



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Indian and Insular Affairs Subcommittee staff, Ken Degenfelder
(Ken.Degenfelder@mail.house.gov), and Kirstin Liddell
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Date: April 01, 2025
Subject: Oversight Hearing on “*Examining 50 years of the Indian Self-Determination and Education Assistance Act in Indian Country*”

The Committee on Natural Resources will host an oversight field hearing titled “*Examining 50 Years of the Indian Self-Determination and Education Assistance Act in Indian Country*” on **Friday, April 4, 2025, at 9:00 a.m. (CDT) at the First Americans Museum in Oklahoma City, Oklahoma.**

Member offices are requested to notify Haig Kadian (Haig.Kadian@mail.house.gov) by 4:30 p.m. on Tuesday, April 1, 2025, if their member intends to participate in the hearing.

I. KEY MESSAGES

- Since the 1970s, the U.S. has implemented a policy of self-determination for Indian tribes and enacted legislation to support self-determination contracts and self-governance compacts with the federal government, allowing tribes to run certain federal programs that serve their members.
- In 1975, the Indian Self-Determination and Education Assistance Act (ISDEAA) was enacted, and over the past 50 years, many tribes have exercised greater self-determination under this Act.
- The current federal policy of self-determination for tribes has enabled many tribes to take on programs, functions, services, and activities (PFSAs) previously provided by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) and, ultimately, provide services to tribal members in a better and uniquely local manner.
- Tribes that enter into self-determination contracts and/or compacts, collectively referred to as 638 contracts or compacts, can tailor the PFSAs they want to take on, allowing the tribe to build up capacity to take on larger and more complicated PFSAs, or slowly increase the scale of PFSAs provided to tribal members as well as the surrounding community.
- The most successful 638 contracts/compacts require tribes to provide additional tribal financial resources to be used in conjunction with federal resources. Some tribes may highlight this funding gap as a barrier to taking on 638 compacts/contracts, even when the tribal community would be better served by local control over PFSAs.

- While self-determination contracts and self-governance compacts have benefited tribes, there is still room for improvement, particularly with respect to closing out contracts and compacts, implementing additional audit initiatives, and exploring other creative solutions to ensure the 638 program continues to grow.

II. WITNESSES

- **The Hon. Bill Anoatubby**, Governor, Chickasaw Nation, Ada, OK
- **The Hon. Chuck Hoskin**, Principal Chief, Cherokee Nation, Tahlequah, OK
- **The Hon. Gary Batton**, Chief, Choctaw Nation, Durant, OK
- **The Hon. Wena Supernaw**, Chair, Quapaw Nation, Quapaw, OK
- **Mr. Jeff Fife**, Secretary of Commerce and Chief of Staff, Muscogee Creek Nation, Okmulgee, OK
- **Mr. Mark Rogers**, Chief Executive Officer, Osage Nation Health System, Pawhuska, OK
- **The Hon. Martin Harvier**, President, Salt River Pima-Maricopa Indian Community, Scottsdale, AZ [*Minority witness*]
- **Mr. Jay Spaan**, Executive Director, Self-Governance Communication & Education Tribal Consortium, Tulsa, OK [*Minority witness*]

III. BACKGROUND

Tribal Self-Determination Contracting and Self-Governance Compacting

Under President Nixon, the United States transitioned to a federal policy of self-determination with Indian tribes. In his July 8, 1970, message to Congress, President Nixon began this policy by stating, “We must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support.”¹ Congress then passed the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975, establishing a statutory framework by which tribes could assume responsibility for PFSAs, which the federal government otherwise typically runs for the benefit of tribal members.²

As a result of ISDEAA and its amendments, tribes may take control of PFSAs in one of two ways—either through a self-determination contract (known as a 638 contract) or through a self-governance compact (known as a 638 compact).³ The self-determination authorities provided by ISDEAA are commonly referred to as “638 contracts” or “638 compacts” in reference to ISDEAA’s public law number, P.L. 93-638. Self-determination contracts and self-governance compacts are not one-size-fits-all and can differ depending on each tribe’s specific needs and

¹ President Richard Nixon, Special Message on Indian Affairs. 1970. <https://www.epa.gov/sites/default/files/2013-08/documents/president-nixon70.pdf>.

² P.L. 93-638. The “638” part is used as another name for self-determination contracting (638 contracting) and self-governance compacting (638 compacting).

³ Murray, Mariel. *Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs*. CRS. 2021. <https://crsreports.congress.gov/product/pdf/IF/IF11877>.

approach.⁴ While both 638 contracts and 638 compacts authorize tribes to exercise greater control over the services provided to their tribal members, each has specific nuances.

Under Title I of ISDEAA, a tribe can enter into a 638 contract related to a BIA service.⁵ Each contract can last up to three years, unless the Secretary of the Interior (the Secretary) and the tribe agree to a longer term. However, the contracts can be renegotiated annually to account for cost increases and any changes in circumstances.⁶

Any federally recognized tribe may submit a 638 contract proposal for review to the Secretary.⁷ The proposal must contain all required information, such as information about the tribe, the point of contact for the contract, a statement of the PFSA the tribe wishes to assume, as well as the needs, funds, and information relating to whether the tribe intends to retain any federal employee assistance or federal resources.⁸ Once submitted, the Secretary has two days to acknowledge receipt and 15 days to notify the tribe of any missing materials and whether the proposal contains any aspect that prohibits the Secretary from approving it, such as the service provided being unsatisfactory or the PFSA being unable to be contracted.⁹ In general, the Secretary has 90 days to approve or decline a proposal. If it is neither approved nor denied in that time frame, then the proposal is deemed approved. Once approved, the Secretary must award the contract and provide the available funds.¹⁰ Considering the few ways in which a contract proposal can be denied, in general, if a tribe wishes to contract out a PFSA, it can likely do so.¹¹

Following the success of the 638 contracting program, the Indian Self-Determination and Education Assistance Act Amendments of 1988 were enacted, which authorized a Governance Demonstration Project.¹² While this initial demonstration project was held within the BIA, Congress extended the authority to the IHS in 1992.¹³ In 1994, the Tribal Self-Governance Act (TSGA) amended ISDEAA by adding a Title IV, to authorize a permanent Tribal Self-Governance program for the BIA to enter into self-governance compacts with tribes.¹⁴

Title V of ISDEAA was added by the Tribal Self-Governance Amendments Act of 2000, which permanently authorized the Indian Health Service to enter into self-governance compacts with tribes.¹⁵ Self-governance compacts are more expansive than self-determination contracts, offering greater flexibility and enabling tribes to assume control over a wider range of services

⁴ 25 CFR Part 900 and Part 1001.

⁵ P. L. 93-638.

⁶ Murray, Mariel. *Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs*. CRS. 2021. <https://crsreports.congress.gov/product/pdf/IF/IF11877>

⁷ 25 USC Sec. 5321 and Hobbs, Straus, Dean & Walker. Memorandum on PROGRESS Act Amendments to Titles I and IV of the ISDEAA <https://www.tribalselfgov.org/wp-content/uploads/2020/10/02-10-22-20-PROGRESS-Act-Title-I-and-Title-IV-Amendment-Final.pdf>.

⁸ 25 CFR Part 900.

⁹ 25 CFR 900.145.

¹⁰ Id.

¹¹ 25 CFR 900.22, detailing the five narrow reasons why a Secretary can decline a self-determination contract proposal.

¹² P.L. 100-472.

¹³ P.L. 102-57.

¹⁴ P.L. 103-413.

¹⁵ P.L. 106-260.

and offerings. As a result, there is a higher threshold for approval, but tribes can negotiate more broadly with the BIA or IHS to cover the costs associated with the compact.¹⁶

Because a self-governance compact is usually broader in scope, negotiations between the tribe and the Secretary are more complex. Formal negotiations are overseen by the Department of the Interior's Office of Self-Governance within the Office of the Assistant Secretary for Indian Affairs.¹⁷ To negotiate a compact, a tribe must have completed the planning phase for self-governance and demonstrate financial stability and management capabilities through an organization-wide audit under the Single Audit Act of 1984, covering the previous three years.¹⁸ A tribe must also initiate and request negotiations for a self-governance compact and an Annual Funding Agreement (AFA) with the Secretary.¹⁹ Only then may a tribe be entered into the applicant pool, of which only 50 additional tribes are authorized to enter into a compact per year, and begin negotiations.²⁰ Self-governance compacts do not have a set mandatory model like self-determination contracts, and all parties involved must negotiate the terms of the self-governance compacts and any associated annual funding agreements (AFAs).²¹

Since their enactment, Congress has continued to refine the 638 contracting and compacting process. In 2020, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act (PROGRESS Act) was enacted.²² The law was intended to streamline and standardize the self-governance process within the Department of the Interior (DOI), while providing tribes with more flexibility to tailor, consolidate, and administer self-determination contracts and compacts.²³

The PROGRESS Act also authorized a Self-Governance Negotiated Rulemaking Committee (Committee), composed of tribal stakeholders, to negotiate and assist with the promulgation of the law's implementing regulations.²⁴ The Act included deadlines for issuing the proposed rule on July 21, 2022, and the final rule on April 21, 2023, after which the negotiated rulemaking committee would sunset and disband.²⁵

However, the Committee did not meet until August 29, 2022,²⁶ almost two years after the passage of the PROGRESS Act. The delay was attributed to the COVID-19 pandemic and the

¹⁶ 25 CFR Part 1001. And Washburn, Kevin. *Tribal Self-Determination at the Crossroads*. Connecticut Law Review 38-777. 2006. https://digitalrepository.unm.edu/law_facultyscholarship/511.

¹⁷ Murray, Mariel. *Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs*. CRS. 2021. <https://crsreports.congress.gov/product/pdf/IF/IF11877>.

¹⁸ 25 CFR Part 1001.

¹⁹ Id.

²⁰ Id.

²¹ Strommer, Geoffrey. *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Act*. American Indian Law Review. 2015.

<https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1001&context=ailr>.

²² P.L. 116-180.

²³ Senate Report on "A Bill to Amend The Indian Self-Determination and Education Assistance Act to Extend the Deadline For The Secretary Of The Interior to Promulgate Regulations Implementing Title IV Of That Act, and For Other Purposes" S. Rpt 118-38, p. 1 <https://www.congress.gov/118/crpt/srpt38/CRPT-118srpt38.pdf>.

²⁴ P.L. 116-180, Sec. 101.

²⁵ Id.

²⁶ Notice of Meeting. *Self-Governance PROGRESS Act Negotiated Rulemaking Committee*. BIA. 2022. <https://www.federalregister.gov/d/2022-17284>.

transition between presidential administrations.²⁷ An extension for the Committee and the negotiated rulemaking process was included in the *Continuing Appropriations Act, 2024 and Other Extensions Act*.²⁸ The legislation also extended the submission deadlines for the Department of the Interior’s proposed regulations from July 21, 2022, to December 21, 2023, and the deadline for final proposed regulations was also extended from April 21, 2023, to December 21, 2024.²⁹

The final PROGRESS Act implementing regulations were promulgated on January 10, 2025.³⁰ These regulations laid out the requirement for federal agencies to define yearly what is considered an “inherently federal function” for the purposes of implementing the Act, and a requirement that DOI must accept a 638 contract or compact if all guidelines are met. It also clarified that contract support costs must be paid out.³¹ While proponents of the law intended the PROGRESS Act and its implementation rulemaking to provide tribes with greater clarity on what constitutes an inherently federal function, Congress should continue to oversee tribal self-governance programs to determine if the law and regulations have provided the intended clarity, or if further legislative action is needed.

638 Contracting/Compacting for Healthcare

Indian tribes can also enter into 638 contracts/compacts for various healthcare programs provided by IHS, including, but not limited to, dental, laboratory services, audiology, obstetrics and gynecology, and inpatient services. As of July 1, 2024, the IHS had entered into 114 compacts and 142 AFAs with tribes and tribal organizations across all 12 IHS Service Areas.³²

The Cherokee Nation has been at the forefront of the 638 contracting/compacting benefits. When Congress first requested that the IHS pursue self-governance opportunities for tribes, the Cherokee Nation was the first tribe to receive a cooperative agreement, totaling \$500,000, to research the agency’s programs and budget, and develop a self-governance model.³³ As a result, in 1994, the Cherokee Nation became one of the first tribes to negotiate and enter into a 638 compact with the IHS.³⁴

The ability to provide healthcare services to its citizens has enabled the Cherokee Nation to expand its health services, making it one of the largest tribally operated healthcare systems in the U.S. Cherokee Nation Health Services (CNHS) employs nearly 160 full-time providers, along

²⁷ Senate Report on “A Bill to Amend The Indian Self-Determination and Education Assistance Act to Extend the Deadline For The Secretary Of The Interior to Promulgate Regulations Implementing Title IV Of That Act, and For Other Purposes” S. Rpt. 118-38, p. 2 <https://www.congress.gov/118/crpt/srpt38/CRPT-118srpt38.pdf>.

²⁸ P.L. 118-15, Sec. 2102.

²⁹ Id.

³⁰ Self-Governance PROGRESS Act Regulations, 89 Fed. Reg. Issue 238. (Dec. 2024). <https://www.govinfo.gov/content/pkg/FR-2024-12-11/pdf/2024-28302.pdf>.

³¹ Self-Governance PROGRESS Act Regulations, 89 Fed. Reg. Issue 238. Page 100, 231 (Dec. 2024). <https://www.govinfo.gov/content/pkg/FR-2024-12-11/pdf/2024-28302.pdf>.

³² Indian Health Service. Self-Governance Tribes. <https://www.ihs.gov/selfgovernance/tribes/>. and IIA Staff Correspondence with IHS. March 21, 2025.

³³ Kauffman and Associates, Inc. 1994. *Indian Health Service Self-Governance Review Through 1994 Negotiations*. University of New Mexico. Pg. 17 <https://www.tribalselfgov.org/wp-content/uploads/2021/05/Indian-Health-Service-Self-Governance-Review-Through-1994-Negotia.pdf>.

³⁴ Indian Health Service. Self-Governance Tribes. <https://www.ihs.gov/selfgovernance/tribes/>.

with over 2,200 health services employees.³⁵ CNHS has invested in the needs of the tribe and the surrounding area through the development of new facilities and ongoing expansion efforts. Currently, CNHS consists of W.W. Hastings Hospital and nine health centers. W.W. Hastings Hospital is a 60-bed inpatient facility initially built in the mid-1980s to serve approximately 60,000 patients per year. The tribe took over the hospital in October 2008, and in recent years, the facility has served over 500,000 patients annually.³⁶

In December 2020, Principal Chief Chuck Hoskin Jr. signed legislation that invested a total of \$440 million in improvement projects, including \$400 million allocated towards the construction of a new hospital in Tahlequah, which will replace W.W. Hastings Hospital upon its completion.³⁷ With the construction of the hospital in Tahlequah, CNHS will be able to offer an increased number of beds for critical care patients, inpatient dialysis, and additional room for the increase in births seen in the labor and delivery department.³⁸

Tribally operated health facilities can adapt to the needs of their patients and utilize revenue to invest in the community. The Cherokee Nation has reinvested the revenue received from third-party billing throughout the services offered by CNHS. The Tahlequah outpatient center was opened in October 2019 and has offered services such as optometry, audiology, physical rehabilitation, behavioral health, radiology, pharmacy, primary care, dental, and more.³⁹

The Chickasaw Nation has also paved the way for tribally run health services, being one of the first tribes to enter into a compact with the IHS to take control of their healthcare system. As a result, the Chickasaw Nation has tailored its health services to the needs of its citizens, offering services in specialties such as dentistry, nutrition, mental health, substance abuse prevention, and pharmacy.⁴⁰ The Chickasaw Nation Medical Center (CNMC) offers a variety of services and clinics, including the Ada Family Practice Clinic, the Diabetes Care Center, the Ada Behavioral Health Clinic, the CNMC Outpatient Pharmacy, and the CNMC WIC Clinic.⁴¹ The flexibility of self-governance has afforded the Chickasaw Nation the opportunity to adapt to changing times and utilize virtual technologies..⁴²

Tribally run healthcare facilities can offer quality care that is both specialized and tailored to the unique cultural experiences of tribal members. Having a cultural connection in their healthcare generally improves the experience of American Indians and Alaska Natives within the healthcare system, keeping them engaged and willing to return for follow-up care.⁴³

³⁵ Id.

³⁶ Cherokee Nation. Health Services. <https://health.cherokee.org/> and IIA Staff Correspondence with Cherokee Nation. March 13, 2025.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ The Chickasaw Nation. Health and Wellness. "About Us." <https://chickasawnationhealth.net/Secondary/About-Us>.

⁴¹ The Chickasaw Nation. Chickasaw Nation Medical Center. <https://www.chickasaw.net/Our-Nation/Locations/Chickasaw-Nation-Medical-Center>.

⁴² The Chickasaw Nation. Health and Wellness. "About Us." <https://chickasawnationhealth.net/Secondary/About-Us> and The Chickasaw Nation. Health and Wellness. "Virtual Visits." <https://chickasawnationhealth.net/Services/Virtual-Visits/Virtual-Medical-Visit>.

⁴³ American Psychological Association. *The Healing Power of Native American Culture is Inspiring Psychologists to Embrace Cultural Humility*. October 2023. <https://www.apa.org/monitor/2023/10/healing-tribal-communities-native-americans>.

638 Contracting/Compacting to Encourage Economic Development

Economic development is the process of influencing an economy's growth to enhance a community's economic well-being.⁴⁴ There are two main objectives: 1) creation of jobs and wealth, and 2) improvement of quality of life by focusing on improving the business and, sometimes, social aspects of communities.⁴⁵

Because 638 contracts/compacts involve government-provided PFSAs, tribes seek these contracts/compacts to encourage economic development and maintain tribal sovereignty over economic enterprises. These include PFSAs that ensure tribal control over tribal resources, such as land, mineral resources, and other natural resources, as well as PFSAs that foster supportive business environments, which can encourage businesses to establish themselves on reservation or tribal trust land. The revenue generated from tribally run PFSAs supports not just the tribe's economy,⁴⁶ but also the economy of surrounding communities as well.⁴⁷

Since the federal government owns tribal trust land for the benefit of an Indian tribe, it is subject to federal oversight regarding the leasing, sale, or encumbrance of the land. If a tribe seeks to conduct activities on trust land, the Secretary must approve the activity. The BIA's Office of Trust Services is traditionally responsible for managing trust and restricted fee lands. That office is divided into two sub-offices, the Division of Real Estate Services and the Division of Land Titles and Records. These two sub-offices oversee the daily real estate services that field offices throughout the country provide to tribes.⁴⁸

The BIA has inconsistently met deadlines for processing mortgages, documenting leases and rights-of-way, and title status reports, which can hinder economic activity by creating uncertainty and roadblocks.⁴⁹ Access to accurate land valuation and realty functions is crucial for developing residential and commercial buildings, as well as for facilitating rights-of-way. Understanding what land is available is also essential for individuals or businesses to participate in economic activities such as agriculture, grazing, timber, or energy development. If a tribe assumes management of realty services and/or land titles and records, the tribe can expeditiously process these documents which can enhance its economic opportunities and benefit their community.

For example, the Cherokee Nation has compacted nearly all realty functions related to trust or restricted lands through the Cherokee Office of Real Estate Services.⁵⁰ This office "is responsible for administering the laws, regulations, and policies affecting the protection and management of trust and restricted lands of individual Indian landowners..."⁵¹ reinforcing the tribe's

⁴⁴ "Community Economic Development: Key Concepts" Mississippi State University Extension. Accessed March 2025. <https://gcd.extension.msstate.edu/sites/gcd.extension.msstate.edu/files/resources/community-economic-development-key-concepts.pdf>.

⁴⁵ Id.

⁴⁶ *Self-Governance Priorities within Cherokee Nation*. Accessed March 2025.

⁴⁷ For example, the Chickasaw Nation contributes more than \$5.5 billion annually to Oklahoma's economy. For more information, see <https://www.chickasawtimes.net/Online-Articles/Governor-Anoatubby-reflects-on-growth-and-anticipates-a-bright-future.aspx>.

⁴⁸ GAO. Tribal Issues. *Bureau of Indian Affairs Should Take Additional Steps to Improve Timely Delivery of Real Estate Services*. October 2023. Pg 9. <https://www.gao.gov/assets/gao-24-105875.pdf>.

⁴⁹ Id.

⁵⁰ Id.

⁵¹ Cherokee Nation. "Real Estate Services." <https://www.cherokee.org/all-services/real-estate-services/>.

sovereignty over its members' real estate. The Cherokee Office of Real Estate Services oversees approximately 46,000 acres of Restricted land, more than 62,000 acres of Trust land, and over 5,100 acres of Fee land.⁵² The Cherokee Nation has developed its own Standard Operating Procedures (SOP's) for each realty function, streamlining processes and significantly reducing timeframes.⁵³ By removing bureaucratic barriers between the BIA and the tribe, these efforts enable the Cherokee Nation to independently lease land for businesses, establish rights-of-way, and facilitate resource and residential development, directly increasing economic benefits for the tribe.⁵⁴

Additionally, the Cherokee Nation has compacted the BIA's Land Title and Records Office (LTRO), which allows all land transactions to be securely stored within the reservation.⁵⁵ Without compacting, these records would be held by the BIA, limiting the tribes' direct access. By managing its own LTRO, the Cherokee Nation ensures immediate access to necessary documents, reducing delays and eliminating transaction costs.⁵⁶

The Quapaw Nation is another tribe that has compacted its land and asset management from the BIA.⁵⁷ By doing so, the tribe directly manages all aspects of business leasing, homeowner leasing, right-of-way agreements, land management, and asset management⁵⁸ through the Quapaw Nation Realty Trust Department.⁵⁹ As a result, the Quapaw Nation is able to operate faster than the BIA, enabling them to move at the speed of business rather than wait several years for the BIA to provide the needed information. By having sovereignty over leasing and permitting services⁶⁰ on its lands, the tribe fosters economic growth and opportunity for its citizens.⁶¹

In the 118th Congress, the Indian and Insular Affairs Subcommittee held hearings on issues related to tribal energy development, particularly the benefits of oil and gas development for long-term growth and intergenerational benefits.⁶² The House Committee on Natural Resources has also received testimony on the benefits of tribal control over tribal forests and federal forests adjacent to tribal land. Several tribes detailed how tribal connections to land enable tribes to conserve and economically benefit from their forest lands.⁶³

Land use restrictions can also translate into a lack of physical infrastructure on or near reservations, usually due to underinvestment and the area's rural or extra-rural character. Tribes

⁵² Id.

⁵³ IIA Staff Correspondence with Cherokee Nation. March 14, 2025.

⁵⁴ Id.

⁵⁵ IIA Staff Correspondence with Cherokee Nation. March 14, 2025.

⁵⁶ Id.

⁵⁷ IIA Staff Correspondence with Quapaw Nation. March 18, 2025.

⁵⁸ Quapaw Nation through their compact operated their own Trust Asset Account Management (TAAMS) system.

⁵⁹ Id.

⁶⁰ Quapaw Nation. "Realty/Trust." <https://www.quapawtribe.com/183/Realty-Trust>.

⁶¹ IIA Staff Correspondence with Quapaw Nation. March 18, 2025.

⁶² "Prepared Statement of the Honorable Melvin J. Baker Chairman, Southern Ute Indian Tribal Council" IIA Sbcmt. Oversight Hearing "Tribal Autonomy and Energy Development: Implementation of the Indian Tribal Energy Development and Self-Determination Act," Sept. 28, 2023. <https://www.congress.gov/118/meeting/house/116420/witnesses/HHRG-118-II24-Wstate-BakerM-20230928.pdf>.

⁶³ Federal Lands Sbcmt. Oversight Hearing "Examining Opportunities to Promote and Enhance Tribal Forest Management" Dec. 5, 2023. <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=415219>.

and Native communities often lack sufficient or adequate facilities and related infrastructure to support prospective businesses.⁶⁴ Tribal roads, particularly in rural areas, can be underdeveloped, and tribal communities have limited access to public or private transportation options.⁶⁵ Despite recent federal investments, essential utilities, such as water, sewer, electricity, and broadband internet, remain underdeveloped.⁶⁶ Congress can strengthen tribes' capacity to take on these responsibilities by considering expanding Good Neighbor or 638 contracting authorities to other departments or agencies outside of DOI.

Challenges with 638 Contracts and 638 Compacts and Opportunities for Improvement

Although self-determination contracts and self-governance compacts have increased tribal autonomy and improved the provision of services to tribal members, there are still areas for improvement that should be addressed at the statutory and/or regulatory level.

One process concern is that these contracts and compacts lack a statutorily mandated timeframe for closure. All parties involved must verify that the requirements and goals have been met before closing out a 638 agreement.⁶⁷ A 2023 DOI Office of the Inspector General (OIG) report found that the BIA has not actively managed the closeout process for 638 contracts and 638 compacts.⁶⁸ The closeout process is necessary to enable tribes and tribal organizations to utilize unspent funds from the 638 agreements for agreed-upon tribal programs and services, while ensuring that the BIA fulfills its trust responsibilities.⁶⁹

The OIG report found that, of the 638 open contracts and 638 compacts administered by the BIA, there were over \$5 million in unused funds. Additionally, the BIA was unable to pinpoint unspent funds, which led to concerns about duplicative agreements.⁷⁰ BIA officials reported that competing priorities, such as the statutory requirement to open and provide funding for new 638 agreements and the lack of a required end date for agreements, affected work on the 638 closeout process.⁷¹ The OIG recommended, and BIA concurred, that the agency should develop a method to monitor the 638 closeout process.⁷² As Congress and the Trump administration continue their efforts to ensure that every taxpayer dollar is used effectively, federal funds allocated to 638 programs should not be sitting in limbo.

Another concern is how quickly tribes and tribal organizations receive a response to their proposals for self-determination contracts and compacts.⁷³ If DOI does not respond promptly, particularly for a request to negotiate a self-governance compact, momentum and expertise could be lost both at the tribal and federal level. Congress should continue monitoring the

⁶⁴ *Growing Economies in Indian country: Taking Stock of Progress and Partnerships*. Pg. 9.

<https://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf>.

⁶⁵ Id.

⁶⁶ Id.

⁶⁷ OIG. *The Bureau of Indian Affairs Can Improve the Closeout Process for Public Law 93–638 Agreements*. June 2023. p. 4.

https://www.doiig.gov/sites/default/files/2021-migration/Final%20Inspection%20Report_BIA638Closeout.pdf.

⁶⁸ Id.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ IIA briefing with the Self-Governance Communication and Education Tribal Consortium. 02.22.24.

implementation of the PROGRESS Act to ensure that processes benefit tribes and reduce reliance on the DOI. Congress could also consider legislation to require the BIA to submit a yearly report detailing the 638 processes and outcomes, as a means of gathering and sharing additional information with tribes and Congress to inform and pursue improvements. These actions would provide ways in which the BIA adheres to a close out process and is responsive to tribes.

Another consideration is the tribal shares of federal monies received when a tribe enters into a self-determination contract or compact. Once the BIA determines a tribe's share of federal funds for a program through the BIA tribal shares process, that allocation remains unchanged unless an Act of Congress explicitly amends it. Therefore, a tribe's share year to year remains unchanged, regardless of any growth on the part of the tribe, and there is little flexibility when other tribes achieve federal recognition, and whether there will be increased discretionary appropriations.⁷⁴ Because a newly recognized tribe would not have previously participated in the BIA's tribal shares process, the BIA will instead provide baseline funding based on the tribe's population.⁷⁵ In effect, this will reduce the amount of funding available for other federally recognized tribes. Congress could require the BIA, in consultation with affected tribes, to reevaluate tribal shares of federal funds in cases of significant changes in a tribe's circumstances or when a region has a newly federally recognized tribe. The equitable distribution of federal funding should consider each tribe's unique situation and its self-governance programs, as well as the constraints of the Federal government's current fiscal realities.

Finally, considering the role audits play in a tribe's plan to enter into a self-governance contract or compact, Congress could consider pursuing a Cooperative Audit Resolution and Oversight Initiative (CAROI) system, similar to the one first established by the Department of Education in 1999.⁷⁶ CAROI "seeks to improve dialogue, promote innovation in identifying solutions to problems, foster continuous improvement of the audit process, improve the efficiency and effectiveness of all oversight activities, and minimize bureaucratic and other inefficient methods".⁷⁷ In a report by the GAO, it was found that "CAROI projects have had a positive impact in reducing recurring findings identified in statewide audits."⁷⁸ CAROI was expanded to all federal agencies as a way to engage all stakeholders in a cooperative audit process and produce better outcomes.⁷⁹ However, it does not explicitly apply to self-determination contracts or self-governance compacts. CAROI "audits can contain cross-cutting findings that identify internal control weaknesses and compliance issues that potentially impact multiple federal

⁷⁴ IIA briefing with the Self-Governance Communication and Education Tribal Consortium. 02.22.24.

⁷⁵ CRS. Bureau of Indian Affairs: Overview of Budget Issues and Options for Congress.

<https://sgp.fas.org/crs/misc/R47723.pdf#:~:text=Once%20Congress%20enacts%20BIA%20appropriations%2C%20BIA%20distributes,provides%20BIA%20with%20discretionary%20appropriations%20through%20seven.>

⁷⁶ U.S. Department of Education. CAROI's Discovering New Solutions Through Cooperative Audit Resolution.

<https://www2.ed.gov/policy/gen/guid/caroi/guide.html>.

⁷⁷ United States Equal Employment Opportunity Commission, Office of Inspector General Cooperative Audit Resolution and Oversight Initiative, (CAROI) Pilot Program Results in Brief.

<https://oig.eeoc.gov/sites/default/files/audits/CAROI%20Sept%2023%202014.pdf>.

⁷⁸ GAO. SINGLE AUDIT Actions Needed to Ensure That Findings Are Corrected. <https://www.gao.gov/assets/gao-02-705.pdf>.

⁷⁹ 2 CFR § 200.513(c)(3)(iii).

programs across numerous agencies.”⁸⁰ It could “help promote transparency in a manner that permits the tribes to control the content and use tools to manage their programs better.”⁸¹ Congress could consider explicitly applying CAROI or other cooperative audit resolution processes to help build tribal capacity through the audit process. This would ultimately bolster a tribe’s ability to allocate resources more efficiently while monitoring where that funding is directed.

⁸⁰ Chief Financial Officers Council.

https://www.cfo.gov/assets/files/Panel6_CAR_OI_Playbook.pdf#:~:text=The%20CAROI%20process%20is%20built%20on%20the%20premise%20that%20government%20programs%20improve&text=complex%20CAROI%20or%20self%2Dinitiated%20CAROI%20%E2%80%94%20as%20previously%20explained%20%E2%80%94%20is%20the.

⁸¹ Id.