



# Flexible Funding Authorities to Support Tribal Climate Adaptation





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# Executive Summary

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## INTRODUCTION

This project is part of a policy research effort intended to support Tribes, federal agencies, and Tribal and non-Tribal organizations in addressing some of the climate adaptation barriers and needs experienced by Northwest coastal Tribes.<sup>1</sup> Accessing and administering Federal funds is a significant challenge for Tribes. Existing federal funding sources are often accompanied by rigid rules that make it difficult for Tribes to flexibly allocate funds as needed, and include strict qualification criteria that limit Tribal access to funds. Short-term funding cycles can be disruptive to long-term staffing and project needs, and are often misaligned with Tribal priorities.<sup>2</sup>

**This policy tool was developed to identify existing and potential flexible-funding authorities for Tribes to better access and utilize Federal funds. This document is composed of three memos, including:**

### MEMO

# 1

### POLICY EXEMPLARS

This memo illustrates some federal policies that may support Tribal goals and priorities, including the Tribal Environmental Resiliency Resources Act (TERRA Act, H.R. 7859) ideas for expanding the use of the Indian Self-Determination and Education Assistance Act (ISDEAA, PL93-638) across federal agencies, and opportunities for enhancing the federal trust responsibility through more efficient federal grant processes.

### MEMO

# 2

### LEVERAGING 477 PLANS

This memo assesses and explains possible flexible funding mechanisms offered by the Indian Employment, Training and Related Services Demonstration Act (PL102-477) and offers models for utilizing these flexibilities to address climate adaptation barriers faced by Northwest coastal Tribes.

### MEMO

# 3

### LEVERAGING PL 93-638

This memo identifies opportunities to utilize 638 contracts and compacts via ISDEAA to make climate adaptation funding more accessible and useful to Tribes. This memo includes three sections: the first describes the origins and objectives of the ISDEAA, the second assesses historic ISDEAA utilization and the changing federal approach to Tribal self-determination and self-governance; and the third suggests potential future research considerations. The appendices include an outline of additional self-governance and self-determination authorities, a table delineating changes to ISDEAA following the PROGRESS Act's final rule, and two documents summarizing and indexing changes to annual Department of the Interior (DOI) ISDEAA notices over time.\*

\* **NOTE:** This effort included a crosscut analysis of DOI's annual required publication of the [List of Programs Eligible for Inclusion in Funding Agreements Negotiated with Self-Governance Tribes by non-BIA Bureaus](#) from 1997 through 2024. The "Leveraging PL 93-638" memo includes high-level summaries of our findings, and the two appendices include more in-depth summaries organized by bureau/office and relevant tables and charts. These two appendices, along with PDF copies of all DOI Notices that are publicly-available in the Federal Register will also be made available on the [Sovereign-to-Sovereign Cooperative Agreements webpage](#).



## Policy Exemplars

This memo offers examples of federal policies that may align with and support Tribal priorities and goals, including the Tribal Emergency Response Resources Act, ideas for expanding the use of the Indian Self-Determination and Education Assistance Act across federal agencies, federal policies that could ensure federal grants better meet the federal trust responsibility, and ideas for expanding the use of the Indian Trust Asset Reform Act for successful Tribal trust asset management.

### EXEMPLAR

# 1

#### THE TRIBAL ENVIRONMENTAL RESILIENCY RESOURCES ACT—LEGISLATION TO STREAMLINE TRIBAL FUNDING FOR ENVIRONMENTAL ADAPTATION

In 2024, Congress considered a bill called the Tribal Environmental Resiliency Resources Act or “TERRA” (H.R. 7859). This bill is similar to the Indian Employment, Training, and Related Services Demonstration Act (PL102-477), but aims to streamline funding related to environmental adaptation, rather than workforce development. As proposed, the TERRA would have “authorize[d] the integration and administrative streamlining of Federal funding for Indian Tribes that have reservations, other Tribal lands, or ways of life at risk due to environmental impacts and natural disasters, and for other purposes.” A similar bill, H.R. 3654, was introduced in early 2025. Like the prior legislation, this bill would enact the TERRA “to authorize the integration and administrative streamlining of Federal funding for Indian Tribes that have reservations, other Tribal lands, or ways of life at risk due to environmental impacts and natural disasters, and for other purposes.”<sup>3</sup> This legislation offers an example of proposed legislation that could streamline additional federal funding sources.

## EXEMPLAR

## 2

**EXPAND THE SCOPE OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT**

(ISDEAA, PL 93-638) could be expanded to allow Tribes to take on programs, functions, services, and activities (PFSAs) across the federal government.<sup>4</sup> Currently, ISDEAA; the Indian Employment, Training, and Related Services Demonstration Act (PL 102-477); and related federal laws create a patchwork of statutory authorities for exercising broader self-determination, each according to their regulations. While these laws represent a solid step toward Tribal self-determination, the gaps that remain can hinder tribal objectives. Outside of the current programs eligible for Tribal administration via self-determination authorities, Tribes receive and utilize tens of billions of dollars in additional federal funds to support their people and lands.<sup>5</sup> But this patchwork of tools limits Tribal self-determination by only allowing Tribes to select from a narrow set of programs from particular agencies. For example, ISDEAA authorizes contracting and compacting of programs, functions, services, and activities (or PFSAs) primarily from the federal Bureau of Indian Affairs (BIA) and Indian Health Service (IHS), although certain other federal programs are available subject to certain limitations. These limits inhibit holistic governance that could enable self-determination according to Tribal priorities across federal funding streams rather than center on federal priorities or funding limitations.

- **One opportunity for expanding ISDEAA’s scope is to amend ISDEAA to provide all or more federal agencies with authority to enter into self-determination and self-governance agreements with Tribes.** Expanding the ISDEAA would decrease the regulatory burden on Tribes to seek self-determination across agencies through each agency’s own self-determination law (for example, the Department of Transportation’s Fixing America’s Surface Transportation Act (FAST Act, PL 114-94, 23 U.S.C. §207), the Forest Service’s Tribal Forest Protection Act, etc.) and allow Tribes to build up existing government capacity to take on all programs that are available to Tribes across all agencies.

Additional legislative actions could aim to ensure that all federal agencies identify PFSAs available to transfer to Tribal management under ISDEAA. In other words, PFSAs that can be adopted by Tribes under self-determination and self-governance agreements could be expanded beyond just those that are available under the current version of ISDEAA Title I and Title IV. An existing example of this can be found in the FAST Act, amended by Section 109 of the Consolidated Appropriations Act in 2024 (PL 118-42), which states: Annual funding agreements “shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.”<sup>6</sup>

- **Alternatively, ISDEAA could be amended to clarify and facilitate interagency transfers (IATs) to the Bureau of Indian Affairs (BIA) so that agencies outside of the Department of the Interior (DOI) and Department of Health and Human Services (DHHS) can utilize 638 agreements more efficiently.** At present, there is a lack of clarity in how IATs may be used to deliver funding to Tribes through 638 agreements. ISDEAA includes “programs administered (under current or future law or interagency agreement) by the DHHS and the DOI for the benefit of Indians for which appropriations are made to other Federal agencies.”<sup>7</sup>

In some instances, other agencies—such as the Department of Transportation, the Environmental Protection Agency, and the Department of Agriculture—have been successful in collaborating with Tribal Nations and the BIA to deliver funding through ISDEAA. However, these efforts are complicated because they rely on the flexibility and willingness of individual actors at individual agencies to find and exercise flexibility within existing law. As a result, some of those efforts fail.<sup>9</sup> Additionally, the complexity and lack of understanding regarding the IAT process can sometimes lead to administrative burdens and ultimately decrease funding available to Tribes.

A 2025 Congressional report referenced a statement by the United South and Eastern Tribes Sovereignty Protection Fund calling on Congress “to ensure legislation ‘fully supports’ interagency transfers.”<sup>9</sup> An amendment to ISDEAA to fully support interagency transfers from departments outside of the DOI and IHS could clarify the IAT process and address the decreases in funds that Tribes have reported as a result of past IATs. Language could be included that would prohibit any reduction in transferred amounts. This could be adapted from the Indian Employment, Training and Related Services Demonstration Act (PL 102-477), which states “[i]n no case shall the amount of Federal funds available to a tribal government involved in any...project be reduced as a result of the enactment of this Act.”<sup>10</sup>

With amendments to authorize all federal agencies to transfer funds to DOI to make use of ISDEAA agreements, the Department of Interior Office of Self Governance (OSG) could be utilized to manage these agreements and transfers. The OSG already manages funds transferred from other departments through the 102-477 program as well as DOI self-governance compacts.<sup>11</sup> However, in determining OSG involvement, careful consideration should be given to ensuring capacity at OSG to maintain and advance efficiency and ensure Tribal priorities are met.

ISDEAA Section 105(l) leases allow Tribal Nations and Tribal organizations to be compensated for costs incurred while carrying out PSFAs administered under Self-Governance agreements with Indian Health Service, Bureau of Indian Affairs, and Bureau of Indian Education at Tribal facilities. When negotiating ISDEAA Section 105(l) leases,<sup>12</sup> parties working with Pacific Northwest Tribal Nations could consider how they can increase flexibility and access to funds for Tribes, and Congress could make Section 105(l) lease funding mandatory, rather than discretionary.

→ **Finally, there are opportunities to expand ISDEAA specifically to support Tribal climate adaptation efforts by integrating ISDEAA into the EPA Indian General Assistance Program (IGAP).**<sup>13</sup> The EPA’s IGAP provides financial support to federally recognized Tribes, particularly smaller Tribes, to build environmental program capacity.<sup>14</sup> A 2008 EPA review found inconsistencies in IGAP implementation and recommended revising funding distribution to better align with Tribal progress, capacity needs, and long-term goals.<sup>15</sup> The Oneida Nation, in 2023 comments provided to the EPA, stated that “if EPA funds were provided through Self-Determination contracts and Self-Governance agreements, Tribal Nations would be able to develop long-term plans to meet the needs of their communities. Tribal Nations would also recognize greater flexibility to redesign programs that provide critical enhancements to our natural and built environments.”<sup>16</sup>

Because IGAP is designed to support Tribal self-determination and self-governance, it presents an opportunity for expanding ISDEAA within the EPA, allowing Tribes greater control over program administration and funding. Given that Tribes are already treated as states under major environmental laws like the Clean Water Act and Clean Air Act, there may be justification to extend ISDEAA to cover IGAP funding. This would enable long-term planning, greater flexibility in program design, and reduced federal bureaucracy. Through Tribal-EPA consultation, integrating ISDEAA into IGAP could expand local decision-making, ensuring that Tribes have the control and resources necessary to effectively protect their natural and built environments.

## EXEMPLAR

## 3

## REFORMING FEDERAL FUNDING AND HONORING THE TRUST RESPONSIBILITY

Various potential reforms could help eliminate barriers and ensure federal funding is made available and utilized more efficiently by Tribal Nations. This section discusses a few such options, one of which that was developed in an Executive Order that has since been rescinded, and concludes with a number of other potential recommendations.

- **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” offers a strong example of federal commitment to easing Tribal access to federal funds and prioritizing Tribal sovereignty. This EO was rescinded by the Trump Administration on March 14, 2025, but demonstrates policy language that could be useful for future proposals or policies.** The EO emphasized funding flexibility and utility to support Tribal priorities, improved policies to reduce administrative burdens, and called on agencies to assess unmet federal obligations to Tribal Nations. Most importantly, the Order recognized that these reforms were “not only good policy, but...also consistent with our commitment to fulfilling the United States’ unique trust responsibility to Tribal Nations...”
- **One pathway to reforming federal funds and recognizing the special responsibilities of the Federal government to Tribal Nations would be through waiving non-federal cost share or cost match requirements in all funding that goes to Tribes.** A key component of the Trust responsibility requires fully funding Tribal programs, functions, activities, and services. Tribes are historically underfunded and face myriad challenges when attempting to access funding that is available. Cost match requirements can be prohibitive and frustrate effective delivery of the federal trust responsibility. If a Tribal Nation has limited capacity and access to outside funding, a cost match requirement of even 5% can take a program off the table. These requirements slow down projects by forcing Tribes to spend years aligning funding before they can even apply for funding they may not get, decreases efficiency and burdens Tribes and the federal government by requiring a web of paperwork and contract negotiation with funding partners, and forces the flow of federal funds toward more well-resourced and high capacity communities, hindering efforts by smaller Tribes to build capacity.<sup>17</sup>

Some agencies have made efforts to minimize or eliminate match requirements for tribal programs through existing authorities, though these are generally piecemeal and Tribes must still wade through myriad regulations and grant applications to find those without a match requirement. In February 2024, the Administration for Children and Families Office of Child Support Services (OCSS) issued a final rule eliminating the non-federal share requirement for Tribal child support programs after determining that the previous 10-20% match requirement “limits growth, causes disruptions, and creates instability.”<sup>18</sup> The U.S. Army Corps of Engineers (USACE) applies a limited waiver of cost share requirements pursuant to Section 1156 of the Water Resources Development Act or WRDA.<sup>19</sup> The limit of that waiver changes annually, and the waiver amount granted often does not equate to a Tribes full match requirement.

**The following examples could be included in a series of best practices for federal funding for Tribes:**

1. Ensure that even one time grant opportunities are available for assumption through existing Tribal self-governance programs and reduce administrative burdens for Tribes to assume these funds.<sup>20</sup>
2. Waive all cost share requirements for Tribes.
3. Ensure that Tribes receive as much funding as desired via ISDEAA compact or contract, which can make those funds flexible to cover a required Tribal cost-match. Work with Tribes to identify flexible funding sources to cover their cost match.
4. Create a Tribal set-aside for individual grant programs “for Indians because of their status as Indians” in order to make funds eligible for delivery under ISDEAA, if desired by Tribal grant recipients.
5. Do not require or require only limited waivers of sovereign immunity for Tribes to receive grant funds.
6. Waive unduly burdensome requirements as was done in the Build America Buy America waiver for Tribes, established in 2025.<sup>21</sup>

**EXEMPLAR**

**4**

**INDIAN TRUST ASSET REFORM ACT**

The United States’s fiduciary and trust responsibility tasks the nation to, among other things, “promote tribal self-determination regarding governmental authority and economic development.”<sup>22</sup> In recognition of this trust responsibility, President Barack Obama signed the Indian Trust Asset Reform Act (ITARA, P. L. 114-178) into law on June 22, 2016.<sup>23</sup>

According to the February 24, 2016 House Bill report, ITARA should be read expansively.<sup>24</sup> ITARA was meant to build upon the ISDEAA and increase Tribal capacity to administer federal funds and services.<sup>25</sup> ITARA allows Tribes to assume direct control and management of trust assets, but makes clear that the United States will not be held financially liable for any losses.<sup>26</sup> ITARA extends to services related to “Tribally owned natural resources” as well as the ability to “procure services related to natural resources owned by the Tribe.”<sup>27</sup>

Amidst Tribal efforts to adapt to a changing climate, full management of Tribal trust assets presents a significant opportunity to manage trust assets in a way that is responsive to Tribal priorities. ITARA enables Tribes to develop and implement their own management plans (in lieu of federal management of trust resources) thereby allowing Tribes to bypass lengthy and bureaucratic federal approval processes. Through ITARA, Tribal governments can respond more rapidly to events that could impact Tribal trust assets.

ITARA seeks to promote Tribal self-determination by empowering Tribes to assume management of their own trust assets under the specifications of a Tribally developed, federally approved Indian Trust Asset Management Demonstration Plans (ITAMPs). ITARA contains three titles. Title I affirms the federal government’s trust responsibility to Tribes, including a responsibility to promote Tribal self-determination and economic development.<sup>28</sup> Title II establishes the Indian Trust Asset Management Demonstration Project (Project), set to expire in June 2026.<sup>29</sup> Title III specifies how Tribes can apply to participate in the Project, what must be included in an ITAMP, specific requirements for forest management and surface leasing plans, and the legal effects of the Act on federal liability and trust responsibility to Tribes.

In the decade since ITARA has been enacted, only two tribes have successfully developed and implemented ITAMPs: the Cow Creek Band of Umpqua Indians and the Coquille Indian Tribe. Both Tribes reside in Oregon and applied to assume authority for forest management projects. Cow Creek's project to streamline forest management was approved in December 2018.<sup>30</sup> Under the ITAMP, the Tribe has been able to implement numerous forest management actions in mere months that would've taken more than a year through traditional federal agencies processes.<sup>31</sup> Cow Creek has successfully generated timber production, revenue, and jobs to local and state industries.<sup>32</sup> The project has improved forest health, abated wildfire risk, and preserved Tribal cultural values. Cow Creek is seeking to expand tribal autonomy to manage all trust resources.<sup>33</sup> The Coquille Tribe similarly streamlined the bureaucratic red tape process. Coquille's ITAMP embeds the perspectives from tribal members, staff, and leadership to inform the forest resource management process.<sup>34</sup> Moreover, the Tribe was able to take advantage of the more flexible timelines to more quickly respond to resource management changes and save money.<sup>35</sup>

Given the widespread adoption by Tribes of ISDEAA more broadly and the benefits of these projects, it's surprising that only two Tribes have had ITARA projects approved in the past decade. We highlight two key challenges to ITARA implementation that Tribal leaders have identified:

- **DOI narrowly interprets ITARA's scope.** The Department of the Interior (DOI) narrowly interprets ITARA so as to exclusively approve ITAMPs for surface leasing and forest management plans.<sup>36</sup> Following this narrow interpretation, DOI prematurely rejects applications and proposals for Tribal management of trust assets outside of these two areas. For instance, the Tulalip Tribes of Washington submitted an application and tribal resolution to the DOI, proposing a management plan of the Tulalip tidelands.<sup>37</sup> The tidelands, which are within the exterior borders of the Reservation that was created through the Treaty of Point Elliott, are "indispensable to protect and preserve the use of the homeland for . . . the Tribes' treaty fishing rights, political integrity, economic security, and health and welfare of its members."<sup>38</sup> Currently the tidelands are managed by the Tulalip Tribes through 638 contracts. However, the DOI rejected the Tribes' application, stating "that the ITARA demonstration project was limited to forestry resources and surface leases."<sup>39</sup> This interpretation prevents tribes from fully benefiting from the provisions and intent of ITARA.
- **There is a lack of clarity and information provided to Tribes regarding ITARA's approval process and funding procedures.** Some Tribal leaders have emphasized a lack of awareness among tribes about ITARA and its potential benefits.<sup>40</sup> The federal government has a responsibility to conduct government-to-government consultation with tribes to share information regarding ITARA.<sup>41</sup> However, in the decade since ITARA has been enacted, the federal government's efforts have been limited. Additionally, there remains a lack of clarity about the implications of ITARA on the federal government's ongoing trust responsibility that may hinder the adoption of ITAMPs among tribal communities. As mentioned above, ITARA's purpose and intent clearly prioritizes tribal control and management of non-monetary trust resources. The federal government's trust responsibility to a tribe managing a trust asset pursuant to an approved ITAMP is less clear cut. One area for clarification is whether the federal government will provide funding to the tribe that is taking over management of their trust resources.<sup>42</sup> While tribes have repeatedly demonstrated sustainable and state-of-the-art resource management practices, tribes require funding to bring these management practices to fruition.<sup>43</sup> Even where a tribe has management authority, the federal government still has a federal trust responsibility and an obligation to provide these resources. This responsibility and obligation may be fulfilled by continuing the funding streams to the tribes that control the management programs.

→ **Funding does not adequately scale with the increased authority and autonomy granted under successful ITARA programs.**

To address these issues, the DOI could expand its interpretation of ITARA or Congress could clarify the definition of trust assets in ITARA. The DOI's interpretation of ITARA's scope is unfounded. ITARA's purpose is rooted in the trust relationship, and namely the "responsibility of the United States to Indian tribes . . . to promote tribal self-determination regarding governmental authority and economic development."<sup>44</sup> While ITARA does not define "trust asset," the Act also does not limit the use of the term either. According to the background and findings in the House, ITARA was intended to extend broadly. In fact, the Affiliated Tribes of Northwest Indians, which helped draft the original bill, "intentionally did not define the term 'trust resources' out of concern that the administration might" use the definition to unnecessarily limit the scope of ITARA.<sup>45</sup> Thus, any services related to "tribally owned natural resources" and to "procure services related to natural resources owned by the tribe" should fall under ITARA's scope of a trust asset.<sup>46</sup>

Section 204 of the Act, which details the process in which tribes may develop ITAMPs, further dispels a narrow reading of "trust asset" in ITARA. One of the first steps in developing an ITAMP is for tribes to "identify the trust assets that will be subject to the plan."<sup>47</sup> There is no limit of what "trust assets" are pursuant to this section, and tribes could determine any resources as "trust assets" to manage.<sup>48</sup> Moreover, the tribe's "trust asset" must reside "within the reservation" or an area within the tribe's jurisdiction.<sup>49</sup> Given this, it is a significant jump to presume trust assets only pertain to surface leasing and forest management. Not all tribes have surface leasing or forest management projects within their reservations. If ITARA was intended only for surface leasing and forest management projects, then the language would have explicitly stated this intention or limited possible interpretations.

While the rationale behind ITARA's narrow interpretation is unsubstantiated, it is likely the DOI looked at Section 205 of the Act to justify the application to only surface leases and forest management projects. Section 205 allows the Secretary to "approve an Indian trust asset management plan that includes a provision authorizing the Indian tribe to enter into, approve, and carry out a surface leasing transaction or forest land management activity without approval of the Secretary,"<sup>50</sup> if the management plan complies with the National Indian Forest Management Assessment (NIFRMA) or the Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act). Section 205 thus provides examples of trust assets because forest management and surface leasing were popular proposed asset management programs in the Pacific Northwest, U.S. and elsewhere in the country. More information regarding these provisions can be found on the Sovereign-to-Sovereign Agreement Database, hosted by the University of Washington School of Law.<sup>51</sup>



## Leveraging PL 102-477 (Indian Employment, Training and Related Services Demonstration Act)

This memo assesses and explains the flexibilities offered by the Indian Employment, Training, and Related Services Demonstration Act (PL 102-477) and proposes steps that Tribes could take to utilize these flexibilities to address climate adaptation barriers faced by Northwest coastal Tribes.

### WHAT ARE 477 PLANS?

The Indian Employment, Training and Related Services Demonstration Act, or PL 102-477, streamlines Tribal funding programs across federal agencies for Tribes with 638 contracts and compacts. Tribes with an approved 477 Plan are able to consolidate funding for workforce, training, and employment programs from twelve different agencies into a single funding stream. 477 Plans have increased opportunities for self-determination and significantly reduced administrative and reporting burdens.

The programs that can be implemented through or included in a 477 Plan are limited to the following: (i) job training; (ii) welfare to work and tribal work experience; (iii) creating or enhancing employment opportunities; (iv) skill development; (v) assisting Indian youth and adults to succeed in the workforce; (vi) encouraging self-sufficiency; (vii) familiarizing individual participants with the world of work; (viii) facilitating the creation of job opportunities; (ix) economic development; or (x) any services related to any of those activities.<sup>52</sup>

According to BIA reporting,<sup>53</sup> as of 2024, there are 78 approved 477 plans including 298 Tribes across 38 federal programs (Congress.gov 2025, 15).<sup>54</sup> The majority of programs included in 477 plans (85 percent) are programs administered by the Health and Human Services Administration for Children and Families. Thus, the ACF [list of Tribes that integrate ACF funding under 477 plans](#) can be a proxy for understanding which Tribes are utilizing 477 plans. Tribal Nations in the Pacific Northwest that utilize 477 plans include the Lummi Nation, Makah Tribe, Port Gamble S'Klallam Tribe, Suquamish Indian Tribe, Tulalip Tribes, and via the South Puget Intertribal Planning Agency, the Confederated Tribes of the Chehalis Reservation, Nisqually Indian Tribe, Shoalwater Bay Indian Tribe, Skokomish Indian Tribe, and Squaxin Island Tribe.

### **WHAT ARE THE ADVANTAGES FOR TRIBES IMPLEMENTING 477 PLANS?**

- Significantly reduced reporting and budgeting requirements;
- Improved Tribal administrative capacity and decreased Tribal overhead costs;
- Ability to waive regulatory and statutory requirements to better serve Tribal needs;
- Enable a unified and streamlined workforce, training, and economic development strategy that is aligned with other Tribal priorities;
- More directly responsive to community needs;
- Opportunities to direct program funding to Tribal economic development projects; and
- Participating Tribes receive the same amount of money for each program that it would receive if the programs were operated separately, including indirect and contract support funds (Renfield 2017).

### **WHAT AGENCIES PARTICIPATE IN PL 102-477? WHAT PROGRAMS ARE ELIGIBLE?**

Agency coordination is managed through a Memorandum of Agreement (MOA) between participating agencies, subject to approval by the U.S. Department of the Interior (DOI). The funds are transferred from the relevant participating agencies to the DOI and the DOI then transfers funding to the participating Tribe via an existing self-determination contract or self-governance compact (U.S. Department of Interior, 2024). 477 plans allow Tribes to combine funding from certain agencies within the following 12 departments: Interior, Labor, Health and Human Services, Education, Justice, Agriculture, Commerce, Energy, Homeland Security, Housing and Urban Development, Transportation, and Veterans Affairs,<sup>55</sup> although not every agency within those departments operates programs that have been deemed eligible for inclusion in a 477 plan. The participating departments must “conduct annual reviews to identify any obstacles preventing Tribes with approved 477 plans from ‘fully and efficiently’ carrying out the purposes of the law,” (Congress.gov 2025).

Appendix A includes a non-exhaustive list of existing programs that are incorporated into 477 plans.

### **HOW DOES A TRIBE REQUEST AND IMPLEMENT A 477 PLAN?**

A Tribe must first develop a draft 477 plan and then submit the plan to the Bureau of Indian Affairs (BIA) Office of Indian Services Division of Workforce Development. Tribes may request a program be added to their 477 plan. The BIA will then work with the relevant agency to determine whether the program is eligible.<sup>56</sup>

The BIA Division of Workforce Development is responsible for transferring funds from the relevant agencies and then disbursing those funds, usually as a lump sum. Thus, Tribes deal with only that federal entity for the operation of these programs. The relevant Tribe no longer has to keep separate records for each program and expenditures do not need to be allocated to individual programs. Tribes will submit only one annual report to Division of Workforce Development regarding the implementation of their 477 plans.



“Each 477 Tribe is guaranteed to receive the same amount of money<sup>57</sup> for each program that it would receive if it operated each of the programs separately, including indirect and direct contract support funds.”<sup>58</sup>

#### **HOW CAN THE ADDITIONAL FLEXIBILITY OF 477 PLANS CREATE OPPORTUNITIES FOR CLIMATE ADAPTATION INNOVATION?**

PL105-568, passed in 2000, amended PL 102-477 to provide for additional flexibility for funding Tribal activities. Title XI of that 2000 law authorizes Tribes participating in Public Law 102-477 to allocate up to 25% of their 477 resources to economic development efforts and job creation, depending on their local unemployment rate. This allocation is permitted regardless of any other statutory or regulatory prohibitions within individual programs (U.S. Department of the Interior 2023). Per the [DOI website](#), Tribes may request a statutory waiver of program provisions that could inhibit the successful implementation of their approved 477 plan.

Thus, a 477 plan may involve the expenditure of funds provided under the included programs to create employment opportunities or to develop the economic resources of the Tribe. These expenditures must be consistent with an overall regional economic activity that has a reasonable likelihood of success and with the purposes applicable to Indian programs under the statute that authorized the funds.<sup>59</sup>

Since 2000, Tribes have utilized the flexibility provided by 477 plans to re-tool federal funding to develop innovative economic development solutions aligned with Tribal priorities. This includes supporting the development of small businesses, small business plan development, and business start-up costs. By examining effective uses of 477 plans for innovative economic development, Tribes may be able to identify ways to align workforce and economic development strategies with climate adaptation goals.

- **477 plans could be used to redirect federal funding to finance economic development efforts related to climate adaptation planning.** Citizen Potawatomi Nation's 477 plan took advantage of the economic development flexibility to redirect some federal funds to the Tribe's CDFI and provide financing to Native-owned small businesses in their service area (Citizen Potawatomi Nation 2021). The result has been a revolving loan fund, which Tribal staff described as follows: "The loan pool is a 477 creation. The CPCDC manages a \$100,000 loan pool that we created. Each year, I get a report on how many new loans, new jobs created. That pool has turned over now over three times." Tribal Nations in the Pacific Northwest could explore opportunities to implement 477 plans, take advantage of Title XI economic development flexibilities, and redirect federal funding to support climate adaptation related businesses and economic development initiatives.
- **477 plans could be used to develop integrated strategies that address capacity needs and develop the workforce needed to carry out Tribal climate adaptation initiatives.** For example, the Nez Perce Tribe aligned its 477 plan with its education plan and partnered with Northwest Indian College to provide local higher education offerings, including through a new Native Environmental Science degree—a field the Tribe deemed critical to its workforce development and the preservation of cultural lifeways (National Congress of American Indians 2024). Through a 477 plan, Tribal Nations in the Pacific Northwest could develop educational programs, workforce training, and youth programming to support climate adaptation goals.
- **The streamlining of federal workforce, training, and assistance programs offered by 477 plans can also be useful in streamlining disaster response by Tribal governments** and providing resources to Tribal members. As described by one Tribal official, "we can step in at any time with 477 without having to maneuver multiple applications in a time of crisis. We can have one application and meet all the needs of the family, and so that can be crucial at times of emergency." By implementing a 477 plan, Tribal governments are able to create a one-stop shop for employment, training, and related services, infrastructure that is particularly useful in deploying a rapid response in the event of a crisis.
- **There are also opportunities to develop collaborative climate adaptation strategies and workforce development planning through 477 plans.** One way to potentially take advantage of the flexibilities offered through 477 plans is to ensure that Tribal workforce, economic development, and related services departments are coordinating and collaborating with any departments engaged in climate adaptation planning. Tribal staff may be able to develop creative workforce and economic development programs that, through the flexibility offered by a 477 plan, can be implemented to address climate adaptation needs. As Tribal governments develop climate adaptation plans, they could coordinate to integrate workforce development, capacity building, and economic development strategies. Moreover, climate adaptation plans that spell out workforce development needs can be used to develop 477 plans and workforce development strategies. Many Tribal Nations with climate adaptation plans have already embedded education and training programs into those plans. Through collaboration, 477 plans may offer more opportunities to direct additional funding toward these efforts and to develop specific economic resources and job creation opportunities related to climate adaptation.

## Helpful Resources

- [Department of Interior Division of Workforce Development: About the 477 Program](#)
- [BIA, How PL 102-477 Can Create Economic Opportunities](#)
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## Appendix A: Existing Programs that May be Included in 477 Plans

### DEPARTMENT OF INTERIOR – EXISTING PROGRAMS

#### Bureau of Indian Affairs

- General Assistance Program
- Tribal Work Experience Program
- BIA Employment Assistance–Adult Vocational Training Program (AVT)
- BIA Employment Assistance–Direct Employment (DE) Program
- BIA Higher Education Program
- BIA Adult Basic Education (ABE) Program
- Johnson-O’Malley Program

### DEPARTMENT OF LABOR – EXISTING PROGRAMS

- Workforce Investment Act (WIA) Section 166 Comprehensive Services Program
- WIA Section 166 Supplemental Youth Services

### DEPARTMENT OF HEALTH AND HUMAN SERVICES – EXISTING PROGRAMS (AS OF 2024)

- Native Employment Works (NEW) Program
- Tribal Temporary Assistance to Needy Families (TANF) Program
- Child Care and Development Fund (CCDF) Program
- Community Services Block Grant
- Family Violence Prevention Services Act
- Low Income Home Energy Assistance Program (LIHEAP)
- Title IV-B, Subpart 1 Child Welfare Services Program
- Title IV-B, Subpart 2 Promoting Safe and Stable Families

### DEPARTMENT OF EDUCATION – EXISTING PROGRAMS

- Perkins Act Discretionary Grants (eligible but never implemented, [source](#))
- Title IV-B Child Welfare Programs ([source](#))



## Leveraging PL 93-638 Addressing Barriers and Needs

This memo is part of a policy research effort intended to support Tribes, partner agencies, and organizations in addressing some of the climate adaptation barriers and needs experienced by Northwest Coastal Tribes.<sup>60</sup> Northwest coastal Tribal governments lack adequate staff for addressing their climate adaptation priorities. Barriers to sufficient staff capacity include short-term grant funding for positions, which drives high staff turnover and absorbs Tribal staff time in grant writing and reporting, and chronic housing shortages that limit staff recruitment and retention.<sup>61</sup> This memo identifies opportunities to utilize 638 contracts and compacts to make funding more accessible and useful to Tribes. The paper includes three sections: The first describes the origins and objectives of PL 93-638. The second section assesses how Tribes have utilized the ISDEAA and how the federal approach to Tribal self-determination and self-governance has evolved. The third section includes considerations for future research. The appendices include an outline of additional self-governance and self-determination authorities, a table delineating changes to PL 93-638 following the PROGRESS Act’s final rule, and two documents summarizing and indexing changes to annual DOI ISDEAA notices over time.

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## SECTION

## 1

## PL 93-638—ORIGINS, OBJECTIVES, POLICY

**PL 93-638: HISTORIC CONTEXT AND ORIGINS**

Passed by Congress in 1975 and signed into law by President Gerald Ford, the Indian Self-Determination and Education Assistance Act (ISDEAA or PL 93-638) followed more than a decade of advocacy by the American Indian Movement, National Congress of American Indians and grassroots civil rights organizing. In 1970, after a series of demonstration projects and continued advocacy over three presidential administrations, President Nixon called on Congress to pass transformative legislation that would become the cornerstone policy of the federal government's shift from the termination era to a federal-tribal relationship characterized by policies advancing tribal self-determination.

ISDEAA was designed, in part, to respond to the decades-long failures of the federal government to efficiently run tribal-serving programs in accordance with tribal need and its trust responsibility.<sup>62</sup> It was grounded in the understanding that tribes could better perform governmental functions and could better respond to community needs than the BIA or other federal agencies operating programs in Indian Country.<sup>63</sup> Self-determination appealed to the Nixon Administration as an opportunity to slim the federal government and to mitigate budgetary increases that had been necessitated by large settlements resulting from poor management of BIA-operated programs.<sup>64</sup> Immediately following the passage of PL 93-638, uptake was low. A 1978 GAO analysis of the legislation found that not much had changed since its passage: of 50 contracts, only 10 were new (the other 40 were renewals of contracts that had been implemented under a pre-existing authority), and of these 10, only 1 "resulted in a shift of services from the agency to the contracting tribe."<sup>65</sup>

Chiefly, Tribal leaders recognized that leaving the design, planning, and evaluation of Federal programs to the federal government could not really be characterized as Tribal self-determination.<sup>66</sup> Among the federal obstacles to widespread Tribal ISDEAA adoption, were lengthy federal contracting processes, "the attitudes of Federal employees" opposed to Tribal control, and a lack of clarity in programs available for contracting under ISDEAA.<sup>67</sup> Moreover, after decades of termination policies, Tribes did not have the administrative infrastructure to successfully operate desired programs, and were justifiably concerned that the 638 contracting program was just the first step towards the termination of federal funding for these programs.<sup>68</sup> Tribes were forced to continue working with Congress to ensure they could take advantage of the authority, and succeeded through several amendments.<sup>69</sup>

Today, 526 tribes take advantage of contracts under Title I of ISDEAA and 295 tribes take advantage of self-governance compacts under Title IV.<sup>70</sup> Tribes participating in the 638 program—sometimes referred to as 638 tribes—take over aspects of particular programs and receive the corresponding funding that had previously been earmarked for the federal agency operating the program. The tribe is then authorized to manage the funding to run the program as it sees fit, shifting the program administration to tribes without increasing appropriations.<sup>71</sup> The program, amended throughout the years following tribal advocacy, has become a tool for furthering tribal autonomy and decreasing federal supremacy within the government-to-government relationship.<sup>72</sup>

## **PL 93-638: CONTRACTING AND COMPACTING POLICY—ELIGIBILITY, PROCESS, PROGRAMS**

**TITLE I—SELF-DETERMINATION CONTRACTS:** An Indian Tribe or tribal organization may enter into 638 self-determination contracts with the Secretary of the Interior at the request of any federally recognized Indian tribe. A Tribal organization is a “recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.” 25 U.S.C. § 5304(l). Title I contracts are mandatory—at the request of any Tribe, the Secretary must enter into 638 contracts with tribes to “plan, conduct, and administer programs or portions thereof” for programs operated by the Department of Health and Human Services and the Department of Interior for the benefit of Indians because of their status as Indians. This includes any office or agency of HHS and DOI as well as those programs administered by the Secretary of Interior for the benefit of Indians for which appropriations are made to agencies other than HHS and DOI. 25 U.S.C. § 5321(1).

Eligible tribal organizations may submit a proposal for a contract to the Secretary for review. The Secretary has 90 days to approve the contract unless one of five findings is made: (1) the service to be rendered to the Indian beneficiaries will not be satisfactory; (2) adequate protection of trust resources is not assured; (3) the proposed project cannot be properly completed or maintained by the proposed contract; (4) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract; or (5) the program, function, service, or activity that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered because the proposal includes activities that cannot lawfully be carried out by the contractor. 25 U.S.C. § 5321(2); 25 CFR 900.22. If the Secretary makes any of the five findings, the Secretary must provide assistance to the Tribe or Tribal organization to “overcome the stated objections.” 25 U.S.C. § 5321(b); 25 CFR 900.28.

**TITLE IV—SELF-GOVERNANCE COMPACTS:** Self-governance compacts differ from self-determination contracts in several key ways. Title IV authorizes the inclusion of a broader range of programs, services, functions and activities (PSFAs) available for Tribal assumption, and also allows more flexibility in Tribal planning and administration of these PSFAs. However, Secretary negotiation of compacts is discretionary, not mandatory, and Tribal eligibility is more limited. Under ISDEAA Title IV, federally recognized Indian Tribes or Consortia of Indian Tribes can enter into written self-governance compacts with the Secretary of Interior. 25 U.S.C. § 5362(b); 25 CFR 1000.115; 25 U.S.C. § 5383(b). A Consortium is defined as “an organization of Indian Tribes that is authorized by those Tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts.” 25 CFR 1000.5.

A Tribe or Consortium may submit a request to the Director of the Office of Self-Governance (OSG) to become a self-governance Tribe. The Tribe/Consortium must first negotiate and implement a self-governance compact, which is a legally binding and mutually enforceable written agreement that affirms the government-to-government relationship between a self-governance Tribe and the United States...” 25 CFR 1000.501. The parties then may negotiate funding agreements, which differ from a compact in that the funding agreements apply to a single bureau, as opposed to apply to all bureaus within the Department. Id. Funding agreements are separate documents negotiated and implemented to assume particular PSFAs, and may be negotiated after or simultaneous to the negotiation of a compact. 25 CFR 1000.540.

“The Secretary, acting through the OSG Director, may not select more than fifty new Tribes to participate in self-governance compacts per year. 25 U.S.C. § 5362(b)(1)(A); 25 U.S.C. § 5383(a). The first eligible fifty who apply may begin to participate in self-governance and anyone denied participation due to the limitation in number is entitled to participate in the next fiscal year. 25 CFR 1000.180. Selected Tribes or Consortia then enter into the negotiation process of the self-governance compact with the Department according to the process laid out in 25 CFR Part 1000 Subpart H. 25 CFR 1000.170.

To be eligible for self-governance, Tribes or Consortia historically required to perform annual audits under the Single Audit Act and 2 CFR part 200 must demonstrate financial stability by having no uncorrected significant and material audit exceptions in the past three fiscal years. 25 CFR 1000.125(c). If issues existed, documentation must prove that corrections were made. *Id.*

Title IV compacts, like contracts, authorize the Tribe to “plan, conduct, consolidate, and administer programs, services, functions, and activities,” but also allow Tribes to redesign, consolidate, or reallocate funds for compacted programs. 25 U.S.C. § 5363(b)(1); 25 U.S.C. § 5363(b)(3).

Title IV self-governance compacts include programs eligible for self-determination contracts under Title I of the Act. 25 CFR 1000.620. Title IV also authorizes Tribal assumption of a broader range of PSFAs for Tribal or Consortium assumption than are eligible under Title I. Three categories of PSFAs may be assumed by Tribes via a compact funding agreement:

- **Category 1, as described in 25 U.S.C. § 5363(b)(1):** “PSFAs administered by the Secretary for the benefit of Indians because of their status as Indians, including, but not limited to those provided through the BIA, the BIE, the BTFA, the Office of the Assistant Secretary for Indian Affairs, and the Appraisal and Valuation Services Office,” as well as the PSFAs administered by these bureaus and offices for which “Indian Tribes or Indians are primary or significant beneficiaries.” 25 CFR 1000.645; 25 CFR 1000.660; 25 U.S.C. § 5363(b)(1)(C). This also includes PSFAs administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to other agencies. 25 U.S.C. 5363(b)(1)(B). These funding agreements are negotiated according to 25 CFR Part 1000 Subpart F. Tribes/Consortium typically do not need Secretarial approval to redesign BIA programs, or the PSFAs identified in 25 U.S.C. § 5363(b)(1). 25 CFR 1000.660
- **Category 2, as described in 25 U.S.C. 5363(b)(2):** PSFAs administered by the DOI, other than those administered by the BIA (which are eligible for compacting through type 1), that are “otherwise available to Indian tribes or Indians.” 25 CFR 1000.820. These programs typically do require Secretarial approval to redesign BIA programs that the Tribe administers under a funding agreement. 25 U.S.C. 5363(b)(2). 25 CFR 1000.660(a). 25 U.S.C. 5363(b)(3).
- **Category 3, as described in 25 U.S.C. 5363(c):** An agreement negotiated for Tribal assumption of either of the above types of PSFAs may also include non-BIA PSFAs administered by the Department that are “of special geographic, historical, or cultural significance” to participating Tribes or Consortium. 25 CFR 1000.825. These terms are defined in the associated regulations at 25 CFR 1000.830. These programs typically do require Secretarial approval to redesign BIA programs that the Tribe administers under a funding agreement. 25 U.S.C. 5363(c); 25 CFR 1000.660(a). A Tribe may only assume these “special significance” PSFAs under funding agreement negotiated for Tribal assumption of programs under 25 U.S.C. § 5363(b)(1) or 25 U.S.C. 5363(b)(2). 25 CFR 1000.200.

Funding agreements may not include programs that are inherently Federal or where the statute does not authorize the type of participation sought by the Tribe. 25 CFR 1000.845. However, a program does not need to be identified in the authorizing statutes to be included in a self-governance funding agreement and a lack of specificity in a statute alone does not create a blanket exclusion of a program in a funding agreement. *Id.* Moreover, functions may not be determined to be inherently federal “simply simply because an organic statute<sup>73</sup> vests an agency with generic management authority over a broad category of land.”*Id.* Ultimately, the Secretary must interpret laws in a manner that facilitates inclusion and implementation of programs in funding agreements. *Id.* The Secretary is required to publish, annually, a non-exhaustive list of Department programs that are eligible for inclusion in these agreements, other than those administered by the BIA, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Appraisal and Valuation Services Office. 25 U.S.C. 5372(c)(3).

Self-governance Tribes are required to submit an annual report on self-governance. 25 CFR 1000.2020. This report is “intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and...is not intended to be burdensome, and Tribes/Consortia are encouraged to design and present the report in a brief and concise manner.” 25 CFR 1000.2020(b). Additionally, Tribes may be asked to submit additional data to the Secretary to be used to determine the allocation of funds to be awarded under a funding agreement. Self-governance Tribes and Consortia are also subject to the requirements of the Single Agency Audit Act (31 U.S.C. 7501) and must submit an annual single audit report for each funding agreement unless exempted by OMB according to annual exemption standards. 25 CFR 1000.2030. 25 CFR 1000.2035. Finally, Tribes are also subject to the reporting and audit requirements for recipients of Federal financial assistance set forth in 25 USC 5305 and must maintain financial records accordingly. 25 CFR 1000.2040.

### LIMITATIONS AND BENEFITS OF ISDEAA AND OPPORTUNITIES FOR FUTURE RESEARCH

All funds provided under a self-determination contract or under a funding agreement associated with a self-governance compact are treated as non-federal funds for the purposes of meeting matching requirements under any other federal law. 25 U.S.C. 5363(j); 25 CFR 1000.2180; 25 U.S.C. 5325(j). Certain grants available to Indians because of their status as Indians (or due to special geographic, historical, or cultural significance) may be eligible to be administered by Tribes via an ISDEAA contract or compact and can create additional flexibility and support Tribes in leveraging these funds into additional funds.

→ **Question for further research:** *Does creating a Tribal set-aside for a grant program run by DOI make that program “available to Indians because of their status as Indians” and thus qualify the funds to be administered via ISDEAA?*

- **Potential recommendation:** *The Department of Interior should make every effort to include a Tribal set-aside in every grant program that is accessible to Tribes, where set-asides are not disallowed by statute. In doing so, the Department should stipulate that “this set aside is made for Tribes because of their status as Tribes” in order to enable funds and programs to be administered via ISDEAA.*

→ **Question for further research:** *Are agencies outside of DOI able to create a Tribal set-aside in the same way as the above, and transfer appropriated funds to the DOI for administration by the Secretary, who can then deliver the funds to Tribes via ISDEAA?*

Tribes are prohibited from assuming any PSFAs, via compact or contract, that are “inherently federal functions.”<sup>74</sup> The [Federal Acquisition Regulation](#) subpart 7.5 includes a non-exhaustive list of typical governmental functions considered “inherently federal,” which can provide some guidance.<sup>75</sup>

In the 2024 [Final Rule](#) for the PROGRESS Act, which amended portions of ISDEAA, the Department of Interior reaffirmed that it continues to make determinations regarding which functions are “inherently Federal on a uniform case-by-case basis,” according to the latest guidance published in the May 17, 1996 Solicitor’s memorandum.<sup>76</sup> The 1996 Memorandum<sup>77</sup> (“the Leshy Memorandum”) states that “The more a delegated function relates to tribal sovereignty over members and territory, the more likely it is that the inherently Federal exception of section 403(k) does not apply.” The Department maintains that assessing whether functions are inherently federal through more uniform rules could result in unintended limitations on tribal exercise of sovereignty.

## SECTION

## 2

**ANALYSIS OF THE LIST OF PROGRAMS ELIGIBLE FOR INCLUSION IN FUNDING AGREEMENTS NEGOTIATED WITH SELF-GOVERNANCE TRIBES PLANS****HOW ARE AGENCIES CURRENTLY USING 683 AGREEMENTS TO DELIVER PROGRAMS, FUNDING, AND SERVICES TO TRIBES, AND HOW HAVE AGENCIES, BUREAUS, OR PROGRAMS HISTORICALLY USED 638 AGREEMENTS?**

Despite the successes of the self-determination and self-governance programs, PSFA adoption has largely been limited to the BIA and IHS. As of 2022, “compared to more than 600 annual contracts with the BIA and IHS in recent years, tribes have entered into fewer than a dozen contracts annually with all of the land management agencies within the DOI combined, including the BLM, Fish and Wildlife Service, and the National Parks Service.”<sup>78</sup> When assessing Tribal requests for self-governance, the Secretary is instructed to interpret laws in a manner that facilitates inclusion and implementation of programs in funding agreements and to maximize the policy of Tribal self-governance. 25 CFR 1000.20(h).

ISDEAA requires the Secretary of the Interior (Secretary) to annually publish a list of, and programmatic targets for, non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program. 25 U.S.C. § 5372. These lists are not exhaustive, and programs available for assumption by a tribe must be determined on a case by case basis, though “the Act, as amended, favors the inclusion of a wide range of programs.” 25 CFR 1000.850. Tribes may negotiate with bureaus to assume PSFAs that are not listed. 25 CFR 1000.870. The Secretary is required to consult Tribes on annual list updates. 25 CFR 1000.860.

The research team analyzed the Secretary’s annual notices to understand trends in the programs included on the annual list across DOI bureaus and offices and in each bureau or office approach toward Tribal self-governance agreements. This is only a snapshot—the annual notices may not include all existing and relevant agreements, and the DOI includes a disclaimer that the lists are not exhaustive and Tribes can assume PSFAs that are not listed. Our analysis included two parts, first we did a qualitative analysis of the changes over time of introductory language that was included for each bureau/office prior to introducing the PSFAs available for assumption, and second, we did a quantitative and qualitative analysis of the PSFAs listed and the number of Tribes with whom each bureau had agreements.

These analyses can be found in appendices to this document.

**ANALYSIS OF 638 NOTICES: INTRODUCTORY LANGUAGE**

Over time, language published in these notices by DOI's non-BIA bureaus and offices has changed significantly, becoming more detailed, and, in the case of some agencies, indicating increased opportunities for expanding Tribal self-governance. These language changes included both substantive and technical changes, as demonstrated by the following examples:

- Some bureaus and offices have recently added clarifying language to explain that **proximity** would not be considered a barrier for entering into 638 agreements, after historically saying that PSFA lists were informed by Tribal proximity (see FY 2023 NPS, FY 2018 BoR, FY 2008 USFWS).
- Some notices began **regularly capitalizing “Tribe,”** indicating a respectful approach toward Tribes and self-governance (see FY 2016 USFWS, FY 2016 ONRR, FY 2014 BLM).
- Other notices included more proactive language about **“promoting”** self-governance (see FY 2015 ONRR and FY 2023 General Section III) and **“encouraging”** Tribes to reach out to discuss compacting agreements, regardless whether a PSFA the Tribe sought to assume was listed (see FY 2008-2009 MMS/BOEM).
- Some notices were updated to change language that historically indicated the assumption of PSFAs by non-self-governance Tribes could be a good **“prerequisite”** for assuming other functions to instead describe assumption of these PSFAs as good **“preparation,”** a phrasing that is both more accurate and less paternalistic (FY 2010 BOEM/MMS, FY 2011 ONRR).
- **Responses to comments** can also be indicative of a bureau/office's approach to Tribes. In the FY 2001 notice, comments to BLM and USFWS requested that the bureaus modify their notice language to be better aligned to the intent of Tribal self-governance. BLM responded that it believed the language was appropriate as written, and no changes were made. USFWS changed the language in the first sentence of the second paragraph from “FWS will also discuss participation in any program with any Indian tribe, self-governance or non-self-governance,” to “Some elements of the following programs may be eligible for inclusion in a self-governance annual funding agreement.”
- The FY 2023 notice included some significant changes across bureaus/offices, following Joint Secretarial Order No. 3403 issued by the Secretaries of the Interior, Agriculture, and Commerce on fulfilling the trust responsibility to Tribes. Following this order, the FY 23 and FY 24 NPS notices made the most significant changes and included an acknowledgement that “all NPS units sit on Indigenous homelands and bear Indigenous interests and unique oral histories.”

This analysis can hopefully be useful to highlight the **non-exhaustive nature of these annual notices**, and the ways in which Tribal assertions of sovereignty can advance self-governance agreements where bureaus and offices may have a blind spot.

- For example, USGS has historically included language that seemingly intends to preclude the bureau from entering into self-governance agreements. USGS included the following statements that could be interpreted as discouraging of Tribal self-governance agreements: “No USGS programs are specifically available to American Indians or Alaska Natives,” “the USGS does not manage lands or resources,” and the following statement, which is very misaligned with the intent of self-governance: “self-governance tribes **may potentially assist** USGS in the data acquisition and analysis components of its activities through a funding agreement.” More about the bureau’s approach can be gleaned by **considering both the introductory language and PSFAs listings**. USGS never once listed any PSFAs that could be assumed by Tribes or entered into any agreements with Tribes prior to FY 2024. In FY 2024, USGS listed two PSFAs and entered into their first agreement, which was with the Yurok Tribe of the Yurok Reservation to assume data collection PSFAs following the Klamath Dam removal.
- In examining the introductory language of historic notices, we noted that the **Bureau of Ocean and Energy Management** fell off the annual notice shortly after its creation in FY 2011. Over the prior few years, the notice language had become increasingly friendly to Tribes, including, in the FY 2010 notice, a statement that Tribes with a “special connection” may be able to assume **offshore energy minerals management programs**. Despite the fact that BOEM has been left off subsequent notices, it could be valuable to note this precedent for the assumption by tribes of offshore minerals management PSFAs through self-governance compacting.

#### **ANALYSIS OF 638 NOTICES: PSFAS**

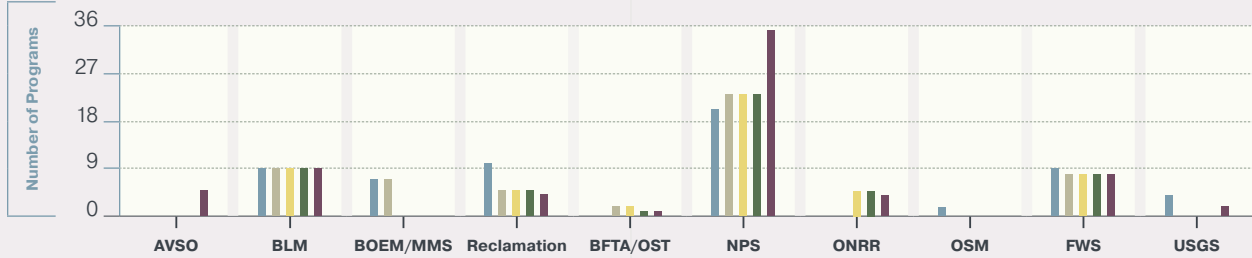
Our analysis of the annual ISDEAA notices published by DOI of the Programs, Services, Functions, and Activities available for Tribal assumption highlights DOI bureaus that have made efforts to increase Tribal self-governance compacting, which could indicate interesting causes for these changes. Over the years, the National Park Service (NPS) significantly increased the number of programs listed as available for Tribal assumption, particularly in FY 2023, resulting in a modest increase in the number of Tribes assuming NPS PSFAs. The FY 2020 BLM notice highlighted how political priorities could impact listings, when a Secretarial Order expanded the minerals management functions available to Tribes. The USGS did not list any Tribal agreements or any programs for Tribal assumption, and, as described above, did not indicate that it was particularly open to Tribal compacting. The removal of dams on the Klamath River provided an opportunity for change, and, in FY 2024, the USGS listed two new programs for Tribal assumption, both related to Klamath restoration efforts.

Importantly, none of these lists are exhaustive, and, while some agencies appear to seek to advance Tribal self-governance by providing expansive lists of PSFAs available for transfer, others list far fewer. These differences could represent a distinction between bureaus that prioritize Tribally-related programs and those that do not. Or, those bureaus listing fewer PSFAs may not understand the breadth of programs that can be assumed by Tribes or simply have not yet been approached by or worked with a Tribe seeking to enter into an agreement. Still, across all of these notices, the scenarios they describe highlight opportunities and pathways for expanding Tribal compacting at DOI. The Klamath restoration described above resulted in two new agreements with USGS, which occurred before USGS had ever listed PSFAs for Tribal assumption. Thus, a program—or even a Bureau—need not be listed in these notices for a Tribe to approach DOI to propose an agreement. The below charts depict key changes over time to the number of PSFAs listed and the number of Tribes with agreements, by bureau/office.

### Number of Programs by Bureau/Office

Comparison across key years (2004, 2010, 2016, 2020, 2024)

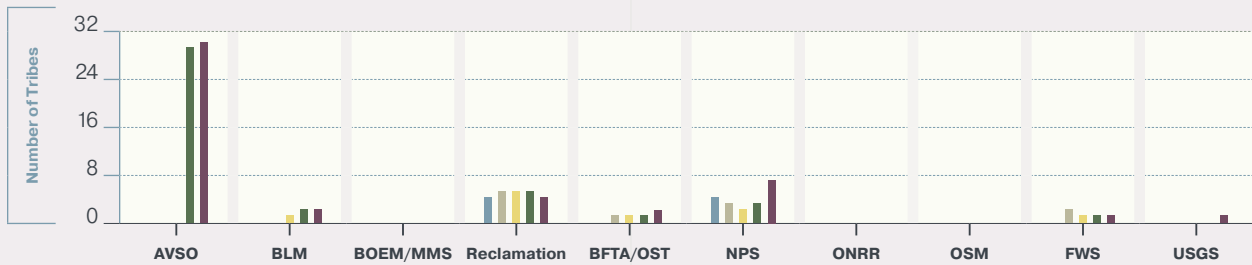
■ 2004 ■ 2010 ■ 2016 ■ 2020 ■ 2024



### Number of Tribes with Agreements by Bureau/Office

Comparison across key years (2004, 2010, 2016, 2020, 2024)

■ 2004 ■ 2010 ■ 2016 ■ 2020 ■ 2024



## SECTION

## 3

**USING ISDEAA TO MAKE FEDERAL PROGRAMS MORE EFFICIENT, ACCESSIBLE,  
AND USEFUL TO TRIBES—ISSUES TO CONSIDER**

## Appendix A:

### Federal Agencies and Additional Self-Determination Authorities

This section draws upon information published in the CRS report "[Tribal Self-Determination Authorities](#)."

**DEPARTMENT OF INTERIOR (DOI) & DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS):** The ISDEAA allows Tribes to operate DOI and HHS programs (as relevant) under an ISDEAA agreement. 25 U.S.C. § 5321(1) (DOI contracts and HHS contracts); 25 U.S.C. § 5363(b)(1); (DOI compacts); U.S.C. § 5385(b)(2) (HHS Compacts).

- Regarding DOI, Tribes are allowed to operate programs through self-determination contract "when the programs are available to Indian Tribes or Indians because of their status as Indians," and are allowed to enter into self-governance compacts to operate those programs as well as programs that are of "special geographic, historical, or cultural significance" to a participating self-governance Tribe.

**Twelve Agencies under 477 Plans: Departments of the Interior, Labor, Health and Human Services, Education, Justice, Agriculture, Commerce, Energy, Homeland Security, Housing and Urban Development, Transportation, and Veterans Affairs.** 25 U.S.C. §3404.

- The Indian Employment, Training and Related Services Demonstration Act, or PL 102-477, streamlined Tribal funding programs across twelve agencies for Tribes with 638 contracts and compacts.
- Tribes with an approved 477 Plan are able to streamline and consolidate funding for workforce, training, and employment programs from twelve different agencies into a single funding stream. The result has been increased opportunities for self-determination and a major reduction in administrative and reporting burden.

**DEPARTMENT OF TRANSPORTATION (DOT):** The FAST Act (Fixing America’s Surface Transportation Act, PL 114-94, 23 U.S.C. §207), amended by Section 109 of the Consolidated Appropriations Act in 2024 (PL 118-42), established the Tribal Transportation Self-Governance Program (TTSGP) and authorized the DOT to enter into self-governance compacts with Tribes for DOT PSFAs.

- Annual funding agreements “shall authorize the Indian tribe, as determined by the Indian tribe, to plan, conduct, consolidate, administer, and receive full tribal share funding, tribal transit formula funding, and funding to tribes from discretionary and competitive grants administered by the Department for all programs, services, functions, and activities (or portions thereof) that are made available to Indian tribes to carry out tribal transportation programs and programs, services, functions, and activities (or portions thereof) administered by the Secretary that are otherwise available to Indian tribes.” 23 U.S.C. § 207(d)(A)(1).
- The Act is modeled off of ISDEAA, and instructs the Secretary of Transportation to largely follow ISDEAA self-governance compacts “except as otherwise expressly provided.” 23 U.S.C. § 207(m)(2).
- By August 2024, four tribes were participating in tribal transportation self-governance compacts.<sup>79</sup>

**DEPARTMENT OF AGRICULTURE (USDA):** The 2018 Farm Bill, PL 115-334, expanded 638 contracting authority to two agencies of the USDA: U.S. Food and Nutrition Service and the U.S. Forest Service.

- **Food Nutrition Service (FNS):** The Farm Bill created authority for a demonstration project for FNS to use 638 contracts for the Food Distribution Program on Indian Reservations (FDPIR). Section 4003(b) of the 2018 Farm Bill.
  - As of 2024, FDPIR has completed two rounds of funding for this program, distributing \$5.7 million to ITOs in Round 1 and \$4.4 million in Round 2.
- **US FOREST SERVICE (FS):** The Farm Bill granted FS and BLM authority to enter into 638 contracts for projects proposed under the Tribal Forest Protection Act (TFPA; 25 U.S.C. §3115(a)).
  - Under TFPA, a Tribe may propose a project on FS or BLM lands that border or are adjacent to forested tribal trust or restricted fee lands to protect tribal forest lands and resources from wildfire, disease, and other threats from federal lands.
  - The Farm Bill provided new authority for the agencies to enter into 638 contracts with Tribes to perform “administrative, management, and other functions” of TFPA projects. Section 8703 of the 2018 Farm Bill.
  - As of November 2023, 22 agreements totaling \$41.7 million were executed.<sup>80</sup>

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD):** Native American Housing Assistance and Self Determination Act of 1996, PL 104-330

- **The Secretary shall make grants on behalf of Indian tribes:** (A) to carry out affordable housing activities; and (B) to carry out self-determined housing activities for tribal communities programs. 25 U.S.C. § 4111(a)(1). The Tribe must submit an Indian Housing Plan. 25 U.S.C. § 4112.
- **Part B:** “The purpose of this part is to establish a program for self-determined housing activities for the tribal communities to provide Indian tribes with the flexibility to use a portion of the grant amounts under section 4111 of this title for the Indian tribe in manners that are wholly self-determined by the Indian tribe for housing activities involving construction, acquisition, rehabilitation, or infrastructure relating to housing activities or housing that will benefit the community served by the Indian tribe.” 25 U.S.C. § 4145.

## Appendix B:

### At a Glance—Title I Self-Determination Contracts & Title IV Self-Governance Compacts and the PROGRESS ACT Final Rule

	<b>Title I Self-Determination Contracts</b>	<b>Title IV Self-Governance Compacts</b>	<b>PROGRESS Act Final Rule</b>
<b>Brief Takeaways</b>	More structured and less flexible. The Secretary must accept Tribal contract proposals and must support Tribes to implement programs if support is needed.	More stringent Tribal eligibility requirements and Secretary approval is discretionary. Provides more flexibility to administer and redesign PSFAs and includes a broader definition of eligible PSFAs than Title I.	The rule revises the regulations implementing <b>Title IV of the ISDEAA</b> , effective January 10, 2025. It does not apply to Title I.  It transfers to participating Tribes control of, funding for, and decision making concerning certain programs, consistent with updates contained in the PROGRESS Act.
<b>Authority and Regulations<sup>81</sup></b>	PL 93-638 Indian Self Determination and Education Assistance Act Title I (25 U.S.C. §§ 5321- 5332)  <b>25 CFR Part 900</b>	PL 93-638 Indian Self Determination and Education Assistance Act Title IV (25 U.S.C. §§ 5361 - 5377)  <b>25 CFR Part 1000</b>	Self-Governance PROGRESS Act Regulations  <b>25 CFR Part 1000</b>
<b>Tribal Eligibility</b>	Tribal organizations may enter into 638 contracts with the Secretary of the Interior at the request of any Indian tribe.  <b>25 U.S.C. § 5304(I)</b>	Tribal organizations are eligible to request to enter into a self-governance compact, and this will be approved at the discretion of the Secretary. In the request, the Tribe must show: successful completion of a planning phase and a planning report; a request for participation in self-governance by a Tribal resolution and/or a final official action by the Tribal governing body; and a demonstration of financial stability and financial management capability for the previous three fiscal years “by having no <i>uncorrected significant and/or material</i> audit exceptions in the past three fiscal years in the required annual audit of its self-determination or self-governance agreements.”.	The PROGRESS Act amended Subpart B to describe and clarify the selection process for participation in self-governance. Additionally, <a href="#">Subpart H</a> specifically details the negotiation process and timeline.  Tribes may submit a request to participate in self-governance compacts to the Director at any time, but at least 180 days before the proposed effective date.
<b>Impacted federal agencies, bureaus, and offices</b>	Department of the Interior Department of Health and Human Services	Department of the Interior  <b>Department of Health and Human Services is authorized to enter into compacts under Title V of the Act</b>	Department of the Interior

	<b>Title I Self-Determination Contracts</b>	<b>Title IV Self-Governance Compacts</b>	<b>PROGRESS Act <u>Final Rule</u></b>
<b>Eligible programs, services, functions, and activities (PSFAs)</b>	<p>Programs administered (under current or future law or interagency agreement) by HHS and DOI for the benefit of Indians because of their status as Indians</p> <p><b>25 U.S.C. § 5321</b> <b>25 CFR § 900.2(b)</b></p>	<p>Programs eligible for self-determination contracts under Title I of the Act.</p> <p><b>25 U.S.C. § 5363(b)(2)</b></p> <p><b>and</b></p> <p>Programs that are of “special geographic, historical, or cultural significance” to a participating self-governance Tribe.</p> <p><b>25 U.S.C. § 5363(c); 25 CFR 1000.125</b></p> <p>So long as none of these PSFAs are inherently Federal.</p> <p><b>25 CFR 1000.129</b></p>	<p>Programs eligible for self-determination contracts under Title I of the Act that are administered by the Secretary for the benefit of Indians because of their status as Indian</p> <p><b>25 U.S.C. § 5363(b)(2); 25 CFR 1000.645</b></p> <p><b>and</b></p> <p>Programs that are of “special geographic, historical, or cultural significance” to a participating self-governance Tribe.</p> <p><b>25 U.S.C. § 5363(c); 25 CFR 1000.840</b></p> <p>So long as these PSFAs are not inherently Federal or precluded by statute. However, federal laws must be interpreted in a manner that facilitates inclusion and implementation of PSFAs in funding agreements.</p> <p><b>25 CFR 1000.845</b></p> <p>The <u>final rule</u> of the PROGRESS Act stipulates that a Tribe requesting a funding agreement for a non-BIA PSFA available to Tribes because of their status as Indians can do so without having an existing agreement for BIA PSFAs. When requesting an agreement for a non-BIA PSFA based on “special geographic, historical, or cultural significance,” the Tribe must already have an existing funding agreement with the BIA or a non-BIA agreement.</p> <p><b>25 U.S.C. 5363(b)(1)</b> <b>25 U.S.C. 5363(b)(2)</b></p>

	<b>Title I Self-Determination Contracts</b>	<b>Title IV Self-Governance Compacts</b>	<b>PROGRESS Act Final Rule</b>
<b>Requests, Applications, and Approvals</b>	<p>The Secretary is mandated to approve proposed self-determination contracts and may only reject a contract in specific cases.</p> <p><b>25 CFR 900.22</b></p>	<p>A Tribe must apply and show: successful completion of a planning phase and a planning report; a request for participation in self-governance by a Tribal resolution and/ or a final official action by the Tribal governing body; and a demonstration of financial stability and financial management capability for the previous three fiscal years.</p> <p><b>25 U.S.C. § 5362(c);</b> <b>25 U.S.C. § 5383(c).</b></p>	<p>A Tribe's request must show successful completion of a planning phase and a request for participation in self-governance by a Tribal resolution or a final official action by the Tribal governing body. Subpart H of the PROGRESS Act regulations details the process of requesting self-governance and negotiations. Tribes required to perform annual audits must also demonstrate financial stability by having no uncorrected significant or material audit exceptions in the past three fiscal years.</p> <p><b>25 CFR 1000.125.</b></p>
<b>Tribal Role</b>	<p>The Tribe is authorized to “plan, conduct, and administer programs or portions thereof.”</p> <p><b>25 U.S.C. § 5321(1)</b></p>	<p>The Tribe is authorized to “plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof.”</p> <p><b>25 U.S.C. § 5363(b)(1)</b></p>	<p>The Tribe has authority to “plan, conduct, redesign, and administer PSFAs that meet the needs of the individual Tribal communities.”</p> <p><b>25 CFR 1000.15.</b></p>
<b>Program Flexibility</b>	<p>Upon request, Tribes may consolidate two or more “mature” self determination contracts into a single contract.</p> <p><b>25 U.S.C. §5321(a)(3)</b></p>	<p>A Tribe may redesign, consolidate, and reallocate funding, typically without Secretary approval for a BIA program, and with Secretary and Tribe/Consortium agreement for non-BIA programs.</p> <p><b>25 U.S.C. § 5363(b)(3).</b> <b>25 U.S.C. 5365(d)(2)</b></p>	

	<b>Title I Self-Determination Contracts</b>	<b>Title IV Self-Governance Compacts</b>	<b>PROGRESS Act <u>Final Rule</u></b>
<b>Reporting</b>	<p>Requires contractors to submit Single Audit Act reports.</p> <p>Reporting requirements over and above the annual audit report are to be negotiated with disagreements subject to the declination procedures of section 102 of the Act.</p> <p><b>25 CFR § 900.3(a)(6)</b></p>	<p>Tribes participating in self-governance compacting are required to submit an annual report on self-governance as well as Single Audit Act reports if they have expended more than a minimum amount published by OMB in accordance with 2 CFR 200.501(d). The annual self-governance report is intended to be brief and concise.</p> <p><b>25 CFR 1000.2020, 1000.2030, 1000.2035.</b></p>	
<b>Application Federal Laws and Regulations</b>		<p>The ISDEAA was further amended by the PROGRESS Act in 2021, which allows Tribes to determine whether to apply federal procurement laws, regulations, and Executive orders when carrying out construction programs under Title IV (<a href="#">source</a>).</p> <p><u>ISDEAA as amended by PROGRESS Act</u>                      “no provision of title 41, United States Code, the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project carried out under this title”</p>	<p>“Unless otherwise agreed to in writing by a Tribe/Consortium, no provision of title 41, United States Code, the Federal Acquisition Regulations, or any other law or regulation pertaining to Federal procurement, shall apply to any construction program or project carried out under title IV of the Act. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.”</p> <p><b>25 CFR 1000.1350.</b></p>

## Endnotes

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- 2 *Id.*
- 3 <https://www.congress.gov/bill/119th-congress/house-bill/3654?s=1&r=1>
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- 12 <https://www.tribalseifgov.org/section-1051/>
- 13 Geoffrey D. Strommer & Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*, 39 AM. INDIAN L. REV. 1 (2014), <https://digitalcommons.law.ou.edu/ailr/vol39/iss1/1>.
- 14 *Id.*
- 15 US EPA, *Guidance On The Award And Management Of General Assistance Agreements For Tribes And Intertribal Consortia* at iii-iv (2013), available at <https://www.epa.gov/system/files/documents/2022-04/final-draft-2022-gap-guidance.pdf>.
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- 23 *Id.* at §§ 5601-5636; see also National Congress of American Indians, “President Signs Indian Trust Asset Management Reform Act Into Law,” (June 22, 2016), <https://www.ncai.org/news/president-signs-indian-trust-asset-management-reform-act-into-law>.
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- 28** 25 U.S.C. § 5601.
- 29** 25 U.S.C. §§ 5611-14.
- 30** Jason Robison, Letter to Harriet Hageman re: Responses to additional questions from the Subcommittee on Indian and Insular Affairs hearing March 1, 2023 titled "Unlocking Indian Country's Economic Potential." (March 20, 2023).
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- 41** Congressional Research Service, Federal-Tribal Consultation: Background and Issues for Congress (Jun. 12, 2024). <https://crsreports.congress.gov/product/pdf/R/R48093>.
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- 47** 25 U.S.C. § 5613(a)(2)(A).
- 48** *See Id.*
- 49** *Id.*; § 5613(a)(2)(B).
- 50** *Id.*; § 5614(b).
- 51** Univ. of Washington, Gallagher Law Library, *Sovereign-to-Sovereign Cooperative Agreements*, <https://lib.law.uw.edu/cooperative/agreements>.
- 52** 25 U.S.C. § 3404(a)(1).
- 53** See Rainie et al. (p. 2) for a discussion of the inconsistencies in annual BIA reporting related to 477 plans. Information about the annual reports can be found on the [Bureau of Indian Affairs Division of Workforce Development webpage](#).
- 54** BIA is required to publish PL 102-477 Annual Reports, though these are not typically publicly available. See 25 U.S.C. § 3410 (a)(3)(B)(ii).
- 55** 25 U.S.C. § 3404.
- 56** This process is described in the [2022 inter-agency MOA](#). 25 U.S.C. § 3404 lays out the eligibility requirements for programs.
- 57** 25 U.S.C. § 3411.
- 58** Reinfeld, *supra* note 4.
- 59** 5 U.S.C. § 3408, SEC. 9.

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- 67 GAO, ii, [URL](#).
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- 79 The Cherokee Nation, Ohkay Owingeh, the Citizen Potawatomi Nation, and the Forest County Potawatomi.
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- 81 The PROGRESS Act requires publication of proposed rules updating BIA's regulations governing Tribal self-governance by Dec. 21, 2024 (date extended by FY 2024 Continuing Resolution Order). The Act also calls for a negotiated rulemaking committee, consisting of representatives of Federal and Tribal governments. [OIRA Dashboard RIN 1076-AF62](#). OMB completed its review of the final rule on Nov. 22, 2024. [OSG's Updates on Rulemaking Process and Consultations; April 2024 Final Committee Report; Proposed Rule](#) (July 15, 2024)





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