meeting of the TIBC.
- c. TIBC meetings will be held over 2-3 consecutive days unless otherwise agreed and are open to the public. However, only TIBC members are eligible to bring motions and vote.
- d. Seating at TIBC meetings shall be designated by the TIBC Co-Chairs. All Tribal leaders are welcome to attend any Tribal Caucus and speak by request to and approval by the Co-Chairs.
- e. Any Co-Chair may recognize non-TIBC members in discussions at meetings. However, priority shall be given to TIBC members before a non-member is given the opportunity to discuss the issue.
- f. Regular meetings (see "Meetings" VI(a)) may be conducted via video or telephone conference.
- g. Special meetings may be called by the Co-Chairs with advance notice to all representatives. These meetings may be conducted via video or telephone conference.
- h. The TIBC members shall be supported with sufficient resources to enable them to fulfill the purposes of this council.
- i. TIBC members shall be prepared to take action on business brought before TIBC during each meeting.

- j. TIBC Tribal representatives will be reimbursed through their BIA regional office in a manner that is acceptable to the TIBC Tribal representative.
- k. The TIBC budget will be reviewed and approved by the TIBC annually.

VII. Quorum and Voting

- a. A quorum will be met by:
 - 1. Three-fourths (18) majority of the voting Tribal representatives (24); or
 - 2. Three-fourths (9) of Tribal regions representing BIA regions (12).
 - 3. In the absence of a quorum, a working meeting will be held with no formal actions.
- b. Voting is limited to Tribal representatives or their designee of the TIBC.
- c. A vote requires a simple majority of TIBC representatives present to pass.

VIII. Sub-Committees

- a. Purpose.
 - 1. Sub-Committees convene TIBC representatives, participants, and Federal reps to engage in more extensive detail on budgets and budget policy and provide recommendations and supporting data to the full TIBC membership.
- b. Establishment.
 - 1. The TIBC may establish Sub-Committees to review, investigate, and/or evaluate issue(s) of importance and provide recommendations to the TIBC.
 - 2. The TIBC must establish a clear mission, purpose and objectives and/or tasks for the Sub-Committee(s).
 - 3. The number of Sub-Committee voting members and chair(s) are determined by the full TIBC by vote.
 - 4. The Chair(s) of each Sub-Committee serve in a non-voting role within the Sub-Committee they chair, except in the event of a vote that requires a tiebreaker.
 - 5. Sub-Committees are intended to operate for a duration specified by the TIBC at the Sub-Committee's inception. A Sub-Committee's term, however, may be extended by a majority vote of the TIBC. If no extension is granted the Sub-Committee will be dissolved.
 - 6. Standing Sub-Committees may be established to address long-term or continuing issues for the TIBC. A standing Sub-Committee's continuation must be agreed to annually at the first National Budget Meeting of the calendar year.
 - 7. The TIBC may dissolve Sub-Committees by a simple majority of TIBC representatives present when a quorum has been met (See Section VII "Quorum and Voting").
- c. Responsibilities.
 - 1. Each Sub-Committee will present to the full TIBC only when there are specific decision items that require consideration by the full body.
 - 2. In the event that a Sub-Committee has decision items to present, each

recommendation shall be discussed individually by the TIBC and only adopted after a motion is made and seconded and approved by the TIBC.

3. All members of the TIBC shall receive written notice of Sub-Committee meetings in advance and be provided the opportunity to participate telephonically.
 4. Indian Affairs officials will assist TIBC Co-Chairs and Sub-Committee chair(s) in inviting and securing participation of appropriate federal officials both within DOI as well as in other federal agencies.
 5. Sub-Committee chair(s) will be responsible for working with the full TIBC to fill vacant positions on Sub-Committee. The TIBC will approve any proposed changes to Sub-Committee membership at the next meeting. However, proposed new members may participate in Sub-Committee meetings in a non-voting capacity until their official membership is approved.
 6. TIBC Tribal Sub-Committee members should make every effort to participate in all in-person and webinar/phone Sub-Committee meetings. Each representative can backfill their participation at in-person/remote TIBC meetings with their alternate representative once per budget formulation cycle (except in extenuating circumstances conveyed to and approved by the Sub-Committee co-chair). If a Tribal Sub-Committee member is unable to meet their attendance obligation, the Sub-Committee chair(s) will work with the TIBC Co-Chairs to identify and designate a replacement member. Before action to replace a TIBC Sub-Committee member is taken, the TIBC Sub-Committee chair(s) will attempt to make direct contact with the member. This attendance standard will ensure that representatives at each meeting are up-to-date and actively engaged in the work of the Sub-Committee.
 7. Each Sub-Committee leader will designate a single individual, either a technical advisor or other staff assistant, to act as the logistical lead responsible for the following Sub-Committee operations:
 - i. working with the Sub-Committee chair(s) to schedule meetings;
 - ii. tracking meeting topics, discussion, outcomes, and follow up;
 - iii. working with the chair(s) to draft meeting agendas and circulate them to Sub-Committee membership at least one week in advance of meetings;
 - iv. tracking Sub-Committee membership, attendance, and managing a process to on-board new members;
 - v. working with the Sub-Committee chair(s) to draft talking points, meeting minutes, and other relevant documents; and
 - vi. ensuring the availability of relevant printed materials for each meeting (agenda, presentations, past meeting notes, etc.).
- d. Sub-Committee Quorum and Voting.
1. A quorum shall be established when a simple majority of Sub-committee voting members are present.
 2. Sub-committee meetings will be open to attendance and participation by the full TIBC membership.
 3. A motion can be brought by a member of the Sub-committee and an affirmative vote will be a simple majority of the voting membership.
 4. Sub-Committees may include technical staff or other non-TIBC members as required to fulfill the intent of the subgroup.

5. Sub-Committee meetings are open to all TIBC members.

IX. Conflicts of Interest

- a. TIBC Tribal representatives will speak on issues for the general benefit of Indian Country. It is assumed that Tribal TIBC representatives will speak from the experience of their Tribes for the benefit of Indian Country in general and that no conflict of interest with any other Tribe occurs when a member speaks about any Tribal issues in their particular Region.
- b. TIBC members will not present proposals that will create an unfair advantage over any other TIBC member or Tribe for the individual person, his/her personal office, or his/her Tribe in the budget process.

X. Meeting Records, communications, and dissemination of TIBC documents

- a. It is the responsibility of Indian Affairs to ensure that accurate records of meeting actions are recorded and summarized as the minutes to be approved by the full TIBC. The written record shall at a minimum be a summary of issues and topics discussed and action(s) taken and not the discussion surrounding the action.
- b. Action items will be developed and provided to the TIBC representatives no later than 21 calendar days after the meeting. Indian Affairs will provide a progress report on action(s) taken at subsequent TIBC meetings.
- c. Indian Affairs is responsible for tracking the following information from Tribes every year:
 - 1. Each region's two TIBC representatives and alternates
 - 2. Each region's technical support staff (if any).
- d. Tribal representatives may be asked to follow up on specific action(s) on a voluntary basis.
- e. Information regarding TIBC meetings, activities, and actions shall be posted on the Indian Affairs website.

XI. Protocol Duration:

This Protocol will be reviewed every six years from the date of adoption.

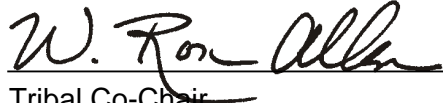
XII. Adoption and Amendments:

This protocol document may be adopted, amended, or terminated per the voting procedure.

The date of adoption and all subsequent amendment dates shall be recorded following this section.

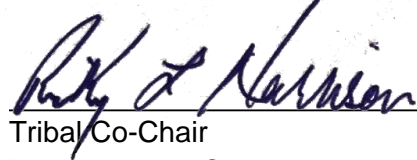
Adopted

The TIBC Protocol was amended during the November 2-5, 2021 TIBC meeting and adopted on November 5, 2021 with a quorum present.



Tribal Co-Chair

W. Ron Allen, Jamestown S'Klallam Tribe



Tribal Co-Chair

Rick Harrison, Chickaloon Native Village

Tribal Co-Chair

Assistant Secretary Indian Affairs
Federal Co-Chair

Office of Special Trustee
Federal Co-Chair