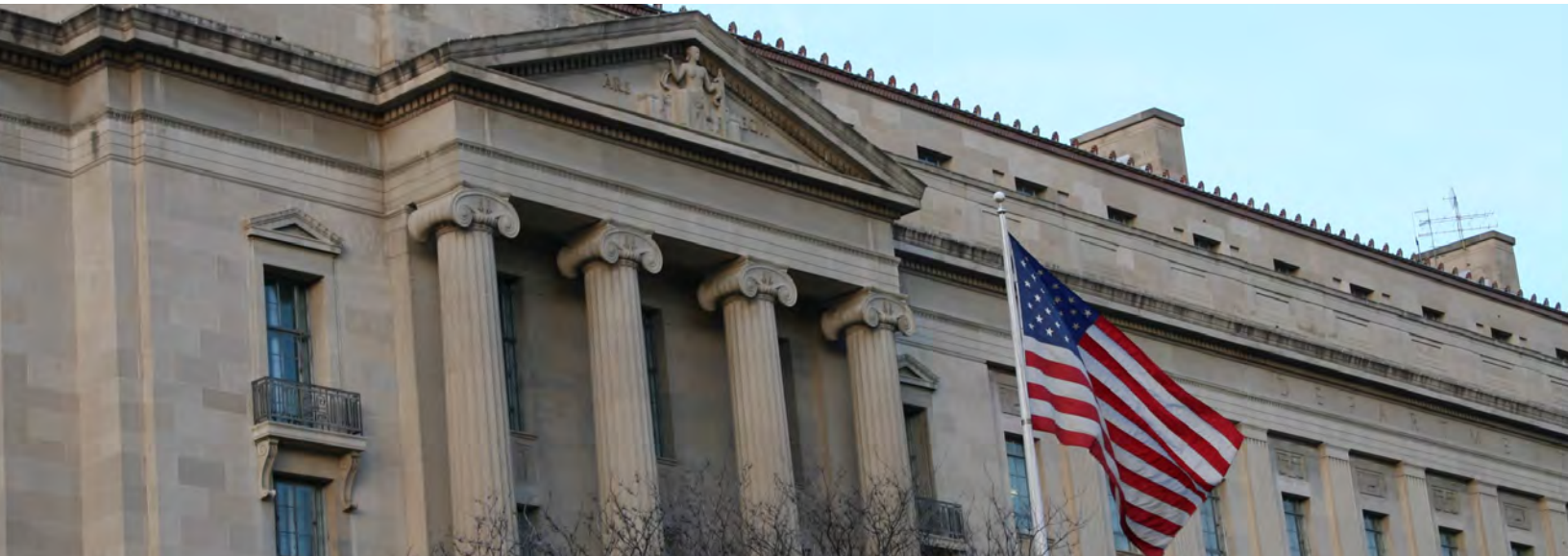




Office of the Inspector General  
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



**Review of the Department's**  
Tribal Law Enforcement Efforts  
Pursuant to the *Tribal Law and*  
*Order Act of 2010*



# Executive Summary

*Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*

## Introduction

According to the most recent crime data available, which is from 2002, Native Americans and others living on tribal lands, known as Indian country, experience a per capita rate of violent crime twice that of other racial and ethnic groups.<sup>1</sup> In 2009, the U.S. Department of Justice (Department) announced that increasing engagement and coordination in tribal communities was a top priority. The following year, the U.S. Congress passed the *Tribal Law and Order Act of 2010* (TLOA). Among other things, TLOA requires the Department to provide legal and investigative assistance to tribes, provide training for tribal justice and law enforcement personnel, and collect data related to crimes in Indian country. The Office of the Inspector General conducted this review to assess the steps the Department and its components have taken to implement these TLOA requirements.

Figure  
Indian Country in the United States



Source: Federal Bureau of Investigation

## Results in Brief

We found that the Department has taken some steps to carry out TLOA's mandates. However, the Department and its components still lack a coordinated approach to overseeing the assistance it provides in Indian country. Further, the Department has not prioritized assistance to Indian country at the level consistent with its public statements or annual reports to Congress. We also found that the Department needs to do more to ensure it provides all of the training TLOA requires. Finally, crime data in Indian country remains unreliable and incomplete, limiting the Department's ability to engage in performance based management of its efforts to implement its TLOA responsibilities.

### *The Department Lacks a Coordinated Approach to the Assistance It Provides in Indian Country, which Compromises Its Ability to Comply with TLOA Requirements*

We found that no Department-level entity oversees Indian country law enforcement activities or ensures the Department's compliance with TLOA mandates. The Office of the Deputy Attorney General convenes a weekly Indian Country Working Group; but not all components with TLOA responsibilities participate, and TLOA requirements are discussed only if a component brings an issue to the group's attention. Further, the Department's Office of Tribal Justice, despite its central role in Native American issues, does not have responsibility for ensuring that components coordinate their law enforcement activities in Indian country.

In the absence of Department-wide coordination, we found that law enforcement activities in Indian country and TLOA compliance vary across components. For example, the United States Attorney's Offices (USAO) we visited differed in their prioritization and implementation of TLOA requirements and no one in the Department, including the Executive Office for United States Attorneys (EOUSA), ensures that USAOs comply with all TLOA requirements. Finally, we found that despite the Department establishing Indian country as a priority area, Indian country funding and resources have decreased since TLOA's implementation.

### *Across Districts, USAOs Do Not Consistently Communicate or Effectively Coordinate with the Tribes Regarding Their Activities in Indian Country*

TLOA requires USAOs to designate an Assistant United States Attorney (AUSA) as a Tribal Liaison to

<sup>1</sup> We use the term "Indian country" because that is the term used in 18 U.S.C. § 1151 (2012).



# Executive Summary

*Review of the Department's Tribal Law Enforcement Efforts Pursuant to the Tribal Law and Order Act of 2010*

facilitate communication and oversee outreach and training to the tribes. However, the primary responsibility for these AUSAs remains to prosecute federal criminal cases. Accordingly, many Tribal Liaisons continue to carry full-time caseloads. We found that these caseloads, if not appropriately balanced with their TLOA responsibilities, may hamper their ability to develop relationships and provide training to tribes. We also found that communication and coordination efforts between USAOs and tribes vary across USAOs. While in certain situations USAOs are limited in the information they can share with tribal authorities, we found in some districts that AUSAs prosecuting Indian country cases do not communicate with tribal prosecutors with enough detail. We also found that tribal prosecutors often have insufficient understanding of the USAO's role in cases that may warrant federal consideration and USAO policies for providing case updates. In addition, we found that within districts the USAOs' processes to consult with or notify tribes about charging decisions are inconsistent and tribal prosecutors often do not receive sufficient explanation for case declinations.

TLOA also "authorized and encouraged" the Department to use tribal prosecutors as Special Assistant United States Attorneys (SAUSA) to assist in prosecuting crimes in Indian country. The Department allows each U.S. Attorney to decide whether to have a SAUSA program, and USAOs cannot require tribes to participate. We found that there are significant benefits from the SAUSA program, such as improved communication and information sharing between USAOs and tribes. However, factors such as the absence of written eligibility criteria and inconsistent funding hamper its use and expansion, which currently stands at only 22 SAUSAs in Indian country.

Finally, we found that most USAOs do not maintain updated and comprehensive operational plans to ensure a coordinated approach to guide their work in Indian country, as Department leadership directed them to do even prior to TLOA's passage.

## ***The Department Must Do More to Ensure that It Provides All TLOA-Required Trainings***

Under TLOA, USAOs are responsible for providing training to tribal justice officials, while the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI) are required to coordinate with the U.S. Department of the Interior's Bureau of Indian Affairs (BIA) to establish new training programs or supplement existing programs to ensure that BIA and tribal law enforcement have access to training. EOUSA's National Indian Country Training Institute fulfills most of

the training responsibilities assigned to USAOs. We found that some USAOs provide additional, ad hoc training and that they do not consistently track or report on this training. We also found that the DEA and FBI have provided some training but need to do more to improve coordination with the BIA and tribal law enforcement, as TLOA requires. In 2016, the FBI and BIA piloted the Indian Country Criminal Investigators Training Program (ICCITP), but limited funding may inhibit efforts to provide consistent training to BIA and tribal law enforcement.

We also found that DEA and FBI Special Agents receive inadequate training prior to working Indian country, despite its unique cultural, jurisdictional, and geographic challenges. DEA Special Agents receive no such specialized training, while a few FBI Special Agents received training through the ICCITP pilot.

## ***The Department Collects Limited Tribal Crime and Prosecution Data but Does Not Use It to Assess Law Enforcement Efforts or Identify Resource and Program Needs***

TLOA established mandates for the Department to report to Congress on its law enforcement activities in Indian country, including the prosecution and investigation of federal cases. To comply with this requirement, EOUSA reports the number of declination, prosecution, and pending decisions each calendar year and the FBI reports all decisions not to refer an Indian country investigation for federal prosecution. However, we found that neither component effectively uses the collected data to evaluate and improve its law enforcement activities in Indian country. In addition, limitations with EOUSA's and the FBI's data collection prevent an accurate assessment of their activities in Indian country.

TLOA requires the Department's Bureau of Justice Statistics to collect data related to crimes in Indian country. However, 7 years after TLOA became law, its data collection and reporting efforts are still in development. Moreover, because participation in the FBI's Uniform Crime Reporting (UCR) Program is voluntary, not all tribes report crime statistics into the UCR database. As a result, Indian country crime statistics are so outdated and incomplete as to be virtually useless.

## **Recommendations**

We make 14 recommendations to improve the Department's ability to meet its obligations under TLOA and to improve its law enforcement activities in Indian country through increased communication and coordination with tribes and informed, performance based management.

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# INTRODUCTION

## Background

According to the most recent crime data available, the U.S. Department of Justice (Department, DOJ) found that in 2002 American Indians experienced a per capita rate of violence more than twice that of other racial and ethnic groups.<sup>2</sup> The Department found that, compared to other groups, American Indians were twice as likely to experience a rape or sexual assault.<sup>3</sup> The Department also found that approximately 62 percent of American Indian victims of violence reported that the offender was under the influence of alcohol, compared to 42 percent for the national average. For American Indians and others living on tribal lands, known under the law as Indian country, scarce law enforcement resources and geographic isolation escalate the challenges tribal communities face in addressing crime.<sup>4</sup> For example, a 2008 Bureau of Justice Statistics (BJS) report found that the Navajo Police Department had only 393 sworn personnel to serve a population of over 192,000 across approximately 22,000 square miles.<sup>5</sup>

## Enactment of the *Tribal Law and Order Act of 2010*

In 2009, Attorney General Eric Holder “made it a Department of Justice priority to increase engagement, coordination and action on public safety in Indian country.”<sup>6</sup> Holder and other Department officials met with tribal leaders to learn about issues facing tribal communities, including their disproportionate rates of violence and victimization and the need to improve collaboration and access to law enforcement and justice resources. The U.S. Congress passed and President Barack Obama signed into law the *Tribal Law and Order Act of 2010* (TLOA) for the stated purposes of clarifying responsibilities with respect to prosecuting crimes committed in Indian country; increasing coordination and communication between federal, state, tribal, and local law enforcement; empowering tribal governments to provide public safety; and increasing and standardizing the collection of criminal data.<sup>7</sup> Recognizing the complicated jurisdictional scheme in Indian country, TLOA

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<sup>2</sup> We use the term “American Indian” throughout this report because that is the term the Department uses in all of its official documents and its annual report to the Congress.

The most recent statistics from the Department that describe the American Indian population and crime are from 2002 and were published in 2004. The most recent information about tribal law enforcement is from 2008. We discuss the lack of current data in the Results of the Review.

<sup>3</sup> DOJ BJS, *A BJS Statistical Profile, 1992–2002: American Indians and Crime*, NCJ 203097 (December 2004).

<sup>4</sup> We use the term “Indian country” in this report because that is language used in 18 U.S.C. § 1151 (2012).

<sup>5</sup> BJS, *Tribal Law Enforcement, 2008*, NCJ 234217 (June 2011).

<sup>6</sup> DOJ, “Tribal Law and Order Act,” October 20, 2016, <https://www.justice.gov/tribal/tribal-law-and-order-act> (accessed January 31, 2017).

<sup>7</sup> *Tribal Law and Order Act of 2010*, Pub. L. No. 111-121, Title II, § 202 (b), 124 Stat. 2258 (2010).

aims to increase commitment and cooperation among tribal, federal, and state law enforcement officials. The passage of TLOA, as well as other legislation, including the *Violence Against Women Reauthorization Act of 2013*, resulted in Department mandates to increase engagement and coordination in Indian country.<sup>8</sup>

The Office of the Inspector General (OIG) conducted this review to assess the steps the Department and its components have taken to implement TLOA requirements, including legal assistance, investigative training, and other technical assistance provided to enhance law enforcement activities in Indian country, as well as related data collection. In the next section, we define and describe Indian country, the Department's responsibilities in Indian country, and the roles the Department's components have in implementing TLOA requirements as they relate to law enforcement activities in Indian country.

## Indian Country

The federal government defines Indian country as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments. Indian country comprises about 2.3 percent of the United States' total land area, and 1.7 percent of the U.S. population identifies as American Indian or Alaska Native.<sup>9</sup> In total, there are 567 federally recognized tribes that reside on 310 reservations in 36 states.<sup>10</sup> Figure 1 below highlights Indian country in the United States.

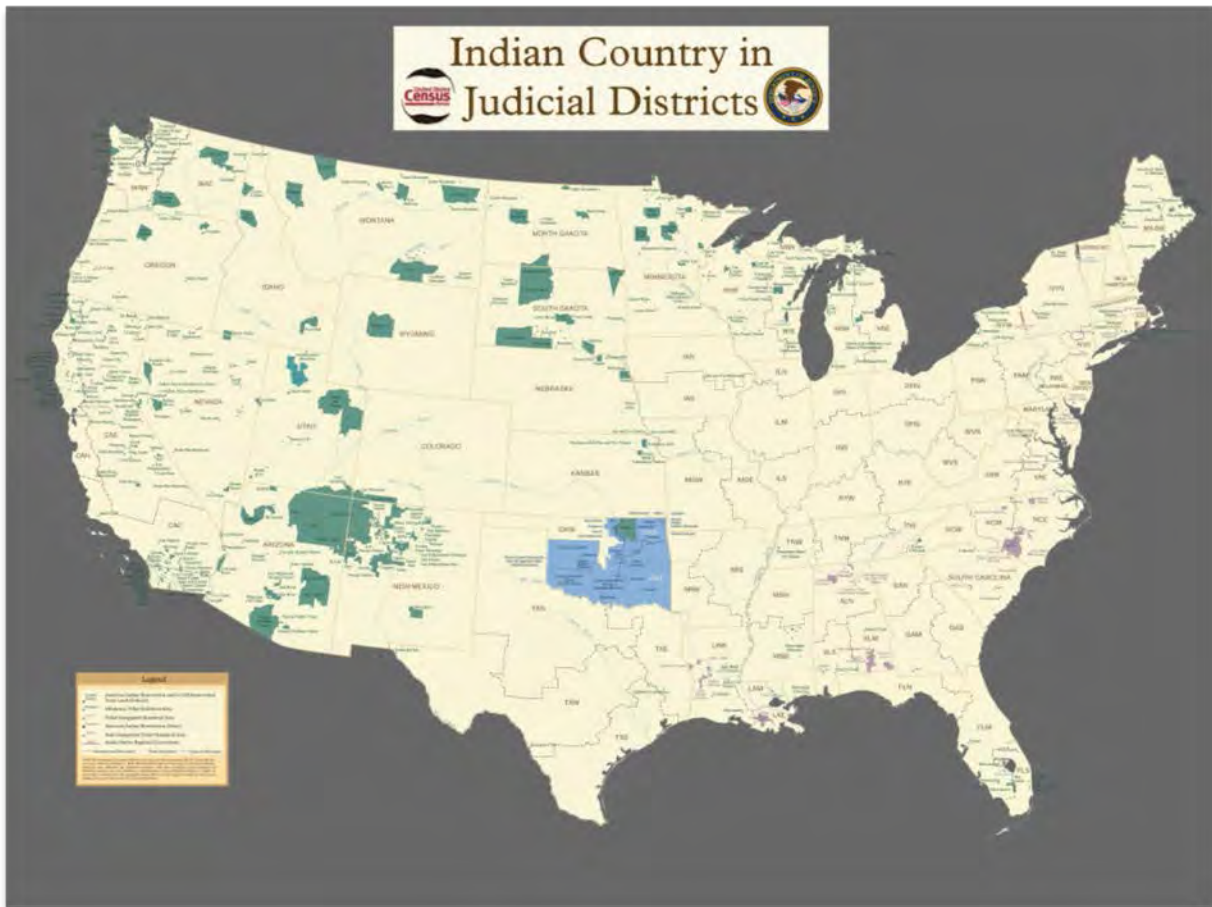
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<sup>8</sup> The *Violence Against Women Reauthorization Act of 2013* recognized certain tribes' power to exercise concurrent criminal jurisdiction over domestic violence cases, regardless of whether the defendant is Indian or non-Indian; clarified that tribal courts have civil jurisdiction to issue and enforce protection orders involving any person, Indian or non-Indian; created federal statutes to address crimes of violence committed against a spouse or intimate partner; and provided more robust federal sentences for certain acts of domestic violence in Indian country. We did not evaluate the implementation of the *Violence Against Women Reauthorization Act* as part of this review.

<sup>9</sup> U.S. Census Bureau, *The American Indian and Alaska Native Population: 2010* (2012).

<sup>10</sup> Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 81 Fed. Reg. 5019 (January 29, 2016).

Figure 1  
Indian Country in the United States



Note: Areas highlighted in green and blue represent American Indian reservations under the jurisdiction of the U.S. government. Purple areas are State Designated Tribal Statistical Areas.<sup>11</sup>

Source: Federal Bureau of Investigation, with OIG revisions

Federally recognized tribes are unique and possess certain rights of self-government (i.e., sovereignty), which are intended to ensure that decisions about a tribe with regard to its property and citizens are made with the tribe's participation and consent. In addition, federally recognized tribes are entitled to receive certain federal benefits, services, and protections because of their government-to-government relationship with the United States.

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<sup>11</sup> The U.S. Census Bureau defines a State Designated Tribal Statistical Area as "a statistical geographic area identified and delineated for state recognized tribes that not are federally recognized and do not have an American Indian reservation or off-reservation trust land." Because State Designated Tribal Statistical Areas are not federally recognized and have no trust land, they are excluded from this report.



## The Department's Responsibility to Indian Country

While tribes have sovereign authority to prosecute any American Indian who commits a misdemeanor-level crime on tribal territory and to maintain concurrent jurisdiction with federal or state courts on any crime an American Indian commits on tribal lands, most tribes do not have the authority to prosecute crimes that non-Indians commit on tribal lands. Further, tribal courts have little punitive sentencing authority for even the most violent offenders.<sup>12</sup> For example, prior to TLOA's passage, under the *Indian Civil Rights Act of 1986*, tribes could sentence a convicted offender to a term of imprisonment not to exceed 1 year and could impose a maximum fine of \$5,000 per offense. As a result, federal agencies, including the Department of Justice and the U.S. Department of the Interior's (DOI) Bureau of Indian Affairs (BIA) play a role in Indian country law enforcement that local criminal justice systems would otherwise handle.<sup>13</sup>

Under the *General Crimes Act of 1817* and the *Major Crimes Act of 1885*, the Department has the legal authority to investigate and prosecute certain felony level offenses, including manslaughter, rape, and sexual abuse, committed in Indian country, whether the offender is Indian or non-Indian.<sup>14</sup> Therefore, in much of Indian country, most of these offenses fall under the jurisdiction of a United States Attorney's Office (USAO) and the Federal Bureau of Investigation (FBI).<sup>15</sup>

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<sup>12</sup> *Indian Civil Rights Act of 1986* (25 U.S.C. § 1301 (Definitions); § 1302 (Constitutional rights); § 1303 (Habeas corpus)).

<sup>13</sup> The *Indian Law Enforcement Reform Act of 1990* (24 U.S.C. 30) established a branch of Criminal Investigations within the BIA's Division of Law Enforcement, which is responsible for providing or assisting in the provisions of law enforcement services in Indian country. The Division of Law Enforcement's responsibilities include cooperation with appropriate federal and tribal law enforcement agencies and the investigation and presentation for prosecution of cases involving violations of 18 U.S.C §§ 1152 and 1153.

The BIA provides government and community services to federally recognized tribes to improve the quality of life for their members. For the purposes of this review, we received information primarily from the BIA's Office of Justice Services, which provides law enforcement services and technical assistance to tribal communities. BIA Office of Justice Services agents have the authority to partner with federal agencies, including the Drug Enforcement Administration (DEA) and Federal Bureau of Investigation (FBI).

<sup>14</sup> Under 18 U.S.C. §§ 1152 and 1153, the federal government has jurisdiction over certain offenses and certain circumstances in Indian country. In particular, 18 U.S.C. § 1153, the *Major Crimes Act*, gives federal courts jurisdiction over murder, manslaughter, kidnapping, maiming, rape, sexual abuse, sexual abuse of a minor, abusive sexual contact, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual under 16 years of age, felony child abuse or neglect, arson, burglary, robbery, felony embezzlement, and theft within Indian country.

<sup>15</sup> The Department typically maintains the sole authority to prosecute violent crimes committed within Indian country unless a state has been granted jurisdiction through Public Law (PL) 280. PL 280 authorizes Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin to prosecute most crimes that occur in Indian country. Optional PL 280 states have concurrent state and federal criminal jurisdiction. These states include Arizona, Florida, Idaho, Iowa, North Dakota, Nevada, South Dakota, Utah, and

(Cont'd)

In response to concerns that tribal leaders raised in October 2009 about public safety in tribal communities, in January 2010 Attorney General Holder announced initiatives to “enable the Justice Department to bring the federal justice system closer to Indian country.”<sup>16</sup> These efforts, intended in part to create better communication and coordination between USAOs and the tribes within their districts, included a directive from Deputy Attorney General David Ogden to all USAOs with Indian country jurisdiction (49 out of 94 USAOs) to:

- meet and consult with tribes in their district annually,
- develop an operational plan addressing public safety in Indian country,
- provide summaries of their operational plans to the Office of the Deputy Attorney General (ODAG) and make those summaries available to the tribes in their districts, and
- work closely with law enforcement to pay particular attention to violence against women in Indian country and to make these crimes a priority.<sup>17</sup>

Following these initiatives, the President signed TLOA into law in July 2010, codifying the responsibilities of federal and tribal law enforcement agencies, including the Department, with respect to crimes committed Indian country.

### *DOJ Component TLOA Roles and Responsibilities*

TLOA prescribed responsibilities to the Department and its components in the areas of legal assistance, investigative training, and data collection to enhance law enforcement activities in Indian country. This section describes each component’s TLOA requirements within these areas.

#### Office of Tribal Justice

The Office of Tribal Justice (OTJ) acts as the Department’s primary point of contact for federally recognized tribes and coordinates complex tribal matters, policy, and legislation among DOJ components relating to public safety and justice in Indian country.<sup>18</sup> The OTJ also serves as the program and policy legal advisor to the Attorney General with respect to the treaty and trust relationship between the United States and Indian tribes and coordinates with other bureaus, agencies,

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Washington. PL 280 effectively limits federal criminal jurisdiction and expands state jurisdiction by transferring the federal government’s authority to the state to prosecute Indian country crimes. However, PL 280 jurisdiction does not affect tribal criminal jurisdiction.

<sup>16</sup> DOJ Office of Public Affairs, “Attorney General Announces Significant Reforms to Improve Public Safety in Indian Country,” January 11, 2010, <https://www.justice.gov/opa/pr/attorney-general-announces-significant-reforms-improve-public-safety-indian-country> (accessed February 1, 2017).

<sup>17</sup> See Appendix 3 for a list of all the USAOs that have Indian country within their jurisdiction.

<sup>18</sup> 25 U.S.C. § 3665(a).

offices, and divisions within the Department.<sup>19</sup> Although the OTJ has existed as a unit within the ODAG since 1995, it became a permanent DOJ component with the enactment of TLOA. The OTJ was funded through reimbursable agreements with several DOJ components until it became part of the Department's permanent budget in fiscal year (FY) 2014.

### Executive Office for United States Attorneys

The Executive Office for United States Attorneys (EOUSA) provides executive and administrative support, including legal education, administrative oversight, technical support, and a vehicle for the creation of uniform policies for U.S. Attorneys throughout the United States and its territories. TLOA required that EOUSA create a Native American Issues Coordinator position to provide advice and assistance to USAOs on Indian country legal and policy issues. The position's duties include serving as the point of contact on all matters criminal and civil, pertaining to American Indian issues, for U.S. Attorneys who have the authority to prosecute crimes in Indian country; coordinating with DOJ components, the Department, and relevant advisory groups to the Attorney General and Deputy Attorney General; and compiling statistics on Indian country investigations and prosecutions for the Department's annual report to Congress.<sup>20</sup>

### U.S. Attorneys

TLOA also established several requirements for U.S. Attorneys. For example, TLOA states that if a U.S. Attorney declines to prosecute or acts to terminate the prosecution of an alleged violation of federal criminal law in Indian country, the U.S. Attorney must coordinate with the appropriate tribal justice officials regarding the status of the investigation and the use of evidence relevant to the case in tribal court. U.S. Attorneys must annually report to EOUSA's Native American Issues Coordinator regarding all declinations of cases that law enforcement agencies had referred for prosecution of crimes allegedly committed in Indian country.

In addition, TLOA required the U.S. Attorney for each district with Indian country jurisdiction to designate at least one Assistant United States Attorney (AUSA) as a Tribal Liaison to coordinate the prosecution of crime in Indian country, develop relationships with tribes, and serve as a link between tribes and the federal justice process. According to TLOA, Tribal Liaisons must also:

- develop multidisciplinary teams to combat child abuse and domestic and sexual violence against Indians;

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<sup>19</sup> The OTJ Director hosts consultations with tribes 6 to 8 times a year. Consultations cover topics such as law enforcement and policy and legislative changes that affect Indian country.

<sup>20</sup> USAOs report to EOUSA's Native American Issues Coordinator data about decisions to prosecute and decline cases, including, but not limited to: (1) the type of crime(s) alleged; (2) the status of the accused as Indian or non-Indian; (3) the status of the victim(s) as Indian or non-Indian; and (4) the reasons for declining or terminating a prosecution.

- consult and coordinate with tribal justice officials and victims' advocates to address case backlogs in the prosecution of major crimes in Indian country;
- develop working relationships and maintain communication with tribal leaders, tribal community and victims' advocates, and tribal justice officials, to gather and share appropriate information;
- coordinate with tribal prosecutors when a tribal government has concurrent jurisdiction over an alleged crime, in advance of the expiration of any statute of limitation;
- provide technical assistance and training on evidence-gathering techniques and strategies to address victim and witness protection for individuals and entities that respond to Indian country crimes;
- conduct training sessions and seminars to certify Special Law Enforcement Commissions for tribal justice officials and other individuals and entities that respond to Indian country crimes;
- coordinate with the OTJ, as necessary; and
- conduct other activities to address and prevent violent crime in Indian country, as the U.S. Attorney determines appropriate.

As of March 2016, there were 98 Tribal Liaisons working in 49 districts with Indian country jurisdiction to establish relationships with tribal communities.

TLOA also "authorized and encouraged" each U.S. Attorney with Indian country jurisdiction to appoint a tribal prosecutor as a Special Assistant United States Attorney (SAUSA) to help coordinate the prosecution of crimes, particularly when tribal crime rates or case declination rates exceed the national average.<sup>21</sup> Under TLOA, appointed tribal prosecutors who participate in the SAUSA program should receive training in federal law, procedure, and investigative techniques. The Department has stated that tribal prosecutors' participation increases the potential for viable criminal offenses to be prosecuted in both federal and tribal court because tribal prosecutors are cross-designated to serve as co-counsel with AUSAs on Indian country investigations and prosecutions.<sup>22</sup> As of September 2016, there were 22 SAUSAs working in Indian country.

To address the training requirements for DOJ prosecutors and tribal justice personnel that USAO Tribal Liaisons originally had to fulfill, in July 2010 EOUSA launched the National Indian Country Training Institute (NICTI). The NICTI, which has two staff members, including EOUSA's National Indian Country Training

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<sup>21</sup> *Tribal Law and Order*, 111th Cong., 2nd Sess., H.R. 725-12, Title I, Subtitle A, Sec. 13 (d) (1).

Pursuant to 28 U.S.C. § 543(a), SAUSAs are cross-deputized tribal prosecutors who can prosecute crimes in both tribal and federal court.

<sup>22</sup> DOJ, *Indian Country Investigations and Prosecutions* (2015), 19.

Coordinator, facilitates Indian country training courses, lectures, and webinars that are held at the National Advocacy Center (NAC) and in the field; trainings are free for participants.<sup>23</sup> The NICTI ensures that federal prosecutors, Special Agents, and state and tribal criminal justice officials receive training and support to address areas relevant to Indian country prosecutions. Training includes topics such as cultural property law, domestic violence, and criminal jurisdiction in Indian country. The NICTI also provides joint training with DOJ components and other federal agencies with Indian country responsibility, including the DOI.

### The Drug Enforcement Administration and the Federal Bureau of Investigation

Both the Drug Enforcement Administration (DEA) and the FBI have the authority to assist in the investigation of federal crimes occurring on tribal lands.<sup>24</sup> The DEA's Regional and Local Impact Section at DEA headquarters oversees the DEA's activities in Indian country. Although the DEA has field offices whose coverage areas include Indian country, it does not specifically assign its Special Agents to work exclusively on Indian country matters. The FBI's Indian Country Crimes Unit (ICCU) at FBI headquarters oversees the FBI's activities in Indian country; as of July 2017, the ICCU consists of a Unit Chief, three Supervisory Special Agents, two Intelligence Analysts, a Management Program Analyst, and a Management Program Assistant. Of the FBI's 56 field offices across the country, 34 have Indian country within their areas of responsibility. In FY 2016, 125 FBI Special Agents were assigned primarily to work on Indian country matters in field offices around the country.

DEA and FBI agents often work with tribal law enforcement when conducting investigations because tribal law enforcement officers are typically the first responders to crimes in Indian country. The DEA and FBI may also work with other federal law enforcement, including Special Agents from the DOI's BIA. TLOA required the DEA and FBI to coordinate with the DOI, specifically the BIA, to

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<sup>23</sup> The NAC is an EOUSA facility in Columbia, South Carolina, dedicated to training federal, state, and local prosecutors.

<sup>24</sup> Under 28 U.S.C. § 533, the FBI has investigative authority to detect and prosecute crimes against the United States. FBI jurisdiction for the investigation of federal violations in Indian country derives specifically from 18 U.S.C. § 1162 (a) and (c).

DEA jurisdiction for narcotics investigations in Indian country derives from the *Federal Controlled Substances Act of 1970*, 21 U.S.C. §§ 801–971, which applies throughout the United States, including in Indian country. Congress provided exemption from the *Controlled Substance Act* only for American Indians using peyote in bona fide religious practices of Native American churches.

The U.S. Marshals Service and the Bureau of Alcohol, Tobacco, Firearms and Explosives also have a presence in Indian country. However, we did not include them as part of this review because they do not have specific responsibilities pursuant to TLOA.

provide training to the BIA, as well as to tribal law enforcement and judicial personnel, on illegal narcotics and alcohol and substance abuse.<sup>25</sup>

In addition to the FBI’s training responsibilities, the FBI must also annually submit information to the Department about criminal matters and investigations not referred to a USAO for prosecution — also known as administrative closures.<sup>26</sup> The DEA does not have data reporting requirements under TLOA. From calendar year (CY) 2011 through CY 2015, the number of FBI administrative closures, or cases not referred for federal prosecution consideration, remained consistent.<sup>27</sup> See Table 1.

Table 1  
FBI Administrative Closures  
CYs 2011–2015

Calendar Year	Administrative Closures
2011	611
2012	658
2013	679
2014	657
2015	668
Total	3,273

Source: FBI

### The Bureau of Justice Statistics

The BJS collects, analyzes, and disseminates information on crime, criminal offenders, crime victims, and criminal justice operations. The BJS also provides financial and technical support to state, local, and tribal governments to improve their data collection capabilities and the quality and the utility of their criminal

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<sup>25</sup> We did not review alcohol or substance abuse training to tribal law enforcement. According to the BIA, the Indian Health Services and the Substance Abuse and Mental Health Services Administration provide this training.

<sup>26</sup> The FBI reports data on: (1) the type of crime(s) alleged, (2) the status of the accused as Indian or non-Indian, (3) the status of the victim(s) as Indian or non-Indian, and (4) the reasons for deciding to decline or terminate prosecutions. We further discuss Department reporting requirements later in this report.

TLOA did not task the DEA with data reporting requirements. Section 212 of TLOA amends Title 25 U.S.C. § 2809 and states that “any federal department or agency” in cases of nonreferrals or declinations of criminal investigations in Indian country “shall coordinate” with its tribal counterparts. This requirement extends to the Bureau of Alcohol, Tobacco, Firearms and Explosives; DEA; FBI; U.S. Attorney’s Offices (USAO); and others conducting investigations on tribal lands. Coordination includes the status of the investigation and the use of relevant evidence in tribal court. No reporting requirements are included.

<sup>27</sup> Because other federal law enforcement agencies such as the DEA and the BIA can investigate and close cases prior to presentation to a USAO, FBI administrative closures alone will not provide a holistic picture of federal cases that are not presented to a USAO for prosecution.

history records. TLOA required that the BJS establish a tribal data collection system and annually report on its data collection efforts to Congress.

### *Investigations and Prosecutions in Indian Country*

According to the Department, TLOA is intended to establish accountability measures for federal agencies responsible for investigating and prosecuting crimes in Indian country.<sup>28</sup> We requested from EOUSA all cases related to Indian country, including cases that were pending, declined, or prosecuted from CY 2011 through CY 2015. We analyzed the data to assess district volume, referring agency, declination and prosecution rates, and reasons for declination. Table 2 represents the results of our analysis of the Department's data and provides a snapshot of the Department's currently reported work in Indian country. However, while we present descriptive statistics here, later in this report we discuss several limitations that prevented a complete and accurate analysis of the Department's investigations and prosecutions in Indian country.

Table 2  
Number of USAO Defendants Prosecuted and Declined  
CYs 2011–2015

	2011	2012	2013	2014	2015 <sup>a</sup>
Defendants Declined	1,043	972	866	987	1,043
Defendants Filed in District Court	1,592	1,590	1,405	1,352	1,343

<sup>a</sup> EOUSA collects its data according to fiscal year, and complete sets of data are not available until the end of the next fiscal year. Although our scope extended to FY 2015, the most complete set of data we received was for CY 2014. To complete the CY 2015 dataset, EOUSA waited until the end of FY 2016 and created a permanent snapshot of CY 2015 for posterity. As a result of EOUSA's data collection parameters, current CY data is always delayed. However, we included CY 2015 here to show that as of September 30, 2015, districts had declined to bring charges against as many defendants in 2011 as they had in 2015.

Source: EOUSA data

As Table 2 shows, USAOs reported a 17 percent decrease in the number of defendants against whom charges were declined from CY 2011 through CY 2013, followed by a 20 percent increase from CY 2013 to CY 2015. Table 2 also shows a 16 percent decrease in the number of defendants against whom charges were filed in District Court from CY 2011 to CY 2015.<sup>29</sup> We also found that from CY 2013 to CY 2015, of the 42 USAO districts that reported at least 1 defendant against whom charges were filed, 21 districts (50 percent) charged fewer defendants than they

<sup>28</sup> DOJ, *Indian Country Investigations and Prosecutions* (2015), 5.

<sup>29</sup> This analysis does not include Indian country defendants prosecuted in magistrate courts. In response to a draft of this report, EOUSA noted the number of defendants filed in magistrate court as follows: CY 2011, 196; CY 2012; 471; CY 2013, 233; CY 2014, 527; and CY 2015, 278.

previously had. While EOUSA's Deputy Director attributed this change to the *Smart on Crime* initiative and the overall decline in federal prosecutions during this time period, he acknowledged that EOUSA had not specifically analyzed prosecution trends in Indian country.<sup>30</sup>

Various law enforcement agencies refer investigations to USAOs for prosecution. For the purposes of this review, we limited our analysis to investigations referred to USAOs by the BIA; DEA; FBI; joint DEA and FBI-led task forces; and local law enforcement, including tribal law enforcement. According to our analysis of EOUSA data, from CY 2011 through CY 2014, the FBI, BIA, and local law enforcement referred over 90 percent of cases to USAOs on Indian country matters.<sup>31</sup> See Table 3 for EOUSA's data reflecting the number of Indian country matters that USAOs received.

Table 3  
Number of Indian Country Matters That USAOs Received, by Agency  
CYs 2011–2014

Agency	2011	2012	2013	2014	Percent Change
Bureau of Indian Affairs	443	445	581	488	10%
Drug Enforcement Administration	37	2	6	7	-81%
Federal Bureau of Investigation	966	969	821	718	-26%
Tribal Law Enforcement <sup>a</sup>	252	240	288	267	6%

<sup>a</sup> Tribal law enforcement also includes matters received by state, county, and municipal authorities.

Source: EOUSA data

### Previous Reviews Related to Indian Country

In 2010, the U.S. Government Accountability Office (GAO) examined the declination rates and declination reasons for all Indian country matters that USAOs received from FY 2005 through FY 2009. The GAO found that USAOs declined to prosecute 50 percent of the 9,000 matters received, with violent crime cases

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<sup>30</sup> In August 2013, the Department announced the *Smart on Crime* initiative, which highlighted five principles to reform the federal criminal justice system. The OIG recently released a review of the Department's implementation of certain principles regarding prosecution and sentencing practices under the *Smart on Crime* initiative. See DOJ OIG, *Review of the Department's Implementation of Prosecution and Sentencing Reform Principles under the Smart on Crime Initiative*, Evaluation and Inspections Report 17-04 (June 2017).

<sup>31</sup> The BIA sometimes collaborates with the DEA and the FBI on investigations in Indian country. A BIA official explained that collaboration among the agencies is of benefit because it is a force multiplier for law enforcement personnel in Indian country. Currently, there are 35 BIA drug agents across the country. In one district we visited, agents from the BIA's Drug Diversion Unit partner with the DEA to conduct drug investigations on tribal lands. The BIA similarly collaborates with the FBI in some districts. A BIA Special Agent told us that in his district the BIA and the FBI meet monthly to discuss ongoing issues and the agencies have a memorandum of understanding that outlines the FBI's responsibility to respond to certain violent crimes in Indian country. Further, BIA agents may also participate on FBI task forces in their district.



declined at a higher rate than nonviolent crime cases.<sup>32</sup> FBI officials also told the GAO that they may elect not to refer to a USAO matters that they believe lack sufficient evidence for prosecution. A 2011 GAO report examined the coordination efforts between DOJ and the DOI when providing support for tribal courts.<sup>33</sup> The GAO found that coordination could be strengthened by improving information sharing and resource distribution to tribal courts.

### Purpose, Scope, and Methodology of the OIG's Review

The OIG assessed the Department's tribal law enforcement responsibilities pursuant to TLOA. We did not review each TLOA requirement directed at the Department and its components. Rather, we focused on the legal assistance, investigative training, and other data collection activities provided to enhance law enforcement efforts in Indian country. For FY 2011 – FY 2015, through data analysis, document review, and interviews, we: (1) reviewed the Department's coordination among its components in providing assistance to Indian country; (2) evaluated EOUSA's use of Tribal Liaisons to assist tribal justice officials in prosecuting cases in Indian country; (3) examined the training that USAOs, the FBI, and the DEA provide to tribal law enforcement and the BIA; and (4) assessed the Department's processes for collecting and reporting crime and prosecution data. Our fieldwork, conducted from April through November 2016, included site visits to seven federal USAO districts and video teleconference site visits to two USAOs. We interviewed officials and staff from the DEA, FBI, and USAOs, as well as the BIA, tribal law enforcement, and tribal justice officials. We also interviewed headquarters officials and staff from the BJS, DEA, EOUSA, FBI, ODAG, OTJ, as well as officials from the DOI. A more detailed description of the methodology of our review is in Appendix 1.

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<sup>32</sup> GAO, *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, GAO-11-167R (December 2010).

<sup>33</sup> GAO, *Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts*, GAO-11-252 (February 2011).

## RESULTS OF THE REVIEW

### The Department Lacks a Coordinated Approach to the Assistance It Provides in Indian Country, which Compromises Its Ability to Comply with TLOA Requirements

The *Tribal Law and Order Act of 2010* (TLOA) required the U.S. Department of Justice (Department, DOJ) and its components to provide legal and investigative assistance, train tribal justice and law enforcement personnel, and collect data related to crimes in Indian country. We found that several DOJ components had taken actions to comply with TLOA's requirements. However, we also found that there is no Department-level entity that oversees component activities or coordinates these efforts to fulfill TLOA mandates. In the absence of a Department-level entity to oversee Indian country efforts, law enforcement activities in Indian country and the implementation of TLOA requirements vary by component. As a result, the Department cannot ensure that it is prioritizing its Indian country responsibilities or meeting these important requirements.

#### *No Department Individual or Entity Coordinates the Department's Tribal Law Enforcement Activities, Including the Implementation of TLOA Requirements, and Component Compliance with TLOA Requirements Varies*

While TLOA established several mandates to the Department and its components, we found that no Department individual or entity ensures the implementation of or compliance with these mandates across the Department. We also found that Department components with TLOA responsibilities do not coordinate their law enforcement activities in Indian country to ensure compliance with TLOA mandates.

Officials with the Office of the Deputy Attorney General (ODAG) told us that it is not the ODAG's role to formally oversee activities associated with TLOA requirements and that each component is responsible for fulfilling its responsibilities in Indian country. ODAG officials said that the ODAG does not provide assistance to the components unless a specific issue is raised to the Department. While the ODAG convenes a weekly working group composed of representatives from various components, including the Executive Office for United States Attorneys (EOUSA), the Federal Bureau of Investigation (FBI), and the Office of Tribal Justice (OTJ) to discuss Indian country issues, officials told us that TLOA activities may or may not be addressed, depending on the issues the representatives choose to discuss.<sup>34</sup> In

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<sup>34</sup> After the completion of our fieldwork, the Department announced several actions to support law enforcement and maintain public safety in Indian country as part of its Task Force on Crime Reduction and Public Safety. The OTJ coordinated a series of listening sessions with tribal law enforcement officials and created a Federal Law Enforcement Coordination group to enhance responses to violent crime in Indian country. The Department also expanded the Tribal Access Program, which ensures that tribes have access to national crime information databases. We discuss data collection activities provided to enhance law enforcement efforts in Indian country later in this

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addition, while the Department's Indian Country Working Group includes representatives from EOUSA and the FBI, each of which has specific TLOA responsibilities, the Drug Enforcement Administration (DEA) does not participate in the working group despite its specific training responsibility established in TLOA. EOUSA's Native American Issues Coordinator told us that, because a lot of components are involved in Indian country, coordinating work can be challenging and that participation in the working group provides another mechanism for communication and coordination throughout the Department.

TLOA formally established the OTJ as a permanent entity within the Department to, among other things, coordinate with DOJ components to ensure each has a process for consulting with tribal leaders in developing policies and other activities that affect tribes. However, we found that the OTJ does not have a role in ensuring that components coordinate their law enforcement activities in Indian country. Rather, the OTJ Director told us that one of the OTJ's primary purposes is to liaise between tribes and the Department regarding jurisdictional issues or other tribal matters that may arise.<sup>35</sup> EOUSA's Assistant Director of Indian, Violent, and Cyber Crime Staff told us that she believes that the OTJ's focus is different from EOUSA's and that the OTJ is a voice and advocate for the tribes, whereas EOUSA serves the Department by supporting the United States Attorney's Offices (USAO).<sup>36</sup> She said that while the two offices work together, she believes the Department is well served by keeping the two separate.

While the OTJ does not serve in a law enforcement capacity, we believe that, as the Department's primary component with tribal responsibilities, the OTJ should have greater involvement in coordinating with EOUSA, as well as the Department's law enforcement components, to carry out the Department's law enforcement activities in Indian country. We were therefore encouraged to learn after our fieldwork that the OTJ had initiated monthly meetings with all Indian country law enforcement agencies, including the FBI, DEA, and the Department of the Interior's (DOI) Bureau of Indian Affairs (BIA). The OTJ told us that the first of these meetings was held in February 2017 and that the group has been meeting regularly

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report. See DOJ Press Release, "Attorney General Jeff Sessions Announces New Actions to Support Law Enforcement and Maintain Public Safety in Indian Country," April 18, 2017.

In response to a working draft of this report, EOUSA stated that the Native American Issues Coordinator now chairs the Violent Crime in Indian Country Subcommittee as a derivative of the Attorney General's Task Force on Crime Reduction and Public Safety. EOUSA further indicated that, since the committee's April 2017 inception, the committee has held 4 meetings and made 40 recommendations to the Office of Legal Policy to combat violent crime in Indian country. Members of the subcommittee include the BIA; DEA; FBI; Office of Justice Programs; OTJ; U.S. Marshals Service; Bureau of Alcohol, Tobacco, Firearms and Explosives; and Federal Bureau of Prisons. We did not review these more recent recommendations to determine whether or not they specifically address TLOA requirements.

<sup>35</sup> In response to a working draft of this report, the OTJ stated that its liaison responsibilities bear equal weight with its other responsibilities as outlined in 28 C.F.R. 0.134.

<sup>36</sup> In response to a working draft of this report, the OTJ stated that its involvement in law enforcement activities is not advocacy, but rather fulfilling a legal requirement that its office coordinate the Department's activities, policies, and positions relating to tribes, specifically with respect to public safety in Indian country.

since then. The OTJ Director also informed us that, as of March 2016, the OTJ had begun meeting with the DEA about how the DEA can do more outreach in Indian country. However, in these meetings, the OTJ provides input only for issues that arise, such as training questions or jurisdiction. Because the OTJ's mission does not include oversight, the OTJ Director said that there needs to be consistent guidance from the Attorney General and the ODAG to ensure that the Department coordinates its Indian country activities. He further stated that he would like to see Indian country consistently treated as a priority across districts. As noted above, ODAG officials told us that oversight of the Department's TLOA responsibilities rests with each component.

While EOUSA, the USAOs, the DEA, and the FBI provide assistance to tribal law enforcement and judicial officials, we found that, as described below, their implementation of TLOA-mandated activities varies and there is no Department-level accountability for their TLOA compliance.

#### Executive Office for United States Attorneys

TLOA established specific requirements for EOUSA and the USAOs, as outlined in the Introduction of this report. However, we found that implementation of these requirements varies across USAOs and that no one in the Department has responsibility for ensuring that all USAOs comply with all TLOA requirements. For example, TLOA required EOUSA to establish a Native American Issues Coordinator position to coordinate with U.S. Attorneys who have authority to prosecute crimes in Indian country and with other DOJ components that have Indian country responsibilities. We found that EOUSA created the position, and that the Native American Issues Coordinator serves as a liaison with other DOJ components and federal agencies, provides legal guidance to USAOs, and compiles data on case declinations for USAO annual reporting requirements established under TLOA.<sup>37</sup> However, EOUSA has limited authority to direct how individual U.S. Attorneys implement programs and, consistent with its general support function, the Native American Issues Coordinator's role is not to direct or assess USAOs' implementation of or compliance with TLOA requirements.

The Department required all USAOs with Indian country jurisdiction to develop operational plans that outline the districts' work in Indian country; to update their plans annually; and, upon adoption, revision, or update, provide the ODAG, through EOUSA, a summary of the plan.<sup>38</sup> However, the Department's directive did not specifically state the purpose of the operational plans, and we found that no individual or entity was tasked under the directive with evaluating the plans to ensure adoption, update, or compliance. The Native American Issues

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<sup>37</sup> USAOs are required to annually report to the Coordinator all declinations to prosecute alleged violations of federal criminal law that occurred in Indian country and that law enforcement agencies referred to them.

<sup>38</sup> David W. Ogden, Deputy Attorney General, memorandum to United States Attorneys with Districts Containing Indian Country, Indian Country Law Enforcement Initiative, January 11, 2010 (see Appendix 2).

Coordinator told us that he was not familiar with each district's operational plan, but he said that he ensures that districts have completed them per the Department's directive.<sup>39</sup> He later told us that he was unaware of what happens if a plan is outdated or not in compliance with the Department's directive. We discuss USAO implementation of TLOA requirements and operational plans later in this report.

EOUSA evaluates the performance of each USAO approximately every 3 years through its Evaluation and Review Staff (EARS), which conducts peer evaluations to assess how well USAOs are following Department policies and the Attorney General's priorities. However, we found that EARS evaluations do not review TLOA compliance or ensure that each district is meeting its goals, objectives, and performance measures in Indian country. The Assistant Director for EARS told us that EARS has not done program evaluations in the last 5 years because of the need to reduce duplicative efforts and contain spending. She told us that, because EOUSA's Office of Legal and Victim Programs (OLVP) had more frequent contact with USAOs with Indian country jurisdiction and has evaluated Indian country programs, EARS removed Indian country issues from its evaluation. However, the Assistant Director of the OLVP told us that the OLVP does not conduct USAO program evaluations and that its work extends to all USAOs, not just districts with Indian country jurisdiction. She also said that the OLVP will not conduct evaluations independent of a specific USAO request.

In response to a working draft of this report, EOUSA stated that the Native American Issues Coordinator oversees implementation of and compliance with TLOA requirements for the USAO community. However, EOUSA also stated that the Native American Issues Coordinator does not assess the work being done in the USAOs and relies on districts to evaluate their full compliance with TLOA. Given EOUSA's role in providing executive and administrative support for U.S. Attorneys throughout the United States, as well as guidance and programmatic support to USAOs on TLOA matters, we believe that EOUSA should include TLOA program evaluations as part of its EARS program.

#### Drug Enforcement Administration

TLOA required the DEA and FBI to coordinate with the BIA to provide training to BIA and tribal law enforcement personnel.

In March 2016, the former Chief of the DEA headquarters' Regional and Local Impact Section (OGR), which manages the DEA's activities in Indian country, assigned a Staff Coordinator to serve as BIA liaison as a collateral duty and to initiate coordination between the DEA and the BIA.<sup>40</sup> The Staff Coordinator said

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<sup>39</sup> The Native American Issues Coordinator had been in his current position for 4 months when the OIG initially interviewed him in March 2016.

<sup>40</sup> In response to a working draft of this report, the DEA told us that the Staff Coordinator was a new, full-time BIA liaison. However, when we interviewed the Staff Coordinator in August 2016, he told us that while he believes the liaison position needs to be full time, he spends a considerable amount of time on other assigned duties and DEA priorities.

that he had consulted with OTJ and BIA representatives to identify ongoing law enforcement and training activities in Indian country to help determine what the DEA's role should be. He told us that his goal was to provide field offices with detailed information regarding the DEA's role in Indian country because DEA agents did not know what they are supposed to do to support investigations with training. Officials from the DEA's Office of Training also told us that they were unaware of the training the DEA has facilitated in Indian country and that they would not know about such training unless a field office requested additional funding.

As discussed later in this report, we found that DEA headquarters personnel were generally unaware of the DEA's law enforcement activities in Indian country and its TLOA requirements to train BIA and tribal law enforcement personnel. The former Chief of the DEA's OGR told us that he did not know how TLOA has affected the DEA's activities.<sup>41</sup> He added that the DEA has little involvement in Indian country and, in line with what we found, the OGR has only recently begun coordinating with other components working in Indian country.

In response to a working draft of this report, the BIA stated that its Drug Division has not worked directly with the DEA headquarters' Office of Training on drug training, but that BIA drug agents in the field work closely with their DEA counterparts in the field on any drug training that the BIA Drug Enforcement program conducts for tribal law enforcement. The DEA told us that although the OGR is, and has been for years, responsible for liaising with the BIA, in FY 2012 the DEA was under a self-imposed hiring freeze followed by a period of federal government sequestration that led to understaffing and the OGR's minimal coordination with the BIA. When we asked the Staff Coordinator in August 2016 about DEA liaison efforts that had occurred before he assumed his position, he told us that there was nothing in place when he arrived at the OGR and that "he had to start from the ground up." Because of these staffing and budgetary issues, the DEA said that the lack of manpower continued for several years and may have impacted the DEA's ability to liaise properly at the headquarters level. The DEA further stated that, despite budget and staffing constraints, its divisions did make training available to state, local, and tribal counterparts. We further discuss the DEA's implementation of TLOA training requirements at the division level and our remaining concerns regarding its training efforts later in this report.

### Federal Bureau of Investigation

The FBI's Indian Country Crimes Unit (ICCU) manages the FBI's Indian country activities, including compliance with TLOA training and data reporting requirements and operational support for issues that arise in FBI field offices with Indian country jurisdiction. We found that FBI field offices inform the ICCU of significant investigations occurring in Indian country and submit investigative case statistics to the ICCU to comply with TLOA data collection and reporting requirements.

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<sup>41</sup> In response to a working draft of this report, the DEA told us that the OGR Chief had been in his current position for 3 months when the OIG interviewed him and that he was in the process of learning the extent of the DEA's involvement with Indian country drug-related investigations.

We also found that the ICCU has attempted to implement some of TLOA's training requirements, although training efforts have been limited. For example, in 2016, the FBI partnered with the BIA to develop the Indian Country Criminal Investigator Training Program (ICCITP) to train law enforcement officers new to federal investigations in Indian country. However, the ICCITP can accommodate only eight BIA participants and eight tribal participants at a time, which makes it a challenge to meet the training needs of BIA and tribal law enforcement officers working in Indian country. In addition, while not a TLOA requirement, the ICCU tracks some ad hoc training that Special Agents provide to tribal law enforcement in the field. We discuss the FBI's implementation of TLOA training requirements, including its ICCITP training program, later in the report.

***DOJ Resources Dedicated to Indian Country Efforts Have Decreased since TLOA's Passage***

Despite the Department's prior statements that public safety in Indian country is a priority, we found that funding and resources for Indian country prosecutions have decreased since TLOA's implementation. While the Department initially made efforts to provide greater funding for Indian country prosecutions, this has not continued over time. In FY 2010, as part of a Department-wide initiative on public safety in Indian country, the Department obtained and allocated an additional \$6 million for at least 35 additional Assistant United States Attorneys (AUSA) in offices with Indian country jurisdiction. While USAO resources for Indian country increased from FY 2011 through FY 2013, since that time both total funding and the number of attorneys have decreased 40 percent. The FBI's resources allocated to Indian country grew slightly from FY 2011 through FY 2016, though they dropped somewhat in FY 2016. In contrast, the DEA has never received funding specifically for Indian country work. Our analysis in Table 4, based on DOJ Budget Fact Sheets, shows the Department's Indian country funding for FY 2010 through FY 2016.

Table 4

Indian Country Funding Enacted for the USAOs and the FBI  
By Position, in Millions, FYs 2010–2016

Fiscal Year Enacted	USAOs			FBI		
	Total Positions	Total Attorneys	Amount	Total Positions	Total Agents	Amount
2010	182	127	\$27.6	115	110	\$25.6
2011	173	123	\$28.3	121	111	\$22.8
2012	173	123	\$32.7	171	142	\$32.7
2013	207	144	\$34.6	143	126	\$26.7
2014	199	136	\$33.4	134	125	\$27.5
2015	124	91	\$21.8	203	125	\$34.0
2016	114	85	\$19.8	163	124	\$30.6

Source: DOJ Budget Fact Sheets

After we completed our fieldwork, EOUSA and the OTJ each provided a spreadsheet that the OTJ was using to track and monitor the Department's

compliance with TLOA. EOUSA said that in 2012 implementation of TLOA was extremely important to the Department's Indian Country Working Group and compliance was monitored and tracked. The OTJ stated that in early 2011 it began tracking TLOA implementation throughout the Department and, where necessary, facilitating coordination between components, including hosting conference calls and providing periodic updates to Department leadership and all components involved in TLOA implementation.

We reviewed a copy of the spreadsheet that the OTJ provided and found that it was created in October 2011 and updated twice, in July 2012 and February 2016.<sup>42</sup> Those updates reflected in the OTJ's spreadsheet were in line with what we found during the course of this review. For example, the OTJ's spreadsheet includes a column regarding TLOA's requirement that the DEA and FBI establish "a new training program" or supplement "existing training programs" for BIA and tribal law enforcement on the investigation and prosecution of illegal drug offenses and alcohol and substance abuse prevention and treatment. We found that initial updates to the spreadsheet in 2012 stated "no status provided." In 2016, updates were limited to (1) the FBI's efforts to coordinate joint training with the BIA and the Federal Law Enforcement Training Center focused on forensic evidence collection and investigations and (2) the DEA's one training that was open to federal, state, local, and tribal partners in 2015. Later in this report, we discuss the DEA's and FBI's efforts to coordinate with the BIA to ensure that both BIA and tribal law enforcement have access to training.

#### Across Districts, USAOs Do Not Consistently Communicate or Effectively Coordinate with the Tribes Regarding Their Activities in Indian Country

TLOA recognized that many tribes rely solely on USAOs to prosecute felony and misdemeanor crimes occurring in Indian country. U.S. Attorneys establish law enforcement policies and priorities within their federal judicial districts, and they may carry out TLOA responsibilities differently based on tribal populations and district priorities. We found that not all districts ensure that TLOA requirements are being met and most Tribal Liaisons work autonomously and carry out duties at their own discretion.<sup>43</sup>

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<sup>42</sup> In response to a working draft of this report, the OTJ provided additional spreadsheets that highlighted status updates for 2011 and 2015. We reviewed the spreadsheets and found that from 2015 to 2016 there were no updates and six cells noted pending changes.

<sup>43</sup> After the completion of our fieldwork, EOUSA stated that in June 2016 Attorney General Loretta Lynch issued a memorandum to all U.S. Attorneys with Indian country jurisdiction, directing them to ensure that performance appraisals of AUSAs with Indian country jurisdiction include, among other metrics, consideration of outreach to tribal leaders and victims, training received or delivered, successful and innovative collaboration with federal and tribal partners, and efforts to enhance a victim-centered prosecution process. We did not initially review this memorandum because it was implemented outside of the scope of our review. However, in April 2017, we requested from EOUSA any evaluations or reports that directly addressed Indian country. We were told that EOUSA does not do evaluations of individual programs in Indian country and that individual program evaluations are left to the USAOs.



Although the Attorney General directed U.S. Attorneys with Indian country jurisdiction to create an operational plan that would guide the Department's strategic approach to working in Indian country, we found that these plans were created for compliance only and are not comprehensive or updated to reflect changes in USAO operations. We found the following deficiencies in the USAO districts' operational plans and work in Indian country:

- Most plans have not been updated to reflect changes since TLOA's passage, including the role of the Tribal Liaison.
- Within each district, dual responsibilities oftentimes prevent Tribal Liaisons from carrying out their TLOA responsibilities. As a result, some districts have case backlogs and USAOs do not adequately or consistently communicate case statuses with tribes.
- There is limited communication between tribal prosecutors and AUSAs prosecuting cases. Even taking into account the diversity of tribes and relations with USAOs, we found that the process to notify tribes of case decisions, particularly case declinations, is inconsistent even within individual USAOs.
- TLOA encouraged each USAO with Indian country jurisdiction to participate in the Special Assistant United States Attorney (SAUSA) program, but we found that the program lacks consistent funding and standard criteria to guide program participants.

***Most USAOs Do Not Maintain Comprehensive or Updated Operational Plans to Guide Their Indian Country Work***

In January 2010, the Department directed each U.S. Attorney with Indian country jurisdiction to establish a plan for leadership and law enforcement activities in its district.<sup>44</sup> Recognizing that any intergovernmental relationship is based on consistent and effective communication, the Department required each USAO to engage annually with law enforcement partners and to use those consultations to develop an operational plan and to review and, as necessary, revise on an annual basis. While not a TLOA requirement, collectively these plans help institutionalize the Department's commitment to Indian country and further the Department's goal of building a more efficient, effective, and sustainable response to the public safety crisis facing American Indians.<sup>45</sup> We reviewed the operational plans of 47 USAO

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<sup>44</sup> Ogden, memorandum to U.S. Attorneys, January 11, 2010.

<sup>45</sup> DOJ, Offices of the United States Attorneys, "Planning a Safer Future in Indian Country: Identifying Problems and Finding Solutions through Collaboration," updated December 8, 2014. We note that this "strategy" document was available on EOUSA's webpage during the course of our review. The strategy reiterates the Deputy Attorney General's 2010 memorandum to U.S. Attorneys declaring the improvement of public safety in tribal communities a top Department priority as well as guidance from the EOUSA Director regarding the "core elements" that U.S. Attorneys with Indian country jurisdiction were to include in their operational plans. In June 2017, at the completion of our fieldwork, EOUSA staff told us that in March 2017 they were directed to remove all information regarding EOUSA's "Priority Areas," including this strategy document, from their webpage, to coincide

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districts with Indian country jurisdiction. Thirty-eight plans were from districts that do not have tribes with Public Law (PL) 280 status (that is, districts with exclusive federal jurisdiction), and nine plans were from districts that have tribes with PL 280 status (that is, districts with state jurisdiction). Of the 38 non-PL 280 plans, we found that 21 (55 percent) did not include core elements such as communication regarding declinations, investigations, victim advocacy, training, outreach, violence against women, and accountability.<sup>46</sup> We also found inconsistencies in other elements, including annual updates, purpose, communication, and Tribal Liaisons.

- Annual Updates: Of the 47 total plans we reviewed, we found that 24 were updated in 2016, outside the period of our review; 3 were updated in 2015; and, from what we can determine, 18 were updated only in 2014 or years prior. Two plans did not include a year of update at all (see Table 5).

Table 5  
Annual Updates of USAO District  
Operational Plans  
FYs 2011–2016

Year of Update	Number of Plans Updated
2011	8
2012	3
2013	1
2014	6
2015	3
2016	24
No Date	2

Source: EOUSA

All districts submitted their plans to EOUSA’s Native American Issues Coordinator after initially drafting them in accordance with the Department’s directive. However, while districts may have submitted their operational

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with the arrival of the new Attorney General. EOUSA no longer uses this strategy document, and, as of October 2017, it does not have an updated or new strategy in Indian country.

<sup>46</sup> Although there are 49 districts with Indian country jurisdiction, we reviewed only 47 operational plans because we excluded 1 district that has a federally recognized tribe but does not have Indian country jurisdiction and we excluded Alaska.

According to the Department, districts that have non-PL 280 tribes (those without any state jurisdiction) should generally consider including the following elements in their operational plans: (1) develop and foster an ongoing government-to-government relationship; (2) improve communications with each tribe, including the timely transmittal of charging decisions to tribal law enforcement, where appropriate; (3) initiate cross-deputization agreements, Special Law Enforcement Commission training, and a Tribal SAUSA program, where appropriate; and (4) establish training for USAO staff and all relevant criminal justice personnel on issues related to Indian country criminal jurisdiction and legal issues.

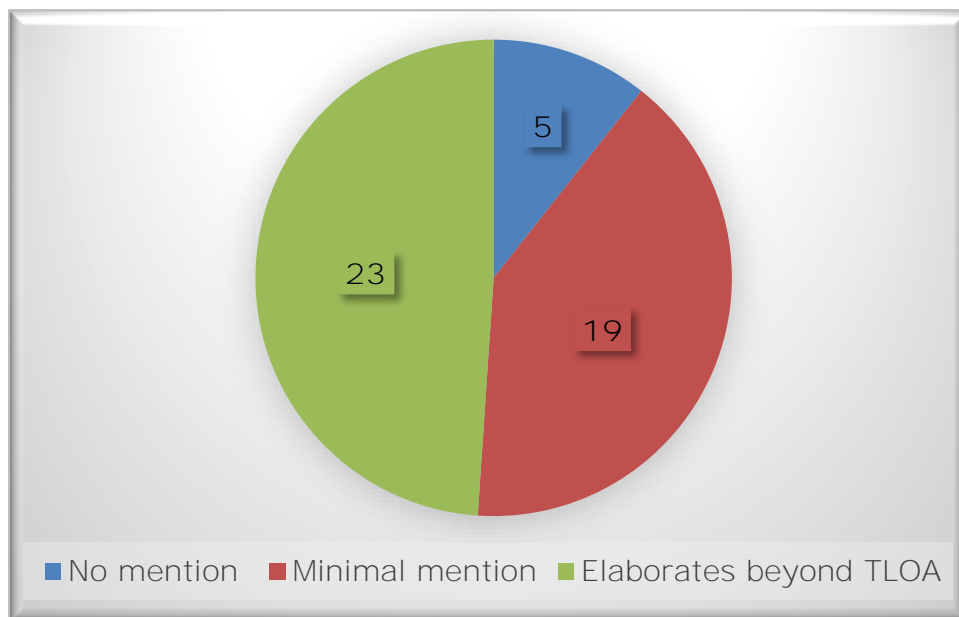
plans, we found that these plans are not reviewed by anyone in a position to ensure that they reflect a district's current strategy and activities in Indian country. EOUSA's Assistant Director for Indian, Violent, and Cyber Crime Staff told us that plans are intended to carry out a mission and to force the districts to think without proceeding, on autopilot or by default. However, as stated earlier, there is no person or office within the Department to ensure that USAO plans are appropriately coordinated with the Department's law enforcement strategy and with the requirements of TLOA in Indian country.

- **Purpose:** We found that the understanding of an operational plan's intent or purpose differed from district to district and even within the same office. One Tribal Liaison told us that the plan serves as an annual reminder of what is expected in the office. However, the Chief of the Violent Crimes Section in the same office told us that the plan does not drive the section's work but rather reflects the work it has already done in Indian country. In another district, the plan was referred to as a strategic plan, serving merely as a reminder to the office "not to fall behind" on the USAO's work in Indian country, as well as a useful tool to maintain institutional knowledge. Other districts use their plans to evaluate staff performance based on the delivery of activities outlined in the plan. For example, an AUSA told us that what is required in the district's plan is also included in staff performance work plans.
- **Communication:** Although the Department directed each district with Indian country jurisdiction to develop an operational plan in consultation with tribes and to engage with them annually, 11 of the 47 plans that we reviewed (23 percent) did not reflect annual consultation with tribes. In fact, tribal prosecutors from each tribe that we interviewed told us that they were neither aware of nor consulted with regard to their USAO's plan. One tribal prosecutor told us that he would have liked to provide input but did not have the opportunity. Because the plans serve as a coordinated strategy for addressing public safety in Indian country, tribes and law enforcement partners should be involved in their creation and in the required annual review and updates to them.

The Department also recommended that operational plans outline the timely transmittal of charging decisions to tribal law enforcement. However, we found that only 19 of 47 (40 percent) of the plans that we examined state that AUSAs and Tribal Liaisons will issue case declination letters. Of the remaining 28 plans, 15 simply state that tribes will be notified and 13 make no mention of communicating charging decisions to tribes at all. Even those plans that we found provide for declination letters, not all specify who should receive those letters. And we found that designated recipients of declination letters range from the investigative agent assigned to the case to tribal law enforcement officials and tribal prosecutors. Because the Department's memorandum stated that charging decisions should be communicated to tribal law enforcement, we believe that all districts should outline their communication method for charging decisions. Below, we further discuss USAOs' communication with tribal law enforcement, including the issuance of declination letters.

We found that Tribal Liaisons are essential for communicating and building relationships with tribes. Although Tribal Liaisons' duties are extensive, covering areas such as training, outreach, and consultation and coordination with tribes, their appointment is critical to improving public safety in Indian country. Tribal Liaisons have specific responsibilities detailed in TLOA, but we found that not all USAO operational plans outline the liaisons' role as contemplated by the statute. While not a requirement, we found that of the 47 district plans we reviewed, many do not describe how TLOA's requirements, particularly those of the Tribal Liaison, apply to their USAO's individual structures. In fact, we found that five plans do not mention the Tribal Liaison at all. While the remaining 42 reference the position, 8 simply state that it exists, 7 only generally describe the position, and 4 inserted verbatim TLOA language. We found that only 23 plans (49 percent) elaborate on the duties of the Tribal Liaison, beyond what TLOA provides, and describe how the position is carried out in their respective districts. Last, 2 of these 23 plans that elaborate on the Tribal Liaison position do so only with regard to training tribal personnel and not other Tribal Liaison responsibilities consistent with TLOA (see Figure 2).

Figure 2  
Count of USAO Operational Plans that Mention the Role of Tribal Liaisons



Source: OIG Analysis

We found that variance in how the Tribal Liaison position is described and carried out can have an impact on how USAOs communicate and coordinate with tribes. For example, one plan states that AUSAs, including Tribal Liaisons, should visit their assigned tribes to gain familiarity, remain in contact with federal agencies and tribal prosecutors to determine the most appropriate avenue for prosecution, and promote the USAO's availability to provide training. Plans like this example, which elaborates on a Tribal Liaison's role, acknowledge the importance of building

a relationship with the tribes. These additional details make expectations clear to tribes, the district, and the Tribal Liaison. However, such examples are few. We further discuss the role of Tribal Liaisons below.

Even though a USAO district's operation plan may include every required statutory criterion, the usefulness of that information depends on the plan's detail and specificity. We believe that comprehensive plans should provide an overview of a district's operations and ensure that all staff members have a common understanding of the district's approach to guide their work in Indian country. For example, one U.S. Attorney told us that if the office were not carrying out the strategy set forth in the plan, he would identify gaps and incorporate them into training opportunities.

While the Department's directive to create district plans was issued prior to TLOA, the Department also directed U.S. Attorneys to update their plans on an annual basis as necessary to address changes in USAO operations. We believe that if U.S. Attorneys are committed to ensuring that plans build the foundation for Indian country success, districts should update their plans as necessary to ensure that they include core elements required under TLOA, such as the addition of Tribal Liaison responsibilities. Also, because operational plans are intended to institutionalize the Department's commitment to Indian country, we believe that districts should use their plan as a management tool to hold themselves accountable for carrying out their Indian country responsibilities and improve the effectiveness of operations accordingly.

### ***Dual Responsibilities Prevent Some Tribal Liaisons from Fulfilling All of Their TLOA Responsibilities***

TLOA establishes several responsibilities for Tribal Liaisons to coordinate the prosecution of crime in Indian country and to develop relationships and maintain communication with tribes through training and outreach. The Department acknowledges that the Tribal Liaison program is one of the most important aspects of its Indian country efforts and that many districts rely on Tribal Liaisons to address challenging cultural and legal issues in Indian country.<sup>47</sup> The OTJ Director told us that an effective Tribal Liaison maintains communication between the tribe and the U.S. Attorney and ultimately makes investigations and prosecutions easier.

TLOA required that each USAO district with Indian country jurisdiction appoint a Tribal Liaison to, among many things, coordinate the prosecution of crimes in Indian country, coordinate with tribal prosecutors, provide technical assistance and training, develop multidisciplinary teams, and maintain communication with tribes. However, Tribal Liaisons often have additional responsibilities, such as carrying a federal criminal caseload and sometimes prosecuting crimes from outside Indian country. As AUSAs, Tribal Liaisons' primary responsibility is to prosecute federal criminal cases, and we found that if this is not

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<sup>47</sup> DOJ, *Indian Country Investigations and Prosecutions* (2015), 2, 22.

appropriately balanced with their TLOA responsibilities, it may hamper their ability to meet all of their TLOA responsibilities.<sup>48</sup>

Several Tribal Liaisons told us that they find it difficult to carry out both the prosecution and liaison functions of their position. We found that in the districts we visited, caseloads vary among Tribal Liaisons, depending on the tribes, and can occupy from 40 to 90 percent of their time. For example, one Tribal Liaison told us that he spends 40 percent of his time prosecuting cases and 60 percent of his time doing outreach, coordination, and training with the 22 tribes in his district. Another told us that he believes that, because he wears too many hats, a case backlog is inevitable. A Tribal Liaison from a different district told us that she has too many responsibilities and has a backlog of training requests from tribes. She said that there are four trainings that a tribe has requested and not received because she was prosecuting a large case. She said that it would be helpful if there were another AUSA prosecuting cases, but she acknowledged that the workload and time spent traveling to tribes do not appeal to most. A USAO Criminal Chief told us that he too would like the Tribal Liaison in his district to focus more on Indian country but limited funding prevents that. He said that in addition to Indian country and federal case assignments that include complex matters such as white collar securities fraud, the Tribal Liaison is also expected to coordinate other initiatives.

Tribal Liaisons must also provide training to tribal personnel, develop relationships, and maintain communication with tribes. However, to do so often involves travel to tribes located in rural areas and a significant distance from their USAO. Even in a state with three USAO districts, a Tribal Liaison told us that the closest tribe he serves is 45 minutes away by car and the farthest is a 4-hour drive. We note that the amount of time Tribal Liaisons may spend on training and outreach depends on the number of tribes they serve as well as the location of the tribes relative to the USAO (some USAOs do coordinated or regional training to help address this). However, we found that for most districts we visited, Tribal Liaisons' dual responsibilities limited their ability to travel and dedicate time to training and outreach with tribes. A Supervisory AUSA told us that because Tribal Liaisons are at the center of Indian country work, each should have the time to liaise effectively. Yet we found this was not always the case.

To ensure that Tribal Liaisons' workloads are appropriately balanced, we believe that USAOs should consider the number of tribes in each district, the tribes' geographic locations relative to the USAO, and the Tribal Liaisons' extensive responsibilities. Because Tribal Liaisons are critical for establishing relationships and ongoing communication with tribes, their time and responsibilities must be appropriately balanced. Appropriately balanced workloads for Tribal Liaisons would help improve communication between the USAO and the tribes and ensure that USAOs are able to meet TLOA responsibilities.

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<sup>48</sup> TLOA itself provides that the Attorney General should take into consideration the dual responsibilities of Tribal Liaisons in evaluating their performance.

### *Limited Communication in Some Districts Between Tribal Prosecutors and the AUSAs Prosecuting Cases in Indian Country Leaves Both Tribes and USAOs Not Fully Informed*

One of TLOA's purposes was to increase coordination and communication among federal, state, tribal, and local law enforcement agencies.<sup>49</sup> Because tribal prosecutors frequently maintain concurrent jurisdiction and can coordinate parallel prosecutions in tribal court, it is particularly important for USAOs to maintain communication with tribal justice officials.<sup>50</sup> One AUSA said that successful work in Indian country depends on establishing good partnerships from the beginning. The OTJ Director emphasized the role of tribal prosecutors and told us that if an AUSA does not spend time with tribal prosecutors, learn from them, and understand what is happening on the ground in Indian country, he or she will miss a huge asset in casework. Despite the importance of strong working relationships and the integral role of tribal prosecutors in the coordination of prosecutions, we found that limited communication sometimes occurs between AUSAs and tribal prosecutors.

We found that the level of communication that tribal prosecutors have with the AUSA often depends on the individual AUSA rather than the USAO's expectations. In some districts, the AUSA assigned to a particular case is responsible for providing tribal prosecutors with case updates. In other districts, the Tribal Liaison, who may be assigned to a particular tribe but not to a particular case, is responsible. However, in two of the seven districts we visited, we found that when a Tribal Liaison was unfamiliar with the case but responsible for communicating case updates, the prosecuting AUSA did not always know who the tribal prosecutor was and the tribal prosecutor did not have a direct line of communication with the AUSA prosecuting the case.

In addition, many USAOs do not allow tribal prosecutors to submit cases directly for federal prosecution. Rather, USAOs accept cases from federal agents, and case-assigned AUSAs generally provide case updates to federal agents. Therefore, tribal prosecutors must contact federal agents, instead of the case-assigned AUSA, for subsequent case updates. A tribal prosecutor told us that the tribe's relationship with the USAO would not be as strong if federal agents did not assist with communication. The tribal prosecutor credited BIA Special Agents for facilitating communication between the USAO and the tribal prosecutor. Another tribal prosecutor told us that she does not receive any formal documentation from the USAO and relies on the tribe's federal liaison, who is a criminal investigator, to inform her of case decisions.

We believe that, even in districts where Indian country cases are presented for federal prosecution through federal agents, it is important that tribal prosecutors have not only the ability to communicate directly with the prosecuting

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<sup>49</sup> In response to a working draft of this report, the BIA stated that a major obstacle to bringing cases forward to the USAOs are the USAOs' local prosecution guidelines, particularly minimum-weight amounts in narcotics investigations, an issue that is beyond the scope of this review.

<sup>50</sup> Some tribal prosecutors will pursue a tribal conviction in addition to a federal conviction because it shows tribal accountability and is documented on the offender's tribal record.

AUSA, but also a relationship with the USAO that encourages such communication. This would allow the tribe to receive case updates and give tribal prosecutors an avenue to relay vital case information, such as the offender's tribal history, directly to the AUSA. Later in this report, we discuss the SAUSA program, which could enhance communication between USAOs and tribes.

***USAOs' Processes to Notify Tribes about Case Declinations Are Inconsistent, and Tribal Prosecutors Often Do Not Receive a Record of the Declination***

When a USAO closes a case without prosecution, the declination should be documented in EOUSA's Legal Information Office Network System (LIONS), as well as in a declination notification letter.<sup>51</sup> We found that the USAOs do not have a consistent process for AUSAs and Tribal Liaisons to formally notify tribal authorities when a USAO declines a case arising from Indian country and that, when they do provide such notification, the USAOs do not always adequately communicate the reason for declination. We attempted to review declination letters for 44 cases that USAOs had declined immediately on intake but had not yet documented the declination in LIONS.<sup>52</sup> Of the 44 cases, we found that in 6 cases (14 percent) there was no declination letter sent to tribal authorities and in 24 cases (55 percent) there was a letter with a general declination reason, such as "insufficient evidence."<sup>53</sup> Of these 24 cases, only 3 of the letters included additional information that would further clarify the reason for declination or assist the tribal prosecutor in trying the case in tribal court. In these three cases, the USAO's decision to decline was fully explained in writing and verbally; in one case, the USAO and the tribe jointly decided that the tribe should prosecute the case.

One AUSA told us that a record of declination is important to the tribe because understanding the reasons for declination can help the tribe work through its internal challenges. Another AUSA said that it could be very frustrating for a tribe to receive declination reasons that do not help move a case forward in tribal court or that provide little information to relay to the crime victim. An assistant tribal prosecutor told us that more descriptive declination letters would help the tribe prosecute in tribal court without redoing work the USAO has already done.<sup>54</sup>

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<sup>51</sup> LIONS is a database that permits USAOs and EOUSA to compile, maintain, and track information relating to defendants, crimes, criminal charges, court events, and witnesses. See also Offices of the United States Attorneys, U.S. Attorneys' Manual, Title 9-2.020 – Declining Prosecution (1997).

<sup>52</sup> An immediate declination occurs when an investigative agency presents to the USAO a case referral that states that the case does not warrant federal prosecution. We requested these particular declination letters to ensure that notification was provided in the instances in which cases were immediately declined but the disposition was not immediately recorded in LIONS.

<sup>53</sup> Of the 14 remaining cases, 6 case files could not be located, 5 cases were never officially declined, in 1 case a suspect was charged, in 1 case the defendant pleaded guilty, and in 1 case the declination letter was sealed because it involved a juvenile.

<sup>54</sup> We recognize that in certain situations there may be limits on the type and amount of information that USAOs can share. In response to a working draft of this report, EOUSA said that USAOs cannot share information that would jeopardize the safety of victims or witnesses or the integrity of the USAO's investigation or prosecution.



In our review of declination letters, we found two cases in which both the investigator and the AUSA had left their assignments before the investigation was complete. In both cases, we found no record of the USAO having declined the case or having notified the tribes that the investigator and AUSA had left. In one case related to child abuse/assault, although a new FBI Special Agent was assigned to the case, the case was not investigated for 2 years. According to the documents we reviewed, when the FBI finally investigated the case, the agents could not collect sufficient evidence and the USAO declined the case. After the case was declined, the USAO sent an email notification only to the FBI agents, not to the tribe; the email noted that the child's mother was notified by telephone at that time, but she never received written notification of the declination.

One U.S. Attorney told us that, if a case cannot be tried in federal court, he feels he owes it to the victim and the family to be forthcoming about the reasons. Further, he said that he expects all of his AUSAs to explain their decisions to federal and tribal agents, as well as to the victims and their families. While AUSAs are not legally required to notify victims when a case referred for federal prosecution is declined prior to charges being filed, TLOA requires U.S. Attorneys to maintain communication with tribal justice officials, the tribal community, and victims' advocates to share information. We believe that USAOs with Indian country jurisdiction can do more to communicate case status and declinations to victims in a timely fashion, to include appropriate explanation of the reasons for declinations.

We also found several instances in which we could not confirm whether the USAO had notified the tribal prosecutor of a case declination; if the USAO did notify the tribal prosecutor, the notification consisted of a declination reason but no additional details.<sup>55</sup> As described above, such limited communication between tribal prosecutors and AUSAs prosecuting cases in Indian country leaves both tribes and USAOs not fully informed about case status. A tribe's Attorney General, who is a tribal prosecutor, told us that he does not receive notification but would like to be informed; otherwise, tribal members believe that the USAO will simply reject cases and let them sit and expire. One AUSA said that when cases are declined for insufficient evidence she does not typically forward case information to the tribal prosecutor. A Supervisory AUSA also told us that prior to our interview he had not considered informing the tribal prosecutor but that it could be a best practice for the district in the future.

In addition to inconsistencies in notifying the tribes of case declinations, we found that declinations by phone occurred in each USAO district we visited. USAOs typically do not decline cases by phone because there would be no record in LIONS or formal notification letter issued to the tribe. AUSAs in three districts told us that federal agents request case declinations by phone to move cases along. When some AUSAs decline a case by phone, they request a follow-up email from the agent so that the declination is in writing. A Criminal Chief told us that if an agent calls regarding a case with no federal jurisdiction or insufficient evidence, he will

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<sup>55</sup> In these cases, we found the declination reasons recorded in LIONS but no corresponding declination letter.

decline the case by phone and follow up with a written declination in email only if the agent requests one. One AUSA told us that he rarely declines cases over the phone because declinations can have a negative connotation to the tribe and he wants the reason that the USAO will not accept the case to be clear.

The Department requires USAOs to communicate charging decisions to tribal law enforcement. While sometimes conversations between AUSAs and investigative agents could lead to a declination decision, we believe that these decisions should be recorded in writing to ensure a declination notification to the tribe. Written declination notifications ensure that all relevant parties have been informed, increase transparency and communication between the USAO and the tribe, and ultimately lead to improved relationships.<sup>56</sup>

***The SAUSA Program Enhances Communication between USAOs and Tribes; but There Are No Formal Criteria to Become a SAUSA and Funding Is Inconsistent***

TLOA “authorized and encouraged” each USAO with Indian country jurisdiction to appoint a SAUSA to prosecute crimes in Indian country. In Indian country, the SAUSA program allows tribal prosecutors to serve as co-counsel with federal prosecutors on felony investigations and prosecutions. The program benefits the tribal prosecutors in many ways, including enhanced communication, greater understanding of federal prosecutorial procedures, and professional development. As of September 2016, there were only 22 SAUSAs working in Indian country serving 9 of 49 USAO districts (18 percent) with Indian country jurisdiction. We found that program participation is low, in part due to tribal sovereignty, conflicts of interest with other tribal duties, and a lack of tribal prosecutors with the appropriate skill sets and experience. Also, despite the potential benefits, there are no written Tribal SAUSA guidelines to establish criteria for applicants and the program lacks consistent funding.

One of TLOA’s purposes was to empower tribal governments with the authority, resources, and information necessary to safely and effectively ensure public safety in Indian country. We found that tribal prosecutors who serve as SAUSAs have improved information sharing with USAOs and greater involvement in federal case prosecutions. SAUSAs told us that the program has enhanced their communication with AUSAs and has assisted in their understanding of the kinds of cases the USAO will accept, as well as the evidence needed to prosecute those cases in federal court.<sup>57</sup> One tribal prosecutor said that before he became a

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<sup>56</sup> EOUSA told us that TLOA does not require a particular means of communicating declinations and that it is a decision best left to the U.S. Attorney because of tribal leadership dynamics and the sophistication of tribal criminal justice systems. While the means of communicating this important information may be best left to the U.S. Attorney based on the particular relationships between the USAOs and the tribal authorities, we believe that within districts the communication method should be considered and consistently applied as to those authorities.

<sup>57</sup> We also found that the SAUSA program is an educational tool for tribal prosecutors and AUSAs. SAUSAs said that greater communication with AUSAs has led to ad hoc mentoring

(Cont’d)

SAUSA, the AUSA would make decisions and rarely consult with the tribe. As a SAUSA, he is more involved and can advocate the tribe's views and needs, which helps the tribe have more input into prosecutions. Another SAUSA told us that before she participated in the program communication with the AUSA was limited to monthly meetings, which were the only instances in which case updates were provided. After becoming a SAUSA, she has been able to work alongside the AUSA to prosecute cases federally, which has resulted in sentences for serious crimes greater than the 1-year maximum available in tribal court. A third SAUSA told us that his relationship with the AUSA has improved since he became involved in the program and that he now has the opportunity to present tribal cases to be considered for federal prosecution. Acknowledging the mutual benefits of the relationship, an AUSA explained that SAUSAs can recognize cases that could be tried federally that might otherwise "fall through the cracks."

Despite the various benefits that the SAUSA program offers to tribes, we found that some tribes do not have prosecutors who meet federal SAUSA requirements or who are willing to participate.<sup>58</sup> EOUSA's Assistant Director of Indian, Violent, and Cyber Crime Staff told us that U.S. Attorneys have to ensure that everyone appearing in federal court has the experience and qualifications necessary to do so.<sup>59</sup> A Tribal Liaison in a USAO district without a SAUSA told us that the tribes in her district express no interest in the program because they do not have either a full-time or an experienced attorney. We also found that not all tribal prosecutors want to participate and pursue federal prosecution. For example, while some tribes are interested in implementing stronger punishments for criminal activities through federal sentencing, others do not believe that lengthy sentences are the appropriate solution. A U.S. Attorney told us that there are no SAUSAs in his district because tribal prosecutors believe that the program presents a conflict of interest; the tribes want to maintain their sovereignty and do not want to work with the federal government to federally prosecute their own tribal members. A tribal Attorney General told us that she was not interested in supporting a SAUSA because she does not want to prosecute more tribal members.

While some tribes cannot participate in the program, or choose not to, we found that other tribes may not know how to participate because the Tribal SAUSA program lacks eligibility guidelines or criteria. EOUSA told us that it did not maintain program guidelines or criteria because the Department's Office on

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opportunities. One SAUSA believed that attending USAO weekly staff meetings and discussing case strategy and ideas with AUSAs had contributed to his professional development.

The National Indian Country Training Institute also facilitated Tribal Liaison, SAUSA, and AUSA trainings during FY 2014 and 2015. However, the number of SAUSAs who participated in these trainings was not available.

<sup>58</sup> To meet federal SAUSA requirements, applicants must have a juris doctor degree and be an active member of the bar in any U.S. jurisdiction.

<sup>59</sup> The program also requires an extensive background investigation, which may present an obstacle for some applicants.

Violence against Women (OVW) funded and facilitated the Tribal SAUSA program.<sup>60</sup> According to OVW staff, while there are no guidelines or criteria for the Tribal SAUSA program, OVW requires a memorandum of understanding (MOU) between the participating tribe and the USAO in its district, which may outline SAUSA responsibilities. However, OVW staff noted that MOUs differ by district and the OVW has no standard of uniformity for them. The lack of written criteria for potential SAUSAs may mean that tribal prosecutors are unaware of their eligibility for the program and that districts may miss opportunities that the program provides to both USAOs and tribal participants.

TLOA required that each USAO district with a SAUSA provide him or her with appropriate training, supervision, and staff support. However, we found that training, supervision, and support vary by district and can depend on the SAUSA's initiative. One SAUSA told us that the success of the program is based on each SAUSA's willingness to pursue such opportunities because there is no comprehensive structure for the program to ensure professional development and mentorship.

Finally, we found that the Tribal SAUSA program does not have a consistent funding source. The OVW provided grant funding for Tribal SAUSA positions as a pilot program, including \$1.7 million in FY 2012 (for four positions), \$890,000 in FY 2014 (for two positions) and \$300,000 in FY 2016 (for four positions).<sup>61</sup> The lack of funding in 2015 led three U.S. Attorneys with Tribal SAUSAs in their district to request BIA funding through a one-time interagency transfer of \$250,000.<sup>62</sup> The remaining 19 SAUSAs without consistent DOJ funding are tribe funded or unpaid volunteer positions. An OVW official said that when the OVW cannot provide additional funding, tribes are left to seek it through other private organizations or government agencies. She added that she believes that the program is tremendously helpful and that it is unfortunate that the Department has been unable to find an alternative funding source. EOUSA's Assistant Director of Indian, Violent, and Cyber Crime Staff told us that although the Tribal SAUSA program is a very positive and popular initiative, the future of the program is unknown because funding for it is concluding.<sup>63</sup>

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<sup>60</sup> After the completion of our fieldwork, EOUSA provided USAO district MOUs for their respective SAUSAs. While these documents vary based on district needs, the MOUs generally describe the nomination and selection process, the duration of the appointment, the SAUSA's duties and responsibilities, case assignments, and standards of performance. The guidelines are established after tribal participants are selected for the program.

<sup>61</sup> The fluctuations relate to the status of the funding for the SAUSA program as "no year money." Tribes receive all funding when the grant is awarded and can withdraw funds for the duration of the grant. Therefore, funding awarded in one particular year may span multiple years.

<sup>62</sup> Although the OVW and the BIA entered into an interagency agreement for a transfer of funds totaling \$250,000, the agreement is reimbursable. Therefore, the OVW did not receive a lump sum but rather receives funds from the BIA each time the grantees withdraw funds.

<sup>63</sup> According to the OVW's Supervisory Attorney Advisor, as of March 2017 the Tribal SAUSA program is no longer accepting applications because the pilot program was not extended and additional funding has not been allocated.

Because the Tribal SAUSA program is a tool to improve collaboration and cultivate relationships with tribes, we believe that there should be formal eligibility guidelines and clear qualification criteria for applicants. We also were concerned by the lack of consistent funding for the program. We believe that formal guidelines and criteria for applicants, as well as a consistent funding source for the program, would improve the coordination of prosecutions for both tribal communities and USAOs.

### The Department Must Do More to Ensure that It Provides All TLOA-Required Trainings

TLOA required that USAOs, the DEA, and the FBI provide certain training to tribes and that the DEA and FBI coordinate with the BIA to ensure that tribes receive this training. We found that EOUSA's National Indian Country Training Institute (NICTI) fulfills most of the training responsibilities assigned to USAOs and that some USAOs provide additional, ad hoc training. We also determined that USAOs do not consistently track or report to EOUSA the training they provide so that EOUSA can determine whether USAOs are meeting all TLOA training requirements. We further concluded that, while the DEA and FBI have provided some training, neither have taken sufficient actions to coordinate their training with the BIA and have not done enough to ensure that they are complying with their TLOA training requirements. Additionally, while not a TLOA requirement, we found that a few FBI Special Agents received training through the ICCITP pilot, but DEA Special Agents receive no specialized training prior to working in Indian country. When DOJ components do not fully satisfy their TLOA training responsibilities, they do not fulfill TLOA's mission to help tribal law enforcement and other personnel investigate and prosecute crimes that occur in Indian country.

#### *The NICTI Provides Training to Tribal Law Enforcement and Tribal Justice Officials, but That Training Does Not Meet All of TLOA's Requirements*

TLOA required Tribal Liaisons to provide tribal justice officials with technical assistance and training on evidence-gathering techniques and strategies to address victim and witness protection. TLOA also tasked Tribal Liaisons with conducting Criminal Jurisdiction in Indian Country (CJIC) training sessions and seminars to certify Special Law Enforcement Commissions for tribal justice officials.<sup>64</sup> To comply with these training requirements, in July 2010 EOUSA created the NICTI, which has assumed many Tribal Liaison training responsibilities.<sup>65</sup>

In general, we found that the NICTI's training meets many of TLOA's requirements. For example, TLOA sought to help reduce violent crime and address sexual and domestic violence against American Indian women. We found that the

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<sup>64</sup> CJIC trainings fulfill one of the requirements for tribal law enforcement officers to receive their Special Law Enforcement Commission certification, which permits tribal officers to assist in federal investigations of major crimes that occur in Indian country.

<sup>65</sup> In addition, the NICTI plans, prepares, and executes distance education projects on public safety matters affecting tribes.

NICTI has facilitated several trainings at EOUSA's National Advocacy Center (NAC) related to domestic violence and sexual assault and victim and witness assistance, as well as other issues related to concerns in Indian country such as cultural property law and criminal jurisdiction. According to EOUSA data, the NICTI conducted 54 trainings from FY 2011 through FY 2015, 22 (41 percent) of which were related to domestic violence and sexual assault of adults and children.<sup>66</sup> Additionally, between FY 2011 and FY 2015, the NICTI facilitated approximately 21 CJIC trainings each year at the NAC and across the country. By annually facilitating multiple CJIC trainings, the NICTI has made CJIC training accessible for tribal personnel across the country.

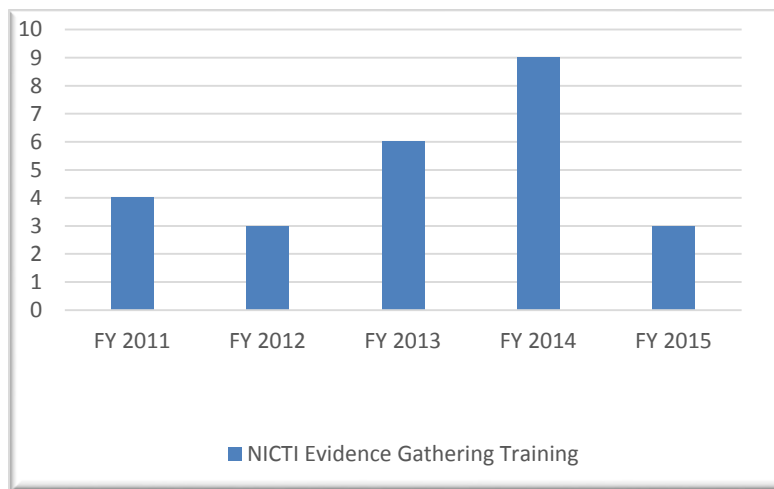
We found limitations with regard to the NICTI's training in evidence-gathering techniques, which is a TLOA requirement. Such training may be especially important since "insufficient evidence" is the most frequent reason USAOs cite for declining to prosecute a case.<sup>67</sup> According to EOUSA training data, from FY 2011 through FY 2015, the NICTI held only three trainings specifically focused on evidence gathering. EOUSA told us that instruction on evidence gathering was also included as a portion of instruction in 22 additional NICTI courses, including Strangulation and Suffocation, Human Trafficking in Indian Country, and Forensic Interviewing of Child and Adolescent Victims. By providing additional evidence-gathering training to tribes, NICTI would not only fully address this TLOA requirement, it would also help improve communication with tribal law enforcement and prosecutors and provide tribes with more information on the types of evidence that warrant federal consideration, including what cases a USAO will accept for prosecution. See Figure 3 below for NICTI training related to evidence gathering.

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<sup>66</sup> Throughout the sequence of EOUSA's responses to our data requests about NICTI training, the number and category of participants changed slightly, indicating that the reported numbers could be erroneous in comparison to true values.

<sup>67</sup> DOJ, *Indian Country Investigations and Prosecutions* (2011–2015).

Figure 3  
 NICTI Evidence-Gathering Technique Training Data  
 FYs 2011–2015



Source: EOUSA NICTI training data

We identified other areas in which NICTI training could be improved. Tribal officials told us about concerns regarding the abilities of new tribal law enforcement to secure crime scenes. One tribe's Public Safety Director told us that he is only 30 percent confident that his new officers can secure a crime scene. He believes that crime scene training could be strengthened so that tribal police know what evidence USAOs need to move a case forward for prosecution. Another tribal officer told us that her comfort level in securing a crime scene and gathering evidence depends on how many officers are available to assist her. She believes that more training focused on using computers for evidence analysis would be helpful because her office receives a lot of information that no one is able to analyze. For these reasons, we believe that the NICTI could provide additional training in order to fully enable tribal personnel to appropriately gather and analyze the evidence necessary to support a federal prosecution.

While the NICTI is fulfilling most of the USAO requirements for training under TLOA, we note that the NICTI has only two staff at the NAC to facilitate training opportunities on issues related to Indian country. As such, we believe that USAOs should do more to assist EOUSA and the NICTI in providing training to tribes.

***Some USAOs Provide Ad Hoc Training to Tribal Law Enforcement and Tribal Justice Officials, but Tracking and Reporting of these Efforts Is Not Required***

We found that some USAOs provide additional training to tribal law enforcement and tribal justice officials on an ad hoc basis; however, EOUSA may not be aware of all of this ad hoc training because USAOs do not track such training or report it to EOUSA. As a result, we were unable to determine the specific types and exact amount of training provided within districts. Of the 49 USAOs with Indian country jurisdiction, only 11 reported district-level training on topics such as report writing, federal court procedures, and child abuse cases. The training these

11 districts provided ranged from 1 to 37 total trainings between FY 2011 and FY 2015. A Tribal Liaison told us that the training he provides is not tracked and that all AUSAs assigned to Indian country cases, either as Tribal Liaisons or as AUSAs who prosecute cases in Indian country, provide training on their own. Another Tribal Liaison estimated that she has facilitated dozens of trainings and recognized that her office should do a better job of tracking the training topics and the number of tribal attendees.

Since the USAO districts do not track the ad hoc training they provide, USAOs cannot ensure that training occurs in all the areas that TLOA requires. Further, EOUSA is unaware of the training that USAOs provide to tribes and is thus unable to assess whether the USAOs' training is meeting TLOA requirements. We believe that EOUSA and the USAOs should do more to ensure that the NICTI and USAO training is complementary and not duplicative, and that it meets the needs of tribes as well as TLOA requirements. As part of that effort, we believe that the USAOs should report their Indian country training activities to EOUSA, and that EOUSA should centrally track the training that the NICTI and USAOs are providing so that EOUSA can ensure USAOs are appropriately addressing training needs in Indian country.

***The DEA and FBI Have Provided Some Training but Need to Do More to Improve Coordination with the BIA and Tribal Law Enforcement, as TLOA Requires***

One of TLOA's purposes was to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country. TLOA required that the DEA and FBI coordinate with the BIA to establish a new training program or supplement existing training programs that ensure that BIA, tribal law enforcement, and tribal judicial personnel have access to training opportunities for the investigation and prosecution of offenses relating to illegal narcotics and alcohol and substance abuse prevention and treatment. However, we found limitations in the DEA's and FBI's coordination with the BIA and tribal officials to ensure adequate access to training opportunities in these areas.

**The DEA Has Provided Some Training to BIA and Tribal Authorities but Should Do More to Consistently Coordinate with Them as TLOA Requires**

We found that, during the period of our review, despite TLOA requirements, the DEA provided limited training that was exclusive to BIA and tribal law enforcement. For example, to comply with TLOA requirements, the DEA headquarters' Office of Training implemented two training initiatives for tribal law enforcement: a Drug Unit Commanders Academy in 2011 and a 2-week Tribal Law Enforcement Basic Narcotics Investigations Course in 2012. However, according to the former Unit Chief for Specialized Training of the DEA's Office of Training, tribal law enforcement attendance at these trainings was low and the DEA did not continue the training after 2012.<sup>68</sup>

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<sup>68</sup> Both the DEA and the BIA told us that in some instances they scheduled training for tribal law enforcement in the field, as requested, and tribal officers failed to show up for the training.



As noted earlier in our report, we found that DEA headquarters personnel were generally unaware of the DEA's TLOA training responsibilities in Indian country. In March 2016, after the initiation of the OIG's review, the DEA assigned a Staff Coordinator with the collateral duty of liaising with BIA and tribal law enforcement agencies to determine how the DEA can help enhance their law enforcement and training activities in Indian country. The Staff Coordinator told us that he associated the FBI and the BIA, rather than the DEA, with Indian country law enforcement responsibilities. While the DEA has a responsibility in Indian country similar to that of the FBI and the BIA, he was not aware of how Indian country fit with the DEA's priorities.<sup>69</sup> He acknowledged that the DEA needs to provide more training specifically geared toward narcotics investigations because drugs and narcotics often underlie crimes that occur in Indian country. He said that the DEA could have a greater impact in Indian country if it became more engaged with the BIA and tribal law enforcement.

Several tribal law enforcement officials we interviewed told us that they had not received training on how to conduct drug investigations and that more narcotics training would be helpful. We found that the 2012 trainings are the only DEA training programs specifically for tribal law enforcement that the DEA headquarters' Office of Training has offered since the passage of TLOA. The Unit Chief in the Office of Training told us that his office does not facilitate any training specific to Indian country; rather, it provides in-service training for DEA Special Agents.<sup>70</sup> The former Unit Chief stated that determining training for Indian country was not a DEA headquarters function but rather the responsibility of individual Division Training Coordinators at the division level. Division Training Coordinators are Special Agents who have a collateral duty of planning and implementing DEA training in each division's area of responsibility.

We found that the Division Training Coordinators from the five DEA divisions with Indian country jurisdiction that we visited do not coordinate and were unaware of any training provided to BIA or tribal law enforcement. One Division Training Coordinator, whose response was typical of those in the divisions we visited, told us that she has never worked in Indian country; provided training to tribal law enforcement; or been made aware that DEA Special Agents in her division were providing training, as none was reported.

Regarding Special Agents coordinating and providing training, we found that low staffing levels in some DEA field offices make it difficult for their Special Agents to provide training to tribal law enforcement. For example, at the time of our site

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<sup>69</sup> In August 2016, the DEA Staff Coordinator attended a 2-week training session with the BIA in Artesia, New Mexico. The DEA told us that the purpose of this training was to educate attendees on how the BIA conducts its investigations. The Staff Coordinator told us that he was the first DEA Special Agent to ever attend and that through his participation he was able to establish networks with the FBI and the BIA.

<sup>70</sup> As stated earlier, the BIA stated that although its Drug Division has not worked directly with the DEA Office of Training on drug training, BIA drug agents work closely with their DEA counterparts in the field on any drug training the BIA Drug Enforcement program conducts for tribal law enforcement or any drug training requests from tribes.

visit, the DEA had three Special Agents assigned to cover the entire state of South Dakota. Nevertheless, some Special Agents told us that they believe the DEA should support the BIA and the tribes through education and training. One DEA Special Agent told us that the DEA has a responsibility to develop tribal police departments in remote areas with unique challenges. While DEA field offices in Indian country may have limited numbers of staff to coordinate and provide training, we believe that, by working with BIA and tribal law enforcement, the DEA could serve as a force multiplier to assist the BIA in covering large tribal areas where its available manpower may be limited. To do so, the DEA must improve its coordination with the BIA to more systematically establish and clarify its training roles and responsibilities in Indian country.

The DEA provided the OIG with documents and data describing trainings, from FY 2011 through FY 2015, about a variety of topics, including narcotics-related issues that were sponsored by the five divisions that the OIG visited. The DEA told us that BIA and tribal police are invited to attend and do attend these trainings. We reviewed the DEA's data and found that these trainings appeared to be existing training courses that all law enforcement could attend, rather than a new training program or supplemented training for tribal law enforcement. We also found that despite TLOA requirements, some courses, such as a Forklift Certification course, appeared to be unrelated to the investigation of illegal narcotics.

Additionally, we found that BIA and tribal law enforcement attendance at these trainings appeared to be relatively limited. For example, of the 5 divisions, 1 division sponsored 353 courses and trained 77 tribal law enforcement officers. A second division sponsored 401 trainings and trained no tribal law enforcement officers. A third division sponsored 152 trainings, during which 2 tribal law enforcement officers received training. A fourth division sponsored 18 training courses, 3 of which were specifically targeted at tribal law enforcement. One of those trainings was attended by 124 tribal officers, a second was attended by 30 tribal officers, and the DEA did not provide information about attendance at the third. A fifth division provided a list of three trainings but was unable to indicate how many tribal law enforcement officers had received the training. Finally, while not a TLOA requirement, we found that BIA and tribal law enforcement participation was not consistently tracked in these division trainings, and that the DEA could evaluate and plan its training activities based on such information. DEA officials told us in response to a draft of this report that TLOA does not require the creation of separate classes exclusively for tribal law enforcement and that given the DEA's size, limited resources, and jurisdiction, it believes that providing joint law enforcement courses, not separate courses for tribal law enforcement, is the best approach.

We concluded that the DEA should do more to communicate to BIA and tribal law enforcement its available training opportunities and to encourage them to attend. Although the DEA advertises its trainings using a variety of methods such as email listservs, community outreach, and personal phone calls, a DEA agent told us that some groups may be missed because people are informed of training through word of mouth. In Oklahoma, for example, where the BIA has an

embedded drug agent in the DEA's field office, a DEA Special Agent told us that if the DEA did not have the BIA drug agent, the DEA would not have the same level of involvement with tribes because Indian country is not their primary focus. Another DEA Special Agent in the same field office told us that while tribal law enforcement has never contacted him about training, this would occur through the BIA Special Agent who also acts as a liaison. In other DEA divisions that do not have an embedded BIA Special Agent, DEA agents told us that communication with BIA and tribal law enforcement is infrequent. We believe that the DEA needs to do more to ensure robust communication and outreach with BIA and tribal officials so that they are aware of all available DEA training opportunities.

While the FBI Has Taken Positive Steps to Coordinate and Provide Training in Indian Country, Additional Efforts Must Be Made to Ensure that Training is Provided as TLOA Requires

Reflective of the FBI's primary role under TLOA to investigate major crimes in Indian country, we found that the FBI has taken positive steps to coordinate with the BIA and provide some training. However, similar to the DEA, during the period of our review we found that the FBI offered training opportunities to its law enforcement counterparts, including BIA and tribal law enforcement, but not as part of a new training program or by supplementing existing training programs as TLOA required. For example, from FY 2011 through 2015, FBI data indicated that FBI headquarters' Indian Country Crimes Unit (ICCU) provided 23 verified trainings to 624 FBI and BIA agents, as well as tribal, state, and local law enforcement personnel, on topics such as interviewing and interrogation, child abuse investigations (physical and sexual), death investigations, and evidence collection.<sup>71</sup> However, we found that the number of these trainings decreased over this period, from nine verified trainings in FY 2011 to three verified trainings in FY 2015, and no FBI-sponsored training was provided in FY 2013 due to sequestration. While FBI data indicates that 348 BIA, tribal, state, and local officers participated in these verified trainings from FY 2011 to FY 2015, not all trainings included the number of attendees, and FBI data does not differentiate between how many personnel from each agency received training.

We also found that other training opportunities the FBI provides are limited in number and that the ICCU does not track them. For example, we found that some FBI Special Agents in field offices provide ad hoc training to tribal law enforcement when they identify a training need. One FBI Special Agent told us that she provided training on evidence processing and interviewing child victims because

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<sup>71</sup> The FBI provided data to the OIG on 48 trainings from FY 2011 through FY 2015. However, we did not include 20 trainings in our analysis because the FBI could not verify that the trainings had occurred and because 5 trainings were duplicated.

In response to a working draft of this report, the FBI stated that the previously reported number of law enforcement officers who received FBI training was overly conservative and unfairly underreported. The FBI amended its previously reported number of law enforcement officers who received FBI training to include 315 students for which the ICCU was unable to locate specific class rosters. However, the OIG was unable to confirm the attendance of these additional students based on data the FBI provided.

she had identified a gap in the tribal police department's ability to conduct child forensic interviews. However, we determined that the ICCU is not aware of all ad hoc trainings that Special Agents provide because Special Agents do not track or report them to the ICCU. The ICCU's Management Analyst told us that she did not believe that a lot of ad hoc training occurs in the field, but she confirmed that reporting it to the ICCU is not required. We believe that the FBI should track the training that its Special Agents provide in Indian country to determine whether tribal training needs are being addressed.

ICCU officials told us that they have not been able to consistently provide training because they have not had adequate funding. In the absence of funding, ICCU officials said that they rely on EOUSA's NICTI to train tribal law enforcement. We found that the FBI coordinated with EOUSA to provide training at the NICTI, and that training increased from 4 trainings in FY 2011 to 15 trainings in FY 2015.<sup>72</sup> While coordinated training efforts between the FBI and EOUSA on overlapping areas of interest are important and a positive step, we believe that the FBI has its own law enforcement training requirements under TLOA and that an over-reliance on the NICTI for training places an undue burden on the NICTI's already limited staff, which is currently only two individuals at the NAC.

Finally, the FBI told us that, in FY 2016 (after the period of our review), the ICCU established with the BIA the Indian Country Criminal Investigator Training Program (ICCITP) for tribal law enforcement, as well as FBI and BIA Special Agents. The FBI developed the ICCITP for law enforcement officers new to federal investigations, specifically to address investigations in Indian country, covering topics that include child abuse investigations (physical and sexual), death investigations, crime scene reporting, and criminal jurisdictions in Indian country.

While the establishment of the ICCITP is a positive development, we do not believe that it alone will be able to meet the needs of all BIA and tribal law enforcement personnel in Indian country because its training programs are offered infrequently and to a limited number of participants. Specifically, each session of the ICCITP accommodates 24 total attendees and participation is divided equally among FBI, BIA, and tribal law enforcement. Therefore, only eight attendees from each group can attend an ICCITP session. Moreover, the ICCU Management Analyst who helps coordinate FBI training told us that only three sessions of the ICCITP were provided in 2016 and only two are planned for 2017.<sup>73</sup> In addition, the ICCITP is located in Artesia, New Mexico, which can make it difficult for most tribal law enforcement to attend. One tribal Police Chief told us that it is a

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<sup>72</sup> We note that only one FBI training was provided at EOUSA's NICTI in FY 2012. However, according to the FBI, the ICCU did not maintain records for trainings taught at the NAC during FY 2011–2013. The ICCU provided to the OIG a list of nine NAC-sponsored Indian country training events during FY 2011–2013, which had FBI instructors and/or presentations.

<sup>73</sup> In response to a working draft of this report, the FBI stated that as of July 2017 four iterations of the ICCITP have trained approximately 96 law enforcement officers from numerous federal, state, and tribal agencies. A fifth iteration was to be conducted in August 2017.

challenge to attend ICCITP training because his department would lose officers for at least 2 travel days in addition to the training days.

*The FBI and DEA Do Not Provide Their Special Agents with Adequate Training Specific to Indian Country, which Differs from Their Other Assignments*

The geographic and cultural conditions associated with Indian country present unique challenges to DEA and FBI Special Agents assigned to work there. We found that not all Special Agents receive training to address these challenges in connection with their assignment to Indian country. According to the ICCU Section Chief, responding to crimes that occur in Indian country can be difficult because reservations are often far away from FBI field offices. Often, new Special Agents are unfamiliar with the extensive and serious violent crimes (such as domestic abuse, child sexual assaults, or hand-to-hand bludgeoning) that often occur in Indian country. During interviews, DEA officials and Special Agents expressed similar concerns.

FBI Special Agents we interviewed told us that they had not received any training specific to Indian country prior to or during their assignment. Instead, they rely on on-the-job training from colleagues, tribal law enforcement, or skills from previous work experiences, which may be different from Indian country work. One Special Agent said that he had not received any training specifically for Indian country, which he said was “crazy” to him given the prevalence of violent crime that occurs on the reservations. Other FBI Special Agents who also did not receive training specific to Indian country suggested that new Special Agents should receive training on homicide, rural tactics, and cultural awareness before investigating crimes on reservations. As mentioned above, while the FBI began offering the ICCITP in 2016, this training, as currently structured and funded, can train only 8 FBI Special Agents per session and cannot ensure that all 125 FBI Special Agents assigned on a full-time basis to Indian country receive training.

DEA Special Agents also do not receive training specifically related to working in Indian country. The Unit Chief of the DEA’s Office of Training stated that none of the training the DEA provides is tailored specifically to working in Indian country, and DEA management and Special Agents in the field said they were unaware of any Indian country-specific training that the DEA may have provided to Special Agents. Several DEA Special Agents told us that training related to Indian country could have been beneficial to their cases on a reservation.

Although TLOA does not require training specifically for FBI and DEA Special Agents, one of its primary purposes was to improve communication and collaboration between federal and tribal law enforcement agencies.<sup>74</sup> We believe that the FBI and DEA should provide training specific to Indian country to help

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<sup>74</sup> Since 2012, the OIG has collaborated with the FBI and the Internal Revenue Service on the U.S. Attorney’s Guardian Project. Thus far, this anti-corruption task force has successfully resulted in over 100 felony convictions for crimes including bribery, fraud, embezzlement, and extortion in federally funded programs in Indian country.

ensure that personnel assigned to these locations understand their law enforcement roles and responsibilities and are prepared for the work they will encounter there.

### The Department Collects Limited Tribal Crime and Prosecution Data but Does Not Use It to Assess Law Enforcement Efforts or Identify Resource and Program Needs

TLOA, recognizing that crime data is a fundamental tool of law enforcement, placed data reporting requirements on the Department, EOUSA, the FBI, and the Bureau of Justice Statistics (BJS). Consistent with this requirement, EOUSA and the FBI collect data on their investigation and prosecution efforts in Indian country, which the Department uses to submit an annual report to Congress.<sup>75</sup> However, more than 7 years after the enactment of TLOA, the BJS is still developing its process for collecting and analyzing data about crimes in Indian country. As a result, we found that crime statistics for Indian country continue to be outdated and incomplete.

We attempted to assess the Department's efforts in Indian country by analyzing the EOUSA and FBI investigations and prosecutions data that the Department annually submits to Congress. We found several limitations to EOUSA's and the FBI's data collection that prevent accurate data analysis, and we found that EOUSA and the FBI do not use the information they collect to assess their activity in Indian country.

#### *EOUSA's and the USAOs' TLOA Data Collection Has Limitations*

To meet TLOA reporting requirements, EOUSA collects data on all Indian country cases that were pending, declined, or prosecuted each calendar year.<sup>76</sup> Congressional and Department leadership rely partly on EOUSA's data to measure the success of the USAOs in carrying out law enforcement priorities, using taxpayer dollars effectively, and achieving Department goals. We found several limitations to EOUSA's data, such as inconsistent data entry, coding errors, a transition to a new database, and a lack of internal controls, all of which prevented in-depth analysis. We discuss these limitations below.

- **Data Entry in LIONS:** EOUSA acknowledges in the Department's annual *Indian Country Investigations and Prosecutions* reports several limitations with its LIONS database; for example, LIONS is not designed to check data entries for accuracy and internal consistency; it does not require a case to be identified as having occurred in Indian country or not; and it does not cross-

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<sup>75</sup> DOJ, *Indian Country Investigations and Prosecutions*. For the Department's annual report to Congress, EOUSA reports the number of federal prosecution declinations each calendar year and the FBI reports the reason for all administrative closures that occur in Indian country. Administrative closure refers to an Indian country investigation that the FBI opens and closes without forwarding to a USAO for federal prosecution consideration.

<sup>76</sup> EOUSA submits its annual report to Congress according to calendar year. However, EOUSA collects its data according to fiscal year.

check data entry fields or responses against those previously recorded in the database.

Our review identified several additional limitations. We found that the manner by which the USAO districts entered information in LIONS created inconsistencies in data entry and the level of detail captured. We determined that this is due in part to the fact that in some districts multiple Legal Assistants are responsible for data entry, which creates greater room for error because each may input information differently. Some districts use Docketing Technicians for data entry, and USAO staff told us that if Docketing Technicians are not detail oriented in their approach no one will know or identify errors. EOUSA's Deputy Director said that EOUSA does not have the staff to double check districts' work and must trust that it is correct.

Given the importance of consistent data entry both within and across USAOs, training is critical to ensure uniformity. However, EOUSA's Deputy Director told us that he could not recall the last time EOUSA had conducted national training on LIONS data entry. Of the seven districts we visited, we also found that none have provided training on data entry using the CaseView interface that is replacing LIONS. Although some districts have transitioned to CaseView, LIONS will remain the underlying database.<sup>77</sup>

- **Transition to CaseView:** CaseView is a new interface that all USAO districts are required to use. In November 2013, the EOUSA Director issued a memorandum on a new coding policy to track Indian country cases in CaseView.<sup>78</sup> Beginning January 1, 2014, districts were to switch from LIONS to CaseView to enter immediate referrals or declinations that occurred in Indian country. If a case is identified as an immediate referral or declination, unlike the LIONS interface, CaseView will capture "location of offense," "tribal affiliation," and the status of the victim and the defendant as "Indian" or "Non-Indian." Districts can enhance CaseView's functionality by collecting and accurately recording data in required Indian country fields to ensure all statutorily required data is collected. However, we found that, as of September 2016, not all districts had transitioned to CaseView and, as a result, not all required data is being collected.<sup>79</sup>
- **CaseView Coding Errors:** When a case is declined for prosecution, individuals responsible for data entry select one of six declination codes in CaseView. We found that declination coding errors had occurred, which adds to the inaccuracy of EOUSA's data. For example, both "alternative to federal

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<sup>77</sup> After the completion of our fieldwork, EOUSA reported that in September 2016 it hosted an Indian country Data Entry Webinar Training with 36 participants to help improve its data collection efforts. EOUSA also reported that it hosted an additional 24 CaseView training webinars in August 2017.

<sup>78</sup> H. Marshall Jarrett, Director, Executive Office for United States Attorneys, memorandum to Districts Containing Indian Country, Guidance on USA-5/5A Coding in Indian Country Cases, November 6, 2013.

<sup>79</sup> EOUSA completed the transition to CaseView in August 2017.

prosecution” and “matter referred to another jurisdiction” are different declination reasons that districts appear to use interchangeably when coding declinations. In CaseView, the record sheet, which staff use to manually record declinations at the district level, indicates that “alternative to federal prosecution” should be used for instances such as payment of restitution, suspect cooperation, or pretrial diversion, not when a case is simply referred to another jurisdiction.

- Internal Controls: We found that few districts have internal controls to ensure data accuracy.<sup>80</sup> USAO management told us that for consistency’s sake their districts limit the number of users who determine case codes; but USAO data entry staff agreed that additional training would be helpful. A Legal Assistant told us that CaseView training would be useful for data entry staff to determine where a crime occurred and how to enter that information in the system.<sup>81</sup> EOUSA’s Deputy Director told us that if all staff received training or became familiar with the LIONS database coding manual, it would create consistency among individuals entering data.

### *USAOs and EOUSA Do Not Effectively Use the Data They Collect*

We found that EOUSA and the USAOs do not analyze the data that they collect to assist in evaluating USAO activities in Indian country. An ODAG official told us that components should use the data they collect to determine how their resources should be allocated and to assist in identifying resource challenges in investigations and prosecutions. EOUSA acknowledged that USAO supervisors could use the data they collect to measure caseloads, workflow, and staffing needs. For example, from calendar year (CY) 2011 through CY 2015, we noted several trends in the number of EOUSA-reported case prosecutions and declinations in Indian country. From CY 2011 to CY 2015, USAOs reported an increase in the number of defendants against whom charges were declined and a decrease in the number of defendants against whom charges were filed in District Court.<sup>82</sup> When we asked EOUSA’s Deputy Director how he would evaluate such a trend, he said that it is likely a combination of increased referrals to USAOs and greater attention paid to docketing. However, we found that the number of Indian country cases that

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<sup>80</sup> After the completion of our fieldwork, EOUSA stated that it discovered errors in previous *Indian Country Investigations and Prosecutions* reports. EOUSA corrected the data in the 2015 report and provided additional training for all districts on “Native Status” data. However, we note that in February 2016, as part of this review, we found errors in the 2014 *Indian Country Investigations and Prosecutions* report and notified EOUSA. Subsequently, additional changes were made.

<sup>81</sup> While EOUSA is not required to capture location of offense, we believe this information is useful to districts when analyzing prosecution data and determining how and where to allocate resources. In the April 2010 Jarrett memorandum, EOUSA requested that USAOs populate this field. Staff we interviewed did not know how to populate the field.

<sup>82</sup> As noted in Table 2 in the Introduction, USAOs reported a 17 percent decrease in the number of defendants against whom charges were filed in District Court from CY 2011 to CY 2013, followed by a 20 percent increase from CY 2013 to CY 2015.



the DEA and FBI referred to USAOs decreased during that same time period and, as noted above, EOUSA docketing has not improved in a way that would explain this.

We also found that there is no priority placed on USAOs' learning to create and utilize customizable database reports, or "crystal reports." Crystal reports can be used, for example, to analyze trends in specific crimes by tribe or to determine administrative timeliness by the amount of time between the date a case is received and the date of its disposition. EOUSA's Deputy Director told us that USAO staff can run a crystal report based on the information they would like to assess; however, he said that some USAO staff do not know how to run them. We found that, in the seven USAOs we visited, only one USAO staff member responsible for Indian country data collection and reporting said they knew how to create crystal reports for further analysis.<sup>83</sup>

EOUSA's Deputy Director told us that EOUSA does not have the time or resources to conduct proactive trend analysis, and we found that most of the USAOs we visited do not have that capability, perhaps due to limited time and/or knowledge. Because CaseView and LIONS provide a statistical illustration of all USAO activities, we believe that training for consistent data entry is critical to ensuring accurate data collection and enabling meaningful analysis of the Department's Indian country law enforcement efforts. We also believe that USAOs should analyze such data to better manage their efforts to address public safety in Indian country and to provide a complete picture of their work in certain areas, such as domestic violence, and with particular tribes. Without such analysis, the Department cannot accurately evaluate its efforts and accomplishments in this priority area.

### ***The FBI's TLOA Data Collection Has Limitations, and the FBI Does Not Analyze the Data It Does Collect***

To comply with TLOA reporting requirements, the FBI reports to the Department on all decisions not to refer an Indian country investigation to a USAO for prosecution — also known as an administrative closure.<sup>84</sup> We found that the FBI has not addressed limitations in its data that have persisted since the Department's first *Indian Country Investigations and Prosecutions* report. In that report, the FBI acknowledged that its data is subject to limitations. For example, the FBI is able to track only allegations reported to the FBI because BIA tribal law enforcement investigations are not reported; the data cannot be used to calculate crime rates; and cases initially identified as non-referrals may be reopened and referred for prosecution if new information is received.<sup>85</sup> Additionally, in annual reports since

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<sup>83</sup> In response to a working draft of this report, EOUSA said that it believed the OIG was overstating the value of these reports. However, we believe that they are an important tool that can be utilized to help analyze trends and thereby inform prioritization and resource allocation.

<sup>84</sup> The FBI's report must include the type of crime(s) alleged, the statuses of the accused and of the victim(s) as Indian or non-Indian, and the reasons for not referring the investigation for prosecution.

<sup>85</sup> The FBI also told us that its computer systems are designed for case management rather than serving as statistical databases.

then, the FBI has continually acknowledged that having multiple people manually enter data into the FBI's case management system leaves room for error. We found that multiple FBI Special Agents across field offices still manually collect and enter data into the FBI's case management system. Through a Management Analyst, the ICCU consolidates and verifies the information on administrative closures with the field offices before submitting the data for the Department's annual report to Congress. The ICCU Management Analyst told us that some FBI agents are better than others at updating their cases. She further stated that she does not know how to address such limitations because inaccuracies in entering and updating data are due to human error and the FBI's database is not set up for reporting purposes.

We also learned that FBI divisions can use as many as 132 categories or codes to denote the alleged crime that was investigated and administratively closed. However, the final report that FBI headquarters prepared has only 10 crime categories. Therefore, the categories that are chosen from among 132 in the field are up to the data entrant's discretion and are reduced to 10 once they reach FBI headquarters. This could lead to incorrect categorizations and the failure to identify trends in criminal activity in Indian country.

Additionally, we found that the FBI does not use the data that it does collect for analysis. FBI ICCU staff told us that the FBI collects administrative closure data only to comply with TLOA, that the staff does not analyze the data for program improvement, and that it does not see any benefit from collecting the data. The ICCU's Management Analyst told us that, while analyzing administrative closures would not help with investigations, it could help to identify cases closed for a lack of resources. In addition to administrative closures, the FBI tracks all cases that the USAOs have prosecuted or declined. Yet, we found that the FBI does not analyze this additional data to identify or highlight resource or staffing trends or possible training needs. The ICCU Management Analyst also said that, for resource purposes, the FBI could analyze the data it collects on pending cases. Because funding constraints continue to present a challenge for the FBI's ICCU, we believe that analysis of such data, though not a TLOA requirement, could assist both FBI field offices and the ICCU in identifying resource, program, or potential training and law enforcement needs.<sup>86</sup>

### ***BJS Crime Statistics for Indian Country Are Outdated and Incomplete***

TLOA requires the BJS to submit to Congress an annual report that describes the data the BJS collects and analyzes related to crimes in Indian country.<sup>87</sup>

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<sup>86</sup> Every fiscal year the FBI relies on data from field offices across all criminal programs to complete a threat analysis, which it uses to direct resources and help mitigate risks. During analysis, the FBI uses a Threat Issue Matrix to place each threat into one of six threat bands. The ICCU Management Analyst told us that in FY 2016, although Indian country elevated from Band 4 to Band 3, it did not receive additional funding or staffing because there are higher priorities for the FBI.

<sup>87</sup> This is in addition to the Department's annual *Indian Country Investigations and Prosecutions* report.

Despite this requirement, we found that the BJS's most recent comprehensive statistical profile specific to Indian country crime data was collected in 2002 and published in 2004; the BJS has not issued information about tribal law enforcement since 2011.<sup>88</sup> As part of this statistical profile, the BJS noted several challenges with the collection of representative statistical data on American Indians. In particular, the BJS noted that the sampling methods that federal surveys use are not easily applied to American Indians because most federal surveys are based on nationally representative samples and cannot be used to describe small population subgroups. According to the BJS, the design of national surveys, such as the BJS's National Crime Victimization Survey, does not allow the calculation of separate crime statistics for each American Indian tribe.<sup>89</sup> In addition to the statistical profile about Indian country crime that the BJS issued in 2004, the BJS reported data about tribal law enforcement in 2011; but the latter report provided no updated crime data.<sup>90</sup>

We also found that the BJS's more recent annual reports about Indian country data focus more on data collection activities that are in progress, with most yet to be completed. For example, in the 2016 BJS report, *Tribal Crime Data Collection Activities*, the narrative reiterated that the BJS has various activities planned or in progress, including a census of tribal law enforcement agencies and a national survey of tribal court systems. However, only the national survey of tribal court systems has been completed to date.<sup>91</sup> BJS officials said that low response rates from tribes and the tribes' lack of trust with providing data to the Department have prevented the progress of its data collection.

### The Uniform Crime Reporting Program

Although the BJS collects American Indian crime statistics from multiple federal statistical agencies, it derives most of its crime data from the FBI's Uniform Crime Reporting Program (UCR), which collects data from law enforcement agencies and makes this data publicly available.<sup>92</sup> We found that since TLOA was enacted, the FBI has tried to increase the number of tribes that report crime data

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<sup>88</sup> BJS, *A BJS Statistical Profile, 1992–2002: American Indians and Crime*, NCJ 203097 (December 2004).

<sup>89</sup> The BJS's annual National Crime Victimization Survey gathers a detailed picture of crime incidents, victims, and trends and is one of the primary statistical programs that the Department uses to measure the magnitude, nature, and impact of crime in the United States. As part of the survey, the BJS collects information on the frequency and nature of the crimes of rape, sexual assault, personal robbery, aggravated and simple assault, household burglary, theft, and motor vehicle theft. It does not measure homicide or commercial crimes.

<sup>90</sup> BJS, *Tribal Law Enforcement, 2008*, NCJ 234217 (June 2011).

<sup>91</sup> The BJS also told us that the results of the survey will go through FY 2014 only because the survey was delayed on multiple occasions. The BJS will collect information regarding FY 2015 at the end of CY 2016.

<sup>92</sup> In addition to the UCR, the BJS derives its Indian country data from the National Crime Victimization Survey, the Census Bureau, the Federal Justice Statistics Program, the Law Enforcement Management and Administrative Statistics, and the Survey of Jails in Indian country.

through the FBI's UCR by providing training on the program and allowing tribes to directly report to the UCR.<sup>93</sup>

There are several limitations to the BJS's reliance on the UCR for crime data related to Indian country. While federal law requires that federal law enforcement agencies provide information to the UCR, participation of other agencies — including tribal law enforcement — is voluntary and difficulties in reporting crime data persist. Therefore, UCR data provides only a fraction of the full picture of crime in Indian country. Also, FBI officials told us that while tribes can report their crime data to the UCR through the BIA, the FBI, or state law enforcement, if a state submits tribal crime data, there is no way for the UCR to distinguish what portion of the data should be attributed to a particular tribe within that state.<sup>94</sup> In addition, FBI officials told us that, even though a tribe may report crime data to the UCR, the UCR program publishes crime data in its reports only if the information submitted is complete. While 207 tribes reported to the UCR in 2014, only 115 tribes submitted complete information that was included in the final UCR report. According to the Section Chief for the FBI Law Enforcement Support Section, the FBI has attempted to address the number of tribes reporting complete information by posting user manuals on the FBI website and providing the BIA with three online trainings from November 2014 through February 2015.

Given that reporting to the UCR is ultimately voluntary for tribal law enforcement and that limitations to providing accurate and complete data persist, the Department faces challenges in fully understanding crime and law enforcement issues in Indian country. A BJS official told us that there is no federal database to accurately capture crime in Indian country because no one has been able to consolidate the data from all sources. Without efforts to update and consolidate data, the Department and others must rely on outdated or incomplete statistics, anecdotes, and periodic news articles to assess crime and law enforcement issues in Indian country. None of these sources enable the Department to engage in appropriate, performance based management of its activities in this important area.<sup>95</sup>

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<sup>93</sup> Through the UCR, local, county, state, tribal, and federal law enforcement agencies submit crime statistics. The UCR collects statistics on violent crime (murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault) and property crime (burglary, larceny-theft, and motor vehicle theft).

<sup>94</sup> In *A BJS Statistical Profile: 1992–2002*, the BJS also noted that statistical coverage of incidents in Indian country using law enforcement, judicial, or corrections data is difficult to quantify because federal, state, and local authorities may have overlapping jurisdiction on tribal lands.

The FBI told us that if a tribal Originating Agency Identifier is used, data can be attributed to a particular tribe. However, if the data is submitted using the Originating Agency Identifier of a city, county, state, or federal law enforcement agency, FBI's UCR program cannot distinguish which portion of the data should be attributed to a particular tribe.

<sup>95</sup> The OIG's 2016 *Top Management and Challenges Report* identified "Using Performance Based Management to Improve DOJ Programs" as a pressing concern. The Department's failure to collect and evaluate "big data" on such important criminal justice issues limits its ability to implement a data-driven approach to planning and management that would support targeting its limited resources as efficiently and productively as possible. See DOJ OIG, "[Top Management Challenges](#)," May 2017.

## CONCLUSION AND RECOMMENDATIONS

### Conclusion

The Department of Justice has publicly stated that public safety in Indian country is a top priority, and the *Tribal Law and Order Act of 2010* (TLOA) reflects Congress's direction to increase coordination and communication among law enforcement agencies and improve public safety in Indian country. TLOA established additional responsibilities and requirements for the Department and some of its components to engage tribal communities and enhance law enforcement activities in Indian country. In reviewing the Department's Indian country activities pursuant to TLOA requirements, we concluded that while the Department and its components have taken some steps to implement TLOA, communication and coordination are lacking, resulting in the Department not effectively fulfilling all of its TLOA roles and responsibilities. We identified several areas that the Department and its components need to improve to increase engagement, coordination, and action on furthering public safety in Indian country.

First, no Department-level entity coordinates the Department's law enforcement activities in Indian country, including the implementation of TLOA mandates, and components with TLOA responsibilities are not held accountable at the Department level for their work in Indian country. The Office of the Deputy Attorney General (ODAG) states that responsibility for the oversight of the Department's TLOA mandates rests with each component; however, we believe that a central Department entity should have this responsibility. Without Department-level coordination, components with TLOA responsibilities are not fully accountable for their overall implementation of and compliance with TLOA mandates. We therefore believe that an individual or entity at the Department level should have the responsibility to increase coordination of TLOA implementation across components.

Second, while the Executive Office for United States Attorneys (EOUSA) and United States Attorney's Offices (USAO) have taken some steps to implement TLOA's mandates, we believe that more coordinated communication would improve the USAOs' relationships with tribes. During our review, we found several areas in which the USAOs can improve collaboration and communication with the tribes under their jurisdiction.

Third, as TLOA recognized, training is fundamental to enhancing the capabilities of tribal law enforcement and other personnel who work in Indian country and can improve the quality of investigations and thereby further action on public safety in those areas. Components with TLOA responsibilities need to do more to ensure that BIA and tribal law enforcement receive all the training that the law requires. We believe that USAOs could assist EOUSA's National Indian Country Training Institute in providing training, and they must track and report the ad hoc training they conduct. We believe that the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) must improve coordination with the Department of the Interior's Bureau of Indian Affairs, as well as communications

and outreach with tribal law enforcement authorities, to ensure that they receive training that addresses the areas that TLOA specifies. The FBI and DEA should also provide their Special Agents assigned to work in Indian country with training that specifically addresses Indian country's unique cultural and geographic issues and prepares them for the work that they will encounter there.

Finally, while the FBI, EOUSA, USAOs, and the Bureau of Justice Statistics all collect some data to comply with TLOA's reporting requirements, there are limitations to the data's accuracy and these components do not analyze the data they collect. We believe that by fully analyzing available data, as well as by continuing efforts to collect and report more complete and accurate tribal crime data, the Department can identify potential areas for improvement in investigations and prosecutions, as well as potential resource and training needs, to enhance its commitment to public safety in Indian country.

### Recommendations

To improve the Department's oversight of law enforcement activities in Indian country, we recommend that the ODAG:

1. Update the 2010 policy memoranda to U.S. Attorneys and heads of components to incorporate *Tribal Law and Order Act* mandates.
2. Designate a person or office at the Department level to coordinate the Department's implementation of the *Tribal Law and Order Act* and ensure that each component carries out its responsibilities.
3. Reconsider whether to allow the tribal Special Assistant United States Attorney program to expire given its benefits to tribal communication and case prosecution coordination.

To improve communication between USAOs and tribes and coordination of prosecutions in Indian country, we recommend that EOUSA:

4. Ensure that all district operational plans are reviewed and updated as necessary, in cooperation with Department components, tribal law enforcement, and tribal justice officials, to consistently and accurately reflect the Department's and U.S. Attorneys' requirements and the priorities that guide their work in Indian country, including *Tribal Law and Order Act* mandates and the role of the U.S. Attorney's Office Tribal Liaisons.
5. Work with U.S. Attorney's Offices to ensure that Tribal Liaisons' workloads are appropriately balanced so that they can effectively carry out their responsibilities, as mandated by the *Tribal Law and Order Act*, in light of local district conditions.
6. Work with U.S. Attorney's Offices to develop district-specific and, where appropriate, tribe-specific guidelines for Assistant United States Attorneys and Tribal Liaisons with regard to communicating case status and

declinations, including appropriate explanation of the reasons for declinations, directly to tribal prosecutors and victims in a timely fashion.

7. Work with U.S. Attorney's Offices to ensure the development and dissemination of guidelines and eligibility criteria for the tribal Special Assistant United States Attorney program, should it be continued.
8. Work with U.S. Attorney's Offices to ensure that they consistently track and report course subjects and agency participation for all training that U.S. Attorney's Offices and the National Indian Country Training Initiative provide, and coordinate additional training accordingly.

To improve training for law enforcement personnel working in Indian country, we recommend that the DEA and FBI:

9. Coordinate with the Department of the Interior, particularly the Bureau of Indian Affairs, and tribal authorities to ensure the delivery of training as the *Tribal Law and Order Act* requires.
10. Track all training provided to the Bureau of Indian Affairs and tribal law enforcement, including ad hoc training that Special Agents provide, and develop procedures to incorporate this information in planning future training.
11. Provide Department Special Agents assigned to Indian country with training specific to Indian country.

To improve oversight of the DEA's activities and TLOA responsibilities in Indian country, we recommend that the DEA:

12. Consider establishing a permanent position at Drug Enforcement Administration headquarters to coordinate with Department components with Indian country responsibility in developing and implementing strategies, programs, and training policies.

To improve the collection of data necessary to engage in performance based management of law enforcement activities in Indian country and ensure TLOA compliance, we recommend that EOUSA and the FBI:

13. Analyze available data to help to identify resource, program, and potential training and law enforcement needs.
14. Provide training to all staff responsible for Indian country data collection to ensure data is captured uniformly.

## PURPOSE, SCOPE, AND METHODOLOGY

For this review, the OIG analyzed the Department's law enforcement activities and policies in Indian country from FY 2011 through FY 2015. We focused on the Department's legal assistance, investigative training, and other data collection activities pursuant to the *Tribal Law and Order Act of 2010* (TLOA). Our fieldwork, conducted from April 2016 through November 2016, included data collection and analysis, interviews, site visits, and policy and document review.

### Standards

The OIG conducted this review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (January 2012).

### Data Collection and Analysis

#### *Executive Office for United States Attorneys Data*

To comply with TLOA reporting requirements, the Executive Office for United States Attorneys (EOUSA) collects data on all Indian country cases that were pending, declined, or prosecuted during each calendar year. We sought to evaluate trends in prosecution and case declinations in Indian country using EOUSA's Legal Information Office Network System (LIONS) database. Recognizing the limited nature of LIONS data, we requested all cases related to Indian country, including cases that were pending, declined, or prosecuted from CY 2011 through CY 2015. We analyzed the data to assess district volume, referring agency, declination and prosecution rates, and reason for declination. We also analyzed data on all Indian country cases that law enforcement agencies referred to the United States Attorney's Offices (USAO) from CY 2011 through CY 2015. EOUSA provided data on cases that the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), and tribal law enforcement agencies had referred. Data related to the BIA was captured as "Native American Affairs Bureau," and cases referred to USAOs from tribal law enforcement agencies were captured as "State County Municipal."

#### *FBI Data*

To comply with TLOA reporting requirements, the FBI reports to the Department on all decisions not to refer an Indian country investigation to a USAO for prosecution — also known as administrative closure. To understand trends in the administrative closures that TLOA requires the FBI to report to Congress, we analyzed data on all Indian country cases that the FBI investigated and decided not to refer to the USAO for prosecution over a 5-year period. We identified trends in administrative closures using the following criteria: (1) total number of administrative closures per calendar year, (2) total number of administrative closures by FBI division, (3) status of the accused and victim(s) as Indian or non-Indian, and (4) the reasons for administratively closing investigations.



## Interviews

We interviewed headquarters officials from the Bureau of Justice Statistics, the DEA, EOUSA, the FBI, the Office of the Deputy Attorney General (ODAG), the Office of Justice Programs, and the Department of the Interior (DOI). We also interviewed staff during site visits to seven USAO districts. At each site visit, we interviewed staff from the DEA, FBI, and USAOs, as well as BIA staff, tribal law enforcement, and tribal justice officials.

### *DOJ Interviews*

We conducted 190 interviews for this review. At Department headquarters, we interviewed 16 staff. We interviewed ODAG officials, including three Associate Deputy Attorneys General and the Director of the Office of Tribal Justice. At EOUSA, we interviewed the Native American Issues Coordinator; the National Indian Country Training Coordinator; the Deputy Director; and the Assistant Director of the Indian, Violent, and Cyber Crimes Staff. At FBI headquarters, we interviewed Indian Country Crimes Unit (ICCU) staff, including the Unit Chief, a Supervisory Special Agent, the Acting Section Chief for the Law Enforcement Support Section, and a Management Analyst. At DEA headquarters, we interviewed staff from the Regional Impact Section of the Office of Global Enforcement, including the Section Chief and the Staff Coordinator. We also interviewed the former Unit Chief for Specialized Training and an Assistant Special Agent in Charge from the DEA's Office of Training.

In the field, we interviewed 94 USAO staff and DEA and FBI Special Agents.<sup>96</sup> At the USAOs, we interviewed U.S. Attorneys, Assistant U.S. Attorneys, Tribal Liaisons, Criminal Section Chiefs, and Law Enforcement Coordinators. For USAO data purposes, we interviewed a Database Manager, Docketing Clerks, Executive Assistants, and Legal Assistants. At the DEA field offices, we interviewed District Training Coordinators, Special Agents in Charge, Assistant Special Agents in Charge, Resident Agents in Charge, and Special Agents. At the FBI field offices, we interviewed Assistant Special Agents in Charge, Senior Supervisory Resident Agents, and Special Agents. For FBI data purposes, we interviewed Operations Support Technicians, Staff Operations Specialists, and Victims Specialists.

### *DOI Interviews*

We interviewed 12 BIA personnel. At BIA headquarters, we interviewed the Associate Director of the Field Operations Directorate and the Deputy Assistant Director of the Division of Drug Enforcement. In the field, we interviewed Special Agents in Charge, Assistant Special Agents in Charge, and Resident Agents in Charge.

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<sup>96</sup> In the field, the OIG team interviewed 41 USAO staff, 30 FBI Special Agents, and 23 DEA Special Agents.

## *Tribal Interviews*

We interviewed 52 tribal law enforcement and tribal justice officials who represented 11 tribes detailed below under Site Visits. For tribal law enforcement, we interviewed Police Lieutenants, Police Chiefs, Criminal Investigators, Narcotics Investigators, Patrol Officers, and Victim Officers. For tribal justice officials, we interviewed tribal prosecutors, tribal Attorneys General, tribal solicitors, and a tribal President and Vice President.

### Site Visits

We visited 11 federally recognized tribes across 5 states: (1) Navajo Nation, (2) Gila River, and (3) Salt River in Arizona; (4) Jicarilla Apache and (5) Pueblo Laguna in New Mexico; (6) Oglala Sioux and (7) Rosebud Sioux in South Dakota; (8) White Earth and (9) Red Lake in Minnesota; and (10) Cherokee Nation and (11) Citizen Potawatomi in Oklahoma. We selected these tribes because they were located in the seven USAO districts with Indian country jurisdiction that accounted for 73 percent of all USAO Indian country matters that were referred and resolved. These tribes also represented tribes with the most and least number of tribal law enforcement personnel; USAO declinations; FBI administrative closures; and a varying degree of Public Law (PL) 280, non-PL 280, and concurrent federal jurisdiction statuses.

We also visited the 7 USAO districts that have the 11 tribes stated above within their jurisdiction. We conducted our site visits in (1) District of Arizona, (2) District of Minnesota, (3) District of New Mexico, (4) District of South Dakota, (5) Eastern District of Oklahoma, (6) Northern District of Oklahoma, and (7) Western District of Oklahoma. We also conducted video teleconferences with the Northern District of New York and the District of Oregon.

We visited 10 FBI field offices: (1) Phoenix Division Office, (2) Farmington Resident Agency, (3) Albuquerque Regional Office, (4) Rapid City Resident Agency, (5) Pierre Resident Agency, (6) Bemidji Resident Agency, (7) Oklahoma City Resident Agency, (8) Tulsa Resident Agency, (9) Muskogee Resident Agency, and (10) Stillwater Resident Agency.

We visited eight DEA field offices: (1) Phoenix Division Office, (2) Albuquerque Division Office, (3) Sioux Falls Resident Agency, (4) Rapid City Post of Duty, (5) Minneapolis District Office, (6) Tulsa Resident Office, (7) Oklahoma City District Office, and (8) McAlester Resident Office. We conducted telephone interviews with four division offices: (1) El Paso Division Office, (2) St. Louis Division Office, (3) Chicago Division Office, and (4) Dallas Division Office.

We selected both FBI and DEA field offices because they work with the 11 tribes referenced above and refer cases to the 7 USAO districts we visited.

### Policy and Document Review

We reviewed policies, procedures, and guidance related to the Department's implementation of TLOA. To evaluate the Department's oversight and

accountability of Indian country law enforcement activities, we reviewed EOUSA documents including Deputy Attorney General memoranda, policy statements, and program statements. From the USAO, we also reviewed the operational plans of 47 USAOs with Indian country jurisdiction to evaluate USAO compliance with TLOA. We identified 19 criteria and determined whether each criterion was included or discussed in each district's operational plan.<sup>97</sup>

We also reviewed training-related documents to determine the type of training that the FBI, DEA, and EOUSA provided to tribal law enforcement and tribal justice officials from FY 2011 through FY 2015. From the FBI, we reviewed ICCU documentation of all FBI-sponsored trainings, which included course schedules and attendance rosters for the Indian Country Criminal Investigator Training Program in Artesia, New Mexico. From the DEA, we reviewed course listings of DEA-sponsored trainings that were available to tribal law enforcement. From EOUSA, we reviewed course listings and attendance documentation from the National Indian Country Training Initiative for all training at the National Advocacy Center. We also reviewed ad hoc training that USAOs provided and tracked in the field.

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<sup>97</sup> The 19 criteria our operational plan evaluation were: (1) year enacted, (2) number of tribes, (3) accountability, (4) communication for cases, (5) communication with tribes, (6) coordination with federal agencies, (7) coordination with state and local agencies, (8) cross-deputization, (9) declinations, (10) investigations, (11) LIONS database, (12) outreach to tribes, (13) Special Assistant United States Attorneys, (14) Special Law Enforcement Commission training, (15) statute of limitations, (16) training, (17) tribal liaison, (18) *Violence Against Women Act*, and (19) victim specialists.

DEPUTY ATTORNEY GENERAL MEMORANDUM TO U.S.  
ATTORNEYS WITH DISTRICTS CONTAINING INDIAN COUNTRY,  
JANUARY 2010



**U.S. Department of Justice**

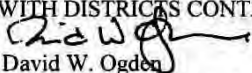
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 11, 2010

MEMORANDUM FOR UNITED STATES ATTORNEYS  
WITH DISTRICTS CONTAINING INDIAN COUNTRY\*

FROM:   
David W. Ogden  
Deputy Attorney General

SUBJECT: Indian Country Law Enforcement Initiative

This memorandum implements a critical component of the Attorney General's initiative to improve public safety in tribal communities by setting forth new policy for U.S. Attorneys' Offices (USAOs) with Indian Country jurisdiction, and by identifying as a Justice Department priority the goal of combating violence against women and children in tribal communities.

The Department of Justice recognizes the unique legal relationship that the United States has with federally recognized tribes. As one aspect of this relationship, in much of Indian Country, the Justice Department alone has the authority to seek a conviction that carries an appropriate potential sentence when a serious crime has been committed. Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian Country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice.

**Indian Country Law Enforcement Initiative**

The Attorney General has launched a Department-wide initiative on public safety in tribal communities. As part of this effort, Department of Justice leadership conducted a series of meetings across the country addressing violent crime in Indian Country. On October 28-29, 2009, the Justice Department convened a national tribal leaders listening session in St. Paul, Minnesota. Also in October, the Justice Department held its annual tribal consultation on violence against women, as required by the Violence Against Women Act of 2005. The Department again had the opportunity to engage with tribal leaders on public safety in tribal communities during the White House Tribal Nations Conference in November. In addition to these sessions with tribal leaders, Department leadership has conducted meetings with Indian Country experts on law enforcement and public safety efforts. I also have had the opportunity to

\* A list of districts that contain Indian Country as of the date of this memorandum is attached hereto as Appendix A.

meet with our own Justice Department specialists in the field – including U.S. Attorneys with significant Indian Country responsibility, Assistant U.S. Attorneys serving as Tribal Liaisons, and FBI Special Agents and Victim Witness personnel working in Indian Country – and have relied on their invaluable insights.

Tribal leaders have confirmed what our own experts working in Indian Country have reported: violent crime in Indian Country is at unacceptable levels and has a devastating impact on the basic quality of life there. Many tribes experience rates of violent crime far higher than most other Americans; indeed, some face murder rates against Native American women more than ten times the national average. Tribal law enforcement resources are typically scarce, a problem exacerbated by the geographic isolation and/or vast size of many reservations. Federal and state resources devoted to Indian Country have also typically been insufficient to address law enforcement needs.

Despite these challenges, tribal governments have the ability to create and institute successful programs when provided with the resources to develop solutions that work best for their communities. And the tireless efforts of the dedicated women and men working for the Department of Justice in Indian Country to seek justice for victims of crime, hold offenders accountable, and safeguard tribal communities are commendable. Assistant U.S. Attorneys and federal prosecutors serving as Tribal Liaisons continue to contribute greatly to the success of those efforts; Safe Trails Task Forces, coordinated by the FBI, play a critical role in coordinating law enforcement in tribal communities; FBI agents work tirelessly to investigate Indian Country crimes; and FBI and USAO victim specialists working in Indian Country are often the sole providers of essential services for the victims of violent crime there.

There is no one-size-fits-all solution to the challenges confronting Indian Country. Indeed, each district and each tribe presents a different set of issues. It is clear, however, that our success depends on the leadership of our U.S. Attorneys, and the focus and commitment of our law enforcement personnel in the field. This memorandum therefore directs each U.S. Attorney with Indian Country jurisdiction to establish a structure and plan for that leadership and focus in his or her district.

In developing this directive, I have worked closely with the Attorney General's Advisory Committee through its Native American Issues Subcommittee (NAIS) and the Executive Office for United States Attorneys (EOUSA), and I am grateful to them for their leadership in this area. I have also asked the NAIS and EOUSA to identify next steps for implementing this directive at the NAIS's January meeting.

**U.S. Attorney Consultations and District-Level Operational Plans**

The United States has a government-to-government relationship with federally recognized Indian tribes. The success of any intergovernmental relationship is based on consistent and effective communication. Moreover, the public safety challenges in Indian Country are not uniform; they vary widely from district to district – and from tribe to tribe – based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures and the number of tribes and reservations within a particular district.

Accordingly, I direct every USAO with Indian Country in its district to engage annually, in coordination with our law enforcement partners, in consultation with the tribes in that district. In addition to tribal governmental and law enforcement leaders, consultation sessions should include other federal law enforcement partners, including FBI, BIA, USMS, DEA, and ATF, and, where appropriate, state and local law enforcement. In addition, it may be appropriate and helpful to include other federal agency representatives with Indian Country responsibility in your district, for example, the Department of Housing and Urban Development, the Department of Health and Human Services' Indian Health Service, and the Interior Department's Bureau of Indian Education.

Following such consultation, I direct all such USAOs to develop an operational plan addressing public safety in Indian Country.

In coordination with the law enforcement agencies and tribes in that district, every USAO with Indian Country jurisdiction should review and, as necessary, revise its operational plan on an annual basis. Every newly confirmed U.S. Attorney in such districts, upon assuming office, should conduct a consultation with tribes in his or her district and develop or update the district's operational plan within eight months of assuming office, unless an extension of time is provided by EOUSA.

The subject matter of each district's plan will depend on the legal status of the tribes in that district (i.e., whether the jurisdiction is Public Law 280, non-Public Law 280, or partial-Public Law 280) as well as the unique characteristics and challenges confronting those tribal nations. Districts that include non-Public Law 280 or partial-Public Law 280 tribes should generally consider inclusion of the following elements in their operational plans: a plan to develop and foster an ongoing government-to-government relationship; a plan to improve communications with each tribe, including the timely transmittal of charging decisions to tribal law enforcement, where appropriate; a plan to initiate cross-deputization agreements, Special Law Enforcement Commission training and a tribal SAUSA program, where appropriate; and a plan to establish training for USAO staff and all relevant criminal justice personnel on issues related to Indian Country criminal jurisdiction and legal issues. Districts that include non-Public Law 280 or partial-Public Law 280 tribes are encouraged to meet individually with each of those

tribes in the course of the planning process. Districts containing only Public Law 280 tribes may consult with EOUSA on an appropriate strategy to ensure regular engagement with tribes and an appropriate assessment of the Justice Department's responsibility with respect to those reservations.

To assist in this process, I have asked EOUSA to develop and provide to the USAOs, by February 1, 2010, model approaches for district tribal consultations and operational planning. These models may be used as guidance to develop individual consultations and operational plans for each district. To help districts address training needs, EOUSA has also created a new position devoted to Indian Country prosecution and investigation training.

Upon adoption of its plan, or revision or update thereto, I request that each district provide the Office of the Deputy Attorney General, through EOUSA, a summary of its operational plan to improve public safety in Indian Country. I also direct that you make these summaries available to the tribes in your district.

The public safety challenges confronting Indian Country are great, and I realize that our efforts in Indian Country can be resource intensive. I am therefore pleased to be able to inform you that the Justice Department's FY 2010 appropriation includes an additional \$6,000,000 for Indian Country prosecution efforts. Overall, at least 35 additional Assistant U.S. Attorneys and 12 additional FBI victim specialists will be added in offices with an Indian Country caseload. These new resources will also enable the Justice Department to bring the federal justice system closer to Indian Country, including through a Community Prosecution Pilot Project that EOUSA is currently developing.

The Attorney General is depending upon you, as leaders of the Justice Department in your respective districts, to craft individual tribal assessments and action plans that respond to the unique challenges facing tribal communities in your district.

#### **Violence against Women and Children in Tribal Communities**

Addressing violence against women and children in Indian Country is a Department of Justice priority. The Department, through the USAOs, has a duty to investigate and prosecute serious crimes in Indian Country, including crimes against women and children. In much of Indian Country, the federal government alone has authority to prosecute certain violent crimes against Native Americans where the offender is non-Indian and to obtain meaningful punishment for any serious offender. In those circumstances, only USAOs can pursue justice for the victim and the community.

Reports of sexual assault or domestic violence in Indian Country should be investigated wherever credible evidence of violations of federal law exists, and prosecuted when the

*Principles of Federal Prosecution* are met. Although sexual assault offenses may often occur outside the presence of witnesses and may present other prosecutorial challenges, these factors should not deter law enforcement personnel from diligently and thoroughly investigating the crime or pursuing prosecution. Where federal jurisdiction exists, the responsibility to investigate and prosecute violence against women in Indian Country also extends to misdemeanor assaults committed by non-Indian offenders against Native American women on federally recognized reservations. Due care should be exercised to recognize ongoing risks to victims in sexual assault and domestic violence cases, and to expeditiously make charging decisions in high-risk cases to minimize or eliminate those risks.

In developing district-specific operational plans for public safety in tribal communities, I direct every U.S. Attorney to pay particular attention to violence against women, and to work closely with law enforcement to make these crimes a priority. This may include reevaluating, together with law enforcement partners including the FBI and the Department of Interior's BIA, existing memoranda of understandings addressing such crimes. Federal law provides for a number of felony level domestic violence offenses in addition to those crimes listed in the Major Crimes Act (18 U.S.C. §1153) and the General Crimes Act (18 U.S.C. §1152), and I have asked EOUSA, working closely with the NAIS, to develop guidance on these additional statutes.

Many sexual assault cases arising in Indian Country require a team investigative effort involving FBI, tribal police, and BIA. Successful multijurisdictional investigations and prosecutions also require a collaborative working relationship. Tribal Liaisons and Assistant U.S. Attorneys assigned to cases of child sexual abuse on the reservations currently use the multidisciplinary model provided in 18 USC §3509(g) with great success. USAOs are encouraged to consider also using this team approach in cases where adult women are the victims of sexual assault. EOUSA will provide further guidance on this issue in coming weeks.

### **Conclusion**

The Department has a responsibility to build a successful and sustainable response to the scourge of violent crime on reservations. In partnership with tribes, our goal is to find and implement solutions to immediate and long-term public safety challenges confronting Indian Country. This directive creates a structure through which U.S. Attorneys will develop targeted plans to help make tribal communities in their districts safer, and to turn back the unacceptable tide of domestic and sexual violence there.

### **Attachment**

cc: All United States Attorneys  
B. Todd Jones  
United States Attorney  
District of Minnesota  
Chair, Attorney General's Advisory Committee



Robert S. Mueller, III  
Director  
Federal Bureau of Investigation

Michele Leonhart  
Acting Director  
Drug Enforcement Administration

Kenneth E. Melson  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms & Explosives

John F. Clark  
Director  
United States Marshals Service

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

U.S. ATTORNEY'S OFFICE DISTRICTS WITH FEDERALLY  
RECOGNIZED TRIBES

1. Middle District of Alabama,
2. Southern District of Alabama,
3. District of Alaska,
4. District of Arizona,
5. Central District of California,
6. Eastern District of California,
7. Northern District of California,
8. Southern District of California,
9. District of Colorado,
10. District of Connecticut,
11. Middle District of Florida,
12. Southern District of Florida,
13. District of Idaho,
14. Northern District of Indiana,
15. Northern District of Iowa,
16. District of Kansas,
17. Western District of Louisiana,
18. District of Maine,
19. District of Massachusetts,
20. Eastern District of Michigan,
21. Western District of Michigan,
22. District of Minnesota,
23. Northern District of Mississippi,
24. Southern District of Mississippi,
25. District of Montana,
26. District of Nebraska,
27. District of Nevada,
28. District of New Mexico,
29. Eastern District of New York,
30. Northern District of New York,
31. Western District of New York,
32. Western District of North Carolina,
33. District of North Dakota,
34. Eastern District of Oklahoma,
35. Northern District of Oklahoma,
36. Western District of Oklahoma,
37. District of Oregon,
38. District of Rhode Island,
39. District of South Carolina,
40. District of South Dakota,
41. Western District of Tennessee,
42. Eastern District of Texas,
43. Western District of Texas,
44. District of Utah,

45. Eastern District of Washington,
46. Western District of Washington,
47. Eastern District of Wisconsin,
48. Western District of Wisconsin, and
49. District of Wyoming.

Source: EOUSA

## THE DEPARTMENT'S RESPONSE TO THE DRAFT REPORT



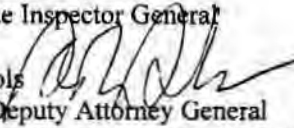
**U.S. Department of Justice**  
Office of the Deputy Attorney General

Office of the Deputy Attorney General

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Washington, D.C. 20530

MEMORANDUM

**TO:** Nina S. Pelletier  
Assistant Inspector General  
Evaluation and Inspections  
Office of the Inspector General

**FROM:** Scott Schools   
Associate Deputy Attorney General  
Office of the Deputy Attorney General

**DATE:** December 8, 2017

**SUBJECT:** Amended Status Update in Response to OIG's Review of the Department's Tribal Law Enforcement Efforts Pursuant to the *Tribal Law and Order Act of 2010*, Assignment Number A-2015-009

The Office of the Deputy Attorney General (ODAG) provides this status update regarding the Office of the Inspector General's (OIG) Review of the Department's Tribal Law Enforcement Efforts Pursuant to the *Tribal Law and Order Act of 2010*, Assignment Number A-2015-009.

**I. Responses to ODAG Recommendations**

*Recommendation 1: Update 2010 policy memoranda to U.S. Attorneys and heads of components to incorporate Tribal Law and Order Act mandates.*

The Deputy Attorney General (DAG) is committed to public safety in Indian country and actively engaged in Indian country issues. The U.S. Attorneys working in Indian country and the focused efforts of the Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee (AGAC) are a crucial part of the Department's overall efforts to improve public safety. ODAG looks forward to working with the incoming NAIS to ensure that policies meet Indian country's needs. The NAIS will review the 2010 memorandum and make recommendations to Department leadership concerning whether to amend or replace that policy.

*Recommendation 2: Designate a person or office at the Department level to coordinate the Department's implementation of the Tribal Law and Order Act and ensure that each component carries out its responsibilities.*

ODAG coordinates criminal activity across the Department, which includes implementation of the Tribal Law and Order Act (TLOA). DOJ components that are statutorily required to fulfill a mandate are responsible for doing so with ODAG's oversight and direction. ODAG's coordination of TLOA implementation is reflected in general oversight activities and in regular opportunities for coordination, such as a bi-weekly criminal Indian country coordination meeting, led by ODAG, and the Indian Country Federal Law Enforcement Coordination Group (ICFLECG). ICFLECG was announced by the Attorney General in April of 2017 and provides 12 federal law enforcement components with a forum to discuss common Indian country issues and how to best coordinate efforts. The bi-weekly criminal Indian country coordination meeting focuses on implementing TLOA, specifically by enhancing coordination between relevant components and discussing ongoing training initiatives. In consultation with the NAIS after it is constituted, ODAG will consider whether it would be necessary and beneficial to designate an entity to oversee TLOA implementation beyond current practice.

*Recommendation 3: Reconsider whether to allow the tribal Special Assistant United States Attorney (SAUSA) program to expire given its benefits to tribal communication and case prosecution coordination.*

The DAG recognizes the value of the Special Assistant United States Attorney (SAUSA) program, which is an ongoing program that has been continuously supported by ODAG. This general program does not expire. Recognizing that each U.S. Attorney's office (USAO) has unique considerations, the Department will work with incoming U.S. Attorneys and the NAIS to maximize the efficacy of the SAUSA program. We will also continue to evaluate how best to support our USAOs with Indian country responsibilities.

ODAG respectfully requests that this Recommendation be closed.

## **II. Responses to EOUSA Recommendations**

EOUSA appreciates the opportunity to comment on the review undertaken by OIG regarding the Department's law enforcement efforts to implement the Tribal Law and Order Act of 2010.

As an initial matter, there are a number of factors that make uniform guidelines, policies, and data collection requirements inappropriate and ineffective in Indian country. There are currently 567 federally recognized tribes in the United States. Each sovereign tribal nation is unique. There is no one-size-fits-all approach to Indian country due to the differences among the tribes and the USAOs. And tribal needs are as diverse as the tribes themselves. Tribal Liaisons and Assistant United States Attorneys (AUSAs) working in USAOs with Indian country responsibilities spend a great deal of time learning the specific cultural and community aspects of each tribe they serve and understand the intragovernmental dynamics that are present on each reservation. The Tribal Liaisons and AUSAs are best situated to determine how to communicate

with the tribes in their districts. In addition, by virtue of the tribes' sovereign status, the federal government cannot require tribal prosecutors or tribal law enforcement to consult with the USAOs regarding cases or provide tribal crime data to the United States.

EOUSA agrees that communication between USAOs and tribes regarding prosecutions can be an effective strategy in increasing the value of prosecutorial efforts, law enforcement initiatives, and investigations in specific tribal communities. Since the passage of TLOA, EOUSA has taken a number of significant steps to increase Department coordination and strengthen USAO Indian country understanding and involvement. These steps include (1) hosting in-person trainings for all United States Attorneys, AUSAs, key USAO staff, federal and tribal law enforcement, tribal prosecutors, and victim advocates through the National Indian Country Training Initiative and (2) hosting an annual law enforcement summit for all relevant federal components to discuss solutions for various criminal trends that are affecting Indian country. In addition, the EOUSA Native American Issues Coordinator oversees the implementation of, and compliance with, TLOA requirements for the USAO community. While not a TLOA requirement, the Coordinator ensures that each district's Indian country operational plan is in place. The Coordinator also ensures that training is being conducted, and that Tribal Liaisons are appointed and performing their required duties. The Coordinator has assisted numerous districts in developing their operational plans and alerts new AUSAs and Tribal Liaisons to their Indian country responsibilities. The Coordinator also routinely contacts AUSAs and discusses specific issues and initiatives in their respective districts. The Coordinator does not assess the legal work being done in the districts. However, he does report potential issues to individual United States Attorneys, in addition to Department and EOUSA leadership.

*Recommendation 4: Ensure that all district operational plans are reviewed and updated as necessary, in cooperation with Department components, tribal law enforcement, and tribal justice officials, to consistently and accurately reflect the Department's and U.S. Attorneys' requirements and the priorities that guide their work in Indian country, including Tribal Law and Order Act mandates and the role of the U.S. Attorney's Office Tribal Liaisons.*

EOUSA fully embraces its role in supporting the USAOs and helping to implement policies consistent with leadership's vision. Although operational plans are not required by TLOA, they are required by current Department policy. EOUSA looks forward to working with leadership offices and the AGAC to determine how best to implement Indian country policies that will work to reduce crime; strengthen native communities; and ensure better coordination across federal, state, and tribal law enforcement organizations.

Consistent with Recommendation 1 above, DOJ leadership will coordinate with the NAIS to determine whether the 2010 memorandum that *inter alia* requires the operational plans should be revised or updated.

*Recommendation 5: Work with U.S. Attorneys' Offices to ensure that Tribal Liaisons' workloads are appropriately balanced so that they can effectively carry out their responsibilities, as mandated by the Tribal Law and Order Act, in light of local district conditions.*

TLOA created ancillary duties but did not fund or authorize additional FTE for the USAOs. Thus, while Tribal Liaisons are tasked with the ancillary responsibility of working with tribes, their primary responsibility is prosecuting crimes. TLOA Sec. 213(D)(2)(B) expressly states that the Attorney General should take all appropriate measure to encourage aggressive prosecution of federal crimes committed in Indian country, while noting the dual role of Tribal Liaisons. In Section 13(c), TLOA states, however, “Nothing in this section limits the authority of any United States Attorney to determine the duties of a tribal liaison officer to meet the needs of the Indian tribes located within the relevant Federal district.” EOUSA agrees to assist United States Attorneys, as needed, in ensuring that the workloads of Tribal Liaisons are appropriately balanced so that they can carry out their TLOA duties.

*Recommendation 6: Work with U.S. Attorneys' Offices to develop district-specific and, where appropriate, tribe-specific guidelines for Assistant United States Attorneys and Tribal Liaisons with regard to communicating case status and declinations, including appropriate explanation of the reasons for declinations, directly to tribal prosecutors and victims in a timely fashion.*

EOUSA agrees that enhanced communication between AUSAs and tribal prosecutors regarding case status would increase both entities' ability to achieve justice in individual matters. TLOA does not require AUSAs to discuss the internal deliberative process of policy making with tribes or tribal prosecutors. It is up to United States Attorneys to determine what prosecution-related information is appropriate to share with tribes. This must be a case-by-case determination due to various factors that may affect the sharing of law enforcement sensitive information with tribal law entities and victims. In addition, due to legal and ethical obligations, providing specific details regarding declinations can be problematic. Information regarding the identity of witnesses and victims, the specifics of evidence collection, and other law enforcement sensitive information, including grand jury materials, must be carefully managed by the USAO. Nonetheless, EOUSA will work with the NAIS to assess the feasibility of district-specific or tribe-specific guidelines consistent with these issues.

*Recommendation 7: Work with U.S. Attorneys' Offices to ensure the development and dissemination of guidelines and eligibility criteria for the tribal Special Assistant United States Attorney program, should it be continued.*

EOUSA agrees to take steps to assist United States Attorneys in the development and dissemination of guidelines and eligibility criteria for the Tribal SAUSA program as needed. In many circumstances, a Tribal SAUSA may facilitate communication between a tribe and the USAO and strengthen that relationship. The appointment of a Tribal SAUSA is the prerogative of the United States Attorney in each district. Although general criteria may be useful in determining qualifications for the position, there may be circumstances in which a Tribal SAUSA may not be appropriate for a particular district.

*Recommendation 8: Work with U.S. Attorneys' Offices to ensure that they consistently track and report course subjects and agency participation for all training that U.S. Attorney's Offices and the National Indian Country Training Initiative provide, and coordinate additional training accordingly.*

EOUSA, through the National Indian Country Training Initiative, will work with the USAOs to more accurately track all training that is provided at the National Advocacy Center, regionally, or in individual districts.

*Recommendation 13: Analyze available data to identify resource, program, and potential training and law enforcement needs.*

EOUSA understands this recommendation to mean that EOUSA should use the available data as part of its overall analysis when considering these issues. While the statistical data collected by EOUSA and the USAO community provides a snapshot of Indian country matters and cases handled by the USAOs, that data alone will not identify resource, program, training, and law enforcement needs. The identification of such needs involves an examination of a variety of qualitative factors, not only statistical information. Rather than placing undue focus on statistical data, EOUSA believes that the attention to the intensified coordination and communication anticipated in the recommendations above would better enhance public safety in Indian country.

With those caveats, EOUSA agrees to use available data as one of many tools to identify needs.

*Recommendation 14: Provide training to all staff responsible for Indian country data collection to ensure data is captured uniformly.*

EOUSA agrees to continue training all USAO staff with Indian country docketing responsibilities on proper coding of Indian country case information. Currently, all data entry personnel have access to relevant guidance, user manuals, factsheets, and policy memos. EOUSA will compile that information and send it to USAOs with Indian country responsibilities.

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EOUSA appreciates the opportunity to respond to this report, and looks forward to following up on these recommendations. In addition, the following are critical issues that need to be corrected in the final OIG report.

**Page 10, Table 2, Footnote a** – The statistics that appear in Table 2 for Calendar Year (CY) 2015 are confirmed, finalized numbers. EOUSA recommends eliminating the footnote or changing it to read as follows:

EOUSA collects its data according to fiscal year, and finalized sets of full fiscal year data are not available until the end of the fiscal year. Reports derived from the current fiscal year are subject to change before the end of the fiscal year. Although our scope extended to CY 2015, the most recent fully finalized CY set of data we received was for CY 2014. To create CY 2015 data, EOUSA combined data from FY 2015 and FY 2016. FY 2016 was ongoing at the time EOUSA initially provided data for this report. For CY 2015 in Table 2 above, statistics for January 1, 2015 to September 30, 2015 were derived from the fully



finalized end of FY 2015 set of data. Statistics for October 1, 2015 to December 31, 2015, came from a set of data taken in April 2016. In response to a working draft of this report following the close of FY 2016, EOUSA compiled statistics for CY 2015 based on end-of-FY 2016 data, and confirmed that the CY 2015 statistics in Table 2 are accurate and final.

**Page 10, Table 2, Footnote 29** – EOUSA requests that OIG include the number of defendants filed in magistrate courts for each year for a more accurate reflection of the work being done in Indian country. Here are the statistics for the number of magistrate defendants filed: CY 2011: 196; CY 2012: 471; CY 2013: 233; CY 2014: 527; CY 2015: 278.

**Page 16, paragraphs 2 and 3** – The EOUSA EARS evaluation program reviews the management and performance of a USAO and functions as a management consulting tool. Each evaluation takes a holistic view of USAO management and operations, and generally does not focus on specific legal program requirements or compliance. The evaluation program is structured and staffed to assess and evaluate office management. Accordingly, any attempt by EARS to assess an office's compliance with TLOA requirements would be incomplete or partial, and would not provide a true and accurate assessment of whether a USAO is in compliance. USAOs are reviewed every four years, and this evaluation timeframe cannot accurately assess ongoing or even annual compliance of any particular program.

Separate audits are conducted by EOUSA subject matter experts when needed or directed by the EOUSA Director (e.g. financial audits, HR compliance audits, etc.). Some of TLOA requirements placed on USAOs require frequent and ongoing action (e.g., the development, adoption, updating, and revision of operational plans for work in Indian country). EARS would be unable to accurately assess compliance with these or other ongoing requirements.

The EOUSA EARS program is not equipped by process, manpower, or other resources to ensure compliance with TLOA requirements. The current 4-year evaluation rotational timeframe cannot be altered without significant increases in manpower and financial resources, or without a significant expansion of the EARS mission, program, and staff. Similarly, it is not equipped to provide the level of expertise, oversight, and review the report contemplates is needed.

### **III. Responses to DEA Recommendations**

*Recommendation 9: Coordinate with the Department of the Interior, particularly the Bureau of Indian Affairs, and tribal authorities to ensure the delivery of training as the Tribal Law and Order Act requires.*

DEA will establish a point of contact at the Office of Training (TR) who will coordinate with Staff Coordinators (SC) within DEA's Office of Global Enforcement on all training requests from the Bureau of Indian Affairs (BIA). This will facilitate specific training to Tribal Law Enforcement Officers conducting narcotics investigations. Examples of training that can be coordinated through TR include: the Tribal Law Enforcement Basic Narcotics Investigation Course, a two-week class developed in coordination with BIA; training modules taught at conferences such as the National Native American Law Enforcement Association (NNALEA)

conference; invitations to attend training offered at DEA Divisions through Division Training Coordinators (DTCs); and trainings provided by DEA Chemists.

*Recommendation 10: Track all training provided to the Bureau of Indian Affairs and tribal law enforcement, including ad hoc training that Special Agents provide, and develop procedures to incorporate this information in planning future training.*

DEA/TR will establish a protocol with DEA's DTCs to track all division-level training provided to BIA tribal members through the DEALS Training Platform, to include the number of attendees who participated.

*Recommendation 11: Provide Department Special Agents assigned to Indian country with training specific to Indian country.*

DEA will request that a training module be conducted by BIA to educate all Special Agents who operate in BIA territory. This training will provide Special Agents with knowledge beneficial to working in Indian Country. DEA/TR will work with its BIA partners to establish a curriculum to assist DEA offices.

*Recommendation 12: Consider establishing a permanent position at Drug Enforcement Administration headquarters to coordinate with Department components with Indian country responsibility in developing and implementing strategies, programs, and training policies.*

DEA currently has a GS-14 SC assigned to Indian Country Affairs with a back-up SC to assist when needed. The SC is DEA's primary point of contact for all Indian country issues. Based on this information, DEA believes this recommendation is now moot.

#### **IV. Responses to FBI Recommendations**

*Recommendation 9: Coordinate with the Department of Interior, particularly the Bureau of Indian Affairs, to coordinate the delivery of training and tribal law enforcement and judicial personnel.*

The FBI coordinates with BIA to host the annual FBI-BIA Indian Country Criminal Investigator Training Program (ICCITP). This is a two-week class focused on core Indian country (IC) investigative knowledge and skills, such as: IC law and jurisdiction; culture; evidence collection; death investigations; child sexual/physical abuse; major cases; drug investigations; trial preparation; and victim/witness assistance. Each ICCITP participant receives a robust evidence collection kit to support the collection of forensic evidence. This class is designed for law enforcement officers (LEO) who are new to federal investigations in IC and was implemented in early 2016. As of August 2017, five iterations of ICCITP have been conducted and 120 LEOs attended from numerous federal, state, and tribal agencies.

In addition, the FBI conducts additional IC training courses across the country for federal, state, and tribal LEOs. These FBI IC training courses cover topics such as: death investigations; child sexual/physical abuse; interviewing and interrogation; evidence collection;

drug investigations; tactics; crisis negotiation; Multi-Disciplinary Teams; Safe Trails Task Forces; and IC operations and management. The FBI has always provided these types of training to federal, state, and tribal law enforcement annually. The FBI will continue these efforts.

*Recommendation 10: Track all training provided to the Bureau of Indian Affairs and tribal law enforcement, including ad hoc training that Special Agents provide, and plan additional training accordingly.*

Going forward, the Indian Country Crimes Unit (ICCU) will request that all field offices notify and report all ad-hoc IC trainings. Additionally, ICCU will report all FBI IC trainings to EOUSA at the end of every calendar year.

*Recommendation 11: Provide Special Agents assigned to Indian country with training specific to Indian country.*

All FBI Special Agents (SAs) must pass a rigorous 20-week academy before being certified and assigned to investigative duties. The FBI Academy curriculum for SAs includes extensive instruction in core law enforcement knowledge and skills, including: federal criminal law and jurisdiction; interviewing and interrogation; evidence collection; Confidential Human Source (CHS) development and handling; firearms; physical fitness; defensive tactics; surveillance; emergency driving; arrest and search/clearing tactics; trial preparation; victim/witness assistance; as well as basic investigative strategy and case management in areas of FBI jurisdiction, from counter-terrorism to criminal enterprises to violent incident crimes. The primary goal of the FBI Academy is to provide a well-rounded introduction to the FBI and criminal investigations, as well as developing the core knowledge, skills and abilities necessary to conduct safe, efficient, and effective criminal investigations and supporting operations. The FBI Academy provides new SAs with the basic knowledge and skills necessary to begin their LE career, regardless of their background or initial assignment. The FBI provides appropriate intermediate and advanced continuing education to SAs to enhance their efficiency and effectiveness throughout their career.

The first step in this continuing education occurs immediately after graduation, when every new FBI SA is assigned a Field Training Agent (FTA), who is an experienced FBI SA in the same office and squad as the new SA. The FTA provides guidance and mentorship and works alongside the new SA on a daily basis, until the new SA completes numerous mandatory on-the-job training (OJT) requirements and is removed from probation, which usually takes approximately 2 years. New FBI SAs assigned to IC have FTAs and must complete the same probationary requirements as all other FBI SAs. In addition to this OJT and FTA mentorship, the FBI provides numerous training opportunities throughout each SAs career, and as previously noted, it is no different for SAs assigned to IC.

As previously noted, FBI IC SAs had dozens of opportunities to attend continuing education on numerous IC-related topics during 2010–2016. In addition to these ICCU, FBI-DOJ NICTI and FBI-BIA courses, other elements of the FBI provided hundreds of training opportunities for FBI SAs during 2010–2016, that benefitted SAs assigned to IC. The vast

majority of these training opportunities are ongoing. For example, IC SAs can attend gang training conducted by the Safe Streets Gang Unit, or Special Weapons and Tactics Team (SWAT) training conducted by the SWAT Operations Unit, or Advanced Evidence Response Team (ERT) training conducted by the ERT Unit, or Crisis Negotiator training conducted by the Crisis Negotiation Unit, or financial crime training conducted by the Financial Crimes Unit (FCU), or numerous other topics that can and do assist in the response to, or investigation of, IC crimes. FBI SAs have a wealth of training opportunities, and although scheduling conflicts may prevent attendance at any single one, each SA is responsible for participating in essential training and continuing education.

The joint FBI-BIA ICCITP focuses on core IC investigative knowledge and skills, and was designed for LEOs who are new to federal investigations in IC. Thus, it was never intended for seasoned IC SAs, which represents the bulk of the FBI IC SA workforce. As previously noted, there are numerous other training opportunities for IC SAs, and the FBI dramatically exceeded the training requirements contained in TLOA during 2010–2016.

The FBI will continue to pursue these and other Indian country training programs.

*Recommendation 13: Analyze available data to identify resource, program, or potential training and law enforcement needs.*

Analyzing FBI's TLOA non-referral data is not an effective way to measure and analyze justice, success, criminal activity, resources, programs, trainings, or other operational needs. The FBI uses more appropriate methods to evaluate and analyze operational needs. For example, every fiscal year the FBI completes a threat analysis in consultation with USAOs across the country, which relies on data from the field offices across all criminal programs, including Indian Country, to analyze crime trends, which are then used for directing resources to help mitigate threats. FBI's TLOA non-referral data alone does not show the FBI's commitment to combating crime on Indian reservations.

*Recommendation 14: Provide training to all staff responsible for Indian country data collection to ensure that data is captured uniformly.*

ICCU has provided training and assistance to field office and HQ personnel regarding the reporting of case declination data, as required by TLOA, since the implementation of the statute. However, ICCU's leadership is in the planning phase of developing a more formal and comprehensive training course to cover appropriate data collection and reporting compliance for all FBI staff responsible for TLOA reporting.

## OIG ANALYSIS OF THE DEPARTMENT'S RESPONSE

The OIG provided a formal draft of this report to the Department of Justice's (Department) Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Executive Office for United States Attorneys (EOUSA), the Office Justice Programs, and the Office of the Deputy Attorney General (ODAG).<sup>98</sup> The ODAG responded to the formal draft report on behalf of the Department, including the DEA, FBI, EOUSA, and the ODAG. The Department's response is included in Appendix 4. The report includes 14 recommendations directed to the Department and its components. Recommendations 1, 2, and 3 are directed to the ODAG. Recommendations 4, 5, 6, 7, and 8 are directed to EOUSA. Recommendations 9, 10, and 11 are directed to both the DEA and the FBI. Recommendation 12 is directed to the DEA. Recommendations 13 and 14 are directed to both EOUSA and the FBI. EOUSA also provided general comments in response to the formal draft. Below we discuss the OIG analysis of EOUSA's comments and the Department's responses to the recommendations and actions necessary to close the recommendations.

### General Comments from EOUSA

**EOUSA Comment:** EOUSA stated that there are a number of factors that make uniform guidelines, policies, and data collection requirements inappropriate and ineffective in Indian country. There are 567 federally recognized tribes in the United States, and each sovereign tribal nation is unique. Therefore, there is not a one-size-fits-all approach to Indian country. EOUSA stated that Tribal Liaisons and Assistant U.S. Attorneys (AUSA) with Indian country responsibilities spend time learning specific cultural and intergovernmental dynamics that are present within each tribe and on the reservation. As such, Tribal Liaisons and AUSAs are best situated to determine how to communicate with the tribes in their district. In addition, by virtue of the tribes' sovereign status, the federal government cannot require tribal prosecutors to consult with the United States Attorney's Offices (USAO) regarding cases or provide tribal crime data.

**OIG Analysis:** The OIG agrees that there is not a one-size-fits-all approach to Indian country. In this report, the OIG recognizes that federally recognized tribes are unique and possess certain rights of self-government (i.e., sovereignty). In addition, the OIG notes that the means of communicating important information, such as case declinations, is a decision best left to the U.S. Attorney based on the particular relationships between the USAO and tribal authorities. However, the OIG continues to believe that, within a district, the communication method should be consistently applied. The OIG does not suggest that tribal prosecutors must consult with USAOs or provide tribal crime data.

**EOUSA Comment:** EOUSA agreed that communication between USAOs and tribes can increase the value of prosecutorial efforts, law enforcement initiatives, and investigations in specific tribal communities. As such, EOUSA has taken a

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<sup>98</sup> The Office of Justice Programs did not have any formal comments on the formal draft report.

number of steps to increase Department coordination and strengthen USAO Indian country understanding. These steps include hosting in-person trainings for all federal and tribal law enforcement through the National Indian Country Training Initiative (NICTI) and hosting an annual law enforcement summit for all relevant federal components to discuss solutions for various criminal trends that are affecting Indian country. In addition, the EOUSA Native American Issues Coordinator (Coordinator) oversees the implementation of, and compliance with, *Tribal Law and Order Act* (TLOA) requirements for the USAO community. The Coordinator ensures that operational plans are in place, training is being conducted, and Tribal Liaisons are appointed and performing their required duties. Last, the Coordinator routinely discusses district-specific issues and initiatives with respective USAOs.

OIG Analysis: The OIG agrees that increased communication between the USAOs and tribes can be beneficial. Our report discusses many actions EOUSA has taken to increase Department communication and coordination, as TLOA intended. Also, the OIG acknowledges that TLOA required that EOUSA create the Coordinator position to provide advice and assistance to USAOs on Indian country legal and policy issues, and the Introduction of the report describes the position's duties.

EOUSA Comment: EOUSA stated that on page 10, Table 2, footnote a, the statistics that appear in Table 2 for Calendar Year (CY) 2015 are confirmed, finalized numbers. EOUSA recommended eliminating or revising the footnote. EOUSA provided suggested revised language.

OIG Analysis: The OIG does not agree that the footnote needs to be eliminated or revised. When the OIG requested the data from EOUSA, in March 2016, EOUSA described a data limitation that the OIG included as a footnote. At that time, EOUSA informed the OIG that it collects data by fiscal year (FY) but reports data by calendar year. When the OIG requested the data, EOUSA was in the middle of FY 2016; therefore, we included the footnote to state that the data did not include the last 3 months of the calendar year for 2015. EOUSA did not question the footnote during the OIG's issuance of its first working draft report. In response to the OIG's reissued working draft, EOUSA stated that the data presented in Table 2 was final. However, we did not remove the footnote because we did not believe that EOUSA did not decline or prosecute additional cases at the end of the year for FY 2015 only. For all other years, EOUSA updated the data at the end of each fiscal year. Given the context of our presentation in Table 2, we believe that it was important to note the limitation for accuracy.

EOUSA Comment: EOUSA requested that on page 10, Table 2, footnote 29, the OIG include the number of defendants filed in magistrate courts for each year for a more accurate reflection of the work being done in Indian country. The number of magistrate defendants filed are as follows: CY 2011, 196; CY 2012, 471; CY 2013, 233; CY 2014, 527; and CY 2015, 278.

OIG Analysis: The OIG has included the information above in a footnote on page 10 of the report.

EOUSA Comment: Regarding page 16, paragraphs 2 and 3, EOUSA stated that Evaluation and Review Staff (EARS) evaluations are management consulting tools used to review the management and performance of USAOs. Generally, each evaluation takes a holistic view of USAO management and operations and does not focus on specific legal program requirements or compliance, but rather office management. Any EARS attempt to assess an office's compliance with TLOA requirements would be incomplete and would not provide a true and accurate assessment of whether a USAO is in compliance. Also, EARS evaluations are conducted every 4 years and that evaluation timeframe cannot assess ongoing or annual compliance, nor can it be altered without significant expansion of the EARS mission, program, and staff. Further, EOUSA subject matter experts conduct separate audits as necessary, or as the EOUSA Director specifies. Some TLOA requirements placed on USAOs require frequent and ongoing action, such as the development, adoption, updating, and revision of operational plans for work in Indian country. EARS would be unable to accurately assess compliance with these or other ongoing requirements. The current 4-year evaluation timeframe cannot be altered without significant increases in manpower and financial resources or without a significant expansion of the EARS mission, program, and staff. Similarly, EARS is not equipped to provide the level of expertise, oversight, and review the report contemplates is needed.

OIG Analysis: The OIG acknowledges that U.S. Attorneys establish law enforcement policies and priorities within their federal judicial districts and may carry out TLOA responsibilities differently based on tribal populations and district priorities. However, during the scope of our review, we did not find that EOUSA had ensured TLOA requirements were being met in each USAO district with Indian country responsibility. As noted in the report, EOUSA has a role in providing executive and administrative support for U.S. Attorneys throughout the United States. The OIG continues to encourage EOUSA to include TLOA program evaluations as part of its EARS program. Currently, evaluations of districts' activities in Indian country are not conducted and TLOA implementation is not assessed through that process.

The Department's and Components' Responses to the OIG's Recommendations

### *Recommendations to the ODAG*

Recommendation 1: Update the 2010 policy memoranda to U.S. Attorneys and heads of components to incorporate *Tribal Law and Order Act* mandates.

Status: Resolved.

ODAG Response: The ODAG stated that the U.S. Attorneys working in Indian country and the focused efforts of the Native American Issues Subcommittee (NAIS) of the Attorney General's Advisory Committee are a crucial part of the Department's overall efforts to improve public safety. The ODAG looks forward to working with the incoming NAIS to ensure that policies meet Indian country's needs. The NAIS will review the 2010 memoranda and make recommendations to Department leadership concerning whether to amend or replace that policy.

OIG Analysis: The ODAG's actions are responsive to the recommendation. As noted in the report, the 2010 policy memoranda to U.S. Attorneys and heads of components directed U.S. Attorneys with Indian country jurisdiction to create an operational plan that would guide the Department's strategic approach to working in Indian country. However, the directive to create operational plans was issued prior to TLOA, and we found that most plans have not been updated to reflect changes since TLOA's passage. By March 14, 2018, please provide NAIS meeting minutes reflecting review and deliberation regarding the 2010 memorandum. Also, please provide any recommendations to Department leadership to amend or replace the 2010 policy memoranda, or a status update on your progress.

Recommendation 2: Designate a person or office at the Department level to coordinate the Department's implementation of the *Tribal Law and Order Act* and ensure that each component carries out its responsibilities.

Status: Resolved.

ODAG Response: The ODAG stated that it coordinates TLOA implementation, which is reflected in its general oversight activities and in regular opportunities for coordination with DOJ components that are statutorily required to fulfill a mandate with ODAG's oversight and direction. Coordination opportunities include the ODAG Indian country bi-weekly meetings that focus on implementing TLOA, specifically by enhancing coordination between relevant components and discussing ongoing training initiatives. The Attorney General's Indian Country Federal Law Enforcement Coordination Group (ICFLECG), established in April 2017, also provides 23 federal law enforcement components with a forum to discuss Indian country issues and how to best coordinate their efforts. The ODAG stated that, after the NAIS is constituted, in consultation with the NAIS, the ODAG would consider designating an entity to oversee TLOA implementation beyond current practice.

OIG Analysis: The ODAG's actions are partially responsive to the recommendation. As noted in the report, an ODAG official told us that the ODAG's role is not to formally oversee activities associated with TLOA requirements and that each component is responsible for fulfilling its responsibilities in Indian country. Also, we found that TLOA activities may or may not be addressed in the ODAG Indian country bi-weekly meetings. Without Department-level coordination, components are not fully accountable for their implementation of TLOA mandates. However, the OIG believes that the Department's creation of the ICFLECG represents a meaningful opportunity to coordinate TLOA implementation. By March 14, 2018, please provide bi-weekly meeting and ICFLECG meeting minutes that reflect coordination between relevant components with responsibility for implementing TLOA mandates, including TLOA training mandates, as well as a status update on designating an entity to oversee TLOA implementation beyond current practice.

Recommendation 3: Reconsider whether to allow the tribal Special Assistant United States Attorney program to expire given its benefits to tribal communication and case prosecution coordination.



Status: Unresolved.

ODAG Response: The ODAG stated that the Deputy Attorney General recognizes the value of the Special Assistant United States Attorney (SAUSA) program, which is a continuously supported and ongoing program that does not expire. Recognizing that each USAO has unique considerations, the Department will work with incoming U.S. Attorneys and the NAIS to maximize the efficacy of the SAUSA program and continue to evaluate how best to support USAOs with Indian country responsibilities.

OIG Analysis: It is unclear whether the ODAG concurs with this recommendation. As noted in the report, the OIG acknowledges that the general SAUSA program is ongoing and has program requirements. However, the tribal SAUSA program is no longer accepting applications because its pilot program has not been extended and additional funding has not been allocated. Please provide a statement of concurrence or non-concurrence on or before March 14, 2018. If the ODAG concurs with this recommendation, on or before March 14, 2018, please describe how the ODAG will reconsider whether to allow the tribal SAUSA program to expire given its benefits to tribal communication and case prosecution coordination.

#### *Recommendations to EOUSA*

Recommendation 4: Ensure that all district operational plans are reviewed and updated as necessary, in cooperation with Department components, tribal law enforcement, and tribal justice officials, to consistently and accurately reflect the Department's and U.S. Attorneys' requirements and the priorities that guide their work in Indian country, including *Tribal Law and Order Act* mandates and the role of the U.S. Attorney's Offices Tribal Liaisons.

Status: Resolved.

EOUSA Response: EOUSA stated that although TLOA does not require operational plans, current Department policy does require them. EOUSA looks forward to working with Department leadership and the Attorney General's Advisory Committee to determine how best to implement Indian country policies that will work to reduce crime; strengthen native communities; and ensure better coordination across federal, state, and tribal law enforcement organizations. Consistent with Recommendation 1 above, Department leadership will coordinate with the NAIS to determine whether to amend or replace the policy that required operational plans be revised or updated.

OIG Analysis: EOUSA's actions are responsive to the recommendation. By March 14, 2018, please describe EOUSA's coordination with the ODAG and the NAIS to determine whether the 2010 memorandum requiring operational plans should be revised or updated, and what revisions or updates are under consideration, including core elements under TLOA, or a status update on your progress. Also, please describe how EOUSA will ensure that all district operational plans are reviewed and updated as necessary.

Recommendation 5: Work with U.S. Attorney's Offices to ensure that Tribal Liaisons' workloads are appropriately balanced so that they can effectively carry out their responsibilities, as mandated by the *Tribal Law and Order Act*, in light of local district conditions.

Status: Resolved.

EOUSA Response: EOUSA stated that TLOA created ancillary duties but did not fund or authorize additional full-time employees for USAOs. While Tribal Liaisons are tasked with the ancillary responsibility of working with tribes, their primary responsibility is prosecuting crimes. EOUSA stated that TLOA expressly stated that the Attorney General should take all appropriate measures to encourage aggressive prosecution of federal crimes committed in Indian country, while noting the dual role of Tribal Liaisons. EOUSA also referenced a section of TLOA stating that nothing in that section limits the authority of any U.S. Attorney to determine the duties of a Tribal Liaison to meet the needs of the tribes located within a district. EOUSA agreed to assist U.S. Attorneys, as needed, in ensuring that the workloads of Tribal Liaisons are appropriately balanced so that they can carry out their TLOA duties.

OIG Analysis: EOUSA's actions are responsive to the recommendation. However, while we acknowledge that, as AUSAs, Tribal Liaisons' primary responsibility is to prosecute federal criminal cases, we do not agree with the characterization of Tribal Liaison responsibilities that TLOA established as "ancillary responsibilities." The Department itself acknowledges that the Tribal Liaison program is one of the most important aspects of its Indian country efforts and that many districts rely on Tribal Liaisons to address challenging cultural and legal issues in Indian country. By March 14, 2018, please provide documentation or describe how EOUSA will work with U.S. Attorneys to ensure that Tribal Liaisons' workloads are appropriately balanced.

Recommendation 6: Work with U.S. Attorney's Offices to develop district-specific and, where appropriate, tribe-specific guidelines for Assistant United States Attorneys and Tribal Liaisons with regard to communicating case status and declinations, including appropriate explanation of the reasons for declinations, directly to tribal prosecutors and victims in a timely fashion.

Status: Resolved.

EOUSA Response: EOUSA agreed that enhanced communication between AUSAs and tribal prosecutors regarding case status would increase both entities' ability to achieve justice in individual matters. EOUSA stated that TLOA did not require AUSAs to discuss the internal deliberative process of policy making with tribes or tribal prosecutors. It is up to U.S. Attorneys to determine what prosecution-related information is appropriate to share with tribes, which must be a case-by-case determination due to various factors that may affect the sharing of law enforcement sensitive information with tribal law entities and victims. In addition, due to legal and ethical obligations, providing specific details regarding declinations can be problematic. USAOs must carefully manage information

regarding the identity of witnesses and victims, the specifics of evidence collection, and other law enforcement sensitive information, including grand jury materials. Nonetheless, EOUSA stated that it will work with the NAIS to assess the feasibility of district-specific or tribe-specific guidelines consistent with these issues.

OIG Analysis: The EOUSA's actions are responsive to the recommendation. The OIG acknowledges in the report that certain situations may limit the type and amount of information shared with tribal prosecutors. However, we found that tribal prosecutors often do not receive sufficient explanation for case declination and AUSAs in some districts do not communicate with tribal prosecutors with enough detail. By March 14, 2018, please provide a status update of EOUSA and NAIS's feasibility assessment of creating district-specific or tribe-specific guidelines to communicate case status and declinations, including appropriate explanation of the reasons for declinations, directly to tribal prosecutors and victims in a timely fashion.

Recommendation 7: Work with U.S. Attorney's Offices to ensure the development and dissemination of guidelines and eligibility criteria for the tribal Special Assistant United States Attorney program, should it be continued.

Status: Resolved.

EOUSA Response: EOUSA agreed to take steps to assist U.S. Attorneys in the development and dissemination of guidelines and eligibility criteria for the tribal SAUSA program, as needed. EOUSA stated that in many circumstances a tribal SAUSA may facilitate communication between a tribe and the USAO and strengthen that relationship. The appointment of a tribal SAUSA is the prerogative of the U.S. Attorney in each district. Although general criteria may be useful in determining qualifications for the position, there may be circumstances in which a tribal SAUSA may not be appropriate for a particular district.

OIG Analysis: EOUSA's actions are responsive to the recommendation. By March 14, 2018, please describe what steps EOUSA has taken to assist U.S. Attorneys in developing and disseminating guidelines and eligibility criteria for the tribal SAUSA program.

Recommendation 8: Work with U.S. Attorney's Offices to ensure that they consistently track and report course subjects and agency participation for all training that U.S. Attorney's Offices and the National Indian Country Training Initiative provide, and coordinate additional training accordingly.

Status: Resolved.

EOUSA Response: EOUSA stated that, through the NICTI, it will work with USAOs to more accurately track all training provided at the National Advocacy Center, regionally, or in individual districts.

OIG Analysis: EOUSA's actions are responsive to the recommendation. However, as noted in the report, only 11 USAOs could report ad hoc training, and it was limited to course titles and PowerPoint presentations. The OIG believes that

EOUSA should centrally track all training to ensure that it occurs in all areas that TLOA requires. Also, EOUSA did not describe how USAOs and the NICTI will coordinate training. As noted in the report, EOUSA is unaware of all training that USAOs provide to tribes and is therefore unable to assess whether the USAOs' training is meeting TLOA requirements. The OIG believes that EOUSA and the USAOs should ensure that NICTI and USAO training is complementary, not duplicative, and that all training provided is appropriately addressing training needs in Indian country. By March 14, 2018, please describe what steps EOUSA has taken to work with USAOs and the NICTI to accurately track all training and coordinate additional training accordingly.

### *Recommendations to the DEA and the FBI*

Recommendation 9: Coordinate with the Department of the Interior, particularly the Bureau of Indian Affairs, and tribal authorities to ensure the delivery of training as the *Tribal Law and Order Act* requires.

DEA Status: Resolved.

DEA Response: The DEA stated that it will establish a point of contact at its Office of Training to coordinate with Staff Coordinators within the DEA's Office of Global Enforcement on all training requests from the Bureau of Indian Affairs (BIA); this coordination will facilitate specific training to tribal law enforcement officers conducting narcotics investigations. The DEA stated that examples of training that can be coordinated through its Office of Training include the Tribal Law Enforcement Basic Narcotics Investigation Course, a 2-week class developed in coordination with the BIA; training modules taught at conferences, such as the National Native American Law Enforcement Association conference; invitations to attend training offered at DEA divisions through Division Training Coordinators; and trainings that DEA Chemists provide.

OIG Analysis: The DEA's actions are responsive to the recommendation. Please provide a copy of BIA training requests and the subsequent training provided, including course subjects and agency participation.

FBI Status: Unresolved.

FBI Response: The FBI stated that it coordinates with the BIA to host the annual Indian Country Criminal Investigator Training Program (ICCITP), which is a 2-week class focused on core Indian country investigative knowledge and skills. The FBI also conducts additional Indian country training courses across the country for federal, state, and tribal law enforcement officers. The FBI has always provided annual training to federal, state, and tribal law enforcement and will continue these efforts.

OIG Analysis: We found that the FBI has taken positive steps to coordinate with the BIA and provide some training to its law enforcement counterparts, including BIA and tribal law enforcement, through the ICCITP and other training opportunities. However, the OIG believes that the ICCITP alone is not enough to

meet the needs of tribal law enforcement personnel in Indian country because it is offered infrequently and to a limited number of participants. Specifically, the ICCITP can accommodate only 24 total attendees; participation is divided equally among FBI, BIA, and tribal law enforcement; and only 2 sessions of the ICCITP were planned for 2017.

It is unclear whether the FBI concurs with this recommendation. Please provide a statement of concurrence or non-concurrence on or before March 14, 2018. If the FBI concurs with this recommendation, on or before March 14, 2018, please provide an update on the number of planned ICCITP sessions that the FBI will conduct in CY 2018, as well as the number of participants by agency. Also, please provide a list of other training opportunities that the FBI provided, including the number of participants by agency. Last, please describe how the FBI will increase the number of participants in its Indian country training efforts to ensure TLOA requirements are met.

Recommendation 10: Track all training provided to the Bureau of Indian Affairs and tribal law enforcement, including ad hoc training that Special Agents provide, and develop procedures to incorporate this information in planning future training.

DEA Status: Resolved.

DEA Response: The DEA stated that it will work with the DEA's District Training Coordinators to track all division-level training, to include the number of participants, through its DEALS training platform.

OIG Analysis: The DEA's actions are responsive to the recommendation. However, we note that the FBI's response below stated that it will track all trainings and report those trainings to EOUSA. The DEA's response does not mention reporting such training to EOUSA. The OIG encourages FBI and DEA officials to coordinate the type of training data that will be collected and reported to EOUSA to ensure a coordinated Department approach to the training provided in Indian country. By March 14, 2018, please provide a report of all division-level training provided, to include the number of participants and their agency. Please also describe how the DEA will coordinate with the FBI to provide the same training data or information to EOUSA.

FBI Status: Resolved.

FBI Response: The FBI stated that the Indian Country Crimes Unit (ICCU) will request that all field offices notify and report all ad hoc Indian country trainings. The ICCU will report all FBI Indian country trainings to EOUSA at the end of every calendar year.

OIG Analysis: The FBI's actions are responsive to the recommendation. By March 14, 2018, please provide the guidance that the FBI will issue to all field offices to notify and report all ad hoc Indian country trainings and describe how the

ICCU will track all Indian country training, to include all ad hoc training that Special Agents provide in the field.

Recommendation 11: Provide Department Special Agents assigned to Indian country with training specific to Indian country.

DEA Status: Resolved.

DEA Response: The DEA stated that it will request that the BIA conduct a training module to educate all Special Agents who operate in BIA territory. This training will provide Special Agents with knowledge beneficial to working in Indian country. The DEA will also work with its BIA partners to establish a curriculum to assist DEA offices.

OIG Analysis: The DEA's actions are responsive to the recommendation. By March 14, 2018, please describe the steps the DEA has taken to work with the BIA to establish a training module for DEA Special Agents and provide a copy of the training curriculum established to assist DEA offices.

FBI Status: Unresolved.

FBI Response: The FBI stated that all new FBI Special Agents must pass a rigorous 20-week academy before being certified and assigned to investigative duties. The FBI also described the curriculum for Special Agents. After graduating from the academy, Special Agents continue their education through a Field Training Agent (FTA), who is an experienced Special Agent in the same office and squad as the new Special Agent. For approximately 2 years, the FTA provides guidance and mentorship and works alongside the new Special Agent on a daily basis, until the new Special Agent completes numerous mandatory on-the-job training requirements and is removed from probation. New FBI Special Agents assigned to Indian country have FTAs and must complete the same probationary requirements as all other FBI Special Agents. In addition to on-the-job training and FTA mentorship, the FBI provides numerous training opportunities throughout each Special Agent's career that is no different for Special Agents assigned to Indian country. FBI Indian country Special Agents had dozens of opportunities to attend continuing education on numerous Indian country-related topics during fiscal years 2010–2016. In addition to ICCU, NICTI, and FBI/BIA courses, other elements of the hundreds of training opportunities that the FBI provided for FBI Special Agents during 2010–2016 benefited those assigned to Indian country and assisted in the response to, or investigation of, Indian country crimes. Each Special Agent is responsible for participating in essential training and continuing education. Also, the ICCITP, which focuses on core Indian country investigative knowledge and skills, was designed for law enforcement officers who are new to federal investigations in Indian country and was never intended for seasoned Indian country Special Agents, which represent the bulk of the FBI Indian country Special Agent workforce. Finally, the FBI stated that it has dramatically exceeded TLOA training requirements and will continue to pursue these and other Indian country training programs.

OIG Analysis: As noted in the report, the geographic and cultural conditions associated with Indian country present unique challenges to FBI Special Agents who work there. FBI Special Agents whom we interviewed told us that they had not received any training specific to Indian country prior to or during their assignment. As such, the OIG believes that, while the FBI's training approach is beneficial to all Special Agents, it should consider how these programs are specific to the unique cultural, jurisdictional, and geographical challenges that Special Agents will encounter.

It is unclear whether the FBI concurs with this recommendation. Please provide a statement of concurrence or non-concurrence on or before March 14, 2018. If the FBI concurs with this recommendation, on or before March 14, 2018, please describe how the FBI will ensure that the training Special Agents receive when assigned to Indian country prepares them for the unique conditions that they will encounter.

### ***Recommendation to the DEA***

Recommendation 12: Consider establishing a permanent position at Drug Enforcement Administration headquarters to coordinate with Department components with Indian country responsibility in developing and implementing strategies, programs, and training policies.

Status: Resolved.

DEA Response: The DEA stated that it currently has a GS-14 Staff Coordinator assigned to Indian country affairs, as well as a back-up Staff Coordinator to assist when needed. The Staff Coordinator is the DEA's primary point of contact for all Indian country issues.

OIG Analysis: The DEA's actions are responsive to the recommendation. As noted in the report, the Staff Coordinator's liaison responsibilities are collateral duties. By March 14, 2018, please describe how the DEA will work with the Staff Coordinator to ensure that his workload is appropriately balanced so that the Staff Coordinator can adequately enhance the DEA's law enforcement and training activities in Indian country.

### ***Recommendations to EOUSA and the FBI***

Recommendation 13: Analyze available data to help to identify resource, program, or potential training and law enforcement needs.

EOUSA Status: Resolved.

EOUSA Response: EOUSA stated that it understands this recommendation to mean that EOUSA should use available data as part of its overall analysis when considering these issues. While the statistical data EOUSA and the USAO community collect provides a snapshot of Indian country matters and cases USAOs handle, that data alone will not identify resource, program, training, and law enforcement needs. The identification of such needs involves an examination of a

variety of qualitative factors, not only statistical information. Rather than placing undue focus on statistical data, EOUSA believes that the attention to the intensified coordination and communication anticipated in the recommendations above would better enhance public safety in Indian country. With those caveats, EOUSA agreed to use available data as one of many tools to identify needs.

OIG Analysis: EOUSA's actions are responsive to the recommendation. We acknowledge that data alone will not identify resource, program, training, and law enforcement needs. In the report, we found that tools such as crystal reports can be used, for example, to analyze trends in specific crimes by tribe or to determine administrative timeliness. The OIG believes that such data can be used to help analyze trends and thereby inform prioritization and resource allocation. We agree that when EOUSA engages in communication and coordination in response to the recommendations above, it will be able to make more informed decisions regarding its efforts in Indian country. By March 14, 2018, please describe how EOUSA will use available data to assist in determining how resources, including staff, should be allocated to manage challenges associated with caseloads and workflow.

FBI Status: Unresolved.

FBI Response: The FBI stated that analyzing TLOA non-referral data is not an effective way to measure and analyze justice, success, criminal activity, resources, programs, trainings, or other operational needs. The FBI uses more appropriate methods to evaluate and analyze operational needs. For example, every fiscal year, in consultation with USAOs across the country, the FBI completes a threat analysis, which relies on data from the field offices across all criminal programs, including Indian country, to analyze crime trends, which are then used for directing resources to help mitigate threats. The FBI's non-referral data alone does not show the FBI's commitment to combating crime in Indian country.

OIG Analysis: We acknowledge the FBI's efforts to measure and analyze its operational needs in Indian country. For example, as noted in the report, every fiscal year the FBI relies on data from field offices across all criminal programs to complete a threat analysis to direct resources and help mitigate risks. However, we also note that, in addition to administrative closures (or non-referral data), the FBI tracks all cases that the USAOs have prosecuted or declined but does not analyze this additional data to identify or highlight resource, staffing, or training needs.

It is unclear whether the FBI concurs with this recommendation. Please provide a statement of concurrence or non-concurrence on or before March 14, 2018. If the FBI concurs with this recommendation, on or before March 14, 2018, please describe how the FBI will analyze available data to assist in identifying resource, program, or potential training and law enforcement needs.

Recommendation 14: Provide training to all staff responsible for Indian country data collection to ensure that data is captured uniformly.

EOUSA Status: Resolved.



EOUSA Response: EOUSA agreed to continue to provide all USAO staff with docketing responsibilities training on proper coding of Indian country case information. EOUSA stated that, currently, all data entry personnel have access to relevant guidance, user manuals, factsheets, and policy memoranda. EOUSA will compile that information and send it to all USAOs with Indian country responsibilities.

OIG Analysis: EOUSA's actions are responsive to the recommendation. Please describe the training provided to all USAO staff with Indian country docketing responsibilities on proper coding of Indian country case information, as well as a list of training dates and the number of participants. Also, please provide a list of all guidance, user manuals, factsheets, and policy memoranda provided to USAOs with Indian country responsibility.

FBI Status: Resolved.

FBI Response: The FBI stated that its ICCU has provided training and assistance to field office and headquarters personnel regarding the reporting of case declination data, as TLOA required, since the implementation of the statute. The ICCU's leadership is in the planning phase of developing a more formal and comprehensive training course to cover appropriate data collection and reporting compliance for all FBI staff responsible for TLOA reporting.

OIG Analysis: The FBI's actions are responsive to the recommendation. By March 14, 2018, please provide a status update on the FBI's progress to develop training on data collection and reporting for FBI staff with TLOA reporting responsibilities.



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