

**House Committee on Natural Resources**  
**6 March 2024**

Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs' 638 Contracting – Indian and Insular Affairs Subcommittee

Congressional Witnesses:

- Bryan Newland
  - Assistant Secretary for Indian Affairs (Department of Interior)
- Deborah Dotson
  - President, Delaware Nation
- Martin Harvier
  - President, Salt River Pima Maricopa Indian Community
- Jay Spaan
  - Executive Director, Self-Governance Communication & Education Tribal Consortium
- Cheryl Andrews-Maltais
  - Chairwoman Wampanoag Tribe of Gay Head Aquinnah

Highlights:

- All the witnesses expressed the importance of self-governance for Tribes, but many commented that there was still a lot of room for improvement in the process of receiving the funds.
- Self Governance Organization's Jay Spaan explained the authorities of self-governance and then focused on the opportunities for the Bureau of Indian Affairs to make the implementation of the authorities more efficient.

General notes about discussion, points raised, etc.

- In Representative Harriet Hageman's (R-WY) opening statement, she explained what 638 contracting is, "In fiscal year 2022, an estimated 275 tribes participated in self-determination contracts, and 292 tribes participated in self-governance compacts. Tribes have continued to advocate for the expansion of 638 contracts and compacts to other federal departments and agencies. Self-determination contracts and self-governance compacts have seen changes over the years as Congress has worked to improve these programs. Each Tribe is uniquely situated within their communities, their culture, and their history. Tribal governments already seek to make the best decisions for their members for their social, cultural, and economic security."
- Asst. Secretary of Indian Affairs Bryan Newland first spoke on the successes the Bureau has with 638 funding to fulfill and advance treaty and trust obligations regarding self-determination and self-governance in the Department of Indian Affairs.
  - He provided the example that the BIA has used funding provided by the bipartisan infrastructure law and the Inflation Reduction Act (IRA) to help relocate or protect Tribes threatened by climate change.
  - Newland also stated that the Department of Interior expects to use 638 funding agreements and future IRA funding opportunities for climate resilience, fish hatcheries, and the [Tribal Electrification Program](#).
  - Two other areas he highlighted are advancing the policies of self-determination, stating that Public Law 638 requires the Department to provide additional payments to Tribes for the cost of infrastructure used to carry out government programs under a self-determination contract or compact.

- President Deborah Dotson stated that the Delaware Nation has seen great success with its self-governance compact, but there are areas where improvement is needed to fully realize the potential power of the act. She gave five examples:
  - The first issue involves the transfer of funds, citing chronic delays in the distribution of funding for interior programs.
  - The second issue involves contract support costs. She explained that the self-governance office provides contract support cost funding at a rate of 80% of the prior year and withholds the remaining 20% until year-end, there is no legal authority for that withholding.
    - She recommended that Congress should consider amending the Act to Provide monetary penalties for non-compliance.
  - The third issue involves model agreements, that Tribes encounter instances where BIA staff require more than the provisions of the model agreement.
    - To address this, the action should either include all required provisions in the model agreement or clarify that the provisions contained in the model are all that may be required. Tribes would benefit from the certainty that such a change in the law would bring.
  - The fourth issue involves staffing levels, and she said that each of the areas she has identified could be helped by the recruitment and retention of competent and trained staff within the Office of Self-Determination and Self-governance.
  - The fifth issue involves reporting Tribes to initiate self-determination contracts and self-governance compacts when Tribes decide to do so. She suggested an amendment that syncs the reporting periods to the Tribes' period of performance which would improve accuracy and Tribal reporting.
- President Martin Harvier said that they have been able to have a lot of economic growth from their self-governance compacts, but challenges persist. He said they need to improve their [Land Titles and Records Office](#) responsibilities, and that they have limited staff that could access the Federal Transit tax system. In addition, the execution of their self-governance complex depends on their community supplementing federal funds. To conclude, President Harvier sounded his support for the ongoing rulemaking for the Progress Act, which harmonizes self-governance compact administration and protects Tribes from unauthorized terms.
- Jay Spaan opened his statements with remarks about the authorities of self and self-governance, and then with a focus on the opportunities for Indian Affairs to make the implementation of the authorities more efficient.
  - “Under self-governance, Tribes have the authority to redesign federal programs in ways that better address local needs without federal interference. Self-determination authority differs in that it requires Tribes to submit redesign proposals for federal review and approval. Another difference between self-determination and self-governance is that they are managed by different entities within Indian Affairs. BIA administers self-determination contracts, while the Office of Self-governance oversees and manages self-governance agreements.
  - “50 years of experience has shown that self-determination and self-governance are successful. Tribal nations have demonstrated that local control, local delivery, and knowledge of need ultimately result in the delivery of more effective programs, greater administrative and governance capacity, increased accountability, and more extensive economic benefits.”
  - He said that while they have had great successes, there are opportunities to improve.

- He gave the example that some Tribal nations with self-governance agreements do not receive all the funding and supporting documentation within the timeframes identified in their agreements.
      - The GAO reported that a complex distribution process and significant vacancies in key positions are both factors in the delays.
    - He also said that Tribal nations have raised concerns that self-governance has not been effectively integrated throughout BIA structure and organization and that key offices do not coordinate as needed to effectively fulfill their responsibilities.
    - Spaan said that some Tribes have experienced delayed funding due to ineffective collaboration and lack of information sharing.
      - He offered the suggestions that the Indian Affairs committee should implement comprehensive modernization efforts for technology systems, improve data management and data sharing capabilities, and streamline unnecessarily complex processes.
- Rep. Hageman (R-WY) asked Bryan Newland how the BIA has and is implementing further changes.
  - He answered that the BIA is working to create the information and IT systems that were included in those recommendations and estimates that testing will be complete by the end of the fiscal year.
- Rep. Teresa Leger Fernandez (D-NM) asked about how to help smaller Tribes that do not have supplemental sources of funding for these programs to compact and contract, given the difficulties with funding.
  - Bryan Newland answered that the BIA is trying to secure more staff who are capable of moving the money more quickly.
- Delegate Amata Radewagen (R-American Samoa) asked Jay Spaan about the closeout process for 638 compacts.
  - Jay Spaan explained that 638 compacts are different from self-determination compacts whenever they are negotiated because they do not have a term. The compacts set the stage for re-establishing the relationship between the Tribe and the federal government. When funding agreements get negotiated, the program services function activities get negotiated as well and are included in the funding agreements. That funding agreement is renegotiated periodically with the Tribe and the federal government coming together.
- Del. Radewagen further asked President Dotson how her Tribe determined that a self-governance compact would serve them better, and if she would suggest any improvements to the negotiation process for self-governance compacts.
  - President Dotson answered that she was not in office when the self-governance compacts were negotiated, but that it gave them more flexibility to move funding around so that they could fund more programs. She suggested for improvement to increase adequate staffing because that would help with getting the funding out.