

**STATEMENT OF  
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ASSISTANT SECRETARY FOR INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE UNITED STATES  
HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

**HEARING ON  
*“Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs’ 638  
Contracting”***

**March 6, 2024**

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 twelve 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.