Response to Additional Allegations - Unsubstantiated Allegations of an Ethics Violation Against a Bureau of Indian Affairs Official

This is a revised version of the July 20, 2022 memorandum issued to the Department, which has been prepared for public release.
Memorandum

To: Deb Haaland
   Secretary of the Interior

From: Mark Lee Greenblatt
   Inspector General

Subject: Response to Additional Allegations – Unsubstantiated Allegations of an Ethics Violation Against a Bureau of Indian Affairs Official
   Case No. OI–AK–21–0193–I

We previously investigated allegations referred to the U.S. Department of the Interior (DOI) by the U.S. Office of Special Counsel (OSC) from an anonymous whistleblower against a Bureau of Indian Affairs (BIA) official. The complaint alleged that in 2020, BIA officials violated Federal regulations when they improperly approved grant funding to an intertribal organization that is operated by a BIA official’s family member, demonstrating a conflict of interest or an appearance of a conflict of interest. We did not substantiate the allegations and provided a report of investigation to the DOI in July 2021.

The OSC has since referred four additional allegations from the anonymous whistleblower and requested that we specify whether we “considered these actions and provide a summary of how they did or did not impact the agency’s determination regarding [the BIA official’s] recusal.” Given the nature of the request, we did not conduct additional investigation on these newly provided allegations. We concluded, however, that they are unsubstantiated based on the information we obtained in our previously completed investigative work. As a result, these allegations do not impact our findings. Further, we recently confirmed that the BIA official’s family member has not worked at the intertribal organization since spring 2022, a fact that independently removes the potential for conflict and appearance as set forth in the allegations. In addition, we confirmed that the BIA official has left Federal service.

We have attached a copy of our previous investigation, and our assessment of the new allegations is detailed in this letter, which we provide to the DOI for appropriate response to the OSC.

Response to New Allegations

Our previous investigation addressed the allegation that the BIA official was personally involved in the approval and expedited disbursement of grant funds to a intertribal organization. We did not substantiate this allegation and found instead that the BIA official recused themself from all matters involving the intertribal organization. The new complaint included four
The OSC provided us these allegations via email but did not provide supporting documentation, further details, or any indicia of reliability. Each allegation is addressed below.

1. **The BIA official allegedly directed another BIA official to create a fund center for the intertribal organization in October 2020.**

   Neither the original complaint nor our initial investigation identified the other BIA official as substantially involved in providing funding to the intertribal organization; this official had left the BIA shortly after our investigation began, and we saw no basis to seek to interview them. Rather, our initial investigation properly focused on the primary employees involved with funding the intertribal organization according to the initial complaint, grant documentation, and interviews. When interviewed, these employees each separately described the BIA official’s known and open recusal from all matters involving the intertribal organization and their efforts to support it. This information is included in more detail in our attached report.

2. **The BIA official allegedly placed deadlines on a budget officer to accelerate the award to the intertribal organization.**

   In our report, we addressed the allegation that the BIA quickly approved the grant, which was cited as evidence of the BIA’s preferential treatment of the intertribal organization. We did not find any evidence to substantiate the allegation of accelerated award or preferential treatment. Instead, we found the intertribal organization was the last entity to receive funds due to various internal delays at the BIA. We interviewed the BIA employees who had primary responsibility for the grant’s administration and worked directly with the budget office. They confirmed the delays and said they had not heard any complaints or concerns regarding the BIA official. We found no evidence suggesting that the BIA official placed any deadlines specific to the intertribal organization.

   The BIA official told us they recused themself from the grant and any other funding to the intertribal organization and provided recusal documentation. When we asked if the BIA official if they had ever inserted themself into the process to “fast-track” funding to the intertribal organization, they replied, “No.” The BIA official stated that they had removed themself from the process “as best [they] could,” and all evidence we examined supported this contention.

   Another BIA official noted that there was a “holdup” on funding for the grant to the intertribal organization. This official stated that they had communicated with the BIA budget office about this issue but did not hear any concerns regarding a conflict of interest or appearance issue involving the BIA official in question. The grant’s awarding official explained that the BIA strives to award grant funding in 30 days, but due to several problems, the grant to the intertribal organization took much longer. (We summarized these problems in our earlier report.) The awarding official reiterated that the BIA official was not involved in any matter related to the intertribal organization grant. The awarding official stated they never felt any pressure personally and never heard any complaints or concerns from others within the BIA about this grant. The awarding official and another employee who was involved in funding the intertribal
organization both said that the BIA official was not involved, the BIA did not give the intertribal organization preferential treatment, and there was no “fast-tracking” of funds to the intertribal organization.

3. The BIA official allegedly was kept apprised of the grant award progress via emails from another BIA official.

During our investigation, the BIA official and the other BIA official both described to us a continuous effort by the region to ensure that the BIA official was not included in, and was even removed from, email communication regarding the intertribal organization. As part of the BIA official’s recusal, the BIA official said they asked the other BIA official to fill in for them on matters involving the intertribal organization because its mission fell under the other BIA official’s purview; as a result, the BIA official forwarded any information they received regarding the intertribal organization to the other BIA official to address. When we asked if the BIA official ever inserted themself into the process by requesting the status of funding, the BIA official said, “No.” The other BIA official confirmed the BIA official’s recusal and their designation to fill in for the BIA official. The other BIA official specifically stated they corresponded by email with an employee involved in the grant award process and the BIA official’s family member directly and that “[the BIA official] was not involved with that at all” or included in any of the email chains. In addition, the other BIA official stated they removed the BIA official from the recipients list on a group email regarding the intertribal organization.

4. The BIA official allegedly directed an employee involved in the grant award process to move funds to the intertribal organization as recently as December 2021.

We provided the results of our investigation in a July 2021 report, so we did not consider any information from December 2021. However, our interviews with both the BIA official and an employee involved in the grant award process contradict this allegation and, instead, describe a collective effort to support the BIA official’s recusal and prevent their involvement in any funding to the intertribal organization.

Our investigation confirmed that the intertribal organization had a history of receiving year-end carryover funds, as well as the more recent congressionally appropriated grants, from BIA. The BIA official told us that, in addition to their recusal from the grant to the intertribal organization, they deferred to the employee on how all year-end funds were distributed. They said the employee would make recommendations and propose how to distribute available year-end funds. When we asked if there was ever a conversation in which the BIA official designated year-end funds for their family member’s organization, they replied, “No.” The employee also confirmed the BIA official’s recusal and the established, longstanding arrangement of the employee stepping in for them because of the recusal. The employee said the BIA official was “very circumspect” about their family member’s involvement at the intertribal organization. The employee stated they did not discuss funding to the intertribal organization with the BIA official and said, “We felt it was important to kinda keep [their] involvement to nothing at all . . . to ensure that any sort of semblance or impropriety” involving the BIA official and their family member and the intertribal organization was avoided.

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1 Based on the initial allegations, we did not conduct any email searches in our investigation.
If you have any questions during your review, please contact me, or your staff may contact Matthew Elliott, Assistant Inspector General for Investigations, at 202–208–5745.

Attachment
Unsubstantiated Allegations of an Ethics Violation Against a Bureau of Indian Affairs Official
I. EXECUTIVE SUMMARY

We investigated allegations referred by the U.S. Office of Special Counsel (OSC) from an anonymous whistleblower (complainant) against a Bureau of Indian Affairs (BIA) official. The complaint alleged that in 2020, BIA officials violated Federal regulations when they improperly approved grant funding to an intertribal organization that is operated by the BIA official’s family member, demonstrating a conflict of interest or an appearance of a conflict of interest. Specifically, the complainant alleged that (1) the organization benefited from an unauthorized preference in the review and approval process when it received a grant of year-end carryover funds that was much larger than average; (2) the BIA official was personally involved in the approval and expedited disbursement of grant funds, as evidenced by their signature on the grant award letter; (3) the organization received unauthorized preferential treatment in the award of the grant; and (4) the BIA and the U.S. Fish and Wildlife Service (FWS) had an agreement to donate excess vehicles to the organization without the appropriate authority.

We did not substantiate any of the complainant’s allegations. We found that the intertribal organization was awarded a grant from a special congressional appropriation, not from year-end carryover funds. The organization was one of multiple to submit proposals that were reviewed, approved, and awarded by the BIA Central Office through a special panel that did not contain any members or input from the BIA official’s office. We found that the BIA official recused themself from the entire process and did not sign the grant award letter. The grant award letter contained a signature line with the BIA official’s printed name and title. However, a different BIA official signed the award letter on the printed signature line with their own name, and the complainant misread the signature. We did not find any evidence of preferential treatment; in fact, the organization was the last of multiple applicants to receive grant funds. Finally, we did not find evidence of an agreement regarding—or any occurrence of—vehicle donation to the organization.

We are providing this report to the Secretary of the Interior for any action deemed appropriate.

II. RESULTS OF INVESTIGATION

We initiated this investigation on December 16, 2020, after the Secretary of the Interior received a referral from the U.S. Office of Special Counsel (OSC) containing allegations from an anonymous whistleblower (complainant) against a Bureau of Indian Affairs (BIA) official. The OSC sent a second referral on March 15, 2021, with an additional allegation.

The complainant alleged that in 2020, BIA officials violated Federal regulations when they improperly approved grant funding to the intertribal organization. The complainant explained that the BIA official’s family member was an executive for the organization and that the relationship resulted in a conflict of interest or an appearance of a conflict of interest, violating
5 C.F.R. § 2635.402, “Disqualifying financial interests,” and § 2635.502, “Personal and business relationships.” 1 Specifically, the allegations stated:

- The organization benefited from an unauthorized preference in the grant review and approval process when it received a grant of year-end carryover funds that was much larger than the average amount; this was alleged to be in addition to a grant disbursed through a nonprofit association.

- The BIA official was personally involved in the approval and expedited disbursement of grant funds to the organization, as evidenced by their signature on the grant award letter.

- The organization received unauthorized preferential treatment by the BIA in the award of the grant.

- The BIA and the U.S. Fish and Wildlife Service (FWS) had an agreement to donate excess vehicles to the organization without the appropriate authority.

A. We Found No Evidence That the Intertribal Organization Benefited From an Unauthorized Preference in the Grant Review and Approval Process

According to the complaint, the intertribal organization benefited from an unauthorized preference in the review and approval process of a grant of year-end carryover funds that was much larger than average year-end grant funding. The organization allegedly received this funding in addition to a grant that was disbursed through a nonprofit association through the BIA Office of Self-Governance (OSG).

We did not substantiate the allegation that the intertribal organization benefited from an unauthorized preference in the review and approval process. We found that in 2020, the organization was awarded a grant, but the funding came from a special congressional appropriation, not from year-end carryover funds from the BIA official’s office. The review and approval process for the funds was conducted at the BIA Central Office. In addition, in 2020 the organization did not receive additional funding through the nonprofit association.

The process by which the intertribal organization received year-end carryover funding began in 2015. That year, there was no specific appropriation or money allocated by the BIA Central Office for specific intertribal funding, so the BIA official’s predecessor worked with the family member’s predecessor to develop a process by which the BIA provided funding to the organization. The process involved carving funds from the BIA official’s office budgets and requesting these carryover funds be rolled into a contract for the organization through the nonprofit association and the OSG. The organization continued to receive year-end carryover funds through the nonprofit association using this approach from 2015 through 2019.

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1 5 C.F.R. § 2635.402, “Disqualifying financial interests,” prohibits employees from participating in particular matters in which they, or someone whose financial interest are imputed to them, have a financial interest; 5 C.F.R. § 2635.502, “Personal and business relationships,” requires employees to consider their participation in matters that create the appearance of a conflict of interest.
The BIA official’s family member told us they were hired as an executive of the intertribal organization and they effectively secured a special appropriation within the U.S. Department of the Interior’s budget, through the BIA, to fund tribal and Federal cooperative management. In addition to the year-end carryover funds, the organization received funds from the special appropriation through the nonprofit association from 2017 through 2019.

A memorandum from the Office of the Assistant Secretary – Indian Affairs (AS-IA) formalized the process for awarding grants from the special appropriation funds. Specifically, it issued a directive to (1) develop funding criteria and solicit requests for proposals (RFPs) from named entities, including the intertribal organization, and (2) establish a review team for proposals. A BIA Central Office official was responsible for the development of criteria, the solicitation of RFPs, and convening the panel to review and approve grant proposals for the special appropriation funds through the BIA Central Office.

We confirmed that the special appropriation review panel’s ranking members did not include employees from the BIA official’s office. Our interviews confirmed that the decisions about the grant were not made by the BIA official. Instead, they were made at the BIA Central Office level, which is a level above the BIA official, and there was a concerted effort by BIA staff to separate the BIA official from the review of the proposals and subsequent decisions about the distribution of funds. Contrary to the complaint, the special appropriation grant was the only grant awarded to the intertribal organization in 2020; there was no additional grant, or any other funding, awarded to the organization through the nonprofit association in 2020.

B. We Found Evidence That the BIA Official Recused Themself From the Process of Providing Funding to the Intertribal Organization

According to the complaint, the BIA official was personally involved in the approval and expedited disbursement of grant funds to the intertribal organization. In support of this claim, the complaint alleged that the BIA official’s signature was on the grant award letter. We did not substantiate this allegation. We found that BIA official recused themself from the entire process and did not sign the letter. The grant award letter contained a signature line with the BIA official’s printed name and title. However, a different BIA official signed the award letter on the printed signature line with their own name and the complainant misread the signature.

The BIA official had a demonstrated history of recusal in situations involving their family member and the intertribal organization. Before the official worked at the BIA, they held a position at a previous DOI agency. Within 1 month of when the family member was hired at the organization, the BIA official (who was then employed at the previous agency) consulted with a DOI ethics official and submitted a memorandum that outlined the steps they would take to avoid an actual conflict of interest or the appearance of impartiality as it related to the organization, citing both 5 C.F.R. § 2635.402 and 5 C.F.R. § 2635.502, and identified another employee to act in their place when recusal was necessary. When the BIA official became employed by the BIA, they discussed with their supervisor and two other BIA officials the potential conflicts of interest, intent to recuse, and the appointment of the two other BIA officials to fill in as appropriate.
The BIA official told us that they completed annual ethics training, consulted the ethics office regarding potential conflicts, and followed the ethics office’s advice for the duration of their Federal career. While the BIA official did not consult the ethics office specifically about the grant to the intertribal organization, an attorney-advisor for the Office of the Solicitor’s (SOL’s) Departmental Ethics Office confirmed that the BIA official had consulted the ethics office about potential appearance issues regarding both outside work and their duties. The SOL attorney expressed the opinion that the BIA official understood the two standards—conflict of interest (18 U.S.C. § 208) and appearance of impartiality (5 C.F.R. § 2635.502)—and said that the BIA official was very cognizant of the potential issues.

The BIA official told us that when the subject of grant funding to the intertribal organization first arose, they did not think much of it because they were removed from any decision making regarding the grants. The BIA official said that since arriving at the BIA, they only learned after the fact how congressionally appropriated funds were distributed. In 2020, as both the BIA Central Office and the AS-IA began to request information related to special appropriation funding, the BIA official stated their intent to keep themself and their office removed from the process. The BIA official emailed their supervisor and other BIA officials to state that they wanted support for recusal from the whole process and to request that the BIA Central Office send out letters, information, and all notification documents regarding the eligibility and selection of grant recipients.

In a followup email, the BIA official reiterated their preference that the Central Office send out subsistence grant related correspondence and that they did not want their name or office associated with the grant in any way. A BIA Central Office official stated that the award letters should go out of the BIA official’s office instead because that office handles the contracting.

As a result, award letters prepared with the BIA official’s printed name and title were provided to another BIA official for signature while the BIA official in question was out of the office. The other BIA official confirmed they had signed the letters with their own name and that they had done so to ensure the BIA official in question was not involved with the grant awards.

The BIA official’s family member told us that when the official became employed by the BIA they did not communicate about funding to the intertribal organization. We did not find any evidence to the contrary.

The BIA official said that if a grant to the organization came up during an internal meeting, they would either leave the meeting or instruct someone to handle it later, which other BIA employees corroborated. Everyone interviewed confirmed that the BIA official recused themself from any involvement in these matters, noting their refusals to even discuss the grant to the organization. No one interviewed observed any conflict or appearance issue stemming from the family member’s employment.
C. We Found No Evidence That the Intertribal Organization Received Preferential Treatment in the Award of the Grant

The complainant alleged that the grant amount was larger than average and was quickly approved and pointed to these facts as evidence of the BIA’s preferential treatment of the intertribal organization. We did not find any evidence to substantiate the allegation of preferential treatment; rather, we found the organization did not receive substantially more than the other entities that received funding and was the last entity to receive funds.

As previously discussed, we found that the BIA official’s office was not responsible for the review or approval of funds related to the grant. Once the decisions had been made, however, the BIA official’s office was responsible for administering the grant. The 2020 grant to the intertribal organization was one of multiple grants awarded to intertribal entities from the special congressional appropriation funding under the same review process and timeline and in the same relative amount, according to the size and budget of the entity. We confirmed other grant recipients were awarded funds before the organization.

The complainant also claimed preferential treatment by the awarding official who administered the grant. In particular, the complaint alleged that the awarding official approved a previously rejected proposal and had a personal relationship with the BIA official’s family member that involved gifts.

The complainant claimed that the awarding official who administered the grant approved the intertribal organization’s 2020 proposal, even though it had no material changes from a previous organization proposal that had been denied by the awarding official’s predecessor. According to the complainant, the previous denial occurred because of the BIA official’s conflict of interest and other reasons. The awarding official’s predecessor told us that they declined to approve the proposal because it was incomplete and did not contain the necessary tribal resolutions. They denied any influence from the BIA official or that they had acted because of any concern about an appearance or conflict of interest. We found no evidence to the contrary. Moreover, we confirmed that the organization’s approved fiscal year 2020 proposal contained the necessary resolutions.

The awarding official told us that the decisions regarding grant awards and amounts were made before their involvement; their role was to monitor, ensure compliance, and sign paperwork and contracts. The awarding official explained that due to several problems, unrelated to any potential conflict of interest, the intertribal organization’s funding was delayed by months, much longer than the BIA’s usual goal of providing grant funding in 30 days. The awarding official denied experiencing or feeling any pressure to award, expedite, or increase the dollar amount of the grant based on the BIA official’s relationship with the family member.

The complainant also contended that the awarding official may have had a personal relationship with the BIA official’s family member that allegedly included an expensive gift. The awarding official told us that they did not know the family member before becoming the grant administrator and that they wanted to keep their relationship professional to avoid questions of
preferential treatment. Both the awarding official and the family member denied exchanging any personal gifts.

The family member said that not only were they not provided preferential treatment, but also expressed the belief that the BIA communicated very poorly throughout the delayed award process.

No one we interviewed observed or heard of any concerns of conflicts, improper influence, or preferential treatment by the awarding official or any other BIA employee.

**D. We Found No Evidence of an Agreement To Donate Vehicles to the Intertribal Organization**

The OSC referred a second complaint in this matter on March 15, 2021, reporting that the complainant disclosed an additional allegation of wrongdoing regarding the intertribal organization. The complainant alleged that the BIA and the FWS had an agreement to donate excess vehicles to the organization without the appropriate authority. We did not substantiate any wrongdoing.

We did not find any evidence of an agreement between the BIA, the FWS, or the intertribal organization regarding vehicle donation. Both the FWS and the organization confirmed the FWS had not donated any vehicles to the organization. We confirmed the organization was eligible for Federal programs, such as the General Service Administration’s (GSA’s) excess program.

**III. SUBJECT**

A BIA official

**IV. DISPOSITION**

We are providing this report to the Secretary of the Interior for any action deemed appropriate.