

Questions from Rep. Westerman for Mr. Jay Spaan, Executive Director, Self-Governance Communication & Education Tribal Consortium

1. Please expand on your answer during the hearing about the 638 closeout process and self-governance compacts.

Self-Governance compacts do not have a term. These documents redefine the relationship between the agency and the Tribal Nation under a Self-Governance model. As such, a closeout process is not needed. The funding agreements associated with a Self-Governance compact identify the specific PSFAs a Tribe is assuming and the associated Tribal shares for the program.

a. What nuances should this committee be aware of regarding a 638 closeout process?

Tribal Nations do have the option to include one-time funds, such as for a construction project, in their agreements. These funds often have unique reporting requirements outside of the Single Audit Act reporting requirements that require more extensive reporting and oversight. These projects may be closed out by a BIA inspection to certify completion and through submission of additional reports to the agency.

b. Do annual funding agreements have a closeout process, and if so, are there ways to improve it?

Funding agreements also do not have a term but, at the request of a Tribe, can be renegotiated if the Tribe wants to assume administration for additional PSFAs or to return PSFAs to the federal agencies. Tribal shares would be renegotiated at that time. It is important to note that PSFAs are not considered one-time funds. These are the base funds needed for the long-term implementation of federal programs and services and the funds do not expire under a Self-Governance agreement.

2. Your testimony mentioned the disconnect between the Bureau of Indian Affairs (BIA) and the Office of Self Governance (OSG) and the impact it has on self-governance compacts.

a. Could you describe instances in which this disconnect has affected tribes?

Some Tribal Nations with Self-Governance agreements faced delays receiving programmatic increases in base budgets because of the lack of integration and coordination between OSG and BIA. For instance, the DOI Inspector General reported in 2018 that poor communication between BIA and OSG resulted in some Tribal Nations missing out on funding intended for them for nearly two years. We recently heard that BIA faced challenges disbursing programmatic increases for another program because they were uncertain about what Tribal Nations assumed the program under Self-Governance. In addition, one Tribal Nation told SGCEC that OSG denied a request to compact a BIA program stating that BIA had no available funds. However, when the Tribal Nation met with BIA directly, BIA staff identified funding for the program that could be incorporated into the Self-Governance compact. We

are thankful that the Tribe did not just take the initial response from OSG as the final answer, but we believe this is an example of the lack of coordination between BIA and OSG.

- b. Are there any suggestions for better communication between BIA and the OSG?

It is unclear why communication between BIA and the OSG remains problematic but both offices fall directly under the Assistant Secretary – Indian Affairs.

At the Indian Health Service, the Office of Tribal Self-Governance is more integrated into the overall IHS structure. This approach has allowed more staff knowledge and awareness across the agency about Self-Governance and has also allowed for IHS to use resources in a manner that reflect a changing environment as more and more Tribal Nations assume programs under Self-Governance agreements.

3. Please provide further details regarding the unresponsiveness of BIA and the OSG to information requests from tribes.

We continue to hear examples from Tribal Nations that they do not receive critical information on programmatic funding and tribal shares from BIA in a timely manner. This information is critical for a Tribe to determine if assuming administration under Self-Governance is feasible. This information comes directly from BIA Regions though OSG may serve as a liaison in efforts to obtain the information. As mentioned in the written testimony, one Tribal Nation reported that it requested funding information from BIA related to the programs that serve the Tribal Nation—a request that should be simple and straightforward to answer for the BIA. Rather than sending an electronic file with the information, the BIA saved several Word documents on a CD and physically mailed the CD to the Tribal Nation. This outdated process unnecessarily prolonged the process and added administrative burdens for both BIA and the Tribal government.

In addition, some Tribal Nations with Self-Governance agreements do not receive notifications from BIA on funding opportunities or data requests because of their status as a “Self-Governance Tribe.” As a result, Tribal Nations with Self-Governance agreements could miss out on funding opportunities and often learn of data requests with limited time to compile and submit information.

- a. Do you think the good faith negotiation requirement in the PROGRESS Act will improve this?

We are optimistic that full implementation of the PROGRESS Act and completion of the rulemaking process will provide significant benefits for Tribal Nations. For instance, the final offer requirement should provide great assistance to Tribal Nations in addressing lengthy agency delays related to review of Self-Governance agreements. However, we are hesitant to speculate whether implementation of the PROGRESS Act will help address all challenges associated with timely responses and sharing of information.

4. What do you think are the two to three most important technology and data management systems within DOI that need to be updated first in order to improve the processes associated with 638 contracts and compacts?

The GAO previously reported that the Department of the Interior's financial data management system is not equipped for the unique aspects of Self-Determination Contracts and Self-Governance Compacts. As a result, DOI officials stated that properly tracking and monitoring the timeliness of payments is difficult. The timely distribution of funds is a significant concern for Tribal Nations. When funds are not disbursed in a timely manner, Tribal governments may have to use funds from their general revenue accounts to cover expenses for federal programs or seek other sources, such as loans, to cover program expenses. When a Tribal government must use its funds for the administration of federal programs—even temporarily—it can adversely affect it in various ways, including lost opportunities to use Tribal funds for improving the Tribes' economic conditions, reducing other services provided to Tribal communities, and furloughing Tribal government employees. We strongly encourage DOI to initiate Tribal Consultation to identify the most important technology and data management systems that need to be updated first but believe that DOI's own acknowledgement that its financial data management system is not equipped for Self-Determination and Self-Governance makes it an ideal candidate for upgrades.