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Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs

Through treaties, acts of Congress, and court decisions, the federal government has recognized a *federal trust responsibility*—a legal and moral obligation—toward *federally recognized Tribes* (hereinafter, *Tribes*) and tribal citizens. Congress’s approach to implementing this responsibility has fluctuated over time. Beginning in the 1970s, Congress established a policy of promoting tribal self-determination through enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA; P.L. 93-638). This policy includes the “effective and meaningful participation by the Indian people in the planning, conduct, and administration of [federal] programs and services.” ISDEAA enables tribal entities to manage federal programs, services, functions, or activities (PSFAs) through two types of ISDEAA agreements: (1) *self-determination (“638”) contracts* (25 U.S.C. §§5321-5332) and (2) *self-governance compacts* (25 U.S.C. §§5361-5377).

This In Focus provides an ISDEAA overview, including how Tribes, tribal organizations, and tribal consortia (collectively, *tribal entities*) may use the authority to receive and manage services from the Department of the Interior (DOI), particularly the Bureau of Indian Affairs (BIA). It also outlines federal funding for ISDEAA agreements and potential issues for Congress.

Use of ISDEAA Agreements at DOI

Most Tribes have entered into ISDEAA agreements to manage DOI programs. As of March 2024, DOI reported that 526 out of 574 Tribes (92%) had 638 contracts and 295 Tribes (51%) had self-governance compacts with DOI. Across DOI, there are nearly 3,200 ISDEAA agreements.

Although tribal entities may enter into ISDEAA agreements with various agencies within DOI, BIA is the lead agency providing services to Tribes and tribal citizens. These programs and services were permanently authorized by the Snyder Act of 1921 (25 U.S.C. §13). BIA programs support tribal social services, economic development, law enforcement, infrastructure, and natural resource management, among other things. BIA also manages the 56 million acres held in trust for Tribes and tribal citizens.

Because participation in ISDEAA agreements is voluntary, Tribes have options when choosing how to receive BIA-authorized services. For example, they could choose to

- receive services directly from BIA, sometimes referred to as a *direct service Tribe*;
- enter into a 638 contract with BIA to administer PSFAs;

- enter into a compact to administer PSFAs; or
- combine the above options to receive BIA services.

Tribal entities may choose different agreement options authorized by the different ISDEAA titles depending on their capacity and interests. The agreements are similar in many ways. For example, under certain circumstances, DOI may decline to enter into a contract and is allowed to reject the terms of a compact or a funding agreement. DOI also is authorized to reassume control of a contracted or compacted PSFA. Key differences in agreement management and flexibility are shown in **Table 1**.

Table 1. Comparison of ISDEAA Agreements at the Department of the Interior

	638 Contract (ISDEAA Title I)	Self-Governance Compact (ISDEAA Title IV)
DOI Entity	Bureau of Indian Affairs	Office of Self-Governance ^a
Eligible Tribal Entities	Tribes or tribal organizations (recognized governing body of a Tribe or a tribally affiliated organization)	Tribes or tribal consortia (group of Tribes)
Application Process	Tribes and tribal organizations submit requests to DOI for approval	Tribes and tribal consortia submit requests to DOI, complete a planning phase, and demonstrate financial capacity by already managing a 638 contract (three years of clean audits)
Programs, Services, Functions, or Activities	PSFAs that BIA otherwise would provide to Tribes or tribal citizens or would operate for their benefit	Same PSFAs as 638 contracts and PSFAs from non-BIA agencies at DOI if the PSFAs hold “special geographic, historical, or cultural significance”

	638 Contract (ISDEAA Title I)	Self-Governance Compact (ISDEAA Title IV)
Flexibility	Tribes and tribal organizations need DOI approval for any substantial changes.	Tribes and tribal consortia may generally redesign or consolidate PSFAs, and reallocate funding, without DOI approval.

Sources: 25 U.S.C. §§5321-5332 and 25 U.S.C. §§5361-5377.

Notes: BIA = Bureau of Indian Affairs; DOI = Department of the Interior; ISDEAA = Indian Self-Determination and Education Assistance Act (P.L. 93-638); PSFA = Programs, services, functions, or activities.

- a. DOI's Office of Self-Governance implements self-governance compacts for all DOI agencies.

Funding for ISDEAA Agreements

Once ISDEAA agreements are finalized, DOI must fund tribal entities under the subsequently negotiated *annual funding agreements*. Tribal entities are entitled to an amount equal to what the DOI agency otherwise would have spent operating that PSFA. BIA must provide a *tribal share*, a non-inherently federal portion of BIA funds that the tribal entity is assuming. ISDEAA also requires funding contract support costs and 105(1) leases.

Contract Support Costs

ISDEAA requires DOI to fund *contract support costs* (CSCs), the reasonable indirect or administrative costs for activities necessary to ensure contract and compact compliance and “prudent management.” In the Consolidated Appropriations Act, 2016 (P.L. 114-113), Congress established an indefinite discretionary appropriations account at BIA. Since then, Congress has generally increased annual appropriations to this account, from \$277 million in FY2016 to \$342 million in FY2024.

105(l) Leases

ISDEAA requires DOI to enter into leases—commonly referred to as *105(l) leases*—to pay for tribally owned or rented facilities used to support activities under ISDEAA agreements. In the Consolidated Appropriations Act, 2021 (P.L. 116-260), Congress established an indefinite discretionary appropriations account for 105(l) leases for BIA. According to DOI, the 105(l) program has grown from 2 Tribes proposing and executing 3 leases in 2019 (the first year the agency received dedicated appropriations) to 93 Tribes proposing 259 initial leases and 238 leases for renewal in 2023.

For more information on BIA's budget, see CRS Report R47723, *Bureau of Indian Affairs: Overview of Budget Issues and Options for Congress*.

Issues Facing Congress

Scope of Activities Within ISDEAA Agreements

Although ISDEAA agreements have been used widely, ISDEAA limits the types of activities tribal entities may include in ISDEAA agreements to those that are not an

inherently federal functions. DOI has explained that it interprets the term on a case-by-case basis by considering the activities the tribal entity seeks to assume, the applicable federal law governing the activities, and the amount of authority DOI would retain. Some Tribes and the Government Accountability Office have asked DOI or Congress to clarify the scope of ISDEAA agreements.

Funding

Funding for ISDEAA agreements is an issue facing Congress. Factors affecting this issue include ISDEAA's statutory language and other legal requirements, available appropriations, and varying tribal needs. For example, ISDEAA requires DOI to pay CSCs to cover reasonable administrative costs. However, whether Tribes historically have received all the CSCs they believe they were legally entitled to has been a source of contention (see *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182 (2012)). Starting in January 2025, DOI agencies other than BIA are to be required to pay CSCs (25 C.F.R. §1000.885).

Tribes seeking to expand existing or enter into new ISDEAA agreements with BIA may face challenges for both historical and legal reasons. Funding levels for tribal shares distributed as part of ISDEAA agreements were established in 1990. BIA may be unable to enter into new ISDEAA agreements with Tribes that did not already have ISDEAA agreements during that process, or did not participate at all, if BIA does not receive appropriations beyond historical levels. In addition, ISDEAA's “reduction clause” states that BIA is not required to reduce funding for PSFAs serving one Tribe or tribal organization to make funds available to another Tribe or tribal organization. This reduction clause has prevented BIA from shifting funds from one Tribe or tribal organization to cover the needs or shortfalls of another.

Oversight of ISDEAA Implementation

Since the 108th Congress, Congress has held oversight hearings and considered bills to examine federal implementation of ISDEAA. At several hearings, some Members and Tribes expressed frustration over federal departments' apparent resistance to implement ISDEAA. To address that issue, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act; P.L. 116-180), among other things, limited the reasons for which DOI may decline to enter into a proposed agreement. The PROGRESS Act also clarified tribal and federal roles in self-governance compacts involving construction, including a section specifically entitled “tribal accountability.” Finally, the act sought to ensure consistent federal implementation of ISDEAA by reconciling DOI and the Department of Health and Human Service's statutory frameworks for self-governance. Following a negotiated rulemaking process, DOI published its final rule implementing the act on December 11, 2024.

For more information on ISDEAA, see CRS Report R48256, *Tribal Self-Determination Authorities: Overview and Issues for Congress*, and CRS Infographic IG10057, *Tribal Self-Determination Authorities*.

Marriel J. Murray, Specialist in Natural Resources Policy

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