

**ADVANCING TRIBAL SELF-
DETERMINATION:
EXAMINING BUREAU OF INDIAN
AFFAIRS' 638 CONTRACTING**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

Wednesday, March 6, 2024

Serial No. 118-100

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.govinfo.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

55-061 PDF

WASHINGTON : 2024

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CONTENTS

	Page
Hearing held on Wednesday, March 6, 2024	1
Statement of Members:	
Hageman, Hon. Harriet M., a Representative in Congress from the State of Wyoming	1
Leger Fernández, Hon. Teresa, a Representative in Congress from the State of New Mexico	3
Statement of Witnesses:	
Newland, Hon. Bryan, Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, DC	5
Prepared statement of	7
Questions submitted for the record	11
Dotson, Hon. Deborah, President, Delaware Nation, Anadarko, Oklahoma	11
Prepared statement of	13
Questions submitted for the record	16
Harvier, Hon. Martin, President, Salt River Pima Maricopa Indian Community, Scottsdale, Arizona	17
Prepared statement of	18
Questions submitted for the record	22
Andrews-Maltais, Hon. Cheryl, Chairwoman, Wampanoag Tribe of Gay Head Aquinnah, Aquinnah, Massachusetts	25
Prepared statement of	27
Questions submitted for the record	32
Spaan, Jay, Executive Director, Self-Governance Communication & Education Tribal Consortium, Tulsa, Oklahoma	35
Prepared statement of	37
Questions submitted for the record	41

**OVERSIGHT HEARING ON ADVANCING
TRIBAL SELF-DETERMINATION: EXAMINING
BUREAU OF INDIAN AFFAIRS' 638
CONTRACTING**

**Wednesday, March 6, 2024
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:25 p.m., in Room 1334, Longworth House Office Building, Hon. Harriet M. Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, Radewagen; and Leger Fernández.

Also present: Representative Schweikert.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order.

I want to apologize that I am late. I was testifying just down the hall on another bill that we have introduced, so thank you for your patience.

Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time. The Subcommittee is meeting today to hear testimony on Advancing Tribal Self-Determination, Examining Bureau of Indian Affairs' 638 Contracting.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member.

I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I also ask unanimous consent that the gentleman from Arizona, Mr. Schweikert, be allowed to sit and participate in today's hearing.

Without objection, so ordered.

I will now recognize myself for an opening statement.

STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. Since the 1970s, the United States has pursued a policy of self-determination for tribes, allowing tribal governments to self-direct services provided to their people.

Tribes know how best to serve their members and it is important that Congress continues to bring tribal voices to the table.

President Nixon laid out the beginning of the Self-Determination Policy, particularly stating, "We must make it clear that Indians can become independent of Federal control without being cut off

from Federal concern and Federal support.” I agree with that sentiment.

In response, Congress enacted the Self-Determination and Education Assistance Act or ISDEAA in 1995. Public Law in 93-638, often referred to by the shorthand of just 638, established the statutory basis for Self-Determination Contracts and later Self-Governance Compacts.

As a result, tribes can seek contracts or compacts for various programs, functions, services, and activities, otherwise run by the Federal Government.

Tribes have used the 638 mechanisms to take over a variety of programs at the BIA, such as those related to public safety, functions of the Indian Health Services, and have even negotiated agreements with other agencies, housed within the Department of the Interior, like the Bureau of Land Management and Bureau of Reclamation.

These Self-Determination Contracts and Self-Governance Compacts reaffirm a tribe’s sovereignty. By running a program, tribes increase their institutional knowledge and find more flexibility in molding a program to fit the needs of their tribal members and their communities.

Again, it is the tribes that know the needs of their members, not the Federal Government.

In Fiscal Year 2022, an estimated 275 tribes participated in Self-Determination Contracts, and 292 tribes participated in Self-Governance Compacts.

Tribes have continued to advocate for the expansion of 638 contracts and compacts to other Federal departments and agencies. This is a popular solution to the persistent concern of out-of-touch bureaucrats running a program.

Self-Determination Contracts and Self-Governance Compacts have seen changes over the years, as Congress has worked to improve these programs. The most recent change occurred in 2020, with the Progress Act being signed into law.

I have heard from tribes across the country that issues with 638 programming remains, such as the response rate to 638 proposals by BIA, the continued inherent Federal functions question, the audit process, and through funding.

I look forward to talking with our witnesses, as each has a unique perspective on the 638 Programs and where improvements can be made, and we can learn from you.

Each tribe is uniquely situated, within their communities, their culture, and their history. Tribal governments already seek to make the best decisions for their members, for their social, cultural, and economic security.

The Subcommittee’s role is to continue to give tribal leaders a platform for advocating for changes that will best support the tribes and their members.

Thank you to our witnesses for being with us today. I look forward to our discussion and I look forward to continuing this conversation around what other programs and services tribes would like to see in a 638 Contract or Compact capability in the near future.

The Chair now recognizes the Ranking Minority Member for her statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Thank you, Madam Chairwoman, and thank you to each of you for coming today to share your stories, because it is only through your testimony and sharing your stories of both the successes you have had and the frustrations that we will know how best to think about legislation.

So, I am very grateful for you being here today. Each of you knows too well how important compacting a 638 is, right? 93-638, is it compacting? Is it contracting? What can we do?

We also know, that since passage in 1975, with President, you know we have to give it to him, he did wonderful things, President Nixon, we got Blue Lake for Taos Pueblo, we got Self-Determination, we got the EPA, but now we need to build on it and get better at what we know works, because tribes have been utilizing the program and you are going to tell us about the successes today.

Three thousand contracts and compacts currently have been authorized by the 638 at the Department of the Interior, and we know, and I have worked on many compacts and contracts with the Indian Health Service, which are also very important.

And we need to recognize that the ISDEAA, together with legislation like the Infrastructure Law and the American Rescue Plan provided that direct funding to tribes that is so essential, because you know better than anybody else how programs should be administered in your communities.

So, while we continue to support tribes assuming control of certain BIA programs, we need to recognize that if the funding isn't there, then you are going to be taking over a program that doesn't have the resources it needs.

And resources are always key. So, we don't want to set up tribes to fail by asking them to take on responsibilities where we have not adequately funded those needs.

As an example, we know there aren't enough BIA Law Enforcement Officers. Recently, while visiting the Mescalero Apache Tribe, they noted how there simply are not enough officers and they are always being pulled to other reservations in the huge, beautiful state of New Mexico.

When I asked about have you thought about compacting or contracting, they said, we can't afford to because we would not have enough officers to basically cover every shift at the level that would be needed.

This is an example of where tribes might have the legal ability to compact, but because resources are not there, there isn't the realistic ability to compact.

So, we have seen increases in the BIA budget, especially over the last two Congresses that might make this a little bit easier, but we also know that we need to assist with the actual contracting itself and with those kinds of costs that come along with the compacting and contracting.

Providing mandatory funding for critical functions like the 105 leases and contract support costs is something we should consider, because when you compact and contract, you need to make sure that money is coming in, right? And when we have things like has happened now where we have such a delay in actually funding our government, that creates insecurity for you when you, I see all these heads nodding, because you know what it is like of now these are your employees saying, we don't know if we can fund you because Congress hasn't done its job.

I am pleased to report that you are here on a really important day here at the House, because we will be voting at about 3:30 on the Appropriations Bill that will fund the agency that you compact or contract with.

And the good news is that we are going to be providing \$4 billion for the Bureau of Indian Affairs, Indian Education Bureau of Trust Fund Management. We are going to fully fund the contract support costs and payments for tribal leases.

This is great news, that we are basically going to have flat funding. I also am very pleased, and we fought really hard to make sure that the Appropriations Bill looks like it does, that we didn't have any severe cuts. I am really pleased and since we are at this table, I want to give a shoutout to Don Young, who, when I was Chair of this Committee, was the Ranking Member, because this appropriations also includes advanced appropriations for the IHS, which is essential.

And we know the IHS has many of its programs compacted and contracted, and with that advance funding our tribal members can get the healthcare they need. So, I want to sort of honor Don Young as I close and yield back.

Thank you, Madam Chair.

Ms. HAGEMAN. Thank you.

Now, I will introduce our witnesses from the panel.

The Honorable Bryan Newland, Assistant Secretary Indian Affairs, U.S. Department of the Interior, Washington, DC, thank you for being with us today.

The Honorable Deborah Dotson, President Delaware Nation in Anadarko, Oklahoma, thank you for joining us as well.

And I will now recognize Mr. Schweikert, from Arizona, for 1 minute to introduce the witness from his district.

Mr. SCHWEIKERT. A whole minute, Madam Chair, Ranking Member.

This is actually sort of fun for me because President Harvier is not only a friend, but when I am at home, I am on the community's land every day of my life. I have lived my entire life alongside the community.

What is unique about President Harvier and his leadership is the Salt River Pima Maricopa is actually very sophisticated.

It is an urban-suburban tribe and in many ways, they have been one of the pioneers of developing contracts. Remember, I believe they were the very first tribe in America that actually had the right to go to contracts with arbitration clauses.

They were the pioneers in many of these things. So, as you are listening to witness testimonies and for those of you who have

much expertise in this, please turn to the President, because they have a unique history of doing it quite successfully.

Madam Chairwoman, my last self-serving comment is what you are doing is very important because those of us on Ways and Means are trying to find a way to do a tax hearing in Indian Country to start to see could we actually start to have a much more unified vision of tax equity, of contracting equity of these things so we could actually sort of make it all work together much more seamlessly.

With that, thank you for being here. And now I run to the next meeting. With that, I yield back, Madam Chair.

Ms. HAGEMAN. Thank you, Congressman, and thank you for joining us today.

Welcome to the Committee today. It is wonderful to see you.

Moving on to the Honorable Cheryl Andrews-Maltais, Chairwoman Wampanoag Tribe of Gay Head Aquinnah, Aquinnah, Massachusetts. Thank you for being here, Madam.

And Mr. Jay Spaan, Executive Director Self-Governance Communication & Education Tribal Consortium from Tulsa, Oklahoma. Welcome to you as well.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record.

To begin your testimony, please press the top button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. And at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement.

I will also allow all witnesses on the panel to testify before Member questioning begins.

The Chair now recognizes the Honorable Bryan Newland for 5 minutes.

STATEMENT OF THE HON. BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. NEWLAND. Thank you, Madam Chair. Aanii Boozhoo. Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee.

My name is Bryan Newland. I have the privilege of serving as the Assistant Secretary for Indian Affairs at the Department of the Interior and I want to thank the Subcommittee for the opportunity today to discuss tribal self-determination and self-governance under the Indian Self-Determination and Education Assistance Act.

That Act, often referred to as Public Law 638, is one of the most significant pieces of Indian legislation enacted into law in the last half century. And, as we have seen, over the past half century, this policy has been an unqualified success.

Through Public Law 638, tribes have increased their tribal government capacity, strengthened tribal sovereignty, and created economic opportunities in their communities.

At the Department, we have successfully used 638 funding to fulfill and advance our treaty and trust obligations regarding self-determination and self-governance.

For example, the BIA has used funding provided by the Bipartisan Infrastructure Law and the Inflation Reduction Act to help relocate or protect tribes threatened by climate change.

The Department expects to use 638 funding agreements in future IRA funding opportunities for climate resilience, fish hatcheries, and the Tribal Electrification Program in which we recently announced funding awards this week.

I want to highlight two areas in particular where we have seen growth, success, and also challenges in advancing the policies of self-determination.

Public Law 638 requires the Department to provide additional payments to tribes for the cost of infrastructure used to carry out government programs under a Self-Determination Contract or Compact.

These payments are called Self-Determination Leases or 105(l) Leases, named for the section of the law governing this process. We recognize the importance of 105(l) Leases as an important tool to develop infrastructure in Indian Country.

The Self-Determination Leasing Program allows tribes to build or improve critical infrastructure more quickly than would be possible under the Department's direct services.

Our Self-Determination Leasing Program has grown significantly, from two tribes with three leases, back in 2019, now to 93 tribes proposing nearly 500 leases and lease renewals just last year.

This Fiscal Year, the Department expects to have more than 90 tribes with over 600 leases and lease renewals worth nearly \$100 million under this program.

This growth presents challenges, as the Department is processing all of these lease requests with almost the same staffing levels that existed in 2019, when we only had three leases.

The second area I want to highlight is Public Law 477 Workforce Development Program. While this law is distinct from Public Law 638, it is related and advances long-standing policies of tribal self-determination.

This law allows tribes and tribal organizations to consolidate Federal funding from 12 different agencies for employment, training, or related services. It reduces administrative burdens and streamlines reporting requirements for tribes.

A tribe or tribal organization that integrates funding from other agencies into a 477 Plan receives those funds from DOI through an existing self-determination contract or self-governance compact.

From a practical standpoint, this allows a tribe to include funding from outside the Department in its contract or compact. When this program works, as Congress designed, it allows tribes and tribal organizations to reduce joblessness in tribal communities, promote economic development, and strengthen self-determination in the delivery of services.

One of the challenging constraints in this program is working across agencies to determine whether a tribe's grant is connected to Workforce Development and eligible for the program under Public Law 477.

And Madam Chair, finally, before I close, I want to thank the Committee for its work to enact the Progress Act and let you know

that the Department is close to completing our negotiated rule-making under that law.

We expect tribal consultations to occur in the late spring and early summer, along with completion of a final rule by December 21 of this year.

We acknowledge, at the Department, that there is room for improvement in our implementation of Public Law 638 and we will continue to work with the Committee, the Subcommittee, tribes, and Congress to meet the underlying goals of tribal self-determination.

Madam Chair, thank you for the opportunity to testify today and I look forward to answering any questions members of the Subcommittee have.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department or DOI). Thank you for the opportunity to discuss Tribal self-determination and self-governance under the Indian Self-Determination and Education Assistance Act.

Indian Self-Determination Education and Assistance Act (ISDEAA) Overview

The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes Indian Tribes and Tribal Organizations to contract for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. Enacted in 1975, the ISDEAA is one of the most significant pieces of Indian legislation enacted into law and the foundation of Federal Indian policy for the last 50 years of. Under the Act, federally recognized Tribes may choose to have the Bureau of Indian Affairs (BIA) provide direct services or operate BIA programs under an ISDEAA agreement. The ISDEAA established a new methodology for Indian Tribes and the Federal Government to work together to accomplish the intent of the President and the Congress in establishing and funding the various Indian programs administered through DOI and, specifically, the BIA.

The ISDEAA allows federally recognized Indian Tribes, Tribal organizations, and Tribal consortia to assume and operate programs administered by the Department. This includes bureaus and offices other than the BIA, such as the National Park Service and the Fish and Wildlife Service, subject to negotiations, when the programs are available to Indian Tribes or Indians because of their status as Indians. The ISDEAA also provides the Secretary of the Interior and the Secretary of Health and Human Services discretion to include other programs they administer by the Secretary that are of special geographic, historical, or cultural significance to the participating self-governance Tribe requesting a funding agreement.

Under Title I of the ISDEAA, a Tribe (or Tribal organization) may enter a self-determination contract with the appropriate Secretary to plan, conduct, and administer programs or services that Interior or the Department of Health and Human Services (HHS) otherwise provide to Indian Tribes and their members. The term of such a contract may be up to three years, unless the Tribe and the Secretary agree to a longer term, subject to renegotiation for changed circumstances.

Generally, under a Title I contract, DOI must approve any substantial changes to a contract. Under Title IV of the ISDEAA, a Tribe may enter a self-governance compact, comprised of a funding agreement and any addenda, for the Tribe to assume funding of, and control over, some federal programs, services, functions, or activities (PSFAs). The term of such a compact may be annual or multiyear. Generally, under a Title IV compact, a Tribe may redesign or consolidate PSFAs and reallocate funding without DOI's approval. There are currently 526 Tribes taking advantage of contracts under Title I and 295 Tribes taking advantage of self-governance compacts under Title IV. Across the Department, there are nearly 3,200 contracts and/or compacts as authorized by ISDEAA.

The ISDEAA was intended to strengthen the ability of Tribes to determine how government services are delivered to people in their communities. The enactment of this law also transformed how the United States approached its trust obligations toward Tribes, American Indians, and Alaska Natives. Namely, rather than the Federal Government making decisions about what is in the best interest of Indian people, the ISDEAA put that power squarely in the hands of Indian people. As we have seen over the past half-century, this policy has been an unqualified success.

Notable Successes Using ISDEAA

In the last 18 months, the BIA has taken multiple actions to fulfill its treaty and trust obligations regarding self-determination and self-governance. For example, the BIA has used funding provided by the Bipartisan Infrastructure Law (BIL) and Inflation Reduction Act (IRA) to enable the relocation of critical infrastructure, and in some cases entire villages, threatened by rising sea levels and other impacts of climate change. Tribal communities, which often reside in those areas most at risk, are closely working with the BIA to ensure the safety of their people and to preserve their way of life.

American Rescue Plan Act of 2021

The BIA received approximately \$892 million through the American Rescue Plan Act of 2021. Those funds were directed to delivery of potable water, housing improvement, and Tribal Government, Social Services, Public Safety and Justice, Indian Child Welfare, and other related expenses. Of those funds, the BIA distributed \$887 million to Tribes through mechanisms under the ISDEAA.

Bipartisan Infrastructure Law (BIL) (Infrastructure Investment and Jobs Act)

The BIA received approximately \$466 million for infrastructure projects and climate resilience initiatives through the BIL. That Act also made Tribal communities eligible for additional DOI programs to support building resilience to wildland fires and droughts, restoring ecosystems, enabling fish passage, and addressing legacy pollution from abandoned mine lands and orphan oil and gas wells. From those funding opportunities, the BIA has distributed \$46.9 million to Tribes through mechanisms under ISDEAA.

Inflation Reduction Act (IRA)

The Department received approximately \$6.6 billion through P.L. 117-169, commonly known as the Inflation Reduction Act (IRA) to invest in a clean energy economy, key habitat restoration and land resilience projects, and environmental justice for historically disadvantaged communities. The total funding includes a \$385 million investment for the BIA to pursue climate resilience and adaptation work and fish hatchery needs, as well as a new Tribal Electrification program. From initial IRA funding opportunities, since FY 2023, the BIA has distributed \$8.2 million to Tribes through mechanisms under ISDEAA. The Department anticipates significant use of the ISDEAA funding agreements in additional funding opportunities for climate resilience, fish hatcheries, and the Tribal Electrification program.

Section 105(l) of ISDEAA

Section 105(l) of the ISDEAA requires the Secretary upon the request of a Tribe or Tribal organization, to enter into a lease with the Tribe or Tribal organization for the facility used by the Tribe to carry out a self-determination contract, self-governance funding agreement, or grant under the Tribally Controlled Schools Act (25 U.S.C. § 5324(l)(1)). The Department recognizes the importance of 105(l) leases as a mechanism for infrastructure development in Indian Country, as the leases ensure that Tribes and Tribal organizations have the proper facilities in place to carry out Federal functions under a self-determination contract or self-governance compact with the Department for functions such as education, general administration, public safety, and others. The section 105(l) program allows improvement of infrastructure and facilities in Indian Country more quickly than would be possible under DOI's direct provision of services.

The section 105(l) program has grown significantly from two Tribes proposing and executing three leases in 2019 to 93 Tribes proposing 259 initial leases and proposing 238 leases for renewal in 2023. In FY 2024, the Department expects to have more than 90 Tribes with over 600 lease renewals and new requests at a value of roughly \$100 million. The Department notes that we have a significant backlog of 1,351 leases pending.

In 2024 alone, the Department has already provided technical assistance to 37 Tribes and received proposals for an additional 76 initial leases and 609 proposed

renewals. It is challenging for staff to keep pace with the significant growth in this hugely successful program.

Self-Governance Under the ISDEAA and the PROGRESS for Indian Tribes Act

At present, there are 295 Tribes participating in self-governance through 141 funding agreements with the Office of Self-Governance—Indian Affairs (OSG). Self-governance Tribes file audits pursuant to the Single Audit Act but, unlike self-determination Tribes, self-governance Tribes are not required to file the Financial and Accomplishments (SF-425 form) quarterly reports, which often positively impacts a Tribe’s decision to join self-governance. Self-governance Tribes may opt to enter into multiyear funding agreements that span several years.

PROGRESS for Indian Tribes Act and updates to process

The PROGRESS for Indian Tribes Act (Pub. L. 116-180) amended the ISDEAA to conform it with the self-governance statute applicable to HHS. The PROGRESS Act creates administrative efficiencies by enabling Tribes to carry out compacts with both DOI and HHS under a similar statutory framework. The PROGRESS Act prohibits the Secretary from reducing the amount of funding under Title IV of the ISDEAA from year to year except as required by, among other things, “a congressional directive in legislation or an accompanying report.” This language is consistent with the language applicable to HHS. The PROGRESS Act applies a rule of interpretation in favor of Tribes in the administration of the ISDEAA. It also provides Tribes the option to determine if the application of any “law or regulation pertaining to Federal procurement (including Executive orders)” will apply to construction programs carried out under Title IV. This follows the process applicable to HHS by providing a Tribe an option to file a final offer after negotiations between the agency and the Tribe fail to reach agreement.

As the Committee is aware, the PROGRESS Act requires negotiated rulemaking process. The Department is very close to completing the PROGRESS Act Federal and Tribal Committee drafting of the proposed rule. The PROGRESS Act requires consultation with Tribes once the proposed rule is published in the Federal Register and prior to the final rule. The Department expects consultation sessions will take place during the late spring and summer months. We anticipate completing a final rule in the negotiated rulemaking process by December 21, 2024.

Areas for Improvement within the ISDEAA

Bureau of Indian Affairs Tribal Grant Schools

The ISDEAA granted authority to federally recognized Tribes to contract with the Bureau of Indian Education (BIE) to operate Bureau-funded schools and to determine education programs suitable for their children. The Education Amendments Act of 1978 (P.L. 95-561) and further technical amendments (P.L. 98-511, P.L. 99-99, and P.L. 100-297) provide funds directly to Tribally-operated schools, empower Indian school boards, permit local hiring of teachers and staff, and establish a direct line of authority between the BIE Director and the Office of the Assistant Secretary for Indian Affairs. School programs operated under the Education Amendments Act of 1978, as amended, which we refer to as “297” for shorthand, are best thought of as federal grantees, in contrast to the contract or compact arrangement with ISDEAA Tribes under Title I.

In FY 2023, BIE School Operations established an Office of Indian Self-Determination to promote tribal participation in, and access to, educational programs and services. The BIE Self-Determination Office is working to increase BIE’s Title I contracting capacity by providing responsive and consistent high-quality service to Tribes receiving both Title I contract and 297 grant funding. Under 297, Tribes or Tribal school boards are authorized to manage day-to-day operations of schools through grant funding specifically for educational programs. This contrasts with the ISDEAA, under which a Tribe generally assumes operation of federal functions for a wide range of programs, outside of educational programs. Additionally, the BIE School Operations Office of Self-Determination will expand outreach, advisory services, technical assistance and training to Tribes for alignment of 297 resourcing options while seamlessly combining Title I contracting options, with the goal of assisting tribes to achieve educational goals and outcomes that are both culturally informed and effectively matched to the academic and socio-cultural needs of their students.

The BIA is also working with the BIE to further increase its contract oversight and grant awarding capacity by establishing and developing a self-determination program. The BIE hired a program manager to further lead and develop that

program and is now working with the BIA to plan and implement a responsible transition of responsibility for its sites.

Closeout Processes for Title I Contracts

On June 12, 2023, DOI's Office of the Inspector General (OIG) issued Report 2020-CDG-060, *"The Bureau of Indian Affairs Can Improve the Closeout Process for Public Law 93-638 Agreements."* In that report, the OIG offered three recommendations that the BIA agreed to address. The OIG stated that the BIA is not actively managing the closeout process for Pub. L. 93-638 agreements and cited a small number of contract closeout actions they found within their contract test sample.

The BIA has placed its priority on timely issuance of funds to Tribal governments. This prioritization has meant fewer resources are available to complete the administrative actions to close out completed contracts. The BIA is addressing DOI OIG's recommendations by directing BIA Regional Offices to immediately coordinate with Tribes to identify unspent funds and complete any required documents, reports, or tasks preventing closure of the agreements in accordance with the applicable laws, regulations, guidance, or other contract terms and conditions. The BIA will also engage with DOI's Office of Information Management Technology subcontractors to develop a cloud-based replacement for the current PL-638 application for ISDEAA agreements, which will include a module to track and close ISDEAA agreements. The BIA aims to launch this system by the end of FY 2024. Finally, the BIA is researching a process that would enable administrative contract closures to improve efficiencies for fully complete contracts.

Separate from closeout of Title I agreements, the Department notes that any decision to begin to apply closeout procedures to self-governance Tribes with agreements under Title IV of ISDEAA would first require a consultation with those Tribes. Self-governance Tribes and OSG have not yet closed out funding agreements during the lifetime of the program. With the passage of the PROGRESS Act, a self-governance Tribe is allowed to maintain its same funding agreement for many years. This new provision would mean that the closeout of a funding agreement could be difficult to achieve.

Public Law 102-477 and the ISDEAA

Public Law 102-477, as amended, allows Tribes and Tribal organizations to consolidate certain federal funding streams from 12 different agencies that a Tribe or Tribal organization has implemented for employment, training, or related services. Public Law 102-477 greatly reduced administrative burden by streamlining program, statistical, and financial reporting requirements. The law provides that Tribes and Tribal organizations operating a plan under Public Law 102-477 (477 Plan) complete a single narrative, statistical, and financial report based on their approved 477 Plan rather than completing multiple reports for individual programs. Most critically, a Tribe or Tribal organization that integrates eligible funding from other agencies into a 477 Plan commits to receive those funds from DOI (after the other agency transfers funds) through an existing ISDEAA self-determination contract (Title I) or self-governance compact (Title IV).

Practically, this creates a mechanism for a Tribe or Tribal organization that has an approved 477 Plan to include funding from outside of the Department into that Tribe's ISDEAA contract or compact. When this process works as Congress designed, it allows Tribes and Tribal organizations to integrate the employment, training, and related services they provide from diverse Federal sources to improve the effectiveness of those services, reduce joblessness in Indian communities, and serve Tribally determined goals consistent with the policy of self-determination, while reducing administrative, reporting, and accounting costs.

Conclusion

The policy of self-determination and self-governance is one of, if not the most, successful tool the Federal Government has to fulfill its treaty and trust responsibilities to Tribes. ISDEAA is widely supported by Tribes. It allows the Federal Government to better allocate funding resources to Tribes and Tribal organizations that are often better able to leverage resources to meet their unique needs. Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, the Department appreciates the opportunity to discuss Tribal self-determination and self-governance, and I thank you for the opportunity to provide the Department's views.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. BRYAN NEWLAND, ASSISTANT
SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

**The Honorable Bryan Newland did not submit responses to the Committee
by the appropriate deadline for inclusion in the printed record.**

Questions Submitted by Representative Westerman

Question 1. Several witness statements raised concerns about how the Bureau of Indian Affairs (BIA) and the Office of Self Governance (OSG) has communicated with the entities and how this resulted in delays and challenges for tribes to implement 638 contracts and/or compacts.

1a) What changes need to be made by BIA and OSG to improve communication between these entities?

1b) Are there statutory barriers to information sharing that Congress should address?

Question 2. President Harvier's written statement mentioned BIA inefficiencies during the COVID-19 pandemic that have impacted their ability to provide services covered by their self-governance compact.

2a) How is BIA improving these types of inefficiencies and what is the process for making sure tribal staff have the training and access needed to run programs?

Question 3. The Committee has heard that there is a clear differentiation between what one BIA region classifies as an inherently federal function to another BIA region.

3a) What is the process for communication between BIA regions on the issue of inherently federal functions?

3b) Where can improvements be made to eliminate confusion?

Question 4. Tribal governments and people have sought to proactively use fire to protect their communities from wildfire risks and for other purposes, but the BIA position on tribal fire use and tribal management of their own fire and fuels programs, including on trust lands, is unclear, particularly when tribal governments seek to engage in fire use, such as prescribed fire, on their lands without explicit approval from BIA. The Committee has heard that BIA is claiming that burn plan approval for prescribed fire is an inherent federal function, and thus cannot be part of a compact agreement with Tribes, and therefore Tribes are not able to include burn plans in their self-governance compacts or access recurring program funding for carrying out federal programs to implement prescribed burning.

4a) Does BIA have a written policy regarding what constitutes inherent federal function with respect to approving prescribed fire burn plans on trust lands?

4b) Is there any other reason beyond claims of inherent federal function that a tribe would not be able to compact related fire and fuels programs?

4c) In developing any policy, did BIA engage in tribal consultation or otherwise seek tribal input?

4d) To the extent that the BIA asserts that it must approve such tribal fire use, is BIA's position based on statute, regulation, or some other authority?

Ms. HAGEMAN. I thank the witness for their testimony and the Chair now recognizes the Honorable Deborah Dotson for 5 minutes.

**STATEMENT OF THE HON. DEBORAH DOTSON, PRESIDENT,
DELAWARE NATION, ANADARKO, OKLAHOMA**

Ms. DOTSON. Kulamalsi hach. Nteluwensi Deborah Dotson. Good afternoon, Madam Chair, Ranking Member, and members of the Committee. My name is Deborah Dotson. I have had the honor of serving as President of Delaware Nation for 7 years.

Delaware Nation's existence on this continent predates the concept of written history. We memorialized our relationship with the United States by signing the very first Indian treaty in 1778, the Treaty of Fort Pitt, which provided us the right to a Congressional Delegate.

I am pleased to be with you today to discuss Delaware Nation's experience operating programs under our self-governance compact.

We have seen great success with self-governance, but there are areas where improvement is needed to fully realize the potential power of the Act. We could suggest improvements in program efficiency and flexibility, but we will focus today on five specific issues that we have noted over the years.

The first issue involves the transfer of funds. The Act requires Self-Governance staff to transfer funds to tribes within 10 days and yet, it is often, many months before funds are received.

Chronic delay in the distribution of funding for an Interior program undermines the program's objectives and can leave tribes in dire straits. Delaware Nation is fortunate to have other resources available to float program operations until Federal dollars arrive, but as you know, too many other tribes cannot do so and Interior's delay often results in a horrible choice between keeping the lights on or serving their people.

The second issue involves contract support costs. Currently, the Self-Governance Office provides contract support cost funding at a rate of 80 percent of the prior year and withholds the remaining 20 percent until year-end.

There is no legal authority for that withholding. Again, this puts tribes in a position to rely on other resources, if they even exist, to cover Federal costs until Interior gets around to paying contract support costs.

Congress should consider amending the Act to provide monetary penalties for non-compliance. Monetary penalties should be automatic and based on any amount that is transferred later than the 10-day statutory window. It is wrong to force tribes to foot the bill of government inefficiency.

The third issue involves model agreements. It helps that the Act provides a model contract for tribes to use in formulating their 638 proposals, however, tribes encounter instances where BIA staff require more than the provisions of the model agreement. We assume good intentions by the BIA, but such add-ons only confuse participating tribes who work hard to follow the Act.

To address this, the Act should either include all required provisions in the model agreement, or clarify that the provisions contained in the model are all that may be required. In short, tribes would benefit from the certainty that such a change in the law would bring.

The fourth issue involves staffing levels. Each of the areas we have identified could be helped by the recruitment and retention of competent, trained staff within the Office of Self-Determination and Self-Governance.

Staff turnover prevents BIA and tribes from forming collaborative relationships and makes it challenging for tribes to accomplish their priorities. When tribes ask the Office of Self-

Governance, we are often told that the office is short staffed and is moving as fast as they can.

None of this is a criticism of good and dedicated BIA staff, but a clear-eyed and honest focus on this chronic staffing issue is worthy of our collective attention.

The final issue involves reporting years. The Act authorizes tribes to initiate self-determination contracts and self-governance compacts when the tribes decide to do so.

Nothing requires a tribe to operate its contracts or compacts on the Federal Fiscal Year, yet BIA requires reporting on fixed dates that do not always sync to the tribe's program year.

An example would be a report, which captures activities for the Federal Fiscal Year of October to September being used where a tribe's program year is April to March.

Standard reporting would capture activities occurring across multiple program years. An amendment which syncs the reporting periods to the tribe's period of performance would improve accuracy in tribal reporting.

I thank you for your time and the opportunity to testify on these important subjects and look forward to any questions you may have. Wanishi.

[The prepared statement of Ms. Dotson follows:]

PREPARED STATEMENT OF DELAWARE NATION PRESIDENT, DEBORAH DOTSON

Madam Chair, Ranking Member and members of the Committee, my name is Deborah Dotson and I am the President of Delaware Nation. I have served as President of Delaware Nation for six years. My Peoples' existence on this continent predates the concept of written history. My Nation memorialized our relationship with the United States by signing the very first Indian treaty with the United States in 1778, the Treaty of Fort Pitt,¹ while the country was still in its infancy and while this legislative body existed as the Continental Congress. Our cooperation with the Continental Congress and our 1778 treaty providing material support and allowing troops to pass through our territory played a critical role in America's success in the Revolutionary War. Today, Delaware Nation has its governmental seat in Anadarko, Oklahoma and shares its jurisdictional area with two other tribes.

I am pleased to be with you today to discuss Delaware Nation's experience in working with the Bureau of Indian Affairs (BIA) through the Indian Self-Determination and Education Assistance Act² (ISDEAA or Act). Delaware Nation operates numerous programs under our Title IV self-governance compact with the BIA. We entered the self-governance program many years ago and transferred all the programs we previously operated under self-determination contracts into our self-governance funding agreement.

While we have seen great success with the self-governance program, we have also encountered areas where improvement is needed to fully realize the power of the Act as originally envisioned by Congress. We could suggest many statutory changes that would benefit Indian Tribes across the United States by improving program efficiency and flexibility, but we will focus on specific issues Delaware Nation has noted over the years.

Some of the areas where improvement is needed include, in no particular order, timely distribution of program funding, upfront distribution of one hundred percent of contract support cost funding, good faith negotiation between the BIA and Indian Tribes resulting in timely review and execution of contracts, compacts, funding agreements, and leases under Section 105(l), adequate staffing within the office of self-determination and the office of self-governance, and creating flexibility to synchronize performance reporting forms with the contracting or compacting Tribe's program year.

¹ 7 Stat., 13.

² 25 U.S.C. §§5301 *et seq.*

Timely Distribution of Program Funding

ISDEAA requires the Office of Self-Governance to transfer funds to Tribes no later than ten days after the apportionment of such funds by the Office of Management and Budget (OMB) to the Department of the Interior (Interior or Secretary), the Department within which the BIA resides. Notwithstanding the requirement of the timely transfer of funds to Tribes, in practice it is rarely accomplished on anything approaching a timely basis.

Indeed, it is often months and sometimes even into subsequent fiscal years before funds are fully distributed. In Interior's defense, for non-Interior funds that are incorporated into the funding agreements, there are often delays in the transfer of funds from the other departments to Interior such that it cannot distribute those funds in a timely manner. However, in the year 2024, with all the conveniences of advanced technology and accounting capacity, that should not remain a perennial problem. It could surely be overcome by concerted action across the federal government.

That all being said, chronic delay in the distribution of funding for Interior programs undermines the program's objectives, is unacceptable, and can leave Tribes in particularly dire circumstances. Delaware Nation is fortunate to have other Tribal resources available to float program operations until federal dollars arrive. Many other Tribes across the country are not so situated and Interior's delay in transferring funds means a Hobson's choice between keeping the lights on or serving their people.

Timely Payment of Contract Support Funds

Under the Act, Tribes are entitled to recover certain contract support costs for costs incurred in administering the contracts or compacts but which the Secretary otherwise would not incur in administration of the programs or which the Secretary does incur but pays from other sources. Again, ISDEAA requires that funds be transferred to Tribes within ten days of apportionment of funds from OMB to Interior. Nothing in ISDEAA allows Interior to withhold program or contract support cost funding and it is required to address those funding shortfalls whenever the shortfall becomes apparent. Interior is prohibited from funding less than the full contract support cost need.

Currently, the Office of Self-Governance provides contract support cost funding at a rate of 80% of the prior year and withholds the remaining 20% until year-end. There is no authority within the Act or other federal law for such withholding of funds and it again puts Tribes in a position to rely on non-federal resources—if they even exist—to cover federal costs until Interior gets around to providing contract support cost funding.

The Act requires full upfront payment of contract support costs due to Tribes, but the reality is much different. The Act should be amended to provide monetary penalties for non-compliance. Tribes should not bear the administrative and financial burden of pursuing relief under statutes such as the Prompt Payment Act where Interior clearly runs afoul of statutory mandates. Those monetary penalties should be automatic and include any amount that is transferred outside of the ten-day statutory window. Tribes must be made whole for being forced to foot the bill of governmental inefficiency.

Good Faith Negotiation and Timely Review and Execution of Contracts, Compacts, Funding Agreements, and Section 105(l) Leases

The Act requires that Interior negotiate in good faith all contracts, compacts, funding agreements, and section 105(l) leases. In fact, ISDEAA provides a model contract that purports to contain all provisions that are required for contracting. However, Tribes often encounter instances where BIA staff require more than the provisions of the model agreement. We assume that this is because the BIA has identified some legitimate purpose for doing so, but that does not mean that their actions are lawful, and administrative add-ons only confuse participating Tribes who work hard to comply with the letter of the Act. To address this, the Act should either be amended to include all required provisions in the model agreement or a statement that the provisions contained in the model agreement are all that are required. This is one of those places where Tribes would benefit from the certainty that such a change to the law would ensure.

In addition, courts have held that Section 105(l) leases are incorporated into funding agreements under both self-determination and self-governance. Delaware Nation has been in Interior's 105(l) lease queue since December 2022. We sit here in March 2024 and Interior recently informed the Nation that it would likely be August 2024 before the Nation's request is even reviewed. This is one more glaring

example of Delaware Nation having to endure delay, forcing it to continue to foot the bill for federal expenses through no fault of its own, all the while hoping that it will be made whole one day.

Adequate Staffing for Self-Determination and Self-Governance Offices

Each of the areas we have already identified can be attributed in part to the lack of trained and experienced staff within the Offices of Self-Determination and Self-Governance. The Office of Self-Determination is notorious for its revolving door for self-determination officers within the regional and agency offices. This continuous changing of staff prevents Interior and Tribes from forming meaningful relationships and makes it nearly impossible for Tribes to make meaningful progress on initiatives that require focus and commitment from the regional and agency offices. The Office of Self-Governance has never been adequately staffed. When Tribes reach out to the Office of Self-Governance to inquire about the status of funding or agreements, we are often told that the Office is short staffed and is moving as fast as it can. Interior also points to staffing shortages as the primary reason for being nearly three years behind in reviewing and negotiating its Section 105(l) leases. ISDEAA and its programs are too critical to Tribal governments and the people we serve to allow our federal partners to be chronically understaffed.

Please understand, this is not a criticism of the good and dedicated staff that work hard every day within the BIA, but a clear-eyed and honest focus on this chronic staffing issue worthy of our collective attention.

Syncing Fiscal and Programmatic Reporting with the Tribe's Program Year

ISDEAA authorizes Tribes to initiate self-determination contracts and self-governance compacts when the Tribe determines it wishes to do so. Nothing in the Act requires a Tribe to operate its contracts or compacts on the federal fiscal year. However, fiscal and programmatic reporting forms require reporting based on fixed dates that do not always sync to the Tribe's program year. An example would be a reporting form which captures activities for the federal fiscal year (October 1–September 30) being used with a Tribe whose program year is April 1 to March 31.

Using the standard form, the activities reported would be for six (6) months of one funding year and six (6) months of the subsequent funding year. Delaware Nation operates its government on an October–September fiscal year but operates its self-governance compacted programs on a January 1–December 31 program year. As such, reporting forms do not always capture the correct data. A statutory amendment which syncs the reporting periods to the Tribe's period of performance rather than relying on standardized OMB forms would improve clarity and accuracy in tribal reporting under the Act.

Appropriate and Meaningful Consultation

Finally, we want to be clear that we thank you for the opportunity to testify today and welcome the fact that you are holding this hearing to gain an understanding of potential improvements in the Act. Even though you have heard many thoughts regarding potential improvements in the Act, we think that you would probably agree that appropriate government-to-government consultation is necessary before any specific legislation is introduced that would amend the Act. That is not intended in any way to diminish this vitally important hearing but to acknowledge the expectations of Indian Country. That consultation is especially important insofar as Title I, on self-determination contracts, applies to federal departments beyond Interior. Which is why the Nation respectfully submits that it is imperative that Tribes be consulted on any proposed changes in the Act and that the impacts of such changes may have on non-Interior programs be considered carefully. All Tribes participating in either self-determination or self-governance programs with any federal department must have a seat at the table.

I thank you for your time and the opportunity to testify on this important subject. Delaware Nation is happy to work with this Committee, Congress, and the Administration to consider solutions to the issues raised today and those that may arise during Tribal consultation.

Wanishi.

QUESTIONS SUBMITTED FOR THE RECORD TO DELAWARE NATION PRESIDENT,
DEBORAH DOTSON

Questions Submitted by Representative Westerman

Question 1. Your written statement expressed concerns with the lack of trained and experienced staff within the Office of Self-Governance (OSG).

1a) Could you please provide examples of when the lack of trained OSG staff hindered your tribe from providing a service?

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

1b) And has there been follow up communication from OSG after the issue has been addressed?

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

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

2a) Could you further elaborate on how this delay directly impacts tribes?

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

2b) Could you further elaborate on how any funding delays have specifically impacted your tribe's self-governance programs?

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

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

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

3a) And what regulatory changes, if any, would you suggest to the Department of the Interior to improve the 638 compact negotiation process?

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

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

Question 4. Has the issue of inherent federal functions impacted what programs and/or functions your tribe was able to include in your 638 compact?

4a) If yes, what was the function and or program that was deemed an inherently federal function?

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

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

4b) And are you aware of any other tribes that were able to compact that function and/or program?

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

Ms. HAGEMAN. I thank the witness for her testimony.

The Chair now recognizes the Honorable Martin Harvier for 5 minutes.

**STATEMENT OF THE HON. MARTIN HARVIER, PRESIDENT,
SALT RIVER PIMA MARICOPA INDIAN COMMUNITY,
SCOTTSDALE, ARIZONA**

Mr. HARVIER. [Speaking Maricopa Language] Kamduum. Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee.

I am honored to offer testimony on tribal self-governance, compacting, and contracting. My name is Martin Harvier. I am the President of the Salt River Pima Maricopa Indian Community.

We were established by Executive Order in 1879. Our community is home to the Auk Akimel O'odham, the Pima, and the Xalychidom Piipaash Maricopa Tribes located in the Phoenix Metropolitan area, the community spans 52,600 acres and has approximately 11,000 enrolled members that require significant government services to meet community needs.

Our engagement with self-governance compacts began in 1995. Our initial compact included a handful of programs, such as road maintenance, social services, and law enforcement.

Over time, we assumed control of additional programs including land, titles, and records, which is commonly known as LTRO. We also took in job training, transportation planning, and detention and corrections.

We are particularly proud of our success with LTRO. Through self-governance, we have streamlined business processes and improved transaction times for leases and probates.

Before self-governance, leases took 6 months for the BIA to record. Now, after we have taken over this responsibility, leases

are recorded in 48 hours. This has allowed for tremendous economic growth in our community.

However, challenges persist. As evidenced by our tribal trust evaluations, we still have work to do, including addressing many deficiencies that were amplified during the COVID pandemic.

The pandemic underscored the need for improved access to Department of the Interior systems and timely staff training. Delays in DOI security clearances, internet connectivity issues, and dependence on external agencies for vital records hindered efficiency.

As a result, we recommended several measures to address these challenges, such as increased staffing at the Office of Hearings and Appeals, develop backlog reduction plans, and improve access to the DOI technology that is necessary to fulfill self-governance agreements.

I want to focus on the last point for a moment. In our community's last Trust Evaluation, we found a need to improve our LTRO responsibilities. The Trust Evaluation identified that we had limited staff that could access the Federal TAAMS System.

We shared this frustration. We hired the required staff and had them on payroll, but the BIA had not completed its background checks. This took over a year. As a result, our community received a negative evaluation finding because of a process we had no control over. The finding is unfortunate, but our employees must have this access.

Execution of our self-governance compacts depends on our community supplementing Federal funds. Last year alone, the community spent more than \$37 million in tribal funds to accomplish compacted responsibilities.

That is more than double the \$14 million we received from the BIA for these functions. It is clear, the base self-governance and direct service funding levels do not meet the actual needs of Indian Country.

Furthermore, we support the advance appropriations for the BIA. Like the VA and IHS, advance appropriation would mitigate uncertainties during a government shutdown.

Finally, we support the ongoing rulemaking for the Progress Act, which harmonizes self-governance compact administration and protects tribes from unauthorized terms.

In conclusion, we remain committed to enhancing service delivery through self-governance contracting and compacting. We appreciate the Subcommittee's attention to these critical issues, and stand ready to work with you to advance tribal self-determination.

Chair Hageman, Subcommittee Members, thank you for this opportunity to testify.

[The prepared statement of Mr. Harvier follows:]

PREPARED STATEMENT OF MARTIN HARVIER, PRESIDENT, SALT RIVER PIMA MARICOPA INDIAN COMMUNITY

Chair Hageman, Ranking Member Leger Fernandez, and members of the Subcommittee: thank you for the opportunity to provide testimony on the important topic of tribal self-governance contracting and compacting. My name is Martin Harvier, President of the Salt River Pima Maricopa Indian Community (SRPMIC).

On behalf of our Community I am happy to share our history and experience with Self-Governance Compacts through the Department of Interior (DOI), Bureau of Indian Affairs (BIA) and to provide a few observations that may be useful for the Committee in its oversight capacity.

By way of background, the Salt River Pima Maricopa Indian Community was established by Executive Order on June 14, 1879 and is home to two distinct tribes, the An Auk Akimel O'odham (Pima) and the Xalychidom Piipaash (Maricopa). Today, SRPMIC shares borders with the fast growing cities of Scottsdale, Tempe, Mesa, and Fountain Hills. The reservation encompasses 52,600 acres and we have an enrollment of approximately 11,000 members.

SRPMIC is part of the fabric of the east valley of the Phoenix metropolitan area and in order to serve our citizens best, government services need to be delivered in a way that is interoperable with our neighboring jurisdictions. Over time it has become clear that SRPMIC can best achieve this goal by taking on federal government functions through self governance.

That is why our Community entered into its first Title IV Self-Governance Compact on October 1, 1995. The first tranche of programs that were included in the Compact were:

- Tribal Scholarships
- Johnson O'Malley
- Tribal Courts
- Social Services (Indian Child Welfare Act, Welfare Assistance Grant)
- Housing Improvement Program
- Law Enforcement
- Road Maintenance
- Agriculture
- Real Estate Services
- Real Estate Appraisals

Over time the SRPMIC assumed the following additional programs:

- FY 2000—Job Training and Placement
- FY 2002—Tribal Transportation Planning
- FY 2003—Indian Reservation Roads Program
- FY 2006—Detention/Corrections
- FY 2007—Juvenile Detention Education
- FY 2017—Land Title Records Office
- FY 2022—Section 105(l) Leasing Program

Among these, perhaps the most impactful has been the assumption of the functions of the Land Title and Records Office (LTRO). Through this, the Community has been able to improve transaction times for business leases, agricultural leases, home sites, right-of-way and probates. One of the key parts of the LTRO function is to have access to the BIA Trust Asset and Accounting Management System (TAAMS). Not only did the community bring the TAAMS system "in-house", we also hired and trained several staff people that are certified on the system.

Along the way SRPMIC has gone through several Tribal Trust Evaluation audits (TTE) with the BIA. These periodic audits are meant to ensure the Community is faithfully upholding our responsibilities, but they also serve as an opportunity to both strengthen tribal programming as well as identify areas where the BIA and partnering Agencies can improve. For example, in the TTE completed in 2022, it was clear the pandemic greatly impacted the delivery of service. The audit highlighted a number of deficiencies, not with our process, but with BIA policy and procedure that we continue to struggle with today. This includes probate transactions, access to IT systems such as ProTrac and TAAMS, the security requirements for equipment and staff, and communication with other agencies and jurisdictions. More specific examples in these areas are noted below:

- Reliance on BIA-Western Region Office (WRO) Division of Probate Services (DPS) for Data Entry: In the Fall 2019, SRPMIC probate staff issued a monthly death report to all of the agencies and sent the physical hard copy probate cases to the BIA-WRO for data entry. BIA-WRO would complete data entry into a ProTrac database and send the completed probate package to the Office of Hearings and Appeals (OHA). Upon the departure of the two tenured SRPMIC staff members who knew how to navigate the system well, BIA-

WRO requested that the new SRPMIC probate staff members assume the data entry role in ProTrac to assist BIA-WRO due to their growing caseload. While SRPMIC was eager to take on this data entry role, SRPMIC had limited access to the requisite ProTrac system.

- Department of the Interior Requires Training for Systems Use: SRPMIC staff are required to take various trainings to utilize DOI trust systems/databases (ProTrac, TAAMS, etc.) before staff are able to use the systems. During the 2022 audit time frame, there was no official probate training for SRPMIC probate staff to attend. WRO staff instead provided an informal training in March 2020 and it was never completed due to the pandemic related closures and work-from-home status of BIA staff.
- BIA/SRPMIC Office Closures and Remote Working Conditions: On March 19, 2020, the Community began its “work from home” status as mandated by SRPMIC Council. SRPMIC Offices were closed and only limited staffing was allowed in the buildings at any given time. The Community Council instituted an Emergency Declaration for the COVID-19 Pandemic on April 1, 2020. This declaration remained in place through March 16, 2022.
- SRPMIC Technology Needs for Laptop Procurement and Imaging: SRPMIC staff worked diligently to ensure that work continued during the COVID-19 Pandemic. During this time, SRPMIC staff needed BIA support to gain remote access to the DOI trust systems/databases. SRPMIC needed to procure BIA-approved laptops to allow for work from home status during the pandemic. It took time to confirm the specifics for the laptops with the BIA and additional time to receive the laptops due to supply chain issues during the Pandemic. Once the laptops were received by SRPMIC, it took weeks to have the BIA-WRO staff image the equipment. This delay caused challenges for staff to complete and view work product for probate and all trust functions. Additionally, we experienced issues with the laptops being removed from the BIA network and patch issues which required SRPMIC staff to take laptops to BIA-WRO for repair and re-imaging.
- Department of the Interior Systems Clearances for Staff and Access to trust systems: SRPMIC staff is required to have DOI Security Clearance to utilize the electronic BIA trust systems (ProTrac, TAAMS, etc.). This process takes a new staff member between 6 to 24 months to gain access. During the pandemic, the process on the BIA side came to a halt and receiving the credentials necessary to bring a new staff member online and functional still continues to be an issue for new staff. SRPMIC does not have authority to request access to additional trust systems in Identity Information System (IIS) and DOI Talent database. The Superintendent is considered the Supervisor in multiple databases and he/she is responsible for this approval, exacerbating delays. SRPMIC is not in control of any of these functions and the Community must rely on BIA’s approval and processing of DOI Security Clearance processing.
- Internet and Systems Connectivity from the BIA Salt River Agency and the SRPMIC Office: Prior to the pandemic, SRPMIC had continual Internet connection issues between the BIA Salt River Agency Office and the Community Government. The BIA owns the internet connection and system, and their connection did not provide consistent or reliable access for SRPMIC staff to conduct trust related work. In late 2019, the former BIA-WRO Director authorized an upgrade at the BIA Salt River Agency offices at SRPMIC’s expense to create consistent and constant Internet connectivity. It must be noted that prior to December 31, 2019, an SRPMIC staff member working in the DOI trust systems would be bumped from the system several times a day due to the system’s poor connectivity capacity. The connection upgrade did not take place until March 2020.
- Dependence on Various outside Agencies: Per the Code of Federal Regulations, specific supporting documentation is required to be included in a completed probate packet. Some of the delays in completing cases during the reporting period were due to dependence on other jurisdictions to provide the information. For instance, probate staff rely on the WRO to provide the IIM account balances and documentation which must be included as part of the probate packet. SRPMIC must request birth certificates, death certificates, marriage/divorce and certification of Indian blood of relatives through other probate agencies, other tribes or other local/state jurisdictions. Receiving supporting documentation from other states is challenging due to jurisdictional rules and requirements to obtain documents. For example,

California has been historically difficult to obtain documents from and in these cases staff have to request family members to request the documentation from the State of California. During the pandemic, there were staffing delays in neighboring jurisdictions and in other jurisdictions where SRPMIC members lived. As an example, from March 2020 to January 2022, it took Maricopa County between 5 to 16 weeks to receive a death certificate. SRPMIC probate staff also rely on the Southwest Land Titles and Records Office (SWLTRO) and other LTRO's for certified land inventories when Community members own land at other Indian reservations. In some instances, LTRO's sent the inventory immediately to SRPMIC probate staff after receiving the notification of death. However, by the time SRPMIC probate staff have a final and complete probate package, SRPMIC staff would have to request an updated land inventory (BIA informal guidance is that certified inventories cannot be older than 6 months).

While it is clear the pandemic caused an extreme dislocation of services, the SRPMIC believe there are ongoing issues at BIA that, if addressed, would today to improve their service and to make transactional work much more efficient. As such, the SRPMIC made the following recommendations to the BIA.

- The Office of Hearings and Appeals (OHA) needs to hire more judges.
- OHA needs to develop a plan to address the SRPMIC and the overall probate backlog. The probate backlog existed before the pandemic and is only more extreme today. Community requests that BTFA look at the backlog of probate cases by WRO and other regional offices to compare the backlog during the Pandemic in relation to the numbers noted in this audit for the SRPMIC.
- WRO Probate Staff needs to provide and be a technical assistance resource to SRPMIC and other Self-Governance tribes. WRO Probate Staff need to clearly understand that the SRPMIC only holds a small part step of in the Probate process and that SRPMIC can be a resource to further support the BIA probate process.
- BIA needs to provide a more efficient process to obtain DOI Systems clearance and provide timely training for Self-Governance tribes. From the SRPMIC's experience we had to fight for access to the database and then beg for quality training on how to use the database. Waiting 6 to 18 months to have a new staff person be functional is unproductive and very inefficient. The SRPMIC has requested additional support to assist with clearance and training on numerous occasions over the last decade with only limited and temporary relief.

The SRPMIC embraces the accountability that needs to be placed on both the respective Tribe and DOI-BIA. To date, the SRPMIC recommendations have had no follow up from the agencies on how they can improve their programming. As a result, there may be similar findings with the 2024 TTE that has recently started.

As this hearing is focused on the advancement of tribal self-determination through P.L. 93-638 contracting and compacting, it is clear there is a tremendous amount of technical support that is needed with functions such as LTRO. The SRPMIC has shown it can successfully assume many federal functions of the BIA and we want to make sure our federal partner is also committed to this success. Similarly the DOI Inspector General Report in 2023 touched on the demands that are required by the BIA to make sure federal funding is used in the most effective way. We agree with the findings that greater internal controls are necessary to track the flow of federal funds and to the extent there are unspent savings we would support any redistribution of funds to tribal programs or bolster its internal requirements for programs such as LTRO and probate activity.

More generally, we believe the BIA must uphold its federal trust responsibility to tribes to meet the needs of critical government important services that are provided throughout a reservation. As it was noted previously, the SRPMIC is located close to one of the largest metropolitan areas in the Country and the demands are great to provide necessary services throughout the Community. For instance, in recent years there has been a growing demand for public safety services including our implementation of the new authorities under the Violence Against Women Act (VAWA). As federal law evolves, BIA funding through compacts should reflect those growing responsibilities.

When the SRPMIC first compacted programs with the BIA in 1995 we received \$3,212,357.00. Following the addition of seven programs the SRPMIC currently receives approximately \$14.7 million with an additional \$6.9 million coming from USDOT for CMAQ. However, based on the growth of the Community, in terms of

increased enrollment and development, the needs of the Community have grown exponentially where the self-governance funding has not kept pace. For example, in Fiscal Year 2023 the SRPMIC appropriated an additional \$37.2 million of tribal funding for compacted programs to meet the unmet need that exists.

The SRPMIC looks forward to working with the Congress and the Administration to continue to improve programming efficiency and the commensurate resources that are needed to fulfill the federal trust responsibility of the federal government to native nations.

In addition to the recommendations to the LTRO and the Probate functions, the SRPMIC offers the following observations:

- The Congress should provide advanced appropriations for the BIA, as there is provided for the Indian Health Service. Just as there are advanced appropriations for programs at the Department of Education, Department of Housing and Urban Development, Department of Labor, and Veterans Affairs, it should also be extended to tribal programming to ensure that funds are available to maintain critical Tribal government functions during times of a federal government shutdown. Funding uncertainty causes Tribes to redistribute funds from other Tribal programs, resulting in diminished services.
- SRPMIC supports the ongoing rulemaking process to implement the PROGRESS Act and does not have any additional policy recommendations at this time. The major impact the PROGRESS Act will have on SRPMIC is the application and administration to Titles IV and V Self-Governance Compacts. The law reconciles Title IV (BIA/DOL programs) and Title V (IHS programs) of the Indian Self-Determination and Education Assistance Act and reconciles the differences in the two types of compacts to encourage more efficiency by Indian Tribes who administer both types of Compacts. There are also favorable changes in this section that require the Federal Agencies to act in “good faith” and interpret the federal laws, regulations, and executive orders in a manner that will facilitate the implementation of Self-Governance Agreements. There are additional technical changes to the Funding Agreement negotiations regarding the Final Offer process and timelines, and under what situations the Federal Agencies can deny these Final Offers. Importantly, there are other provisions that will protect tribes from the Agencies that may impose unauthorized terms in a compact or funding agreement. Overall these amendments will provide more flexibility for the SRPMIC in its administration of its BIA and IHS Self-Governance Compacts.

Chair Hageman and members of the subcommittee thank you for the opportunity to provide testimony on this important subject and SRPMIC stands ready to be a constructive ally in improving services through the Self-Governance contracting and compacting process.

QUESTIONS SUBMITTED FOR THE RECORD TO MARTIN HARVIER, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Questions Submitted by Representative Westerman

Question 1. In your written statement, you mentioned inefficiencies within the Bureau of Indian Affairs (BIA) during the COVID-19 pandemic that impacted your tribe's ability to provide services.

1a) Has BIA improved in this area, and has the agency created more opportunity for tribal staff to have the training and access needed to run programs included in your self-governance compact?

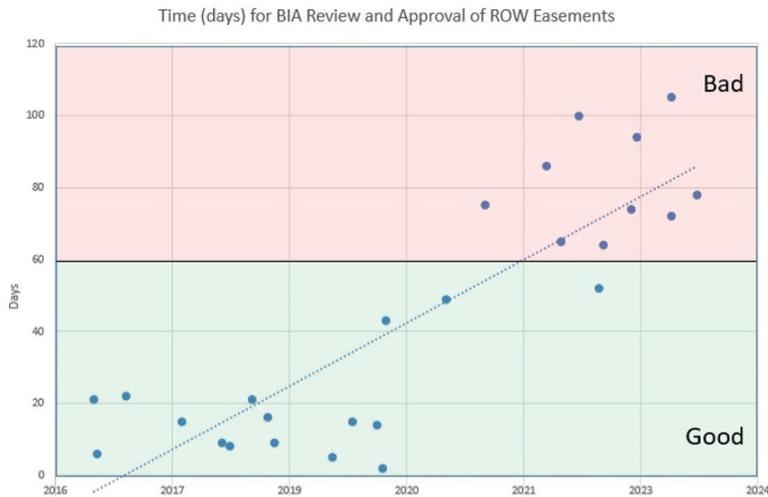
Answer. While the initial issues raised regarding training for staff for Salt River Pima-Maricopa Indian Community (SRPMIC) TAAMS access have mostly been resolved we have encountered an additional issue for Tribal staff that has impacted SRPMIC's ability to provide compacted services.

On Thursday, March 7, 2024 SRPMIC was informed that the Salt River Agency would be receiving our Right of Way packets, but they will now be reviewed at the Western Region Office (WRO) level. Once the review has been completed, the Salt River Agency (SRA) would then approve the packet. This strays from the previous process of the SRA reviewing the packet with WRO approving the packet. SRPMIC was never notified in this change of process and this change in approval process has

since created a backlog in right of way approvals pending with the BIA. Below are the pending packets and number of days pending.

Packet Name	Date Hand Delivered to SRA	Number of Days Pending as of 3/25/2024	Additional Comments
Osborn Road SR 28-2 Assignment and Assumption	10/17/23	160 days and counting	This same packet had been previously returned from the Agency for a technicality involving the National Tribal Transportation Facility Inventory update
Osborn Road SR 28-1 Administrative Modification	11/02/23	144 days and counting	
Osborn Road SR 28-1 Partial Mutual Termination of Grant of Easement	11/02/23	144 days and counting	
Allotment 5001 and Jackrabbit Road	1/16/24	69 days and counting	
Bunnyville Subdivision	2/27/24	27 days and counting.	This same packet had been previously returned from the Agency after 70-days for a critical defect involving the NEPA clearance documents

As per the federal regulation, 25 CFR 169.123 (Rights of Way Over Indian Land), BIA is supposed to grant or deny the right-of-way within 60-days of receipt of a complete package. We are not aware if they have the necessary resources at the agency level, or if the agency was instructed to include the WRO, or if there is another reason. In any instance, the time of BIA review and approval of Right of Way Easements have declined significantly since 2006, per the graph below.



This delay in approvals can negatively impact SRPMIC's future Trust Evaluation's. The decline in approval of Right of Way packets greatly impacts SRPMIC's ability to provide trust functions to members and needs to be addressed immediately.

Question 2. Please expand on the issues raised in your testimony surrounding the tribal trust evaluation audits with the BIA and where you see room for improvement.

Answer. Under the Indian Self-Determination and Education Assistance Act in accordance with 25 CFR 1000.354 the trust evaluation should be completed annually. Since 2006, Salt River Pima-Maricopa Indian Community has only received 7 completed audits as follows:

- | | |
|--------|-----------------------|
| • 2006 | • 2012 |
| • 2007 | • 2016 |
| • 2009 | • 2022 |
| • 2011 | • Pending 2024 |

We understand that there may be staffing issues that prohibit the Division of Trust and Review from maintaining annual reviews for self-governance tribes. Our recommendation would be to provide adequate funds for the Bureau of Indian Affairs to address the staffing issues to maintain the codified legislation as it pertains not only Trust Evaluations, but BIA functions as a whole.

Question 3. Several witness statements mentioned the Department of the Interior's lack of timeliness to distribute program funds under self-governance compacts.

3a) Could you further elaborate on how this delay directly impacts tribes?

Answer. Without advanced appropriations and the lack of timeliness to distribute funds under the self-governance compacts Tribes are left with two options.

1. Tribes that are capable of diverting different streams of funding to cover PSFA's will do what is possible to meet the needs of Tribal members.
2. Tribes without the ability or flexibility to cover PSFA's are left to delay the delivery of PSFA's to Tribal members until funding is provided.

In either instance the delay in funding can impact the Tribe's ability to provide the compacted or contracted PSFA's, which ultimately impact Tribal members.

3b) Could you further elaborate on how any funding delays have specifically impacted your tribe's self-governance programs?

Answer. Since FY 2020, SRPMIC has not received a fully executed Annual Funding Agreement (AFA) for the fiscal year (FY) prior to October 1st. Without the AFA for the FY, SRPMIC does not receive a signed Authority to Obligate (ATO) until well into the FY. With this delay SRPMIC has to either rely on any carryover or Tribal funds to supplement PSFA's until ATO's are issued and money can be drawn. For example:

- FY 2023 SRPMIC did not receive the 1st FY 2023 ATO until January 31, 2023, approximately 4 months into FY 2023.
- FY 2024 SRPMIC did not receive a fully executed amendment to the Multi-Year Funding Agreement and AFA until February 12, 2024 and the 1st FY 2024 ATO was issued on February 29, 2024, approximately 4 months and 28 days into FY 2024.

Without the timely funding that is due to Tribes to perform inherently federal functions, we are left to find alternative funding sources to maintain services until self-governance allocations are produced.

SRPMIC recommend the addition of awarding officials within the BIA and the Office of Self-Governance to help facilitate the movement of ATO's to Tribes. As of now the only awarding official in the Office of Self-Governance is the Director and when she is not available a backlog of ATO's accumulates which delays the necessary funds being distributed to Tribes.

Question 4. Where could Congress legislate regarding the 638 compacting process that would improve the 638 negotiations?

4a) And what regulatory changes, if any, would you suggest to the Department of the Interior to improve the 638 compact negotiation process?

Answer. With the pending implementation of the PROGRESS Act, the law reconciles Title IV (BIA/DOL programs) and Title V (IHS programs) of the Indian Self-Determination and Education Assistance Act and reconciles the differences in the two types of compacts to encourage more efficiency by Indian Tribes who administer both types of Compacts. There are favorable changes in this section that

require the Federal Agencies to act in “good faith” and interpret the federal laws, regulations, and executive orders in a manner that will facilitate the implementation of Self-Governance Agreements. There more technical changes to the Funding Agreement negotiations regarding the Final Offer process and timelines, and under what situations the Federal Agencies can deny these Final Offers. There are other pro-tribal provisions in the law, including a provision that protects tribes from the Agencies trying to impose unauthorized terms in a compact or funding agreement. Overall these amendments are in provide more flexibility for the Community in its administration of its BIA and IHS Self-Governance Compacts. Other than this, the rulemaking process does not help (as is) with the deficiencies previously noted

Question 5. Has the issue of inherent federal functions impacted what programs and/or functions your tribe was able to include in your 638 compact?

5a) If yes, what was the function and/or program that was deemed an inherently federal function?

Answer. In FY 2017 SRPMIC assumed the Land Titles and Records (LTRO) function that was deemed an inherently federal function after many years of discussion between SRPMIC and BIA.

5b) And are you aware of any other tribes that were able to compact that function and/or program?

Answer. SRPMIC is aware of other Tribes that were able to compact the LTRO. We are also aware of additional Tribes who wish to compact LTRO but are being told that this is not an inherently federal function and being denied the addition to their compact.

Ms. HAGEMAN. I thank the witness for his testimony.

The Chair now recognizes the Honorable Cheryl Andrews-Maltais for 5 minutes.

**STATEMENT OF THE HON. CHERYL ANDREWS-MALTAIS,
CHAIRWOMAN, WAMPANOAG TRIBE OF GAY HEAD
AQUINNAH, AQUINNAH, MASSACHUSETTS**

Ms. ANDREWS-MALTAIS. Good afternoon, Madam Chairwoman, Ranking Member, and honorable Subcommittee Members. Thank you for the opportunity to testify here today.

My name, again, is Cheryl Andrews-Maltais and I am the Chairwoman of the Wampanoag Tribe of Gay Head Aquinnah. My tribe has lived on our Aboriginal homelands since time immemorial and we have occupied the island Noepe, what is also known as Martha’s Vineyard, for over 13,000 years.

We are part of the Great Wampanoag Nation and we are the first people to meet the pilgrims in 1620 and we were the original signatories to the first treaty in this hemisphere, the 1621 Treat of Peace between us and King James I.

Like other tribes in New England, we were the first to endure colonial laws, which were written to limit and take away our inherent sovereignty, our rights, our culture, our lands, and our traditional way of life.

But despite over 400 years of this attempted genocide and acculturation, we remain here strong and resilient. I began with this brief history of my people as an example of the fact that most of our tribes have faced, with other treaties, with the United States.

Before contact, as Indigenous Peoples of these lands, all tribes maintained thriving communities and robust economies with significant intertribal trade and commerce, political alliances and

sophisticated Indigenous knowledge, through which we utilized, maintained, managed, and preserved our natural resources.

Our rights to practice our way of life was given to us by the Creator as sovereign Tribal Nations and we exercise those rights as individual governments and stewards of our land and our natural resources for ourselves and our future generations.

The Indian policies that were initially established were devised to strip us of all that we knew and held dear. They were specifically designed to kill the Indian and eradicate us from existence, a systematic plan to divest us of all of our lands and natural resources and a way to enforce us into submission and into a way of life foreign to us resulting in the deaths of hundreds of thousands of us through war, starvation, disease, and broken spirits.

However, we are still here. We have survived resistant, resilient, and strong. Through the centuries, we have also witnessed the failed policies of the United States as they have intended to try to help us as Native peoples.

As documented in the U.S. Commission on Civil Rights: A Quiet Crisis and its follow-up report, Broken Promises, the United States has failed to meet its trust and treaty obligation and has failed to adequately fund tribes and Federal agencies in order to meet its obligations to the tribes.

However, a dynamic shift in the Indian policies came with the passage of the Indian Self-Determination and Education Assistance Act. This forward-thinking legislation was one of Congresses first efforts to meaningfully acknowledge Tribal Nations sovereignty and recognize our ability to administer programs and services at a higher level of expertise and effectiveness than before.

It empowered our Tribal Nations across the country to assert our sovereignty and determine our own destinies, which has had far better outcomes.

This is the route that my tribe chose. Self-governance has provided a mechanism through which we have been able to better provide for our people. Self-governance has been transformative.

This could not have been proven more clearly than with the accomplishments of so many tribes during the recent COVID pandemic. Tribes were provided direct Federal funding with simple specific guidance for the use of the funds.

And, like with self-governance, we demonstrated how well we can do our jobs when given the resources and the Federal Government steps out of the way.

While some strides have been made, the government still seems to treat our sovereign nations as wards of the government with a paternalistic perspective. Federal funding across Indian Country is often delivered through a competitive grant process or through states.

Grant funding fails to reflect the unique nature of Federal trust obligation and tribal sovereignty by treating Tribal Nations as non-profits rather than governments, which is an abrogation of the Federal trust responsibility.

Advancing self-determination and self-governance is a must. The expansion of the ISDEEA authorities would be the next evolutionary step for the Federal Government's recognition of tribal sovereignty and would reflect its full commitment to tribes.

As previously noted, we Tribal Nations are political, sovereign entities with the status that stems from our inherent sovereignty and we, as self-governance peoples, predate the founding of the United States.

We call upon Congress to enact legislation that expands self-governance capabilities across the Federal Government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Thank you for your attention to this critical issue, and I stand ready to assist in any way to work together to strengthen tribal sovereignty and self-determination.

[The prepared statement of Ms. Andrews-Maltais follows:]

PREPARED STATEMENT OF CHAIRWOMAN CHERYL ANDREWS-MALTAIS, WAMPANOAG
TRIBE OF GAY HEAD AQUINNAH

Good Afternoon Chairwoman Hageman, Ranking Member Fernandez and Honorable Subcommittee Members, thank you for the opportunity to testify regarding the issue of: Advancing Tribal Self-Determination: Examining the Bureau of Indian Affairs' 638 Contracting."

My name is Cheryl Andrews-Maltais and I am the Chairwoman of the Wampanoag Tribe of Gay Head Aquinnah currently serving in my fifth term and a Board Member of the United South and Eastern Tribes ("USET"). My Tribe has lived in our ancient aboriginal homelands since time immemorial and have occupied the island of Noepe (also known as Martha's Vineyard) off the coast of Massachusetts for over 13,000 years. We are part of the Great Wampanoag Nation and are known as "The People of the First Light". Not only are we the People of the First Light, we are the Peoples of many firsts: we are the People who had first contact with the Pilgrims in 1620 in Pawtuxet which now known as Plymouth and we are the People with whom King James I of England made the first Treaty in this hemisphere, the 1621 Treaty of Peace. This Treaty recognized and respected the sovereignty of the both our sovereign nations—The Wampanoag Nation and Britain. We are also the survivors of the first germ warfare in this hemisphere perpetrated against our People to decimate our population and steal our lands. We are the People who were put into the first concentration camp in this hemisphere during Metacom's (also known as King Philip's) War. And we were the first People to have our lives, lands and natural resources stolen from us through murder, trickery and enacted laws, specifically designed to eliminate us through the attempted and systematic cultural and literal genocide of our People. Like other New England Tribes, we were the first to endure Colonial laws that were written to limit or take away our inherent sovereign rights, our culture, our ceremony and spirituality and our traditional ways of life and living.

However, while we are some of the first People to experience and survive the devastation of Colonialism, despite over 400 years, four centuries of this attempted genocide and attempted acculturation and colonialism, we are still here; resilient, resiliant and strong. Before contact, as the Indigenous Peoples of these lands, we maintained thriving communities and robust economies with significant intertribal trade and commerce, political alliances and sophisticated Indigenous knowledge; through which we utilized, maintained, managed and preserved our natural resources for our sustenance and subsistence. Our right to live and practice our ways of life was given to us by our Creator and as sovereign Tribal Nations, we exercised those rights as independent governments and stewards of our lands and natural resources for ourselves and our future generations to come.

I began with this brief history of my People, as an example of most of our Tribes who have faced similar if not the same fate, whether their Treaties or agreements were with another country or the United States. We all had thriving communities and robust economies, our traditional ways of life and natural resource management which has sustained us. Our lands and resources were so bountiful and attractive; that when the foreigners came, they coveted them so much, that they would do anything to possess them. This was the beginning of the Indian policies established to strip us of all that we knew and held dear, our culture, traditions, our lands and our natural resources. These policies, designed to "kill the Indian" and eradicate us from our lands were specifically designed to remove us from all that we knew and honored. Despite the promises made in the Treaties in exchange for peace, or access

to our resources, these policies were actually a systematic plan to divest us of all of our lands and natural resources. These policies were designed as a way to try to force us into submission, into a way of life foreign to us, resulting in the death of hundreds of thousands of us through wars, starvation, disease and broken spirits. However we still survived, resistant, resilient and strong.

Through these centuries, we have witnessed the failures of these Indian policies, and the inability of the United States to keep its promises; promises made to us in exchange for the lives of our Ancestors, our lands and natural resources. As documented in the United States Commission on Civil Rights 2003 Report: *A Quiet Crisis* and its 2018 follow up Briefing Report: *Broken Promises*, the United States has failed to meet its trust and treaty obligations and has failed to adequately fund Tribes, and/or agencies like Indian Affairs in order to meet their obligations to the Tribes. While the Bureau of Indian Affairs has made significant strides in changing the culture within the agency to better support Tribal Nations, there still seems to be pressure from Congress to treat sovereign Tribal Nations as wards of the government, with a paternalistic perspective, disregarding that Tribal Nations have a unique political relationship with the United States, unlike any other political subdivision or non-profit organization.

Through our tenacity, we have been able to demonstrate that despite the United States' failure to meet its treaty and trust responsibilities our Tribal Nations remain, that we are the same strong resistant and resilient People, with the knowledge and capacity to care for our own People. We have been able to demonstrate that the policies of the United States have not succeeded in doing what they were intended to do. Nevertheless, during this time, we also realized that we, as sovereign Tribal Nations, can assist the United States in fulfilling its trust and treaty obligations. We recognized that by providing us with the resources we need for us to rebuild our own Communities and economies, then stepping aside while we provide the programs and services that we design to best meet the needs of our People, we can all do better.

Advancing Self-Determination Through the Indian Self-Determination and Education Assistance Act

A dynamic shift in the policies and way of thinking, came with the passage of the Indian Self-Determination and Education Assistance Act (ISDEAA) in 1975 (Public Law 93-638). I am honored to address you today regarding the critical matter of advancing self-determination through the Indian Self-Determination and Education Assistance Act (P.L. 93-638, 25 U.S.C. §§ 5301 et seq.). This landmark legislation has empowered Tribal Nations across the United States to assert our sovereignty and determine our own destinies.

This forward-thinking legislation was one of the first efforts to meaningfully acknowledge Tribal Nations' sovereignty and recognize our ability to administer the programs and services, promised to us by the United States, at a level of expertise and effectiveness which has had better outcomes than ever before. One of the fundamental aspects of the Indian Self-Determination and Education Assistance Act is the distinction it draws between "self-governance" under Title IV and "self-determination" under Title I.

Title IV of the Act allows participating Tribes to negotiate funding agreements with the Department of the Interior for Public Law 93-638 programs, granting Tribes the authority to assume control over these programs and service. This is the route my Tribe chose and which has allowed us to design our own programs and services in a manner that best serves our Tribal Members and their needs.

A key differentiator between self-determination contracts and self-governance compacts lies in the level of tribal flexibility afforded. While Tribes under Title I *contracts* must seek approval from the Department of the Interior for substantial changes, Tribes under Title IV *compacts* have greater autonomy. They can redesign or consolidate Public Law 93-638 programs and reallocate funds within selected programs without prior approval from the Department of the Interior. This is an essential aspect of Tribal self-determination. Tribes make the best decisions with regard to the effectiveness of program and service delivery to their People.

With the expansion of Self-Governance through the amendments of the ISDEAA under Title IV in 2000, Tribes have been able to unlock more opportunities for creative programming and community building by negotiating directly with Federal Agencies for the administration of the funding. As this success demonstrated the effectiveness of Tribal decision making and innovation when it came to designing and delivering programs and services, the expansion of the rights and responsibilities of the Tribal Nations proved that Tribal control, would not only assist the United States in fulfilling its trust and treaty obligations to Tribes, it benefited both the Tribes and the United States.

My Tribe, the Wampanoag Tribe of Gay Head (Aquinnah), became the first self-governance Tribe in the Eastern region. The Tribe's decision to pursue self-governance underscores the importance of enabling Tribes to exercise genuine self-determination over their affairs without the need for constant oversight from Federal agencies. While this has been a strong step forward, there is still the need for greater funding, self-governance expansion and flexibilities for the Tribal Nations to truly flourish.

The potential for even greater success is with the expansion of Self-Determination and Self-Governance. In my fifth term as Chairwoman, I have witnessed firsthand the transformative power of self-governance. This could not have been proven more clearly than with the accomplishments of so many Tribes during the recent COVID-19 Pandemic. This was the first time that all Tribes were provided direct Federal funding, with simple and specific guidance for the use of those funds, and Tribes demonstrated how well we can do our jobs, when given the resources and the government steps out of the way. Tribes, who were among the most vulnerable populations, did a far better job in preventing, preparing for and responding to the deadly COVID-19 pandemic than any other government instrumentality. For example, our Tribe's ability to develop and manage our own COVID-19 response programs, without waiting for permission from the Bureau of Indian Affairs has been instrumental in protecting the health and well-being of our community during these challenging times. Self-governance gave us the ability to respond quickly, mitigating the number of cases and ultimately deaths caused by COVID-19.

In addition to leading my Tribal Government for five terms as a Self-Governance Tribe, I previously served as a Senior Advisor to the Assistant Secretary-Indian Affairs, and I currently serve on various national advisory councils and committees like the BIA and IHS Tribal Self Governance Advisory Committee and the Health and Human Services Secretary's Tribal Advisory Committee. It is with this experience in mind that I urge the expansion of self-governance to all Federal agencies, programs, and funds. Much of the Federal funding across Indian Country is delivered through the competitive grant process (and often through the states). Not only is this an abrogation of the Federal trust responsibility to force Tribal Nations to compete for Federal dollars, but the competitive grant process often precludes many Tribal Nations from having access to those dollars at all. Grant funding fails to reflect the unique nature of the Federal trust obligation and Tribal sovereignty by treating Tribal Nations as non-profits rather than governments. Self-governance Contracting and Compacting should be an available option across the Federal system.

Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the Federal government would be the next evolutionary step in the Federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. Expansion would empower Tribal Nations to administer Federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. We call on Congress to enact legislation that expands our self-governance capabilities across the Federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. As Tribal Nations, we are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, Treaties, Statutes, Executive Orders, and judicial decisions all recognize that the Federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our Federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services.

All Federal programs and dollars must be eligible for inclusion in ISDEAA self-governance contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring that Tribal Nations have real decision-making in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional Federal programs to appropriately serve our communities as well as have the authority to redistribute funds to administer services among different programs as

necessary. To accomplish this requires a new framework and understanding that moves us further away from the current archaic, paternalistic approach of the Federal government managing Indian affairs.

Advancing Self-Determination is a must as funding is inadequate, human resources are scarce and the relationship between Tribal Nations and the Bureau of Indian Affairs ever-evolving. In the almost 50 years since the passage of the ISDEAA, Tribal Nations have demonstrated our capacity and expertise to take on more Federal responsibilities when and if they so choose. It is time to begin to re-envision the role of the Bureau from paternalistic regulator to a true partner and advocate for Tribes as we continue to serve our people.

Authorize Interagency Transfer of Federal Funds to Support Tribal Programs and Services

The Federal government has a long track record of failing to uphold its trust and treaty obligations to fully fund Tribal programs and services. USET SPF fully supports the ability of Tribal Nations to request and receive funds from any Federal agency through ISDEAA 638 self-governance contracts and compacts.

Since passage of ISDEAA, Tribal Nations have become experienced in managing complex Federal programs under these types of agreements. These agreements empower us to administer Federal funds in a manner that we deem appropriate and necessary to achieve our goals and priorities to better serve our citizens and communities. The 638 contracting and compacting method empowers our Tribal Nations to fully exercise our sovereignty and self-determination. Other methods of Federal funding, especially grant and competitive grantmaking models, treat Tribal Nations as not-for-profit entities, instead of sovereign governments, and create unnecessary barriers to services provided in fulfillment of perpetual trust and treaty obligations. Under a 638 mechanism, Tribal Nations can determine how to utilize funds received from Federal agencies to appropriately utilize such funds to better serve our citizens and communities.

Expand the 477 Program Across the Federal Government

Established in 1992 by Public Law 102-477 (P.L. 102-477), the 477 program was intended to reduce unemployment in Tribal communities by establishing employment opportunities consistent with the purposes of the Indian Self-Determination and Education Assistance Act (ISDEAA). The program also sought to increase the effectiveness of employment and training programs by streamlining administrative requirements through consolidation of budgeting, reporting, and auditing systems. Congress amended the 477 program through the, “Indian Employment, Training and Related Services Consolidation Act 2017” (P.L. 115-93), which empowered Tribal Nations and organizations to consolidate eligible employment, training, and related services from different Federal sources. The intention of this was to reduce the administrative, reporting, and accounting cost burdens on Tribal Nations and organizations.

The 477 program 2017 amendments also directed Federal agencies to sign an Interagency Memorandum of Agreement (Interagency MOA) to implement the consolidation of eligible employment and training programs across a number of Federal agencies. However, following the Interagency MOA that was signed in December 2018—without Tribal consultation—other Federal agencies sought to implement their employment and training programs using their own methods and prerogatives without Department of the Interior (DOI) leadership and direction. It was not until October 7, 2022 that the Administration announced the signing of an updated Interdepartmental MOA to implement the 477 program. The 2022 Interdepartmental MOA has sought to streamline plan approval procedures and reaffirmed the decision-making authority of the Secretary of the Interior in approving 477 Program plans. The goal of the 2022 Interdepartmental MOA is to increase Tribal Nation economic resilience through employment and training programs and services based on our Tribal community priorities and initiatives.

The 477 program serves as a positive model for reducing reporting burdens on Tribal Nations and organizations, as it eliminates underlying reporting requirements for Federal programs integrated into each 477 plan and replaces them with a single annual report. For these reasons, I strongly recommend that Congress and the Subcommittee on Indian and Insular Affairs advance legislation to expand the 477 Program across the entirety of the Federal government. Enacting a law that will reduce reporting burdens and streamline administrative requirements for Tribal Nations will support our efforts in Nation rebuilding and ensure our economic resilience through Tribal-centric goals and initiatives in employment and training services.

The Directives of EO 14112 Must be Made into Law

On December 11, 2023, President Biden Issued Executive Order 14112, “Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination” (EO 14112). This Executive Order was issued to our inherent sovereignty and self-determination to advance economic growth, pursue Nation rebuilding, and directly address the economic, social, and public health priorities of our citizens. The current service model of Federal funding allocation, administration, and oversight remains a paternalistic, pre-self-determination era mechanism that stifles the proper management and use of Federal resources in Indian affairs. In order to usher in a new era of Tribal self-determination, Federal laws and regulations must be rescinded or revised to truly advance our sovereign efforts to pursue economic development and Nation rebuilding for the improved economic, social, and public health of our communities. We remind Congress and the Subcommittee, however, that no level of economic success attained by Tribal Nations diminishes or eliminates the United States’ moral and legal trust and treaty obligations to fully fund Tribal programs and services. While ISDEAA 638 contracting and compacting was an initial, positive step forward in advancing our sovereignty and self-determination, the Federal government must remove statutory and regulatory barriers for us to appropriately manage Federal programs and funds for the benefit of our communities and citizens.

Oversight is Needed to Accurately Verify Tribal Funding Levels Without Penalizing Tribes

Congress should exercise its oversight authority in determining how much actual funding actually reaches Indian Country. The Office of Management and Budget (OMB) asserts that over \$20 billion in Federal dollars is appropriated to Indian Country annually. From the perspective of the Tribes and Tribal advocates, including those who serve on budget formulation committees for Federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. OMB should be required to provide a full accounting of Federal funding which is actually distributed to Indian Country. To date, OMB has not responded to this request. However, this information is absolutely essential to the measurement of the Federal government’s own success in meeting its obligations and the work of Tribal Nations.

In reading through the Office of the Inspector General Report: *The Bureau of Indian Affairs Can Improve the Closeout Process of Public Law 93–638 Agreements*, I believe it is incumbent upon the Bureau to ensure that all appropriated funds are utilized effectively and efficiently to fulfill their intended purpose: enabling Tribes to provide essential government services for their Tribal Members and the close-out process is a critical component of verifying those funds. And while the Bureau concedes to many of the Report’s observation and has agreed to corrective measures, the Report’s tone still resonates with a paternalistic view of the relationship between the Bureau and the Tribal Nations. Let me be clear—the United States’ trust and treaty obligations have no end date nor are Tribal Nations equal to other “grant recipients.” This funding is a critical part of the United States fulfilling its ongoing trust and treaty obligations. We have paid it forward with the lives of our Ancestors, our land and our natural resources; and this debt to us, to Indian Country, is ongoing and does not go away.

While there is merit to ensuring that any unexpended funding should be accounted for and redistributed, this should not be at the expense of a Tribe who has been sent funding they are entitled to only to be ordered to spend those funds in accordance with an arbitrary timeline imposed upon them by the Federal government. Self-Determination is self-explanatory—Tribes get to decide how and when to spend their funding. The single annual audit should be sufficient to ensure that expenditures are consistent with its intended authorization. In the same manner that aid to foreign countries does not require this type of reporting and oversight nor should burdensome reporting and oversight be imposed upon Tribal Nation for repayment of a debt owed to us.

As we consider the future of Tribal Self-Determination, we must remain steadfast in our commitment to upholding the principles enshrined in the Indian Self-Determination and Education Assistance Act. By fostering collaboration, accountability, and mutual respect between Tribal Nations and the Federal government, we can continue to advance the cause of Indigenous sovereignty and self-governance.

In conclusion, both Title I and Title IV ISDEEA agreements are critical towards ensuring that Tribal Nations have the tools and resources necessary to chart their own course toward prosperity and self-sufficiency.

Thank you for your attention to this critical issue. I stand ready to assist in any way possible as we work together to strengthen Tribal Sovereignty and Self-Determination.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. CHERYL ANDREWS-MALTAIS,
CHAIRWOMAN, WAMPANOAG TRIBE OF GAY HEAD AQUINNAH

Questions Submitted by Representative Westerman

Question 1. In your testimony, you mentioned the importance of flexibility given to tribes participating in a self-governance compact.

1a) Could you further expand on your tribe's experiences with this level of flexibility and autonomy and how it has overall improved tribal members experience with programs?

Answer. Thank you for the opportunity to provide further testimony on this important issue. Due to our very unique situation, we opted into Self-Governance on both the Bureau of Indian Affairs (BIA) and the Indian Health Services (IHS) sides. Deciding to enter into Self-Governance Compacting has made a significant difference in how we are able to better meet the needs of my Tribal Community.

By way of background, our Tribe is small with a current Tribal population numbering about 1500 enrolled Tribal Member/Citizens. Because our Tribal offices and Aquinnah Homelands are on the island of Noepe (aka Martha's Vineyard), it has created a very unique set of challenges. The island is a world-wide tourist destination and has attracted wealthy and famous people from all sectors, including Presidents since President Grant. With so much notoriety focused on our island homelands, by the 1970s more and more notable celebrities came to the island to build summer, 2nd or 3rd homes. This influx of wealthy and notable people moving to the island forever changed the nature, demand for land and the characteristics of the island. Not having legal counsel or being accustomed to the court system, many of our Tribal Member/Citizens were swindled out of their lands, or their lands were taken for back-taxes, or portions sold of land just to make ends meet. Additionally, there was little opportunity for professional or gainful year-round employment and limited education opportunities, so many of our Tribal Members/Citizens were forced to move to the other end of the island, or off the island all together.

The attrition of our Tribal Member/Citizens having to move off the island just to make ends meet continues to this day at an alarming rate. Due to the astronomically high cost of living, the lack of available, never mind affordable, housing and the lack of many meaningful year-round employment opportunities; only about 25% of our Tribal Member/Citizens live on the island. The remaining 75% of our Tribal Member/Citizens live on the mainland, with the highest concentrations living in the northeast and New England, with significant numbers remaining in Massachusetts, Rhode Island and Connecticut. The balance of our Tribal Member/Citizens live in the rest of United States and around the world.

Prior to Self-Governance, the ability to serve my Tribal Community was extremely challenging because most Indian Policies under both the BIA and IHS are far too restrictive. Even now, most Indian Policies written to provide essential services to Tribal Member/Citizens are still predicated on the old failed Indian Policies and an antiquated reservation system, which in most cases has never fit Tribes in the east, and hasn't fit the rest of Indian Country in general since the Allotment and Relocation eras. Additionally, as Tribal Nations grew and rebuilt their economies, there was a need to expand into areas outside of the proverbial "reservations" in order to accommodate our growing populations, and for Tribal Member/Citizens to find educational opportunities and or meaningful employment outside the confines of the reservations and often outside their local areas.

In our case, while the funding is still woefully inadequate, the flexibilities contained within the Self-Governance amendment option provided us with the ability to re-design programs such as our Social Services, and roll up other associated programs, services and function activities (PSFAs) funding to create services that could reach a greater amount of our People. While many of our People still lived in our Ancestral Wampanoag Homelands, the majority did not live on the island. The old policies were extremely restrictive of who and how you could serve your

People, incorrectly interpreted our service area to restricting us to providing services only to those Tribal Member/Citizens who lived in a limited geographical area, and used inapplicable income thresholds for eligibility. This disparity in access to services created great dissention and disharmony in our Tribal Community, because it was inconsistent with our culture and traditions of equality for all. Under Self-Governance, we were able to expand our service areas to include more of our eligible Tribal Member/Citizens to receive critical and necessary support services.

The old policies also required an inordinate amount of reporting and limited access to funding. This situation created administrative burdens and cash-flow issues, which negatively affected timely payments to vendors, and the draw-down process was complicated and overburdensome. Although the Federal Government has not provided the prompt full payment for our Self-Governance Compacts by the beginning of the fiscal year, as required by the statute, it's far better than regular 638 contracting or direct services. Not having to receive our funding in quarterly installments, after having to report on all expenditures first, has made planning more effective and vendor payments far more timely and streamlined.

Under Self-Governance "lump-sum" payments we could maximize our funding by combining the funding line items and re-allocate the funding to recreate more effective support for our Tribal Member/Citizens.

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

2a) Could you further elaborate on how this delay directly impacts tribes?

Answer. Funding delays have had serious impacts on Tribal Governments. Tribal Governments, unlike other government instrumentalities, do not have a tax base. Additionally, like my Tribe, most Tribal Governments are totally reliant on the program funding to administer necessary programs and services. When Tribal Governments are not supplemented by other funding, the failure of the Department of the Interior to get the funding to Tribal Governments can create Tribal Government shutdowns. Not only do these delays harm our Tribal Member/Citizens who rely on the necessary services the Tribal Government provides on behalf of the United States, it impacts employees who may have to be laid-off, affecting their lives and livelihood, impacting employee retention by causing them to potentially seek other employment; further injuring the Tribal Member/Citizens. It also affects the Tribal Government's ability to timely pay its vendors, creating a negative impact on Tribal Government's ability to secure vendors for goods and services. And when it comes to paying on behalf of or re-imbursing Tribal Member/Citizens for their financial outlays, this can affect the Tribal Member/Citizen's credit ratings because the bills that were guaranteed by us are sent to collection agencies.

2b) Could you further elaborate on how any funding delays have specifically impacted your tribe's self-governance programs?

Answer. The uncertainty of funding and/or timely funding creates unnecessary stress on the part of the Tribal Government and erodes the trust that we have with our Tribal Member/Citizens, our employees and our vendors. We've had to develop plans for how to continue to support the Tribal Community with the possibility of limited to no staff, no funding to pay bills or obligations and the potential going in to the limited reserves that we have, which were obligated to other initiatives.

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

3a) And what regulatory changes, if any, would you suggest to the Department of the Interior to improve the 638 compact negotiation process?

Answer. Congress could move the funding for Tribal Governments from discretionary to mandatory in appropriations. The United States trust and treaty obligations to Tribal Governments should not be at the discretion of individual Congresses. As previously stated, Tribes have paid it forward with the lives of our Ancestors, our land and our natural resources. Mandatory and advanced funding for Tribes would help to better meet the needs of the Tribes, and better fulfill the obligation of the United States to our Tribal Governments. Full and mandatory funding for Tribes is a must as well. More information is contained in the Quiet Crisis and Broken Promises Reports. For Tribal Governments, the only human condition housed within the Department of the Interior (DOI), it's disrespectful to the Peoples and sacrifices that we have made, to have to compete with the limited dollars in the DOI Budget. This is not honoring the promises made to us for peace and/or in exchange of our lands and natural resources. The Department of the Interior generates billions of dollars of revenue for the United States from Indian Lands (and

resources). Congress can alleviate much of the uncertainty by changing the way they fund Tribal Nations (Indian Country).

Congress could also fix how Indian Country is funded across the Federal Family. Tribal Governments are political entities, each entitled to adequate funding to rebuild our Communities and our economies which, under Federal Policies, were systematically dismantled to eliminate us from existence. Tribes should not be treated as non-profits or states to compete against each other and those entities for the funding to rebuild our Communities and economies under a grant structure.

Instead, Congress should look to a weighted formula-based funding structure that will provide all Tribal Governments, listed on the Secretary's List, with annual appropriations to run our governments and rebuild our Communities and economies. Each formula must have minimums and caps, and a set aside for extenuating circumstances. For example, if the funding is for infrastructure, the funding should have 50% equally allocated to each Tribe. Then weighted by 30% allocation based upon Tribal Government land base holdings. Finally retaining 15% to be allocated by population, with the remaining 5% for Tribal Governments with extra high costs of goods and services, and/or extra-large populations and or extra-large land holdings. A similar formula breakdown could be if the funding was for direct services to individuals, the weight would be similar with the 50% equally divided, however the 30% weighted allocation area would be based upon population, then land holdings at 15% with the retained amount of 5% for extra-high cost of goods and services, extra-high populations and extra-large land bases.

Then if Congress was to look across the entire federal system of grants to see where funding has been set aside for Tribal Governments, or where Tribal Governments are eligible to receive funding, then pooled it into the general-purpose areas, there would be far more funding to offer. By pooling all of the general-purpose area funding across the federal family into, a weighted formula, under a Self-Governance model. Then all Tribal Governments can begin to appropriately design and plan their programs and services, with funding to sustain the programs and services so there isn't any uncertainty of whether or not the Tribe will be "awarded" funding that we are all entitled to, and each Tribal Government can design the programs and services to better meet it's unique and individual needs to service its People and rebuild its Communities and economies as they determine.

Tribal Governments should never have a cost share for any federal funding. And, Tribal Governments should not be wasting our very limited and valuable human and financial resources, on writing grants for which we may never receive, and/or reporting on the funding that we do receive. No financial aid to other Sovereigns for assistance is conditioned the way funding to Tribal Governments is. And no other Sovereign has the special relationship that Tribal Governments have with the United States, nor is any other Sovereign owed the debt that Sovereign Tribal Nations are. We provide a single audit which should suffice to verify that Tribal Nations are expending our funding consistent with its intended purposes.

Question 4. Has the issue of inherent federal functions impacted what programs and/or functions your tribe was able to include in your 638 compact?

4a) If yes, what was the function and/or program that was deemed an inherently federal function?

4b) b. And are you aware of any other tribes that were able to compact that function and/or program?

Answer. So far, we have not had the issue of being denied the opportunity to assume the federal functions that we have requested. However, that is probably because we haven't re-negotiated our Compact in several years. I am aware of some Tribes that have had issues with attempting to assume certain functions.

Additional Recommendations for Congress to consider:

All Legislation should have very specific language that states the statute it is applicable to, and includes all federally Recognized Tribal Governments listed on the Secretary's list, and that the legislation repeals any other provision of law contrary to the full application of this statute to all federally Recognized Tribal Nations.

Re-envision the Federal Government's Relationship with Tribal Nations, to review all funding across the federal family for allocation and weighted formula application.

To stop writing legislation that treats Tribal Governments as non-profits or states, requiring sovereign Tribal Nations to receive the United States funding obligation in the form of grants, compete against each other for funding, have to come up with additional funding as a "match" and/or be required to report on funding expenditures beyond the single audit requirement.

Provide a Self-Governance model option for as many Tribal Governments who determine they have the capacity to customize their programs and services as they are able to, and or see fit.

Legislate for Tribal Government Self-Governance across the board in all cabinets and departments. Pool funds from all cabinets/bureaus into a general-purpose areas for weighted formula distributions, with weighted formula percentages determined by purpose areas (similar to the ARPRA funds 50% equally split), establishing minimum and capped amounts, with weighing the balance of the funding as it pertains to purpose area and related distributions.

Thank you again for the opportunity to answer these additional questions. I am happy to have a more detailed and in-depth discussion on how these ideas can be implemented to improve the distribution of federal funds, in the effort to help fulfill the United States Trust and Treaty Obligations to our Tribal Governments.

Ms. HAGEMAN. I think the witness for her testimony.
The Chair now recognizes Mr. Jay Spaan for 5 minutes.

STATEMENT OF JAY SPAAN, EXECUTIVE DIRECTOR, SELF-GOVERNANCE COMMUNICATION & EDUCATION TRIBAL CONSORTIUM, TULSA, OKLAHOMA

Mr. SPAAN. Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Jay Spaan. I am a citizen of the Cherokee Nation and serve as the Executive Director for the Self-Governance Communication & Education Tribal Consortium. It is a great honor to be here today to discuss self-determination and self-governance.

I am going to start with a few general remarks about these authorities and then focus on opportunities for Indian Affairs to make the implementation of the authorities more efficient.

Self-Determination Contracting and Self-Governance Compacting are effective mechanisms that tribal governments use for delivering Federal programs to their communities.

Nearly all Tribal Nations administer BIA or IHS programs using Self-Determination Contracts and more than 280 Tribal Nations have BIA or IHS programs delivered through Self-Governance Compacts.

Both self-determination and self-governance are authorized in the Indian Self-Determination, Education, and Assistance Act, but they are distinct authorities and mechanisms, each with its own attributes, benefits, and regulatory framework.

Self-governance was developed as a tribally-driven initiative to improve upon and move beyond the limitations that tribes experienced using self-determination.

As such, self-governance authority provides tribes with greater flexibility and more efficiencies. For instance, under self-governance, tribes have the authority to redesign Federal programs in ways that better address local needs without Federal interference.

Self-determination authority differs in that it requires tribes to submit redesign proposals for Federal review and approval. Another difference between self-determination and self-governance is that they are managed by different entities within Indian Affairs.

BIA administers Self-Determination Contracts while the Office of Self-Governance oversees and manages Self-Governance Agree-

ments. Both BIA and the Office of Self-Governance are overseen by the Office of the Assistant Secretary of Indian Affairs.

Fifty years of experience has shown that self-determination and self-governance are successful. Tribal Nations have demonstrated that local control, local delivery, and knowledge of need ultimately result in the delivery of more effective programs, greater administrative and governance capacity, increased accountability, and more extensive economic benefits.

While the success of self-governance is undeniable, there are opportunities for our Federal partners to make implementation of the mechanism within Indian Affairs more effective and efficient.

For example, some Tribal Nations with Self-Governance Agreements do not receive all the funding and supporting documentation owed to them within the time frames identified in their agreements.

One tribe told us they are still waiting for \$13 million from Fiscal Years 1922 and 1923 owed for administration of programs assumed under a Self-Governance Compact.

The concern of timely discernment of funds was also raised by the GAO in 2019. GAO specifically noted that Interior's inability to disperse funds within time frames agreed to in self-determination and self-governance agreements can cause an undo burden on some tribes and dissuade other tribes from using the mechanisms.

The GAO report indicated that a complex distribution process and significant vacancies in key positions are both factors that contribute to the delays. In addition, Tribal Nations have raised concerns that self-governance has not been effectively integrated throughout BIA's structure and organization and that key offices do not coordinate as needed to effectively fulfill their responsibilities.

As previously mentioned, the Office of Self-Governance and BIA are separate entities under Indian Affairs. In part, this organizational arrangement was intended to ensure that BIA's initial reluctance to embrace self-governance would not hinder the opportunity for Tribal Nations to use it.

However, for Tribal Nations with Self-Governance Agreements, separation without effective collaboration may limit access to some BIA offices, programs, and resources.

Further, due to ineffective collaboration and a lack of sharing basic information within the organization, some tribes have experienced situations in which they were delayed in receiving programmatic funding increases.

Finally, we continue to hear examples of tribes that received conflicting information, depending on the office within Indian Affairs that they are speaking with.

For instance, we recently heard that a tribal government was denied a request to compact a BIA program by the Office of Self-Governance on the basis that BIA had no funds to support the program.

When the tribe met with BIA directly, the Bureau found funding to support the tribe's request. It is unclear why tribes continue to receive inconsistent information from the Bureau, depending on which office is asked, but it seems reasonable that a lack of collaboration and information sharing contributes to this problem.

I respectfully offer the following suggestions for the Subcommittee. Indian Affairs should implement comprehensive modernization efforts for technology systems, improve data management and data sharing capabilities, and streamline unnecessarily complex processes.

Two, Indian Affairs should ensure that self-governance is integrated and understood throughout the Department, including BIA, so that tribes with Self-Governance Agreements are not isolated to only one office.

Thank you for the opportunity to share information with you. Chair Hageman, Vice Chair Leger Fernández, and members of the Subcommittee, this completes my prepared statement. I am happy to respond to any questions you may have.

[The prepared statement of Mr. Spaan follows:]

PREPARED STATEMENT OF JAY SPAAN, EXECUTIVE DIRECTOR, SELF-GOVERNANCE
COMMUNICATION & EDUCATION TRIBAL CONSORTIUM

Chair Hageman, Ranking Member Leger Fernández, and Members of the Subcommittee: On behalf of the Self-Governance Communication and Education Tribal Consortium (SGCETC), I am pleased to be here today to share information and discuss how Tribal Nations use Self-Determination and Self-Governance authorities to reassume the administration and implementation of Bureau of Indian Affairs (BIA) programs. SGCETC is a non-profit Tribal consortium that supports Tribal Self-Determination and Self-Governance by promoting communication, providing education, offering technical assistance, facilitating collaboration, and sharing resources among all Tribal Nations.

The enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA) of 1975 (Public Law 93-638) marked a pivotal shift in how federal resources and programs were delivered to Tribal Nations. Before the act, the BIA and the Indian Health Service (IHS) administered most federal resources and programs that serve Tribal Nations. Passage of the ISDEAA and its subsequent amendments provide Tribal Nations with alternative models—Self-Determination contracts and Self-Governance compacts—for the delivery of BIA and IHS resources and programs to their communities. Essentially, ISDEAA authorizes Tribal Nations to better serve their communities by reassuming administration and implementation of select federal programs—putting Tribal governments in the role previously held by BIA and IHS.

**Brief History of Self-Determination Contracting and Self-Governance
Compacting at BIA**

In 1975, ISDEAA formally ushered in a new era of Federal Indian policy that recognized Tribal sovereignty and the inherent right of Tribal Nations to self-govern. ISDEAA authorized Tribal Nations to negotiate Self-Determination contracts, enabling them to take over some administrative duties previously managed by the BIA.

Enactment of the ISDEAA was a significant step for Tribal sovereignty. Yet, Tribal Nations faced challenges in the late 1970s and early 1980s implementing this new authority—largely due to resistance from the federal bureaucracy to relinquish control over federal programs that BIA was accustomed to administering.

In 1987, corruption and mismanagement of funds were exposed within the BIA. These revelations, coupled with pressure from Tribal leaders for BIA to relinquish control of federal programs that Tribal Nations administered using Self-Determination contracts, laid the groundwork for the strategic evolution of Tribal authority from Self-Determination to what is now known as Self-Governance compacting.

Self-Governance compacting is based on the idea that Tribal governments should receive both funding and the authority to design and implement federal programs that serve their communities without federal interference.

In 1988, Congress approved ISDEAA amendments to test this concept—establishing a 5-year demonstration project within the Department of the Interior

(DOI).¹ This project expanded Tribal authority over programs and functions, reduced federal oversight, and provided greater flexibility for Tribal governments to redesign and reallocate resources to meet the unique needs of their communities.

Recognizing the success of Self-Governance authority, Congress made it a permanent option for Tribal Nations in 1994.² Recently, Congress further amended ISDEAA with the Practical Reforms & Other Goals to Reinforce the Effectiveness of Self-Governance & Self-Determination for Indian Tribes (PROGRESS) Act of 2020 to streamline the negotiation process, enhance administrative efficiencies, and provide more flexibility in administering contracts.

Self-Determination and Self-Governance Are Effective Mechanisms for the Delivery of Federal Programs and Resources to Tribal Communities

Each Tribal Nation voluntarily decides whether, and to what extent, to pursue the administration of federal programs using Self-Determination and/or Self-Governance mechanisms. At least 569 of the 574 federally recognized Tribal Nations have negotiated a Self-Determination contract with BIA and/or IHS, and more than 380 Tribal Nations negotiated a Self-Governance compact with the BIA and/or IHS to assume administration of one or more federal programs.

Using these mechanisms, Tribal Nations have reassumed the administration and implementation of a variety of programs and functions from the BIA covering activities, including but not limited to: programs to manage natural resources and economic development, operate utilities, repair and maintain roads and bridges, inspect oil and gas operations, survey lands, manage land records, conduct land appraisals, administer social services and child welfare programs, administer tribal courts, implement land and water claims settlements, administer education and scholarships programs, and provide law enforcement services.

Since its inception nearly 50 years ago, the motivating theory behind Self-Determination and Self-Governance has proven true. Tribal Nations have amply demonstrated that local control, local delivery, and knowledge of need ultimately result in the proliferation of more effective programs, greater administrative capacity, increased governance capacity and leadership skills, and more extensive economic benefits. For instance, the Harvard Project on American Indian Economic Development found that beginning in the late 1980s (when ISDEAA was amended to include Self-Governance compacts) until 2022, the per capita income of the average Tribal citizen living on-Reservation has increased by 61% and the proportion of families on-Reservation with children living in poverty has been reduced from 47.3% to 23.5%.³ In addition, in 2022, the U.S. Government Accountability Office (GAO) identified the use of Self-Determination contracts and Self-Governance compacts as a best practice for federal agencies to distribute funds intended for Tribal Nations and their citizens quickly. GAO also noted that using these mechanisms mitigates administrative burdens for both Tribal governments and federal agencies.⁴

Self-Governance compacting provides flexibility for Tribal Nations to use federal funds more effectively and efficiently by (1) redesigning programs to meet local priorities, (2) integrating related resources to reduce fragmentation at the Tribal government level, and (3) providing opportunities to waive some federal agency rules and guidance that hinder local solutions. It also reduces administrative and reporting burdens while increasing local accountability, allowing more focus on program delivery.

Key Differences in Self-Determination and Self-Governance

Self-Determination (Title I of ISDEAA) and Self-Governance (Title IV of ISDEAA) both aim to transfer control over programs, functions, services, and activities (PFSAs) from the federal government to Tribal governments, allowing more local control and decision-making authority over federal resources and decreasing bureaucratic processes. Yet, Self-Determination and Self-Governance are each distinct authorities and mechanisms. For instance, Self-Governance authority allows Tribal Nations to administer and redesign federal programs based on their priorities and local needs, free from federal interference. Self-Determination authority generally requires Tribal governments to submit standards and redesign proposals for federal

¹ Indian Self-Determination Amendments of 1987, Pub. L. No. 100-472.

² Indian Self-Determination Act Amendments of 1994, 108 Stat. 4250.

³ The Harvard Project on American Indian Economic Development, *American Indian Self-Determination Through Self-Governance: The Only Policy That Has Ever Worked*, Statement to The Commission on Native Children by Joseph P. Kalt (December 15, 2022).

⁴ U.S. Government Accountability Office, *COVID-19 RELIEF FUNDS: Lessons Learned Could Improve Future Distribution of Federal Emergency Relief to Tribal Recipients*, GAO-23-105473 (Washington, D.C.: December 2022).

review and approval—providing the BIA with more control and involvement over implementing the resources and programs. The following table developed by the GAO compares key attributes of Self-Determination and Self-Governance authorities.

Attributes	Self-determination contract	Self-governance compact
Eligibility/participation	All tribes (and tribal organizations authorized by tribes) may submit a contract proposal to Interior for review.	In addition to existing participants, the Secretary of the Interior may select up to 50 new tribes per year to participate in self-governance. The qualified applicant pool for the program is to consist of each tribe that successfully completes the planning phase and has demonstrated financial management capability.
Reporting requirements	Participating tribes are required to submit an annual audit report to Interior under the Single Audit Act (SAA). The SAA requires that all non-federal entities that expend \$750,000 or more of federal funds per year complete an annual audit in conformity with the SAA.	Participating tribes are required to submit an annual audit report to Interior under the SAA. The SAA requires that all non-federal entities that expend \$750,000 or more of federal funds per year complete an annual audit in conformity with the SAA.
Standards for administering programs	Tribal proposals must include the standards under which the tribe will operate all non-construction programs, services, activities, or functions that are included in the proposal.	Tribes do not have to identify the standards for administering programs.
Right to redesign programs	Tribes may propose to redesign non-construction programs included in a contract, including non-statutory program standards, to make them more responsive to the population being served. Tribes must notify the Secretary of their intent to redesign. A proposal to redesign must be evaluated by the Secretary.	Tribes may redesign or consolidate programs without review by the Secretary except where the redesign involves a waiver of a regulation that would otherwise apply to the program or function.
Right to reallocate funds	Tribes are authorized, with respect to allocations within the approved budget of the contract, to re-budget funding allocations if such re-budgeting would not have an adverse effect on the performance of the contract.	Tribes may reallocate funds to any program authorized by Congress in the approved budget of the compact.

Source: GAO analysis of Indian Self-Determination and Education Assistance Act of 1975, as amended. | GAO-19-87

Another significant difference between Self-Determination and Self-Governance is that Self-Determination contracts and Self-Governance compacts are managed by two different organizations within Indian Affairs.

- For Self-Determination contracts, BIA negotiates, approves, manages, and monitors the contracts. The funding for Self-Determination contracts also flows through BIA regional offices.
- For Self-Governance compacts, the Office of Self-Governance (OSG) has a variety of responsibilities associated with managing Self-Governance agreements, including: determining if a Tribal Nation is eligible to negotiate a compact, participating in negotiations with Tribal governments and BIA programs to identify the amount of funds that will be included in the Self-Governance agreements, processing waivers of BIA regulations, and transferring funds to Tribal Nations with Self-Governance agreements. OSG also monitors Tribal governments' compliance with Single Audit Act requirements and coordinates the collection of budget and performance data from Tribal Nations that have a Self-Governance compact.

BIA and OSG are both overseen by DOI's Office of the Assistant Secretary—Indian Affairs.

Indian Affairs Needs to Take Actions to Help Ensure the Continued Expansion and Success of Self-Determination Contracting and Self-Governance Compacting

Indian Affairs has taken actions in recent years to streamline some BIA operations and reduce administrative burdens. For instance, Indian Affairs has worked to improve and reform some outdated or inefficient policies and processes, such as its effort to streamline the land acquisition, rights-of-way, and business lease application processes. However, numerous challenges that Tribal Nations face in working with Indian Affairs, including BIA and OSG, indicate that more work is needed and must be aimed at empowering Tribal Self-Governance. Indian Affairs should ensure its organizational capacity, structure and processes promote opportunities for increased Self-Governance.

Systems and Processes Need to be Modernized and Streamlined to Support the Continued Growth of Self-Governance Many Tribal Nations have expressed concerns that Indian Affairs' systems and processes are outdated and needlessly complex—creating significant challenges and inefficiencies for Tribal Nations with Self-

Determination and Self-Governance agreements and hindering the expansion of Self-Governance for other Tribal Nations. All administrative aspects associated with entering into and functioning under a Self-Governance agreement—from initial application, vetting, negotiation, finalization of agreements, delivery of funds, provision of payment details, and data collection for future year payments—need to be simplified and streamlined for the continued success of Self-Governance.

The following examples highlight the challenges created because of outdated and overly complex systems and processes:

- OSG does not ensure that Tribal Nations with Self-Governance agreements receive funds within the required time frames. Many Tribal Nations with Self-Governance agreements have expressed concerns about delays in receiving funds and the supporting documentation that were negotiated and agreed upon with DOI. In one example, a Tribal government is still waiting for the Department to provide \$13 million owed from FY 2022 and FY 2023 to administer federal programs under a Self-Governance agreement.
- In 2019, GAO reported to Congress that Tribal governments may be dissuaded from using Self-Determination and Self-Governance mechanisms due to DOI's inability to provide Tribal Nations with funds to administer federal programs within the time frame specified in Self-Determination and Self-Governance agreements.⁵ The GAO found that 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. The GAO and Indian Affairs identified several reasons for the delays in distributing funds, including a substantial number of vacancies in key positions, such as Awarding Officials. In addition, the distribution process requires numerous steps and approvals that can bog down the flow of funds.
- Tribal Nations have expressed concerns that the OSG database, which is intended to provide critical information related to funding does not always have timely information needed to fully account for the purpose of specific funds. Tribal Nations continue to push OSG to update and modernize the system.
- Some Tribal Nations have reported that BIA and OSG are unresponsive to requests for information to negotiate a Self-Governance compact or that simple requests result in overly burdensome processes to obtain information. For example, 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 2019, the GAO reported to Congress that BIA remains reluctant to share vital information needed by Tribal governments to negotiate a Self-Governance agreement. The GAO also found that some information provided to Tribal Nations is inconsistent among BIA regions and noted that BIA often lacks documentation or justification for its determinations that impact Tribal Nation's access to programs and resources for inclusion in Self-Governance agreements.

Self-Governance Needs to be Better Integrated Throughout Indian Affairs and More Coordination is Needed Between OSG and BIA Self-Governance has not been effectively integrated throughout BIA's structure and organization. OSG currently resides under Indian Affairs, outside of the BIA. This organizational arrangement was intended to ensure that BIA's reluctance to embrace Self-Governance would not hinder how Tribal Nations use the authority. However, it may have also limited access to some BIA offices, programs, and resources for Tribal Nations with Self-

⁵U.S. Government Accountability Office, *INDIAN PROGRAMS: Interior Should Address Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87 (Washington, D.C.: January 2019).

Governance compacts and provided some BIA offices with an excuse to neglect their duties that should extend to all Tribal Nations—regardless of whether the Tribal government has a Self-Governance agreement.

The following examples highlight the challenges created due to the lack of integration of Self-Governance across Indian Affairs and the lack of coordination between BIA and OSG:

- 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.⁶ It is unclear why BIA and OSG do not share basic information, but Tribal Nations continue to raise concerns that the lack of coordination hinders effective implementation of Self-Governance authority.
- 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.
- Some Tribal Nations have stated that BIA officials have discouraged them from negotiating a Self-Governance agreement. For instance, Tribal officials have been told BIA would no longer provide support if they entered into a Self-Governance agreement even though the statute clearly requires the agency to provide technical assistance and perform any PSFAs left with the BIA. In another instance, Tribal officials have been encouraged by Indian Affairs officials to pursue alternative mechanisms over Self-Governance—mechanisms which provide federal agencies with more control when compared to Self-Governance.
- 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.

SGCEC offers the following suggestions for the Subcommittee’s consideration:

- Congress could direct Indian Affairs to identify and implement comprehensive modernization efforts for technology systems, improve data management and sharing capabilities, and streamline unnecessarily complex processes associated with Self-Determination and Self-Governance.
- Congress could direct Indian Affairs to ensure that Self-Governance is integrated and understood throughout the Department, including BIA, so that Self-Governance is not isolated.

SGCEC appreciates the opportunity to share information on Self-Determination and Self-Governance with the Committee. Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO MR. JAY SPAAN, EXECUTIVE DIRECTOR,
SELF-GOVERNANCE COMMUNICATION & EDUCATION TRIBAL CONSORTIUM

Questions Submitted by Representative Westerman

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

Answer. 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.

⁶Office of Inspector General, U.S. Department of the Interior, *Indian Affairs Offices’ Poor Recordkeeping and Coordination Threaten Impact of Tiwaha Initiative*, Report No: 2017-ER-018 (Washington, D.C.: September 2018).

1a) What nuances should this committee be aware of regarding a 638 closeout process?

Answer. 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.

1b) Do annual funding agreements have a closeout process, and if so, are there ways to improve it?

Answer. 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.

Question 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.

2a) Could you describe instances in which this disconnect has affected tribes?

Answer. 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 SGCETC 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.

2b) Are there any suggestions for better communication between BIA and the OSG?

Answer. 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.

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

Answer. 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.

3a) Do you think the good faith negotiation requirement in the PROGRESS Act will improve this?

Answer. 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.

Question 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?

Answer. 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.

Ms. HAGEMAN. I thank the witness for his testimony. And one of the things that I very much appreciate is that you brought actual solutions and ideas of how you see things that can be fixed and addressed in addressing this program.

So, I appreciate the testimony from all five of you.

The Chair will now recognize Members for 5 minutes of questioning, beginning with myself.

Mr. Newland, in your testimony, you mentioned that BIA was working to resolve the three recommendations to resolve unspent funds and create better processes for closing out funds.

Can you explain how the BIA has and is implementing further changes and how many closeouts have happened since the report was actually released?

Mr. NEWLAND. Thank you for the question, Madam Chair. I can report that, by the end of this Fiscal Year, we anticipate having 141 of the 183 listed contracts in the IG report effectively closed out and we are working with the tribes for those other 42 agreements to make sure that we are able to continue to support their efforts to spend down those funds.

With respect to the other two recommendations in the IG's report, we are working to create the information and IT systems that were included in those recommendations and estimate that we will complete testing on that system by the end of this Fiscal Year.

On the third recommendation, we are targeting the end of the calendar year for closing out that recommendation.

Ms. HAGEMAN. Thank you. Could you also please elaborate on your testimony regarding the Progress Act's Negotiated Rule-making Committee. And, specifically, what I would like you to discuss is what major obstacles are left to discuss and is the Committee on track to meet their final rule proposal extended deadline of December 21 of this year?

Mr. NEWLAND. Thank you, Madam Chair. We are effectively or essentially at the end stage of the negotiated rulemaking where the Committee meets with Federal officials to hash out the language of the rule.

What is left to do is finish drafting the text of the rule and propose it and engage in consultation. And we do expect to complete that work by the statutory deadline.

Ms. HAGEMAN. OK. Thank you.

I would also like to question President Deborah Dotson. President Dotson, you provided testimony regarding reporting windows and how those windows do not always align with tribal program years.

Why doesn't each tribe just operate through programs on a Federal Fiscal Year and is there a hardship created with realigning programs with the Federal Fiscal Year?

Ms. DOTSON. Thank you, Madam Chair for your question.

We have the right to set our programs and our Fiscal Years when we would like to, which best serves our people.

And if we were to put our Fiscal Years with the Government's Fiscal Year, we could lose funding if we did that. We want to have the maximum funding to serve our people.

Ms. HAGEMAN. OK. And for President Harvier, your testimony mentions the impact of assuming functions of the Land, Title, and Records Office. How have the improvements you have made helped your tribe integrate with other communities in the Phoenix Metro area?

Mr. HARVIER. Thank you, Madam Chair.

I think for the previous leadership of our community for many years, and because of our location around the metropolitan area and the cities that surround our community, we have always tried to have good relationship with their surrounding cities and currently, we have agreements, for example, with solid wastewater agreements with our surrounding cities.

So, being a self-governance tribe, it makes it easier for us because we have control over what we are doing on our side in working with the cities. For example, our law enforcement.

Currently, our law enforcement is cross deputized and it is always a concern in Indian Country when outside law enforcement come into Indian Country. I think our relationship, because of our self-governance compact and having our law enforcement cross deputized, there is that discussion and that relationship that we have, because of self-governance, that we are able to work with the surrounding cities.

Ms. HAGEMAN. That is all very good. Thank you.

And just another question is, how has your ability to shorten bureaucratic times for documentation, that would usually take the BIA so much longer, impacted economic development on the reservation?

Mr. HARVIER. Well, that was a big plus for us in taking the Land, Records, and Titles over as a community. With the development that happens within our community, I think developers that are wanting to develop and have a site chosen, they want to be able to move things along.

So, having the Land, Records, and Titles in house and the time frames that we meet, I think it assures the developers that a project can start on time and things can start moving, instead of having to wait to go through the process of waiting months.

So, it has been a big benefit to the community for economic development in our community.

Ms. HAGEMAN. It sounds like it has benefited everyone to be able to do this, to process these documents on a much faster basis. So, thank you for that.

I am now going to recognize the other members of the Committee and I will recognize Ms. Leger Fernández for 5 minutes of questions.

Ms. LEGER FERNÁNDEZ. Thank you, Madam Chairwoman.

And thank you, President Harvier, for pointing out how much your tribe actually provides to carry out the functions that the Federal Government, in its trust responsibility, is supposed to be doing.

It is more than a two-to-one ratio, right? I am curious, and I would like to ask President Dotson and Chair Andrew-Maltais whether you also provide tribal funds to meet these obligations for the compacting contracting that you do?

And then a second one is, whether you also compact contract IHS functions, or is it just all BIA, BIE?

Ms. DOTSON. Thank you for the question. Yes, we provide funding to initiate programs that we have a short fall in and we do not contract for IHS.

Ms. LEGER FERNÁNDEZ. Chairwoman?

Ms. ANDREWS-MALTAIS. Thank you for the question.

We are actually a self-governance on both the Indian Health Services as well as BIA for about 20 years. And because the funding is so inadequate, we wind up by having to, the terminology now is called braiding, but we use grants to supplement the programs and services that we are able to provide for our community members because without the ability to redesign, we wouldn't be able to administer the programs and the services in the way that they need to to meet our people's needs.

Ms. LEGER FERNÁNDEZ. Right. The flexibility that compacting provides and the flexibility within the IHS system, in terms of the multiple sources of revenue really makes a difference.

Ms. ANDREWS-MALTAIS. Absolutely.

Ms. LEGER FERNÁNDEZ. And I think that is the point that was made in Secretary Newland's testimony about the benefits of the leasing program.

President Harvier, do you also compact IHS?

Mr. HARVIER. We just built a new health facility in our community and right now, I guess, what we are going through is a process in working with more on the IHS side in building the community, taking that project over as a self-governance project.

The situation that we faced after the project was completed, it is the start-up costs that we occurred as a community and now, trying to get those funds reimbursed. Those are some of the issues that we face and I will just say, I think we have been blessed as a community to be able to add more funding to programs that are so necessary for our members, but there are a lot of tribes out there that don't have that opportunity and that is where, to me, as a tribe, we are not really being able to service our members the way we would like to and how important that funding is to the tribes and getting it out in a proper time.

Ms. LEGER FERNÁNDEZ. And to Secretary Newland, I have a couple of questions. One is, given the inability of smaller tribes, although it is really amazing the number you gave in your testimony is that \$887 million of the \$892 million of our American Rescue Plan you actually were contracting and compacting?

That is really great and thank you for doing that. I think that is important. But I would like you to address two things. One is, what we might do to think about how we help smaller tribes who do not have a supplemental source of funding for these programs to compact and contract more?

And two, we heard testimony from several witnesses about the timeliness of actually getting the money. Some suggested that Congress should actually put it into law. Well, it is kind of already in the law.

So, can you tell me what you are doing to make sure that that is there so we don't, I mean, how do we get the money to the tribes quickly? What are you doing to make sure that happens?

Mr. NEWLAND. Thank you, Ranking Member.

Both of your questions are actually related to your first observation about moving the Rescue Plan money through Public Law 638 contracts.

The team that we have, in Indian Affairs, at the Department, when they have the resources to do the work, they are able to move this money out and move it quickly.

The challenge with getting money out in a timely manner and then meeting the close-out obligations on the backend is really a matter of resources, which has been reflected in the Department's budget requests the past several years.

One of the things that we can do to move this money more quickly is make sure we have the awarding officials within the BIA who are capable of handling the volume on both ends.

Ms. LEGER FERNÁNDEZ. Yes. You had pointed out that you had the same staff when you started as you have now.

OK. Thank you. With that, my time is expired, and I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mrs. Radewagen for 5 minutes of questioning.

Mrs. RADEWAGEN. Thank you, Chairwoman Hageman.

Mr. Spaan, in Secretary Newland's testimony, he mentioned that a Self-Governance Compact has not been closed out in the history of the program. Is there a reason to include a close-out process for 638 compacts or is that a question that should be left to negotiation between the Secretary and tribes?

Mr. SPAAN. Thank you very much for that question.

Compacts are different than Self-Determination Contracts. Compacts, whenever they are negotiated, do not have a term. The Compacts really set the stage for re-establishing a relationship between the tribe and the Federal Government.

So, whenever those get initiated, they are not active for a certain amount of time. What then happens is there are funding agreements that get negotiated where individual Program Services Function Activities get negotiated and put into that funding agreement.

That funding agreement is renegotiated periodically with the tribe and the Federal Government coming together. So, if there are any changes that are needed, that happens within the funding agreement during the negotiation process.

I think with the kind of close-out, I think there is also a difference between project versus program based. So, I think that project based is something that does have a lot of reporting requirements and sort of a close out.

Mrs. RADEWAGEN. And President Deborah Dotson, in your testimony, you mentioned that you entered into a Self-Governance Compact by transferring items previously operated under Self-Determination Contracts. How did your tribe determine that a Self-Governance Compact would serve you better and would you suggest any improvements for the negotiation process for Self-Governance Compacts?

Ms. DOTSON. Thank you for the question.

I was not in the office at the time when we negotiated our Self-Governance Compact, however, it gives us more flexibility to move funding around so that we can fund more programs.

And the improvement I would suggest is that adequate staffing would help. It would help with getting the funding out to us.

Mrs. RADEWAGEN. Thank you, Madam Chairwoman.

I yield back the balance of my time.

Ms. HAGEMAN. Well, I want to, again, thank the witnesses for your valuable testimony and the Members for their questions.

For those of you who have been watching this Subcommittee over the last year, I believe that it is apparent that the things that we have really been focusing on have been economic development for our tribes. Improving the economic conditions and giving them the opportunity to make decisions that are going to be in the best interest of their members.

It has been one of my priorities and one of my agendas to ensure that we are recognizing and acknowledging the sovereignty and autonomy of these Tribal Nations so that you can do what is in the best interest, not only in the short term but in the long term.

Having these kinds of hearings helps us to understand what the current legislative landscape looks like, how we can streamline it, how we can make it better, and what we can do for all of our tribal members.

So, I appreciate the fact that you are willing to travel to Washington, DC. I know it is not easy to get here. I have to come here from Wyoming and go through Denver. I have to drive 100 miles just to even catch the plane, but we very much appreciate you coming here.

We don't always have a full array of folks coming here to question. I had four hearings today myself. We have so many things going on, but I do want you to understand that your testimony is extremely important to us and helps us to be better at drafting legislation that is, again, in the long term, going to be able to help you with your management and the decisions that you are making for your members.

Again, thank you very much for being here. I want to state that the members of the Committee may have some additional questions for the witnesses and we will ask you to respond to those in writing.

Under Committee Rule 3, Members of the Committee must submit questions to the Subcommittee Clerk by 5 p.m. on Monday, March 11, 2024. The hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Subcommittee stands adjourned. Thank you.

[Whereupon, at 3:19 p.m., the Subcommittee was adjourned.]

