



DOJ CONSULTATION ON TRIBAL CRIME VICTIM SERVICES FUNDING

National Congress of American Indians Response to DOJ Questions

April 30, 2019

The U.S. Department of Justice (DOJ) recently released a framing paper for a May 1, 2019 consultation on the administration of tribal set-aside funding from the Crime Victims Fund. The paper asks for tribal input on a series of specific questions. The questions below are taken from the DOJ framing paper. The text following the questions is NCAI's preliminary responses to DOJ's questions.

In addition to answering the specific questions posed by DOJ, NCAI would like to address several other important issues. First, NCAI thanks the Administration for its ongoing support for a tribal set-aside from the Crime Victims Fund. There is a profound need for crime victim services in tribal communities and this funding will begin to allow tribal governments to meet the needs of crime victims.

Second, we are deeply concerned that DOJ has made choices about how to administer these funds that simply are not working. We understand that DOJ received only 59 applications for funding through the CTAS process, which at most would allow DOJ to allocate about \$29 million of the \$167 million available. We request that DOJ provide an update on its plans to administer the FY 19 funds to be sure they reach the tribal communities who desperately need them. We have heard from dozens of tribes that they were not aware that this funding would be made available through CTAS or who believed that they could not apply if they were still in the process of finalizing their FY 18 tribal set-aside awards. We have heard complaints and confusion about why awards this year were capped at \$500,000 (compared to \$720,000 last year) when the overall amount of funding available increased significantly. CTAS is not the right vehicle for this funding, and the overlapping timing of the CTAS solicitation deadline, the finalization of appropriations for FY 2019, and the DOJ process for finalizing FY 2018 tribal set-aside awards compounded the challenges.

Finally, we are extremely disappointed to see that of the \$133.1 million appropriated for tribal crime victim services in FY 18, less than \$100 million of it was disbursed to tribes as directed by Congress. We are particularly concerned that \$24 million of appropriated funds were returned to the Crime Victims Fund. Indian tribes have worked for years to educate members of Congress and the Administration about the dire need for victim services in tribal communities. At every opportunity over the past several years, tribes have urged DOJ to administer this funding on a non-competitive, streamlined basis, in order to ensure that these funds are disbursed efficiently and equitably in a way that works for the tribal communities they are intended to serve. DOJ's attempts to administer this funding to date raise grave concerns about DOJ's capacity to successfully administer this funding. It is imperative the DOJ moves swiftly to develop a plan to ensure that the agency is able to successfully administer these funds that tribal communities so desperately need.

1. Question: How should OVC increase access to funding and services for tribal governments – both in the Lower 48 and in Alaska?

NCAI's member tribes adopted a resolution in 2018 (attached) that calls for DOJ to make tribal set-aside funding from the CVF available to all eligible applicants on a non-competitive basis. Tribal leaders have repeatedly expressed that DOJ's short-term, competitive grants undermine program stability, hamper long-term planning, and run counter to the policy of tribal self-determination. The Indian Law & Order Commission similarly concluded that the manner in which DOJ administers its funding is failing to meet the needs of tribes.

The specific level of block grant or formula funding should be negotiated with tribes and based on agreed upon criteria. In order to develop the specific funding distribution methodology and program parameters, NCAI recommends that DOJ create a working group of tribal leaders from across regions who can examine existing funding formulas in other areas and develop principles and recommended criteria for funding. The working group could be asked to consider questions such as:

- What factors should be considered in the funding formula?
- Should a base level of funding be established for all eligible tribes?
- Should other DOJ tribal funding streams be included?
- Should tribal governments be permitted to join together as tribal consortia to pool their block grant funds?
- What should be required from tribes in order to access the funds?
- What parameters should be placed on the use of the funds?
- What portion of the funding should be retained for capacity building, technical assistance, and research?

It is also important to note when thinking about dividing up available funding among eligible tribal governments that it is likely that not all 573 federally-recognized Indian tribes will apply for DOJ funding. Tribal funding in the tribal Family Violence Services and Prevention Act, for example, is administered as a formula program by the Department of Health & Human Services and is available to all tribes. In 2015, 274 Indian tribes applied for the funding. This number has been slowly increasing from the 200 tribes who applied for the funding when it was first adopted.

2. Question: What other programming ideas should OVC explore to meet the needs of victims of crime in tribal communities – either through CTAS or other solicitations?

NCAI has previously recommended that DOJ rethink how it administers tribal funding more comprehensively, including reforming/rethinking the CTAS process. The current CTAS process needs to be improved both with regard to how tribes are required to apply for funding and how grant awards are made and managed. The current solicitation is incredibly burdensome for tribes and requires tribes to shoehorn their needs to meet DOJ's funding priorities. The current CTAS process also often results in multiple grant awards with multiple administering agencies all with varying requirements. This places a tremendous unnecessary administrative burden on tribal governments.

NCAI has recommended that DOJ move to a block grant funding model for all of its tribal funding streams. Given the challenges with the current CTAS solicitation, we think it is better to administer the tribal CVF set-aside as a streamlined, block grant program. We were encouraged by OVC's

streamlined methodology for administering FY18 tribal set-aside funds and the inclusion of the FY 19 funding in CTAS was a significant step in the wrong direction.

3. Question: While there are certain limits on how OVC funding can be used to address the housing and transportation needs of crime victims, OVC is interested in exploring how we can help tribal communities develop resources to address the full continuum of victim service needs – including transportation, emergency shelter, transitional housing, and preparing for permanent housing – in a manner that is practical, culturally appropriate, and safe?

- **Should OVC provide a separate solicitation to assist with emergency and/or transitional housing?**
- **Should OVC prioritize applications that respond to housing and transportation needs?**
- **What else does OVC need to know to respond to these critical concerns?**

We appreciate the needs in the areas of housing and transportation, but NCAI believes that it is important that tribal governments have the ability to determine how tribal funding should be allocated to best support their particular needs and circumstances. We would encourage DOJ to take a broad view of the types of victim services programming that can be supported through DOJ funding. The needs in tribal communities differ in significant ways from state and local communities. Victims in tribal communities are in need of traditional victim services. They also need, however, to know that there is 9-1-1 service in their communities and a law enforcement officer who can respond when criminal victimization is occurring. We encourage DOJ to consider asking Congress for additional flexibility in the use of CVF funds in tribal communities.

The underfunding of tribal justice systems is a dereliction of the federal trust responsibility that results in lost lives, high rates of criminal victimization, and unaddressed trauma for generations of victims. Most recently, the BIA submitted a report to Congress estimating that to provide a reasonable base level of funding to all federally-recognized tribes: \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed for detention (we are not aware of a similar estimate of need for traditional victim services programs). Based on recent appropriation levels, BIA is generally funding tribal law enforcement at about 20% of estimated need, tribal detention at about 40% of estimated need, and tribal courts at a dismal 3% of estimated need.

The needs of victims in tribal communities simply cannot be met without addressing the gross underfunding of tribal justice systems. Tribal governments should be able to use available funds to meet the needs of victims however they deem appropriate without an artificial distinction between a victim's needs for a functioning criminal justice system and their need for traditional victims services. It simply defies common sense for the funding to be available to help ensure victims' rights are upheld within the justice system, for example, but not to ensure that there is a functioning justice system to begin with.