



Delaware Nation

Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs' 638 Contracting

**Response of Delaware Nation President Deborah Dotson
to Supplemental Questions received March 11, 2024
related to the
Hearing of the House Resources Committee
Subcommittee on Indian and Insular Affairs
Held March 6, 2024**

- 1. Your written statement expressed concerns with the lack of trained and experienced staff within the Office of Self-Governance (OSG).
 - a. Could you please provide examples of when the lack of trained OSG staff hindered your tribe from providing a service?****

Delaware Nation, like many other compacting Tribes, has experienced significant delays in the transfer of program and contract support cost funding from OSG. The explanation from OSG for delayed transfer of funds is that they lack adequate staffing and are therefore unable to keep up with the workload volume. Statements made by Delaware Nation are not intended as a slight against OSG or its dedicated staff. OSG simply does not have the level of staffing necessary to allow OSG to move all funding to all compacting Tribes in a timely fashion. Fortunately, Delaware Nation has had access to other non-federal resources which it has used to bridge the gap between the beginning of the program year and the date which funds are transferred. These non-federal resources would be available for other services and opportunities had they not been redirected to float otherwise federal obligations.

- b. And has there been follow up communication from OSG after the issue has been addressed?**

OSG is responsive to inquiries but simply is not equipped with the level of staff necessary to address the level of workflow for which it is responsible. So, at the end of the day, while Delaware Nation appreciates OSG's communication regarding staffing deficiencies it does nothing to address the underlying staffing issue or the workflow deficiency.

2. Several witness statements mentioned the Department of the Interior’s lack of timeliness to distribute program funds under self-governance compacts.

a. Could you further elaborate on how this delay directly impacts tribes?

When funds are delayed, Tribes are forced either to shutter these vital programs until funds are received or to redirect other tribal resources, if they exist, to operate the federal programs until federal funds arrive. Tribes often forego other economic opportunities to foot the bill for an inefficient federal government.

b. Could you further elaborate on how any funding delays have specifically impacted your tribe’s self-governance programs?

Delaware Nation consistently uses non-federal dollars to cover federal obligations until federal funds arrive from OSG such that Delaware Nation citizens continue to have access to critical resources without regard to when OSG transfers funds. This is only possible because Delaware Nation’s economic ventures provide revenue to bridge the gap. Without those resources, Delaware Nation would be forced to close the doors to its programs until compact funding is transferred.

3. Where could Congress legislate regarding the 638 compacting process that would improve the 638 negotiations?

Because Interior is still working to promulgate regulations to implement the PROGRESS Act’s amendments to Title IV – DOI Self-Governance, it is currently unclear whether the PROGRESS Act’s amendments achieve the intended results. This circumstance makes it difficult to identify additional legislative changes. Those PROGRESS Act amendments are the result of a decades-long effort by Tribal leaders and any further amendments must be developed through meaningful consultation. Delaware Nation is in favor of legislation to streamline negotiations by importing Title I’s 90-day deemed approved contracting deadline into the Title IV compacting process. Delaware Nation would also support legislation to impose automatic monetary penalties payable to the Tribe or Tribal Organization where OSG fails to transfer funding consistent with statutory deadlines.

a. And what regulatory changes, if any, would you suggest to the Department of the Interior to improve the 638 compact negotiation process?

Again, because compacting Tribes have not yet operated under the PROGRESS Act’s forthcoming regulations, it is difficult to propose further regulatory changes. However, Delaware Nation would be in favor of regulations to

implement the statutory changes identified above so long as those regulations are a result of meaningful consultation and negotiated rulemaking.

- 4. Has the issue of inherent federal functions impacted what programs and/or functions your tribe was able to include in your 638 compact?**
- a. If yes, what was the function and or program that was deemed an inherently federal function?**

It is the responsibility of the Department of the Interior to identify the programs, functions, services, and activities, or the portions thereof, which may be transferred under 638 and Tribes are forced to rely on those determinations. This scenario makes it impossible for Tribes to know what other functions exist and how the Department of the Interior determined they were inherently federal.

Delaware Nation has not been impacted directly by the issue of inherently federal functions but the Department of the Interior's inconsistent classification of functions can be interpreted to indirectly impact all Tribes including Delaware Nation. Improper classification of functions as inherently federal takes the function and associated funding off the table for assumption via self-determination contracts and self-governance compacts.

- b. And are you aware of any other tribes that were able to compact that function and/or program?**

N/A – please see response to prior question. We are aware of functions being transferred to one Tribe but not to another Tribe in the same Region but this has not happened directly to Delaware Nation.

Wanishi,

President Deborah Dotson
Delaware Nation