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# **Tribal Energy Resource Agreements (TERAs): Overview and Selected Issues for Congress**

Updated July 9, 2026

**Congressional Research Service**

<https://crsreports.congress.gov>

R49025



R49025

July 9, 2026

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## Tribal Energy Resource Agreements (TERAs): Overview and Selected Issues for Congress

Pursuant to the federal trust responsibility and various federal statutes, the Department of the Interior (DOI) and *federally recognized Tribes* (hereinafter *Tribes*) manage energy production on tribal lands. The federal trust responsibility is a legal obligation under which the United States, through both acts of Congress and court decisions, “has charged itself with moral obligations of the highest responsibility and trust” toward Tribes. Federal statutes generally require DOI (as delegated to the Bureau of Indian Affairs [BIA]) approval and oversight of tribal energy resources development on tribal lands. BIA often reviews and approves surface and subsurface leases, drilling permits, rights-of-way, cultural resources surveys, and environmental studies and surveys related to tribal energy development. The Bureau of Land Management and other DOI bureaus typically manage operational aspects of energy development.

Certain Tribes have successfully developed energy and mineral resources on tribal lands. In FY2025, DOI reported that tribal lands produced about 373 million cubic feet of natural gas, about 73 million barrels of oil, and more than 4 million tons of coal. Yet some Tribes have expressed concern that federal approval processes are barriers to energy development. For example, some Tribes have testified that the approval process for tribal energy development is cumbersome, involves too many federal agencies, and takes too long.

To address these tribal concerns, in 2005, Congress passed the Indian Tribal Energy Development and Self-Determination Act (ITEDSA 2005; P.L. 109-58, Title V). Among other provisions, ITEDSA 2005 allows Tribes to enter into *tribal energy resource agreements* (TERAs) with the Secretary of the Interior (hereinafter *Secretary*). If the Secretary approves a TERA, a Tribe can enter into leases, business agreements, or rights-of-way to develop energy resources on tribal land without requiring the Secretary’s review and approval for each lease, business agreement, or right-of-way. TERAs therefore offer Tribes increased administrative and regulatory control over tribal energy projects. After proposals to clarify and simplify the TERA process were considered in several Congresses, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (ITEDSA 2017; P.L. 115-325) became law in December 2018. In 2019, DOI amended the 2008 TERA regulations.

Congress and others continue to deliberate the implementation of the TERA authority. A handful of Tribes have initiated the process of entering into a TERA; to date, DOI has approved one TERA. In May 2026, DOI approved the first-ever TERA agreement, from the Southern Ute Indian Tribe. Common concerns reportedly inhibiting Tribes from entering into TERAs include ambiguity surrounding the criteria for reviewing TERA applications, the scope of activities in a TERA, time frames for processing TERA applications, and financial assistance for TERA implementation. For example, ITEDSA 2017 allows a Tribe to identify in a TERA application what operation and development functions it will assume from the federal government as long as they are not *inherently federal functions*. However, neither ITEDSA 2017 nor its implementing regulations specify the functions considered to be inherently federal.

One specific source of ambiguity is the difference between the TERA statute (ITEDSA 2017) and DOI’s implementing regulations (2019 TERA regulations). For example, ITEDSA 2017 amended the process for approving a TERA to make it less complex; however, the 2019 TERA regulations maintained many of the old process requirements. In addition, before submitting a TERA application, the regulations (but not the statute) require Tribes to request a “pre-application consultation” in writing to the Secretary. Similarly, the regulations indicate that DOI does not necessarily consider a submitted TERA application to be complete but does not explicitly define the term *complete application*. Finally, ITEDSA 2017 and the 2019 TERA regulations direct the Secretary to provide a requesting Tribe the amounts the Secretary otherwise would expend to carry out a federal activity on the Tribe’s behalf. However, despite ITEDSA 2017’s direction to DOI to address the calculation of these amounts in regulations, the 2019 TERA regulations do not include a formula.

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## Introduction

Pursuant to the federal trust responsibility and various federal statutes, the Department of the Interior (DOI) and *federally recognized Tribes* (hereinafter *Tribes*) manage energy production on *tribal lands*.<sup>1</sup> The *federal trust responsibility* is a legal obligation under which the United States, through both acts of Congress and court decisions, “has charged itself with moral obligations of the highest responsibility and trust” toward Tribes.<sup>2</sup> Federal statutes generally require DOI (as delegated to the Bureau of Indian Affairs [BIA]) approval and oversight of tribal *energy resources* development on tribal lands.<sup>3</sup> BIA often reviews and approves surface and subsurface leases, drilling permits, rights-of-way, cultural resources surveys, and environmental studies and surveys related to tribal energy development.<sup>4</sup> The Bureau of Land Management and other DOI bureaus typically manage operational aspects of energy development.<sup>5</sup> The Department of Energy also provides technical and financial assistance for tribal energy development, but that is beyond the scope of this report.<sup>6</sup>

Tribes may choose from several types of leases or agreements to develop energy on tribal lands. The appropriate type of lease or agreement to use depends on factors such as the type of tribal land and the ownership and type of energy resource (i.e., surface or subsurface). Some leases or agreements can be used for energy development on tribal lands, and others can be used for individually owned allotted lands.<sup>7</sup> For purposes of this report, a *lease* is a written agreement, or modification of a written agreement, between a Tribe and a tenant or lessee, whereby the tenant or lessee is granted a right to possess tribal land or energy mineral resources for energy resource development. A *business agreement* is any permit, contract, joint venture, option, or other agreement that “furthers any activity related to locating, producing, transporting, or marketing energy resources” on tribal land. A *right-of-way* is an easement, right, or other authorization over tribal lands for a pipeline or electric transmission or distribution line that serves a facility related to energy resource development on tribal land.<sup>8</sup>

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<sup>1</sup> A *federally recognized Tribe* (hereinafter *Tribe*) is an entity formally recognized as having a government-to-government relationship with the United States, entailing special rights, immunities, and privileges as well as eligibility for certain federal programs and services (25 C.F.R. §83). There are several types of *tribal lands*, including trust, restricted fee, allotted, and privately owned (fee) lands. For the purpose of this report, *tribal lands* addresses only land held in trust by the United States for the benefit of Tribes. See generally CRS Report R48360, *Tribal Lands: Overview and Issues for Congress*, by Mariel J. Murray.

<sup>2</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942). For a general overview of the trust relationship, see *United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011).

<sup>3</sup> *Energy resources* refers to both nonrenewable and renewable energy, including but not limited to natural gas, oil, uranium, coal, nuclear, wind, solar, geothermal, biomass, and hydrologic resources (25 C.F.R. §224.30).

<sup>4</sup> U.S. Government Accountability Office (GAO), *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands*, GAO-15-502, June 8, 2015, p. 4, <https://www.gao.gov/products/GAO-15-502> (hereinafter, GAO, *Indian Energy Development*, GAO-15-502).

<sup>5</sup> Bureau of Indian Affairs (BIA), “Onshore Energy and Mineral Lease Management Interagency Standard Operating Procedures,” pp. F-3 and G-vii, [https://www.bia.gov/sites/default/files/dup/inline-files/interagency\\_sop\\_09-23-13.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/interagency_sop_09-23-13.pdf). See also BIA, “Indian Energy Service Center,” <https://www.bia.gov/bia/ots/iesc>.

<sup>6</sup> For more information, see CRS In Focus IF11793, *Indian Energy Programs at the Department of Energy*, by Corrie E. Clark, Mark Holt, and Lexie Ryan.

<sup>7</sup> See generally CRS Report R47640, *Energy Leasing and Agreement Authorities on Tribal Lands: In Brief*, by Mariel J. Murray.

<sup>8</sup> Definitions adapted from 25 C.F.R. §224.30. For more information on BIA’s lease approval process, see 25 C.F.R. Part 163. For more information on BIA’s right-of-way approval process, see 25 C.F.R. Part 169.

Certain Tribes have successfully developed energy and mineral resources on tribal lands. In FY2025, DOI reported that tribal lands produced about 373 million cubic feet of natural gas, about 73 million barrels of oil, and more than 4 million tons of coal.<sup>9</sup> Yet some Tribes have expressed concern that federal approval processes are barriers to energy development.<sup>10</sup> For example, some Tribes have testified that the approval process for tribal energy development is cumbersome, involves too many federal agencies, and takes too long.<sup>11</sup>

To address these tribal concerns about the “cost, delay, and uncertainty” of tribal energy transactions, in 2005, Congress passed the Indian Tribal Energy Development and Self-Determination Act (ITEDSA 2005; P.L. 109-58, Title V).<sup>12</sup> Among other provisions, ITEDSA 2005 allows Tribes to enter into *tribal energy resource agreements* (TERAs) with the Secretary of the Interior (Secretary).<sup>13</sup> If the Secretary approves a TERA, a Tribe can enter into leases, business agreements, or rights-of-way to develop energy resources on tribal land without requiring the Secretary’s review and approval for each lease, business agreement, or right-of-way. TERAs therefore offer Tribes increased administrative and regulatory control over tribal energy projects. **Table 1** compares the requirements for review and approval by the Secretary for tribal energy development actions for Tribes with and without TERAs.

**Table 1. Comparison of Requirements by the Bureau of Indian Affairs (BIA) for Energy Development Actions for Tribes With and Without TERAs**

BIA Review and Approval Requirement		
Energy Development Actions	Tribes Without TERA	Tribes With TERA
Each Lease	Required	Not required
Each Business Agreement	Required	Not required
Each Right-of-Way	Required	Not required

**Source:** CRS, based on 25 U.S.C. §3504(a)(2) and 25 U.S.C. §3504(b).

**Notes:** For more information on BIA’s lease approval process, see 25 C.F.R. Part 163. For more information on BIA’s right-of-way approval process, see 25 C.F.R. Part 169. TERA = tribal energy resource agreement.

After consideration in several Congresses, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017 (ITEDSA 2017; P.L. 115-325) became law in December

<sup>9</sup> DOI, Office of Natural Resources Revenue (ONRR), “Natural Resources Revenue Data,” <https://revenuedata.doi.gov/query-data/?dataType=Production&landType=Native%20American>. ONRR defines these areas as Native American lands, including “tribal lands held in trust by the federal government for a tribe’s use, and allotments held in trust by the federal government for individual Native American use” (ONRR, “Natural Resources Revenue Data—Revenue,” <https://revenuedata.doi.gov/downloads/revenue/>).

<sup>10</sup> See, e.g., U.S. Congress, Senate Committee on Indian Affairs, *Indian Tribal Energy Development and Self-Determination Act Amendments of 2012*, report to accompany S. 1684, 112<sup>th</sup> Congress, 2<sup>nd</sup> Session, December 21, 2012, S.Rept. 112-263, p. 4. See also Statement of the Honorable Andrew Gallegos, Tribal Council Member, Southern Ute Indian Tribal Council, at U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, *Tribal Natural Resource Development: Barriers and Successes*, hearing, 119<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 22, 2026, <https://docs.house.gov/meetings/II/II24/20260422/119108/HHRG-119-II24-Wstate-GallegosA-20260422.pdf> (hereinafter Gallegos, Statement in *Tribal Natural Resources Development* hearing).

<sup>11</sup> U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on the Interior, Energy and the Environment, *Tribal Energy Resources: Reducing Barriers to Opportunity*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 17, 2018, H.Hrg. 115-91 (GPO, 2018), p. 5 (H.Hrg. 115-91).

<sup>12</sup> H.Rept. 115-1057.

<sup>13</sup> ITEDSA 2005, as amended by ITEDSA 2017, expressly excludes Alaska Native Corporations from TERAs. 25 U.S.C. §3501(4)(B); see also 25 U.S.C. §3501(6) (defining Alaska Native Corporation).

2018.<sup>14</sup> At the time, the Senate Committee on Indian Affairs stated that the implementation of ITEDSA 2005's TERA provisions was "more burdensome than Congress intended," and that amendments were needed to "provide direction and clarity."<sup>15</sup> In 2019, DOI amended the 2008 TERA regulations.<sup>16</sup>

To date, a handful of Tribes have initiated the process of entering into a TERA. In May 2026, DOI approved a TERA application from the Southern Ute Indian Tribe, the first-ever TERA agreement.<sup>17</sup> This report analyzes the evolution of the TERA requirements over time, and how Congress and DOI have addressed some of the common concerns reportedly inhibiting Tribes from entering into a TERA, including the criteria for reviewing TERA applications, the scope of activities in a TERA, time frames for processing TERA applications, and financial assistance for TERA implementation.<sup>18</sup> This report does not discuss tribal energy development organizations.<sup>19</sup>

## Evolution of TERA Authorities and Requirements

### Indian Tribal Energy and Self-Determination Act Amendments of 2005 and 2008 TERA Regulations

ITEDSA 2005 amended the Indian Energy Resources title in the Energy Policy Act of 1992 (EPACT 1992; P.L. 102-486, Title XXVI).<sup>20</sup> Among other provisions, ITEDSA 2005 introduced TERAs as an option for Tribes seeking to develop energy resources on tribal lands. An approved TERA authorized Tribes to enter into a lease or business agreement to (1) develop, process, or refine an energy mineral resource on tribal lands or (2) to construct or operate electricity generation, transmission, or distribution facilities on tribal land.<sup>21</sup> The terms for a lease or business agreement executed under an approved TERA could not exceed 30 years for energy development projects, except for lease terms of oil and gas production, which could not exceed

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<sup>14</sup> See discussion of introduced bills and hearings over several congresses in H.Rept. 115-1057 and S.Rept. 115-84.

<sup>15</sup> S.Rept. 115-84.

<sup>16</sup> BIA, "Tribal Energy Resource Agreements," 84 *Federal Register* 69602, December 18, 2019, <https://www.federalregister.gov/documents/2019/12/18/2019-27399/tribal-energy-resource-agreements> (hereinafter, BIA, "2019 TERA Regulations").

<sup>17</sup> DOI, "Interior Enters Into Nation's First-Ever Tribal Energy Agreement," May 11, 2026, <https://www.doi.gov/pressreleases/interior-enters-nations-first-ever-tribal-energy-agreement>.

<sup>18</sup> See generally S.Rept. 112-263; U.S. Congress, Senate Committee on Indian Affairs, *Indian Tribal Energy Development and Self-Determination Act Amendments of 2014*, report to accompany S. 2132, 113<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 113-224, July 30, 2014; U.S. Congress, Senate Committee on Indian Affairs, *Indian Tribal Energy Development and Self-Determination Act Amendments of 2015*, report to accompany S. 209, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 114-149, September 30, 2015; and U.S. Congress, Senate Committee on Indian Affairs, *Indian Tribal Energy Development and Self-Determination Act Amendments of 2017*, report to accompany S. 245, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Rept. 115-84, May 24, 2017.

<sup>19</sup> 25 U.S.C. §3504(h).

<sup>20</sup> Section 503 of the Indian Tribal Energy Development and Self-Determination Act of 2005 (ITEDSA 2005; P.L. 109-58, Title V) amended and replaced Sections 2601-2606 of EPACT 1992. EPACT 1992 established several financial and technical assistance programs in both the Department of Energy and DOI for Tribes to pursue renewable and nonrenewable energy development. For information on DOE's tribal energy programs, see CRS In Focus IF11793, *Indian Energy Programs at the Department of Energy*, by Corrie E. Clark, Mark Holt, and Lexie Ryan.

<sup>21</sup> ITEDSA 2005, §503; BIA, "Tribal Energy Resource Agreements Under the Indian Tribal Energy Development and Self-Determination Act; Final Rule," 73 *Federal Register* 12807, March 10, 2008, p. 12830, <https://www.federalregister.gov/documents/2008/03/10/E8-4301/tribal-energy-resource-agreements-under-the-indian-tribal-energy-development-and-self-determination> (hereinafter BIA, "2008 TERA Regulations").

10 years.<sup>22</sup> Under an approved TERA, Tribes also could enter into a right-of-way for pipelines or for electricity transmission or distribution over tribal lands as long as the term did not exceed 30 years and was serving a facility on tribal land.<sup>23</sup>

ITEDSA 2005 required a TERA to include the following provisions, among others:

1. requiring periodic reviews and monitoring of TERA activities and enforcement authority by the Secretary;
2. ensuring the Tribe acquires the necessary information from an applicant for a lease, business agreement, or right-of-way;
3. addressing the terms of a lease or business agreement or conveyance of a right-of-way;
4. providing for public notification of final approvals;
5. specifying the financial assistance, if any, the Secretary may provide to the Tribe to assist in TERA implementation, including environmental review of individual projects; and
6. addressing various aspects of environmental review and compliance, among others.<sup>24</sup>

ITEDSA 2005 required the Secretary to approve a TERA if three criteria were met:

1. the Secretary determined the Tribe demonstrated sufficient capacity to regulate energy resource development;
2. the TERA included provisions relating to the Secretary's ability to periodically review and monitor the Tribe's performance under a TERA and the Secretary's enforcement authority; and
3. the TERA included required provisions applicable to leases, business agreements, or rights-of-way to be executed under the agreement.<sup>25</sup> In addition, ITEDSA 2005 required the Secretary to approve or disapprove a TERA no later than 270 days after the Secretary received a Tribe's TERA application.

In 2008, DOI promulgated TERA regulations as authorized by ITEDSA 2005. TERA regulations expanded upon ITEDSA 2005 requirements related to processing timelines of TERA applications, the Secretary's approval of TERA applications, TERA requirements and inherently federal functions, and the Secretary's determination of a Tribe's capacity to develop its proposed energy resource. The following sections summarize selected regulatory requirements.

### **Criteria for Reviewing TERA Applications**

ITEDSA 2005 and the 2008 TERA regulations outlined the procedure for DOI consideration of a TERA application. For example, ITEDSA 2005 required the Secretary to determine whether the applying Tribe demonstrated sufficient capacity to regulate its energy resource development. "Sufficient capacity" was undefined, providing the Secretary with discretion in determining

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<sup>22</sup> ITEDSA 2005, §503; BIA, "2008 TERA Regulations," p. 12830. Oil and gas leases may extend past the 10-year term as long as oil or gas is produced in paying quantities.

<sup>23</sup> ITEDSA 2005, §503; BIA, "2008 TERA Regulations," p. 12830.

<sup>24</sup> ITEDSA 2005, §503.

<sup>25</sup> ITEDSA 2005, §503.

whether a Tribe was qualified to enter into a TERA. Pursuant to ITEDSA 2005, the 2008 regulations required DOI consideration of the following factors:

- the energy resource the Tribe proposed to develop and regulate;
- the administrative or regulatory activities the Tribe sought to assume;
- materials and information submitted with the TERA application;
- the Tribe’s history in energy resource development;
- the Tribe’s administrative expertise in regulating the energy resource development described in the TERA application;
- the Tribe’s financial capacity to evaluate proposals and monitor anticipated activities;
- the Tribe’s past performance administering contracts and grants associated with self-determination programs, cooperative agreements, and environmental programs; and
- the Tribe’s past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way.<sup>26</sup>

### Scope of Activities in a TERA

One key aspect of the TERA approval process included identifying the federal activities a Tribe could assume and perform under a TERA. These activities could not include inherently federal functions.<sup>27</sup> The 2008 TERA regulations required TERA applications to include statements about the Tribe’s experience in energy resource development and its capability to assume federal activities other than inherently federal functions.<sup>28</sup> DOI declined to define the term *inherently federal functions* and instead stated that it would determine such functions on a case-by-case basis.<sup>29</sup> The 2008 regulatory preamble notes that evaluating inherently federal functions on a case-by-case basis aligns with DOI’s approach for evaluating activities allowed to be assumed in agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA, P.L. 93-638). ISDEAA is briefly described in the textbox below.

#### **Indian Self-Determination and Education Assistance Act**

Beginning in the 1970s, Congress established a policy of promoting tribal self-determination and self-governance. The Indian Self-Determination and Education Assistance Act (ISDEAA; P.L. 93-638, 25 U.S.C. §§5301 et seq.) outlined federal policy on tribal self-determination, which includes the “effective and meaningful participation by the Indian people in the planning, conduct, and administration of [federal] programs and services.”

ISDEAA, as amended, enables Tribes, tribal organizations, and tribal consortia (collectively, *tribal entities*) to manage non-inherently federal programs and activities that would otherwise be administered by certain federal agencies. As enacted in 1975, ISDEAA authorized the Department of the Interior and Department of Health and Human Services to enter into *self-determination (“638”) contracts* with tribal entities (Title I). Since 1975, Congress has amended ISDEAA several times, for example, to provide more autonomy to tribal entities through *self-governance compacts* (Titles III, IV, and V). Tribal entities may choose different *ISDEAA agreement* options depending on their capacity and interests. The majority of Tribes have entered into ISDEAA agreements to manage federal programs.

<sup>26</sup> BIA, “2008 TERA Regulations,” 25 C.F.R. §224.72. No TERAs were entered into under this framework.

<sup>27</sup> BIA, “2008 TERA Regulations,” p. 12824 (emphasis added).

<sup>28</sup> BIA, “2008 TERA Regulations,” p. 12824.

<sup>29</sup> BIA, “2008 TERA Regulations,” p. 12810.

**Source:** ISDEAA, P.L. 93-638, as amended. See also CRS Report R48256, *Tribal Self-Determination Authorities: Overview and Issues for Congress*, coordinated by Mariel J. Murray.

## Time Frames for Processing TERA Applications

ITEDSA 2005 and the 2008 TERA regulations set time frames for departmental review. ITEDSA 2005 required the Secretary to approve or disapprove a TERA no later than 270 days after the Secretary received a Tribe's TERA application. If the Secretary disapproved the TERA, the Secretary had no more than 10 days to notify the Tribe (in writing) about the basis of the disapproval, identify the changes needed to address the Secretary's concerns, and provide the Tribe an opportunity to resubmit.<sup>30</sup> The Secretary then had no more than 60 days after receiving a revised TERA to approve or disapprove.<sup>31</sup> The 2008 TERA regulations expanded on the TERA approval process by creating points of contact, establishing additional time frames for TERA application review and consultation, and requiring DOI to meet with Tribes at various points in the approval process.

## Indian Tribal Energy and Self-Determination Act Amendments of 2017 and 2019 TERA Regulations

In December 2018, Congress passed ITEDSA 2017 (P.L. 115-325), which modified several ITEDSA 2005 provisions.<sup>32</sup> Specific to the TERA approval process, Congress amended the time frames for processing a TERA, addressed the Secretary's discretion in determining a Tribe's capacity to develop energy projects by allowing a Tribe to certify it is a qualified Indian tribe,<sup>33</sup> reduced the number of TERA provision requirements, and allowed Tribes to enter into funding agreements (to fund TERAs) with the Secretary.

ITEDSA 2017 also directed DOI to update the TERA regulations. Specific to the TERA application approval process, the 2019 TERA regulations amended time frames for approving a TERA application, removed tribal capacity requirements, and required available financial amounts to be provided to a requesting Tribe. The 2019 TERA regulations also addressed how the Secretary considers the criteria for approving or disapproving a TERA, when a TERA can take effect, inherently federal functions, reasons for disapproving a TERA application, and certification as a qualified Indian tribe.

This section reviews selected provisions in ITEDSA 2017 and in the 2019 TERA regulations, and how they changed from ITEDSA 2005 and 2008 TERA regulations.

## Revised Criteria for Reviewing TERA Applications

ITEDSA 2017 and the 2019 TERA regulations outlined a revised procedure for DOI consideration of a TERA application. For example, whereas ITEDSA 2005 required the Secretary to determine whether a Tribe demonstrated "sufficient capacity" to regulate energy resource development, ITEDSA 2017 removed that requirement.<sup>34</sup> In lieu of requiring the Secretary to determine a Tribe's capacity, ITEDSA 2017 authorized *qualified Indian tribes* to submit TERAs

<sup>30</sup> ITEDSA 2005, §503.

<sup>31</sup> ITEDSA 2005, §503. The Secretary of the Interior (Secretary) and the Tribe may agree to a later date.

<sup>32</sup> ITEDSA 2017, 132 Stat. 4445, 25 U.S.C. §§3501 et seq.

<sup>33</sup> *Qualified Indian tribe* is defined in the next section.

<sup>34</sup> ITEDSA 2005, §503.

to the Secretary.<sup>35</sup> A Tribe is qualified if it submits in its TERA application a certification that it either (1) has operated under an ISDEAA agreement for managing tribal land or natural resources for at least three consecutive years, or (2) can otherwise demonstrate experience developing, administering, reviewing, and evaluating energy resource leases or business agreements.<sup>36</sup> The regulations continued to allow the Secretary and Tribe to discuss the Tribe's capacity to manage and regulate the Tribe's natural resources, and to perform necessary administrative, technical, financial, and managerial responsibilities.<sup>37</sup>

In addition, ITEDSA 2017 limits the Secretary's discretion in evaluating TERAs. It states that the Secretary shall disapprove a TERA *only* if the TERA (1) violates federal law (including regulations) or a treaty (a new provision); (2) does *not* include a provision authorizing the Secretary to annually review and evaluate the Tribe's performance under the TERA and take enforcement action in specific situations; and (3) does *not* include required provisions applying to leases, business agreements, or rights-of-way to be executed under an approved TERA.<sup>38</sup>

### Revised Scope of Activities in a TERA

ITEDSA 2017 and the 2019 TERA regulations amended the requirements for what needs to be included in a TERA application. Under ITEDSA 2017, TERAs have 13 provision requirements with respect to leases, business agreements, and rights-of-way subject to the TERA (ITEDSA 2005 required 16 provisions). Congress removed some requirements, kept several others, and introduced new requirements.<sup>39</sup> For example, ITEDSA 2017 and the 2019 TERA regulations allow a Tribe to identify in the TERA the operational or development functions it intends to conduct pursuant to a lease, right-of-way, or business agreement approved by the Tribe.<sup>40</sup> However, neither ITEDSA 2017 nor the 2019 TERA regulations defined or amended the prohibition on the inclusion of inherently federal functions in TERAs.<sup>41</sup>

### Revised Time Frames for Processing TERA Applications

ITEDSA 2017 amended the timeline for processing a TERA application. ITEDSA 2017 requires the Secretary to notify the Tribe if the TERA application is complete or incomplete no later than 60 days after a TERA application is submitted.<sup>42</sup> The Secretary is to inform the Tribe of what information is needed to complete the submission and identify any financial assistance the Secretary will provide to the Tribe for the TERA's implementation.<sup>43</sup> The agreement takes effect

<sup>35</sup> ITEDSA 2017, §103(a)(4)(A). The 2019 TERA regulations use the term *qualified Tribe* instead of qualified Indian tribe, but these two terms have the same definition (25 C.F.R. §224.34). For consistency, this report uses the term *qualified Indian tribe*.

<sup>36</sup> ITEDSA 2017, §§103(a)(1)(B)(ii)(II)(ee), 105(a)(2).

<sup>37</sup> BIA, "2019 TERA Regulations," 25 C.F.R. §§224.51, 224.58.

<sup>38</sup> ITEDSA 2017, §103(a)(4)(B)(ii). Italics added for emphasis.

<sup>39</sup> Congress removed three provisions relating to the demonstration of tribal capacity. Congress kept certain requirements, including those ensuring compliance with applicable environmental laws, establishing a process for consulting with a state for off-reservation impacts, and citing tribal laws that require the exhaustion of tribal remedies before a petition may be submitted to the Secretary regarding a Tribe's compliance under the TERA. See 25 U.S.C. §3504(e)(2)(B)(iii) for a complete list of TERA provision requirements with respect to leases, business agreements, and rights-of-way subject to the TERA.

<sup>40</sup> ITEDSA 2017, §103(a)(4)(B)(ii)(II)(ee), and 25 C.F.R. §224.63(m).

<sup>41</sup> 25 C.F.R. §224.

<sup>42</sup> ITEDSA 2017, §103(a)(4)(A).

<sup>43</sup> ITEDSA 2017, §103(a)(4)(A).

271 days after the Secretary receives a TERA application from a qualified Indian tribe, or 91 days after the receipt of a revised TERA application, unless the Secretary disapproves the TERA application before that time.<sup>44</sup>

## Financial Assistance for TERA Implementation

ITEDSA 2005 did not include funding for Tribes taking over a program or activity from the federal government in a TERA. After ITEDSA 2005, some Tribes interested in pursuing a TERA commented on the lack of financial assistance for Tribes assuming functions in a TERA.<sup>45</sup> For example, Tribes indicated to GAO that assuming the federal government's activities would require significant tribal resources and, without additional funding, Tribes would not have the resources to assume these activities.<sup>46</sup>

ITEDSA 2017 provides a funding mechanism for TERAs. As a result of a Tribe carrying out a federal activity under a TERA, ITEDSA 2017 requires the Secretary to make available, upon a Tribe's request, any amounts the Secretary would have expended to carry out the same activity on the Tribe's behalf.<sup>47</sup> ITEDSA 2017 requires the Secretary to promulgate regulations to address the calculation of the amounts the Secretary would have expended.<sup>48</sup>

## Selected Issues for Congress

Congress and others continue to deliberate the implementation of the TERA authority. A handful of Tribes have initiated the process of entering into a TERA; in May 2026, DOI approved the first-ever TERA agreement, from the Southern Ute Indian Tribe.<sup>49</sup> To date, it remains the only approved TERA.

Congress may consider several issues related to implementation of the TERA authority, including the criteria for reviewing TERA applications; the scope of activities in a TERA; time frames for processing TERA applications; and financial assistance for TERA implementation.

## Criteria for Reviewing TERA Applications

Congress may continue to evaluate the effectiveness of the TERA approval process. In the 119<sup>th</sup> Congress, the House Committee on Natural Resources held an oversight hearing entitled *Tribal Natural Resource Development: Barriers and Successes*, where the majority asserted that energy development on tribal lands is “constrained by a fragmented federal approval process involving multiple agencies and dozens of steps, creating delays and uncertainty that deter investment and prevent otherwise viable projects from moving forward.”<sup>50</sup>

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<sup>44</sup> ITEDSA 2017, §103(a)(4)(B).

<sup>45</sup> S.Rept. 112-263, p. 11, footnote 68.

<sup>46</sup> GAO, *Indian Energy Development*, GAO-15-502.

<sup>47</sup> ITEDSA 2017, §103(a)(6). Tribes may also enter into annual (or multiyear) funding agreements under ISDEAA (see, e.g., 25 U.S.C. §5329).

<sup>48</sup> ITEDSA 2017, §103(a)(6).

<sup>49</sup> DOI, “Interior Enters Into Nation’s First-Ever Tribal Energy Agreement,” May 11, 2026, <https://www.doi.gov/pressreleases/interior-enters-nations-first-ever-tribal-energy-agreement>.

<sup>50</sup> U.S. Congress, House Committee on Natural Resources, Subcommittee on Indian and Insular Affairs, *Tribal Natural Resource Development: Barriers and Successes*, hearing memo, 119<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 22, 2026, <https://docs.house.gov/meetings/II/II24/20260422/119108/HHRG-119-II24-20260422-SD002.pdf>.

Tribes and GAO have also criticized the TERA approval process. Tribes have testified that the approval process for tribal energy development, including TERAs, is cumbersome, involves too many federal agencies, and takes too long.<sup>51</sup> In June 2015, GAO published the first of several reports on Indian energy development, including factors hindering Tribes' ability to enter into TERAs.<sup>52</sup> GAO reported that Tribes described the TERA application process as “complex, confusing, and time consuming” and noted that significant tribal resources were required to complete the application process.<sup>53</sup> According to GAO, BIA acknowledged these concerns but noted that the process could not be simplified due to the statutory framework.<sup>54</sup>

ITEDSA 2017 amended the process for approving a TERA to make it less complex; however, the 2019 TERA regulations maintain many of the old process requirements. For example, ITEDSA 2017 limits the Secretary's discretion in evaluating TERAs by setting a presumption that a TERA is considered approved unless the Secretary takes action to disapprove it.<sup>55</sup> DOI's presumption is the opposite: that a TERA is considered unapproved unless the Secretary takes action to approve the agreement.<sup>56</sup> Other regulatory requirements, such as the deadlines for scheduling the preapplication meeting and the application consultation meeting, may continue to be an issue for Tribes seeking to further reduce complexity in the TERA process. Options for Congress could include amending the law to clarify the Secretary's role in approving a TERA, or to otherwise clarify the discrepancies between the law and regulations.

## Tribal Capacity

ITEDSA 2017 removed the requirement for secretarial determination of sufficient tribal capacity to develop energy resources and all requirements for Tribes to demonstrate such capacity. Instead, ITEDSA 2017 states that a Tribe must certify it is a qualified Indian tribe. Both the law and the regulations state that to be considered a qualified Indian tribe, a Tribe must either (1) have experience contracting or compacting under ISDEAA for at least three consecutive years or (2) have substantial experience in administering energy leases or managing its energy resources.<sup>57</sup>

ITEDSA 2017 and the 2019 regulations lack direction about the process to certify a Tribe as “qualified” using the second criterion. While the first criterion is relatively straightforward for a Tribe to meet—by providing evidence of ISDEAA contracts or compacts—the second criterion is more subjective. Whether or not a Tribe has demonstrated substantial experience in administering energy leases or managing its energy resources is therefore up to the Secretary's discretion. Neither the law nor the regulations mention (1) how the Secretary will evaluate a Tribe's certification or documentation that it meets the second criterion, or (2) the types of documents a Tribe will need to produce to meet the second criterion. The 2019 TERA regulations require that an interested Tribe request a preapplication meeting with the Secretary, during which, among other things, the parties can discuss the Tribe's “capacity to manage and regulate the energy

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<sup>51</sup> U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on the Interior, Energy and the Environment, *Tribal Energy Resources: Reducing Barriers to Opportunity*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 17, 2018, H.Hrg. 115-91 (GPO, 2018), p. 5. See also Gallegos, Statement in *Tribal Natural Resources Development* hearing.

<sup>52</sup> GAO, *Indian Energy Development*, GAO-15-502.

<sup>53</sup> GAO, *Indian Energy Development*, GAO-15-502, p. 33.

<sup>54</sup> GAO, *Indian Energy Development*, GAO-15-502, p. 34.

<sup>55</sup> 25 U.S.C. §3504(2).

<sup>56</sup> 25 C.F.R. §224.67-§224.68.

<sup>57</sup> 25 U.S.C. §3501(9).

resource development.”<sup>58</sup> This discussion might include, for example, documentation of how the Tribe has administered and monitored energy leases, or descriptions of experienced staff and departments within the Tribe—all of which were previously required under the 2008 regulations to demonstrate tribal capacity. If the Secretary requires such documentation, it may run counter to congressional intent. ITEDSA 2017 and its precursor bills sought to mitigate barriers to entry by removing previous requirements for documentation of tribal capacity. For example, S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011, sought to “clarify and expedite the process by which the Secretary determines whether an Indian tribe has demonstrated sufficient capacity to enter into a TERA.”<sup>59</sup> Options for Congress could include clarifying the requirements for tribal certification as “qualified” under the second criteria, which might encourage more Tribes to propose TERAs.

## Scope of Activities in a TERA

The scope of activities that may be included in a TERA is a recurring issue. ITEDSA 2017 allows a Tribe to identify in the TERA application what operation and development functions it will assume from the federal government as long as they are not inherently federal functions. Tribes and GAO have sought clarity by asking for a definition of that term. Without a definition or list of items considered inherently federal functions, Tribes informed GAO that they would be unable to determine what functions the Tribes could take over or what they could work on to demonstrate capacity.<sup>60</sup> After the 2008 TERA regulations were implemented, GAO recommended that DOI define the term. In September 2017, the Acting Assistant Secretary—Indian Affairs informed the Senate Committee on Indian Affairs that the Office of Indian Energy and Economic Development had placed additional information on its website about TERAs and would develop a primer or provide guidance on training opportunities for Tribes interested in pursuing a TERA.<sup>61</sup> In June 2018, BIA testified that GAO closed out this recommendation pertaining to TERAs on March 8, 2018.<sup>62</sup> Tribal stakeholders continue to request that inherently federal functions be defined, claiming that “BIA failed to resolve this regulatory blockage.”<sup>63</sup> The TERA 2019 regulations did not define the term. However, in response to tribal comments, the TERA 2019 final rule preamble indicated that the Secretary would undertake efforts to define it.<sup>64</sup> On December 16, 2019, the

<sup>58</sup> 25 C.F.R. §224.51.

<sup>59</sup> S.Rept. 112-263. See discussion of introduced bills and hearings over several congresses in H.Rept. 115-1057 and S.Rept. 115-84.

<sup>60</sup> GAO, *Indian Energy Development*, GAO-15-502, p. 32. Tribal stakeholders also indicated they needed clarity about the tribal environmental review process and whether or not receiving public input opens up the Tribe to liability, which could delay tribal decisionmaking.

<sup>61</sup> U.S. Congress, Senate Committee on Indian Affairs, *High Risk Indian Programs: Progress and Efforts in Addressing GAO’s Recommendations*, hearing, 115<sup>th</sup> Cong., 1<sup>st</sup> sess., September 13, 2017, S.Hrg. 115-235, (GPO, 2018), p. 46. CRS was unable to locate this guidance on any of DOI’s websites.

<sup>62</sup> U.S. Congress, Senate Committee on Indian Affairs, *GAO High Risk List: Turning Around Vulnerable Indian Programs*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 13, 2018, S.Hrg. 115-308, (GPO, 2018), p.19; GAO, “Recommendations,” in *Indian Energy Development*, GAO-15-502, <https://www.gao.gov/products/GAO-15-502>.

<sup>63</sup> H.Hrg. 115-91, p. 12. See also Gallegos, Statement in *Tribal Natural Resources Development* hearing.

<sup>64</sup> BIA, “2019 TERA Regulations,” p. 69608. The preamble states,

Several Tribes and other commenters expressed the need to define “inherently Federal functions” to clarify what functions are not available for Tribes to undertake in a TERA. According to these Tribes, a definition is necessary for several reasons, including to address issues, provide certainty, and ensure consistency in interpretation. A few requested that the definition exclude basic minerals development functions, like applications for permits to drill, thereby allowing Tribes to undertake these functions through TERAs. A Tribal organization commenter requested consultation with Tribes before the Department defines the term.

Secretary signed Secretarial Order (S.O.) 3377, *Contractibility of Federal Functions for Oil and Gas Development on Indian Lands*.<sup>65</sup> S.O. 3377 required the Solicitor’s Office to create two lists: one for inherently federal functions related to oil and gas development that are not allowed under a TERA, and the other for federal functions related to oil and gas development that are allowed under a TERA. All actions were to be taken within 90 days from the date of S.O. 3377.<sup>66</sup> On February 24, 2020, the Assistant Secretaries for Indian Affairs; Land and Minerals Management; and Policy, Management, and Budget approved a memorandum of agreement that included these two lists.<sup>67</sup>

As in the TERA debate, some Tribes and GAO have suggested that DOI propose or Congress establish a statutory definition of *inherently federal function* to clarify the scope of ISDEAA agreements.<sup>68</sup> In January 2019, GAO issued a report addressing factors that hinder Tribes from entering into funding contracts and compacts under ISDEAA. The report states that, because inherently federal functions are determined on a case-by-case basis, such determinations are not consistent across BIA.<sup>69</sup>

When DOI updated its ISDEAA self-governance regulations in 2024, it did not define inherently federal functions. However, it included a new section that requires BIA’s regional and central offices to develop and distribute a document outlining its inherently federal functions and cost calculations each fiscal year.<sup>70</sup> The regulations further require “uniformity and consistency” in identifying these functions and their associated costs. Congress may consider whether this type of BIA guidance document may be useful in the TERA context as well.

Congress has considered defining inherently federal functions in various instances. In the 117<sup>th</sup> Congress, various bills introduced to implement Indian water rights settlements included language noting that federal compliance activities were inherently federal.<sup>71</sup> Some Members of Congress have supported continuing to defer to DOI’s current case-by-case approach in interpreting the term in the ISDEAA context.<sup>72</sup> In addition, one bill introduced in the 118<sup>th</sup> Congress would have required a list of all forest management activities for which contracting is available under the Tribal Forest Protection Act’s self-determination authority.<sup>73</sup> Congress may consider whether to keep the status quo, which leaves room for agency interpretation, or to enact legislation that more explicitly defines what functions are inherently federal in the TERA context.

<sup>65</sup> DOI, Secretarial Order (S.O.) 3377, “Contractibility of Federal Functions for Oil and Gas Development on Indian Lands,” December 16, 2019, [https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3377-508-compliant-1\\_0.pdf](https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3377-508-compliant-1_0.pdf).

<sup>66</sup> DOI, S.O. 3377, §5.

<sup>67</sup> DOI, *Memorandum of Agreement Between Bureau of Indian Affairs, Office of Self-Governance, Office of Natural Resources Revenue, and Bureau of Land Management*, February 24, 2020, [https://www.usetinc.org/wp-content/uploads/2020/04/02.24.20-MOA-BIA.OSG\\_ONRR\\_BLM\\_with-Annex-A-contractable-functions.pdf](https://www.usetinc.org/wp-content/uploads/2020/04/02.24.20-MOA-BIA.OSG_ONRR_BLM_with-Annex-A-contractable-functions.pdf) (hereinafter DOI, S.O. 3377 MOA).

<sup>68</sup> BIA, “Self-Governance PROGRESS Act Regulations,” 89 *Federal Register* 100230, December 11, 2024. See Government Accountability Office (GAO), *Interior Should Address Factors Hindering Tribal Administration of Federal Programs*, GAO-19-87, January 2019, p. 15, <https://www.gao.gov/assets/gao-19-87.pdf>.

<sup>69</sup> GAO, *Factors Hindering Tribal Administration*, GAO-19-87, p. 15.

<sup>70</sup> 25 C.F.R. §1000.690.

<sup>71</sup> See, for example, H.R. 8921 and S. 1911 in the 117<sup>th</sup> Congress.

<sup>72</sup> Rep. George Miller, “Tribal Self-Governance Amendments of 1998,” House Extensions of Remarks, *Congressional Record*, daily edition, vol. 144 (October 9, 1998), p. E1982, <https://www.govinfo.gov/content/pkg/CREC-1998-10-09/pdf/CREC-1998-10-09-pt1-PgE1982.pdf>.

<sup>73</sup> The Rural Prosperity and Food Security Act of 2024, S. 5335, §8236.

## Time Frames for Processing TERA Applications

Several Congresses have considered bills to amend ITEDSA 2005 to “streamline the TERA approval process,” for example by establishing time frames for DOI to process TERA applications.<sup>74</sup> ITEDSA 2017 required the Secretary to notify a Tribe if a TERA application is complete or incomplete no later than 60 days after its submission.<sup>75</sup> The agreement takes effect 271 days after the Secretary receives a TERA application from a qualified Indian tribe, or 91 days after the receipt of a revised TERA application, unless the Secretary disapproves the TERA application before that time.<sup>76</sup>

The 2019 TERA regulations specify procedures for Tribes to submit TERA agreements, which may delay processing time beyond Congress’s intentions in ITEDSA 2017. For example, before submitting a TERA application, the regulations (but not the statute) require Tribes to request a “pre-application consultation” in writing to the Secretary.<sup>77</sup> Similarly, the regulations indicate that DOI does not necessarily consider a submitted TERA application to be complete but does not explicitly define the term *complete application*.<sup>78</sup> This means that Tribes may need to revise and update their initial submissions, which could cause uncertainty about when the 271-day review period begins and when the TERA may automatically take effect if the Secretary does not act. Options for Congress could include amending the law to clearly specify whether a preapplication process is required, when a TERA application is considered complete, or when the 270-day timeline begins to eliminate potential ambiguity in subsequent regulations.

## Financial Assistance for TERA Implementation

Congress could consider whether federal financial assistance is aligned with tribal energy development. For example, DOE provides financial assistance, technical assistance, education, and capacity building to address barriers to developing energy resources on tribal lands. Congress might choose to examine whether DOE has successfully addressed these tribal barriers, especially in comparison with BIA, and what sort of assessment or evaluation could be done (by GAO or others) to evaluate performance by BIA and DOE.

Current law and regulations leave potential ambiguity surrounding financial assistance for TERA implementation. ITEDSA 2017 and the 2019 TERA regulations direct the Secretary to provide a requesting Tribe the amounts the Secretary otherwise would expend to carry out a federal activity on the Tribe’s behalf. However, despite ITEDSA 2017’s direction to DOI to address the calculation of these amounts in regulations, the 2019 regulations do not include a formula. ITEDSA 2017 also stated that annual funding agreements (AFAs) should be negotiated and entered into separately from TERAs.<sup>79</sup> Given that the regulations do not clearly indicate how the Secretary will make funding calculations or lay out the process for adopting an AFA, there may be ambiguity for Tribes regarding how they may negotiate for funding, and how much funding they will receive.

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<sup>74</sup> S.Rept. 115-84.

<sup>75</sup> ITEDSA 2017, §103(a)(4)(A).

<sup>76</sup> ITEDSA 2017, §103(a)(4)(B).

<sup>77</sup> 25 C.F.R. §224.51.

<sup>78</sup> A “complete application” may be an application that meets the criteria in 25 C.F.R. §224.53, “What must an application for a TERA contain?,” but it is not explicitly defined.

<sup>79</sup> 25 U.S.C. 3504(g)(2).

## Appendix. Summary of Selected Differences Between Statutory and Regulatory Tribal Energy Resource Agreements (TERA) Requirements

**Table A-1** compares differences between the current statutory and regulatory requirements (ITEDSA 2017 and 2019 TERA regulations) for provisions within tribal energy resource agreements (TERAs). Some requirements have been summarized or condensed.

**Table A-1. Summary of Selected Differences Between Statutory and Regulatory Tribal Energy Resource Agreement (TERA) Provision Requirements**

Requirement Subject	TERA Statute (ITEDSA 2017)	TERA Regulation (25 CFR Part 224)
<i>Criteria for Reviewing TERA Applications</i>	Sets a presumption that a TERA is considered approved unless the Secretary disapproves it. The Secretary may disapprove a TERA for specified reasons only. (25 U.S.C. §3504(e)(2))	The Secretary must take steps to approve or disapprove the final TERA. (25 C.F.R. Part 224, Subpart C)
<i>Time Frames for Processing TERA Applications</i>	A TERA takes effect on the 271 <sup>st</sup> day after the Secretary receives a TERA application from a qualified Indian tribe. (25 U.S.C. §3504(e)(2)(A))  A TERA's effective date or implementation may not be delayed by the amount of time needed for the Secretary to make funding calculations or the adoption of an annual funding agreement. (25 U.S.C. §3504(g)(4)(B))	A TERA takes effect on the 271 <sup>st</sup> day after the Secretary receives a "complete" TERA application from a qualified Indian tribe. (25 C.F.R. §224.74)  Before submitting a TERA application, a Tribe must request a "pre-application consultation" in writing to the Secretary. (25 C.F.R. §224.51)
<i>Financial Assistance for TERA Implementation</i>	The Secretary will provide to the Tribe any amounts that the Secretary would otherwise expend to operate or carry out any program, function, service, or activity (or any portion of a program, function, service, or activity) of the Department that, as a result of the Tribe carrying out activities under a TERA, the Secretary does not expend. (25 U.S.C. §3504(g)(1))  The Secretary shall calculate the amounts in accordance with the regulations. (25 U.S.C. §3504(g)(4))	The Secretary will provide to the Tribe those amounts that the Secretary would otherwise have expended to carry out any program, function, service, or activity (or portion thereof) that the Secretary does not expend as a result of the Tribe carrying out the activities under a TERA.  The Secretary will provide the Tribe with a full accounting of the amounts as calculated based on the specific terms of the TERA, the scope of the contracted functions, and applicable circumstances. (25 C.F.R. §224.79)

**Source:** Prepared by CRS with information from 25 U.S.C. §3504 and 25 C.F.R. Part 224.

**Notes:** All references to the Secretary refer to the Secretary of the Interior.

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## **Acknowledgments**

Tana Fitzpatrick, former CRS Specialist in Natural Resources, wrote the original version of this report.

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