

**WRITTEN TESTIMONY OF
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SELF-GOVERNANCE COMMUNICATION & EDUCATION TRIBAL CONSORTIUM
OVERSIGHT HEARING ON
“ADVANCING TRIBAL SELF-DETERMINATION: EXAMINING BUREAU OF
INDIAN AFFAIRS’ 638 CONTRACTING”
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

March 6, 2024

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,

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

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

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 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.

³The 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).

⁴U.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).

Table 1: Comparison of Attributes of Tribal Self-Determination Contracts and Self-Governance Compacts

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

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).

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-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 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.

SGCETC 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.

SGCETC 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.

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