



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

JUN 07 2022

Dear Tribal Leader:

The Department of the Interior (Department) Bureau of Indian Affairs' budget received an additional \$62 million in funding under the Fiscal Year (FY) 2022 Consolidated Appropriations Act (P.L. 117-103) to implement public safety changes in response to the Supreme Court's decision in *McGirt v. Oklahoma*. The Department is seeking consultation with both the affected Tribes and separately with all Oklahoma Tribes on how to distribute this additional funding in a fair and equitable manner that aligns with the areas of greatest need.

The Department is proposing a two-step framework for allocation of these funds and the enclosed Framing Paper goes into detail on how we are proposing to do this. We have proposed some framing questions we would like your input on in this enclosed paper.

Step one is to determine the allocation among Tribes using two factors: service population and land base. Regarding service population, we are recommending a weighted average that is then ranked with the Tribe's corresponding land base in acres. The second step will consist of collecting Tribal reprogramming requests identifying the allocation of funding across the Detention/Corrections program, Tribal Courts Tribal Priority Allocation program, and the Criminal Investigations & Police Services program. This information will be consolidated and submitted to Congress for approval as required by the FY 2022 Consolidated Appropriations Act reprogramming requirements.

We welcome any other possible allocation methodologies that you would like to propose.

We will hold the consultations in person in Tulsa, Oklahoma on July 19, 2022, in the Madrid Room at the Renaissance Tulsa Hotel and Convention Center located at 6808 South 107th East Avenue Tulsa, OK. The first consultation session will be held from 9:00 am – 12:00 pm CT and will be open to the Cherokee Nation, Chickasaw Nation, Choctaw Nation, Muscogee (Creek) Nation, Quapaw Nation and the Seminole Tribe. The second consultation session will be held from 1:00 pm – 4:00 pm CT and will be open to all interested Oklahoma Tribes.

You may provide written comments to consultation@bia.gov by 11:59PM ET on August 2, 2022. If you have question regarding this consultation, please contact Tracy Goodluck, Senior Policy Advisor, at tracy_goodluck@ios.doi.gov or at (202) 208-7163.

Sincerely,

Bryan Newland
Assistant Secretary – Indian Affairs

Enclosure

Framing Paper on Proposed Bureau of Indian Affairs Two-Step Allocation Framework

Public Law 117-103, FY 2022 Consolidated Appropriations Act, included an additional \$62 million in the Bureau of Indian Affairs' (BIA) budget under Criminal Investigations and Police Services in response to the Supreme Court's *McGirt v. Oklahoma* decision. The language included in the Joint Explanatory Statement identifies the purpose as follows:

“The agreement includes \$62,000,000 to implement public safety changes resulting from the McGirt v. Oklahoma Supreme Court decision, which created an immediate and severe shortage of police and investigative personnel in the expanded Tribal criminal jurisdiction areas. BIA is directed to consult with impacted Tribes regarding the allocation of funds and to submit a subsequent reprogramming request to allocate portions of the funding to Detention/ Corrections and Tribal Courts as necessary.”

We are proposing a framework for distribution of the funding, and we are seeking your input and guidance on how the framework should be implemented or changed to best meet Tribal needs. Essentially, there are two steps in our proposal: Step 1 – Determine the allocation of funding among the affected Tribes, and Step 2 – Each Tribe will decide their preferred funding split between law enforcement, detention, and courts.

Step 1: Determine Allocation Among Tribes

Historically, the BIA Office of Justice Services (OJS) funding methodology utilized the factors shown below to objectively approximate need and allocate funding increases accordingly. However, given the extreme and rapidly evolving implications of the McGirt decision, we do not believe that some of these factors can accurately represent need with data that is a year old. Even if the data was gathered today, we cannot assume it has much predictive value for estimating need given the rapidly shifting landscape of public safety in eastern Oklahoma.

- Prior Year Violent Crime Rate
- Prior Year Drug-related offenses (monthly drug statistics reported by tribe)
- Current funding level versus estimated program need
- Size of trust land service area (land base)

Therefore, we propose to set aside the factors typically used in our methodology to estimate need, and instead determine an allocation based on just two factors: service population and land base. Still, there are multiple service population figures for each affected Tribe/Tribal area, so our proposal includes a matrix to assign a weight to each figure and calculate a weighted average service population for each affected Tribe.

We would like to utilize Tribally certified enrollment data in the matrix. However, Tribally certified enrollment data collected by the BIA is not public information, so we are not sharing it as part of the matrix at this time. But we will be seeking permission from each Tribe to share the Tribally certified enrollment data as part of the matrix during the consultations. The matrix currently uses U.S. Department of Housing and Urban Development enrollment data as a placeholder.

Source Data				
2020 Census Data				HUD data
Weight	Native Population	Total Population	Enrollment	Weighted Average Service Population with HUD enrollment
	30%	35.0%	35.0%	
Cherokee	171,093	689,666	319,558	404,556
Chickasaw	53,525	296,759	38,740	133,482
Choctaw	58,035	227,938	228,617	177,205
Muskogee Creek	114,648	650,139	72,169	287,202
Quapaw	876	3,029	5,294	3,176
Seminole	6,415	21,672	15,123	14,803
Totals:	404,593	1,889,202	679,501	1,020,424

The set of weights assigned to all service population figures must add to 100 percent, and to ensure fairness to each affected Tribe, a single set of weights will ultimately need to be decided and used in the matrix. This is where input from each affected Tribe is critical.

The Department is seeking input on the following questions:

- Would you assign the individual percentage weights differently to these service population figures? If so, why?
- Are there other service population figures for your Tribal area that should be incorporated into this matrix? If so, why?
- Should one or more of the service population figures shown in the matrix be removed? If so, why?

The next part of step 1 in our allocation methodology is to incorporate the weighted average service population for each affected Tribe into a ranking matrix with their corresponding land base in acres. Our proposal uses the total acreage estimates for the affected Tribal areas provided by the Bureau of Land Management in 2021. This matrix proportionately ranks the Tribes by each element, and then assigns a weight to each element and calculates a weighted average summary proportional ranking to use for allocation of the funds among the affected tribes.

	Weighted Average Service Population	Proportion of Total	Tribal Area Acreage Estimate	Proportion of Total	Weighted Average Proportion	Corresponding Percentage
Weight	60%		40%		Number	
Cherokee	404,556	0.3965	4,451,435	0.2260	0.32828	32.8%
Chickasaw	133,482	0.1308	4,721,369	0.2397	0.17437	17.4%
Choctaw	177,205	0.1737	6,982,329	0.3545	0.24599	24.6%
Muskogee Creek	287,202	0.2815	3,111,184	0.1580	0.23205	23.2%
Quapaw	3,176	0.0031	62,720	0.0032	0.00314	0.3%
Seminole	14,803	0.0145	367,409	0.0187	0.01617	1.6%
Totals:	1,020,424	1.0000	19,696,446	1.0000	1.00000	100.0%

Step 2: Collect Tribal Reprogram Requests

After the allocation amounts for each affected Tribe are determined, OJS will reach out to each Tribe for a written request to OJS designating the proportion of funds that the Tribe wishes:

- To remain within the Criminal Investigations & Police Services program;
- To reprogram to the Detention/Corrections program; and
- To reprogram to the Tribal Courts (TPA) program

The OJS will then consolidate these requests and submit a combined reprogram request to the Congress as required by Departmental guidelines. Following approval from Congress, the funding will be realigned as designated by each Tribe, and then OJS will engage the Office of Self-Governance and regional awarding official(s) to incorporate the funds into new or existing Tribal funding agreements.

Among other factors that may be considered as you determine your allocation among these three programs, please be aware this funding will represent recurring (base) program increases. While program funding carries substantial flexibility in its use, it cannot be utilized for facility costs such as new construction or maintenance and repair of existing facilities.

As noted in the Dear Tribal Leader Letter, this is BIA's allocation proposal for consultation, and we are interested in exploring other possible allocation methodologies that you may wish to propose.