



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **The Bureau of Indian Affairs Can Improve the Closeout Process for Public Law 93–638 Agreements**



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**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

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Memorandum

To: Darryl LaCounte  
Director, Bureau of Indian Affairs

From: Kathleen Sedney   
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Final Inspection Report – *The Bureau of Indian Affairs Can Improve the Closeout Process for Public Law 93–638 Agreements*  
Report No. 2020–CGD–060

This memorandum transmits our inspection report on the Bureau of Indian Affairs' management of the closeout process for agreements issued under the Indian Self-Determination and Education Assistance Act (as amended), Public Law 93–638. We offer three recommendations to help improve the management of the closeout process, as well as resolve identified monetary findings.

We will refer Recommendations 1 through 3 to the Office of Policy, Management and Budget for resolution and implementation tracking and to report to us on their status. In addition, we will notify Congress about our findings, and we will report semiannually, as required by law, on actions you have taken to implement the recommendations and on recommendations that have not been implemented. We will also post a public version of this report on our website.

If you have any questions about this report, please call me at 202–208–5745.

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# Results in Brief

## What We Inspected

We conducted this inspection to evaluate the Bureau of Indian Affairs' (BIA's) management of the closeout process for agreements issued under the Indian Self-Determination and Education Assistance Act (as amended), Public Law 93–638.

The closeout process—in which the parties to the agreement determine that all contractual requirements have been completed—is necessary to enable tribal organizations to use unspent restricted funds on agreed-upon tribal programs and services, demonstrate accountability with respect to funds provided, and ensure the BIA fulfills its trust responsibilities.

## What We Found

We found that the BIA is not actively managing the closeout process for Public Law 93–638 agreements, and that, on average, the BIA has issued 878 new and closed only 20 existing Public Law 93–638 agreements per fiscal year. As of September 30, 2021, the BIA had 6,148 open agreements and had not identified agreements where the completion of specific administrative tasks would result in the ability to close the agreement. As a result, we identified over \$5 million in unused funds from 183 agreements<sup>1</sup> that could be put to better use for tribal programs and services if closed. Additionally, the BIA is unaware of the unspent funds held by recipients and is at risk of issuing duplicate agreements.

## Why This Matters

Although some open agreements and unspent funds are expected, the number of open Public Law 93–638 agreements has grown at a rate of nearly 900 per year since 2013. If the BIA does not manage the closeout process, the number of open agreements will continue to grow and could require additional resources to address. Closing Public Law 93–638 agreements ensures that Federal funds are both fully spent and used for authorized purposes and results in tribal organizations' ability to spend previously restricted funds on agreed upon tribal programs and services.

## What We Recommend

We make three recommendations that, if implemented, will help the BIA actively manage the closeout process for Public Law 93–638 agreements. The BIA concurred with all three recommendations. Based on the responses to our draft report, we consider Recommendations 1 through 3 resolved.

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<sup>1</sup> This is based on information provided by the BIA on the closeout status of 183 open agreements as of September 30, 2021.

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# Introduction

## Objective

We conducted this inspection to evaluate the Bureau of Indian Affairs' (BIA's) management of the closeout process for agreements issued under the Indian Self-Determination and Education Assistance Act (as amended), Public Law No. 93–638.

See Appendix 1 for the scope and methodology.

## Background

Agreements made under the authority of Public Law 93–638 authorize tribal organizations to assume the responsibility for programs and services administered to them on behalf of the Secretary of the Interior. These agreements are managed cooperatively between the BIA and tribal organizations and are provided to support (among other matters) social, environmental, economic, judicial, and infrastructure-related services. Public Law 93–638 agreements provide ongoing and recurring services, and the duration of agreements vary between 1 and 3 years, with some agreements having an indefinite term.<sup>2</sup> In contrast to grants, the funding for Public Law 93–638 agreements does not expire and the period of performance does not end until funds are used or identified for use in a successor agreement. In addition, while grants are governed by the entirety of 2 C.F.R. Part 200,<sup>3</sup> “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” only Subparts E (Cost Principles) and F (Audit Requirements) apply to Public Law 93–638 agreements.

Public Law 93–638 agreements can be administered by tribal governments under a self-determination contract (Title I) or a self-governance compact (Title IV). The primary difference between Title I and Title IV is the amount of tribal flexibility and oversight by the BIA—in general, Title IV agreements provide greater tribal autonomy and less BIA oversight.<sup>4</sup> To be eligible to participate in Title IV, a tribal organization must demonstrate financial stability and management capability as defined by Public Law 93–638, through 3 years of participation in a Title I agreement with no material single audit findings.

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<sup>2</sup> Specific legislation—Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act, Public Law 116–180 (2020)—allows Title IV agreements to remain open indefinitely.

<sup>3</sup> 2 C.F.R. § 200 is comprised of six subparts, only two of which apply to Public Law 93–638 agreements. Specifically, subparts A through D do not apply. These subparts include pre and post award requirements, which include closeout requirements.

<sup>4</sup> For example, under Title I, the U.S. Department of the Interior (DOI) must approve any substantial changes to an agreement. Upon notifying the Secretary, a tribal organization that carries out a non-construction self-determination agreement may propose a redesign of a program, function, service, or activity to address the specific needs of the tribal organization. 25 U.S.C. § 5324(J).

A single audit is required when a non-Federal entity expends \$750,000 or more during the fiscal year.<sup>5</sup> The single audit report is the main tool used by the BIA to monitor Federal financial assistance funds awarded to non-Federal entities.<sup>6</sup> A thorough analysis of a single audit report is critical in identifying deficiencies in the recipients' compliance with the provisions of laws, regulations, or contracts/grant agreements, and any weaknesses in its financial management and internal control systems. A single audit finding means that the auditor identified deficiencies in internal control or noncompliance with laws, regulations, or contracts/grant agreements. Correcting such deficiencies and weaknesses helps ensure the effective use of Federal funds and reduce Federal improper payments.

### **Funding for Public Law 93–638 Agreements**

The funds for Public Law 93–638 agreements are restricted for use on agreed-upon tribal programs and services and are available until used. Remaining funds on Public Law 93–638 agreements result from undelivered or incomplete delivery of services or from unresolved single audit findings.

The BIA has visibility over Tribal Priority Allocation funds<sup>7</sup> in the joint accounts until a tribal organization withdraws funds from the joint account. Afterwards, the BIA can only see spending activity through annual program inspections and can monitor funds remaining on the tribal organization's Federal financial reports (when required by the agreement terms) and annual single audit reports.

### **Elements of the Public Law 93–638 Closeout Process**

The purpose of the Public Law 93–638 closeout process is to ensure Federal funds are both fully spent and used for authorized purposes. Closing agreements allows tribal organizations to use unspent restricted funds on agreed-upon tribal programs and services, demonstrate accountability with respect to funds provided, and ensure the BIA fulfills its trust responsibilities.<sup>8</sup>

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<sup>5</sup> 2 C.F.R § 200.501, subpart F. Under Title IV, however, the tribal organization may redesign or consolidate a single Federal program, function, service, or activity (PFSA) and reallocate funding without DOI's approval. In another example, under Title I, an interested tribal organization may request by tribal resolution to enter into agreement with the BIA to operate a single Federal PFSA previously managed by the Federal Government. If approved, the DOI provides the tribal organization with the same funding amount the Federal Government would spend to operate the PFSA. Under Title IV, however, an interested tribal organization may request to enter into a self-governance compact, which allows a tribal organization to enter into a single agreement which that provides funding for multiple PFSAs.

<sup>6</sup> For Indian tribal organizations that meet this requirement, recipients must initiate single audits by engaging independent audit firms to conduct audits for the applicable fiscal year and submit audit reports within 9 months after the end of the period audited.

<sup>7</sup> Tribal Priority Allocation (TPA) funds are appropriated by Congress as a mechanism to allow direct involvement by Tribes and tribal organizations in setting priorities for their operating programs. When TPA funds are available, the BIA deposits funds for each Public Law 93–638 agreement into joint accounts that tribal organizations can access and from which they can withdraw funds.

<sup>8</sup> The trust responsibility is a legally binding relationship created by treaties and case law and rooted in the trust doctrine, which ensures the sovereignty and welfare of Indian Tribes and people. This includes the responsibility to protect and enhance tribal lands, resources, self-government, and to provide economic and social services to support the prosperity of Indian Tribes and citizens of federally recognized Tribes.

There are many unique challenges to closing Public Law 93–638 agreements, including the absence of statutory or regulatory time frames mandating closure and the fact that funds do not expire. Instead, agreements can be closed when a tribal organization and the BIA determine that all requirements of both parties are complete. Each Public Law 93–638 agreement is negotiated separately and although a model agreement is used, agreement terms vary.

Title I and Title IV agreements have different closeout requirements but share common elements, which are described in Figure 1. Title I agreements follow the applicable closeout procedures from the BIA’s *Internal Agency Procedures Handbook for Non-Construction Contracting Under Title I of the Indian Self-Determination and Education Assistance Act*, which includes a requirement to complete a closeout checklist.<sup>9</sup>

**Figure 1: Common Closeout Elements**

<b>Element</b>	<b>Description</b>
All tasks and reports are completed	The BIA can close agreements after the Tribe or tribal organization has submitted all reports required by the terms of the agreement, including all annual audit reports.
Single audits are complete and outstanding single audit findings are resolved	Tribes and tribal organizations that receive over \$750,000 <sup>10</sup> in Federal funding must complete and submit to the BIA a single audit report 9 months after the end of the fiscal year. The BIA uses single audits, which are performed by independent auditors, to determine if agreements have compliance findings or questioned costs that need to be corrected.
Funds are disbursed and spent	The BIA reconciles the agreement to verify that all required payments have been made to the tribal organization.
Release of claims is completed	Both parties release one another from any and all claims arising from the agreement.

## **Grants Oversight and New Efficiency Act of 2016**

Closing out grants allows agencies to identify and redirect unused funds to other projects and priorities as authorized or to return unspent balances to the U.S. Department of the Treasury. The Grants Oversight and New Efficiency (GONE) Act of 2016 was passed in response to long-standing concerns with grant closeout<sup>11</sup> and requires the identification of grants the Government would benefit from closing—those with remaining funds, those with no remaining funds, and

<sup>9</sup> Each closing checklist is unique based on the terms of the agreement.

<sup>10</sup> Office of Management and Budget (OMB) Circular No. A–133 requires each non-Federal entity that expends \$750,000 or more of Federal assistance during the non-Federal entity’s fiscal year to have a single or program-specific audit conducted for that year in accordance with the provisions of 2 C.F.R. § 200.501. Tribes and tribal organizations that do not meet the \$750,000 annual expenditure amount are not required to comply with the Single Audit Act and 2 C.F.R. § 200.501 requirements.

<sup>11</sup> For example, in 2016 the U.S. Government Accountability Office (GAO) found approximately \$944 million in funding remained in expired grant accounts operated by the U.S. Department of Health and Human Services at the end of fiscal year 2015. *Grants Management: Actions Needed to Address Persistent Grant Closeout Timeliness and Undisbursed Balance Issues*, GAO–16–362, April 14, 2016.

those with a performance period that has expired. The Act requires Federal agencies to identify and report Federal grant and cooperative agreements with periods of performance that had been expired for at least 2 years and to take action to close the expired awards. Federal agencies were also required to submit an initial report to Congress by December 31, 2017, and to provide an update within 90 days after the initial report submission that included recommendations for legislation to improve the accountability and oversight of grant management, including the closeout of covered grant awards.<sup>12</sup>

In March 2020, we completed a risk assessment of the grant closeout process required by the GONE Act.<sup>13</sup> Our assessment found the DOI's grant closeout process to be at high risk of inaccurate reporting. Specifically, the assessment identified an unresolved material weakness, unreported data, inaccurate information, policy gaps, and unsupported reports. We issued a recommendation for the DOI to determine if Public Law 93–638 agreements should be reported pursuant to the GONE Act. In response to the recommendation, the DOI provided support on its decision to exclude Public Law 93–638 agreements from GONE Act reporting, citing 25 U.S.C. § 5324(a)(1), which provides that self-determination contracts and grants are not subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian Tribes.<sup>14</sup>

Despite the DOI's conclusion, we conducted an inspection of the BIA's management of the closeout of Public Law 93–638 agreements for two reasons. First, because the agreements were not required to be reported under the GONE Act, we concluded that a separate review was warranted given that Public Law 93–638 agreements face similar risks regarding closeout and remaining balances.

Second, the DOI had an unresolved Federal Managers Financial Integrity Act (FMFIA)<sup>15</sup> internal control material weakness in its fiscal year (FY) 2021 agency financial report.<sup>16</sup> The self-reported material weakness cited the DOI's need to improve management and oversight of both tribal financial assistance and tribal agreements made under Public Law 93–638.

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<sup>12</sup> The OMB revised the closeout regulations for Federal grant awards on November 12, 2020, to support timely closeout, improve the accuracy of reporting, and to reduce recipient burden. 2 C.F.R. § 200.344.

<sup>13</sup> *Risk Assessment of the U.S. Department of the Interior's Grant Closeout Process* (Report No. 2019–FIN–037), issued March 2020. The Inspector General was required by the GONE Act to conduct a risk assessment to determine if an audit or review of the agency's grant closeout process is warranted. The report is available at: <https://www.doioig.gov/reports/other/risk-assessment-us-department-interiors-grant-closeout-process>.

<sup>14</sup> We closed the recommendation based on the BIA's response.

<sup>15</sup> The FMFIA requires agencies to establish internal control and financial systems that provide reasonable assurance of achieving the three objectives of internal control, which are: effectiveness and efficiency of operations, compliance with regulations and applicable laws, and reliability of financial reporting. The FMFIA also requires that the agency head provide an annual Statement of Assurance on whether the agency has met these requirements. Information about the Federal Managers Financial Integrity Act is located at: [H.R.1526 - 97th Congress \(1981-1982\): Federal Managers Financial Integrity Act of 1982 | Congress.gov | Library of Congress](https://www.congress.gov/115/legislation/1526).

<sup>16</sup> OMB Circular No. A–123 requires that each Federal agency identify and report on material weaknesses. The DOI's 2021 FMFIA report is available at: <https://www.doi.gov/sites/doi.gov/files/afr21-book-final508c.pdf>.

# Results of Inspection

We found that the BIA is not actively managing the closeout process for Public Law 93–638 agreements, and that, on average, the BIA has issued 878 new and closed only 20 existing Public Law 93–638 agreements per fiscal year.<sup>17</sup> As of September 30, 2021, the BIA had 6,148 open Public Law 93–638 agreements. Some open agreements and unspent funds are expected (i.e., those related to ongoing projects). However, the BIA has not identified those agreements where the completion of specific administrative tasks would result in the ability to close the agreement. Closing these agreements, as appropriate, would allow tribal organizations to use unspent restricted funds on agreed-upon tribal programs and services, demonstrate accountability with respect to funds provided, and ensure the BIA fulfills its trust responsibilities.

The number of open Public Law 93–638 agreements has grown at a rate of nearly 900 per year since 2013. This occurred because the BIA has not tracked or monitored the closeout process for Public Law 93–638 agreements. As a result of the failure to close out agreements as needed, we identified over \$5 million in unused funds<sup>18</sup> from 183 agreements that could be used for tribal programs and services if managed more efficiently. Additionally, the BIA is unaware of the unspent funds held by recipients and is at risk of issuing duplicate agreements. Figure 2 summarizes the number of Public Law 93–638 agreements issued by fiscal year and the number that have been closed by fiscal year between FYs 2013 and 2019.

**Figure 2: The BIA’s Issued and Closed Public Law 93–638 Agreements as of September 30, 2021**

<b>Fiscal Year Opened</b>	<b>Agreements Issued</b>	<b>Closed Since 2013</b>	<b>Open as of 9/30/2021</b>
2013	1,219	89	1,130
2014	778	32	746
2015	722	24	698
2016	874	17	857
2017	847	9	838
2018	899	11	888
2019	992	1	991
<b>Total</b>	<b>6,331</b>	<b>183</b>	<b>6,148</b>

Source: Financial and Business Management System

<sup>17</sup> We reviewed open Public Law 93–638 agreements issued by the BIA as of September 30, 2019. This included agreements issued between FYs 2013 and 2019.

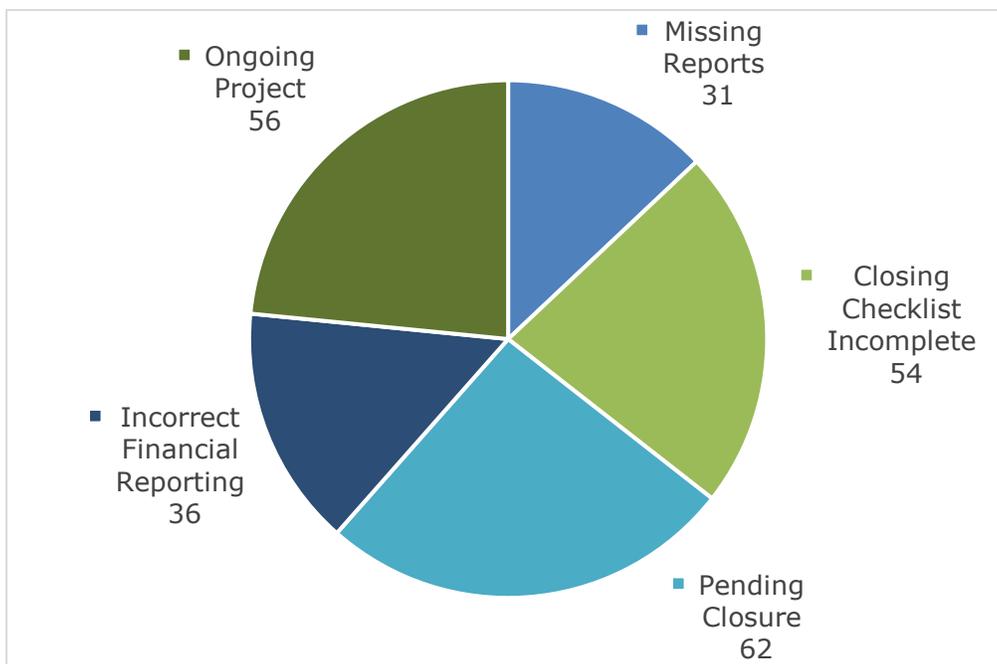
<sup>18</sup> This conclusion is based on information provided by the BIA on the closeout status of 183 open agreements as of September 30, 2021.

## Monitoring and Identifying Agreements with Outstanding Tasks

The BIA has not identified the open Public Law 93–638 agreements where the completion of specific administrative tasks would result in the ability to close the agreement. Closeout ensures funds are fully spent for authorized purposes and that all tasks required by the agreement are complete. Closeout may enable tribal organizations to use unspent restricted funds on agreed-upon tribal programs and services.

To determine why the agreements remained open during FY 2021 and the amount of unspent funds on the open agreements, we reviewed a sample of 239 open Public Law 93–638 agreements across 7 BIA regions. The BIA provided data on unspent funds and factors prohibiting closure, but it stated this data is not centrally tracked, monitored, or managed by the BIA. We categorized responses received into five major categories, as shown in Figure 3.

**Figure 3: BIA Provided Reasons Public Law 93–638 Agreements Were Open During FY 2021**



Some of the reasons the BIA provided for open agreements were expected, such as the 56 agreements related to ongoing projects. However, we found that 31 agreements were missing required reports, 36 agreements required corrections to financial status reports, 54 awards had incomplete closing checklists, and 62 agreements pending closure that had remaining tasks preventing closeout. Figure 4 illustrates the reason agreements were open and the actions the BIA could take to close the agreements.

**Figure 4. Actions Needed to Close Public Law 93–638 Agreements**

<b>Reason Open</b>	<b>Action Needed for Closure</b>
Ongoing Project	Agreement is active with the delivery of services ongoing. No efforts to aid closeout are necessary, and the BIA continues oversight and monitoring efforts until the agreement is complete.
Missing Reports	Reports required by the agreement have not been submitted. The BIA can prompt completion of reports through correspondence with the tribal organization and can offer technical assistance.
Incorrect Financial Reporting	Financial status reports and single audit findings require correction or resolution. The BIA can prompt correction and submission of the reports through correspondence with the Tribe and can offer technical assistance.
Closing Checklist Incomplete	Elements of the required closing checklist are incomplete and require further attention. The BIA can work with the Tribe to complete remaining checklist tasks to close the agreement.
Pending Closure	Closeout modifications and final tasks remain incomplete. The BIA can work with and prompt the tribal organization to complete the remaining tasks and close the agreement.

In addition to providing information on the underlying reason these agreements remained open, BIA officials provided the amount of unspent funds remaining on the 239 open agreements, which totaled \$10,640,281. The funds for Public Law 93–638 agreements are restricted for use on agreed-upon tribal programs and services, so closing them helps verify that Federal funds have been fully accounted for and spent appropriately. Figure 5 identifies the amount of unspent funds held by tribal organizations categorized by the reason the agreement is open.

**Figure 5: Unspent Funds Held by Recipients by Reason Preventing Agreement Closure**

<b>BIA Region</b>	<b>Ongoing Project</b>	<b>Missing Reports</b>	<b>Incorrect Financial Reporting</b>	<b>Closing Checklist Incomplete</b>	<b>Pending Closure</b>
Alaska	567,167	-	-	-	-
Rocky Mountain	2,486,676	-	(6,897)	-	57,718
Eastern Oklahoma	-	-	169,973	-	-
Southwest	345,523	469,622	-	-	-
Western	-	-	-	-	-
Navajo	2,033,393	4,379,656	-	-	-
Great Plains	137,450	-	-	-	-
<b>Total</b>	<b>5,570,209</b>	<b>4,849,278</b>	<b>163,076</b>		<b>57,718</b>

Approximately half the unspent funds we tested were expected because they were related to ongoing projects. However, the other half was associated with agreements where the completion of specific administrative tasks would result in closure. Specifically, the BIA could prompt the recipients to complete missing reports, correct financial reporting, or complete remaining tasks preventing closure, which would ensure funds are fully spent for authorized purposes. Further, the BIA could work with the tribal organization to complete remaining checklist tasks to ensure that all tasks required by the agreement are complete.

The 239 agreements we reviewed represent a small portion of the 6,148 open Public Law 93–638 agreements issued by the BIA, and while we cannot extrapolate the dollar amount, there are likely more unused funds on other open agreements. We note that those funds could be used by recipients if the BIA takes action to close open agreements. We identified \$5,070,072 in unused funds<sup>19</sup> from 183 of the Public Law 93–638 agreements we reviewed that could be used for tribal programs and services if managed more efficiently.

<b>Recommendation</b>
<p>We recommend that the BIA:</p> <ol style="list-style-type: none"> <li>1. Take appropriate action on the 183 agreements with \$5,070,072 in unused funds identified in this report.</li> </ol>

<sup>19</sup> This is based on information provided by the BIA on the closeout status of 183 open agreements as of September 30, 2021.

## Competing Priorities and Closeout Process Complexities

BIA officials stated they have not actively managed the closeout process due to competing priorities, citing the underlying complexities of Public Law 93–638 agreements and the lack of statutory requirements mandating agreement closure. A BIA official stated the closeout process for Public Law 93–638 agreements slows because of the mandatory requirement to issue and provide new funding for Public Law 93–638 agreements. Specifically, every year, Congress appropriates new funding that the BIA is responsible for distributing, either through a new agreement or adding to an existing agreement.

In addition, some factors of the Public Law 93–638 agreement closeout process that contribute to these challenges are outside of the BIA’s control. For instance, there are no requirements mandating Public Law 93–638 agreement closure, funds do not expire, and agreements remain open until funds are used or a successor agreement is negotiated.

In 2014, the Office of Acquisition and Property Management identified an FMFIA material weakness in the DOI’s management of grants, cooperative agreements, and tribal awards. According to the DOI Agency Financial Reports, the DOI has focused its remediation efforts on (1) providing training on requirements and limitations for monitoring and oversight of Public Law 93–638 awards, (2) complying with Federal and DOI policies for risk assessments and management and monitoring of financial assistance and tribal awards, and (3) requiring the BIA to work with tribal organizations to ensure proper monitoring of funds provided.

However, the DOI’s efforts to address the FMFIA material weakness have not focused on or improved closeout for Public Law 93–638 agreements. For example, in its *2021 Agency Financial Report*, the DOI asserted, “No existing material weaknesses for the financial assistance function or for the tribal awards made under P.L. 93–638 were reported by [the BIA] or any other DOI bureau that would support maintaining this material weakness originally declared in FY 2014,” and the DOI likewise reported that this material weakness was corrected in its *FY 2022 Agency Financial Report*.<sup>20</sup>

According to a BIA official, by not closing Public Law 93–638 agreements, the BIA could inadvertently issue duplicate awards and is also unaware of unspent funds held by recipients. Closing Public Law 93–638 agreements, in contrast, ensures that Federal funds are both fully spent and used for authorized purposes. Moreover, closing out agreements may enable tribal organizations to use unspent restricted funds. That is, even though Public Law 93–638 agreement funds do not expire, completing the closeout process can enable the parties to the agreements to identify agreed-upon uses for unspent restricted funds.

The BIA has not tracked or monitored the closeout process for Public Law 93–638 agreements.

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<sup>20</sup> The DOI reported in its *2018 Agency Financial Report* that the efforts to improve compliance on grants resulted in the closure of over 12,000 financial assistance awards. In its *2020 Agency Financial Report*, the DOI first asserted the FMFIA material weakness was remediated but ongoing corrective actions remained.

If action is not taken, the number of open agreements will continue to grow and require additional resources to address. As mentioned previously, the BIA has not identified the open Public Law 93–638 agreements where the completion of specific administrative tasks would result in closure. Notwithstanding the BIA’s claims that the process is complex, the existing system has led to a situation in which the number of open Public Law 93–638 agreements continues to increase by roughly 900 agreements per fiscal year.

<b>Recommendations</b>
<p>We recommend that the BIA:</p> <ol style="list-style-type: none"><li>2. Develop a method to track and monitor the closeout process of Public Law 93–638 agreements.</li><li>3. Develop a methodology for identifying Public Law 93–638 agreements where the completion of specific administrative tasks would result in the ability to close the agreements.</li></ol>

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# Conclusion and Recommendations

## Conclusion

As of September 2021, the BIA had 6,148 open Public Law 93–638 agreements and the number of open agreements had increased by roughly 900 per year between FYs 2013 and 2019. Additionally, the BIA has not identified those agreements where the completion of specific administrative tasks would result in the ability to close the agreement. We identified \$5,070,072 in unused funds<sup>21</sup> from 183 Public Law 93–638 agreements that could be used for tribal programs and services if managed more efficiently.

The BIA has not closed Public Law 93–638 agreements because it has focused on the requirement to issue and provide new funding for Public Law 93–638 agreements. It has also failed to consistently track or monitor the closeout process. Without action, the number of open agreements will continue to grow and could require additional resources to address. Closing Public Law 93–638 agreements ensures that Federal funds are both fully spent and used for authorized purposes and results in tribal organizations’ ability to spend previously restricted funds on agreed upon tribal programs and services.

## Recommendations Summary

We provided a draft of this report to the BIA for review. The BIA concurred with all three recommendations and identified a target date of December 1, 2023, for implementation. We consider Recommendations 1 through 3 resolved. Below, we summarize the BIA’s response to our recommendations as well as our comments on their responses. See Appendix 3 for the full text of the BIA’s response; Appendix 4 lists the status of each recommendation.

We recommend that the BIA:

1. Take appropriate action on the 183 agreements with \$5,070,072 in unused funds identified in this report.

**Bureau Response:** The BIA concurred with the recommendation and stated that the BIA Regional Offices would be notified to “immediately coordinate with the recipients to identify unspent funds, complete missing reports, correct financial reports or complete the remaining tasks preventing the closure of the agreement and ensure the closeout process is completed in accordance with applicable laws, Federal regulations, BIA guidance and contract terms and conditions.” The BIA also stated that, for the next 6 months, the Office of Indian Services’ Division of Self-Determination would conduct monthly meetings with the Deputy Bureau Director of Field Operations to track and monitor the progress of actions taken by each Regional Office.

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<sup>21</sup> Based on information provided by the BIA on the closeout status of 183 open agreements as of September 30, 2021.

**OIG Comment:** Based on the BIA’s response, we consider Recommendation 1 resolved. We will consider this implemented when the BIA provides documentation demonstrating that the BIA has resolved all 183 agreements and accounted for all unused funds.

2. Develop a method to track and monitor the closeout process of Public Law 93–638 agreements.

**Bureau Response:** The BIA concurred with the recommendation and stated that the current Indian Self-Determination and Assistance Act closeout process is “outside of any electronic system and therefore can be difficult to track.” Therefore, the BIA stated that it will research the current contract software to determine if enhancement features could be incorporated to enable an electronic system that the BIA could use to track and close the agreements.

**OIG Comment:** Based on the BIA’s response, we consider Recommendation 2 resolved. We will consider this implemented when the BIA provides documentation demonstrating that it has developed a method to track and monitor the closeout process.

3. Develop a methodology for identifying Public Law 93–638 agreements where the completion of specific administrative tasks would result in the ability to close the agreements.

**Bureau Response:** The BIA concurred with the recommendation and stated that “[c]urrent law, regulation and [Indian Affairs] guidance require [Indian Self-Determination and Assistance Act] agreements to be “fully expended and accounted for [in a] submission to [Indian Affairs] as Financial Statements, Financial Status Reports (SF-425’s) and/or submittal of Single Audit (if applicable). [Indian Affairs] will be required to research all possible solutions to identify a methodology where the completion of specific administrative tasks could result in the ability to close the agreement.”

**OIG Comment:** Based on the BIA’s response, we consider Recommendation 3 resolved. We will consider this implemented when the BIA provides documentation demonstrating that it has developed a methodology for identifying Public Law 93–638 agreements in which the completion of specific administrative tasks would result in the ability to close the agreements.

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# Appendix 1: Scope and Methodology

## Scope

The scope of our inspection included agreements issued by the Bureau of Indian Affairs (BIA) under the authority of the Indian Self-Determination and Education Assistance Act (as amended), Public Law 93–638. We reviewed open Public Law 93–638 agreements issued by the BIA as of September 30, 2019. For awards created prior to fiscal year (FY) 2013, the agreement creation date reflects when the agreement was migrated to the Financial and Business Management System. We measured the closeout status of agreements issued by the BIA as of the end of FY 2019 at two measurement points, September 30, 2020, and September 30, 2021.

## Methodology

We conducted this inspection in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

To accomplish our objective, we:

- Reviewed Public Law 93–638, Title 25 U.S.C., and 25 C.F.R. Part 900 for information on closeout procedures.
- Interviewed BIA staff, the BIA Deputy Chief Financial Officer, and the BIA Director of Self Governance and the Chief of Self-Determination to discuss challenges with and the benefits of closing Public Law 93–638 agreements.
- Reviewed information from the Financial and Business Management System to determine the total number of open agreements as of September 30, 2020, and September 30, 2021; the number of agreements closed during FY 2021; and the cumulative number of agreements closed since 2013.
- Reviewed the U.S. Department of the Interior’s efforts to address its self-asserted Federal Managers Financial Integrity Act material weakness for FYs 2014 through 2021.
- Obtained the closeout status of 239 agreements from 7 BIA regions. We used a judgmental sample that allowed us to select agreements that supported a variety of tribal functions across several BIA regions. We collected information to determine outstanding items or tasks were preventing agreement closure as well as the amount of funds held by the recipient.

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## Appendix 2: Monetary Impact

The inspection identified \$5,070,072 in funds from 183 Public Law 93–638 agreements issued by the Bureau of Indian Affairs (BIA) that could be put to a better use if management action is taken. A detailed list of agreements will be provided to the BIA.

	<b>Funds To Be Put To Better Use (\$)</b>
<b>183 Open Agreements</b>	<b>5,070,072</b>
<b>Totals</b>	<b>\$5,070,072</b>

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## **Appendix 3: Response to Draft Report**

The Bureau of Indian Affairs' response to our draft report follows on page 17.



# United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

IN REPLY REFER TO:  
Division of Self-Determination

## Memorandum

To: Kathleen Sedney  
Assistant Inspector General for Audits, Inspections and Evaluations

From: Darryl LaCounte **Darryl LaCounte**  
Director, Bureau of Indian Affairs

Digitally signed by Darryl LaCounte  
Date: 2023.05.09 15:54:54 -04'00'

Subject: Management Response to Recommendations in Draft Report (No. 2020-CGD-060)  
Indian Affairs Can Improve the Closeout Process for Public Law 93-638 Agreements

Indian Affairs (IA) response that “IA Can Improve the Close-out Process for Agreements issued under the Indian Self Determination and Education Assistance Act (as amended), Public Law 93-638 U.S. Department of the Interior Office of Inspector General (OIG) Draft Audit Report No. 2020-CGD-060.

This memorandum transmits the IA management’s response to each of the audit recommendations, plans for corrective actions and documentation of corrective actions taken thus far. IA management is committed to improving our contract administration and oversight and ensuring the compliance with applicable laws, federal regulations, IA guidance, and contract terms and conditions. Our responses are listed below:

**Recommendation 1: (CONCUR)** Take appropriate action of the 183 agreements with \$5,070,072 in unused funds identified in the report.

**Actions Planned:** BIA Regional Offices (Alaska, Eastern Oklahoma, Great Plains, Navajo, Rocky Mountain, Southwest, Western) will be notified to immediately coordinate with the recipients to identify unspent funds, complete missing reports, correct financial reports or complete the remaining tasks preventing the closure of the agreement and ensure the closeout process is completed in accordance with applicable laws, federal regulations, IA guidance and contract terms and conditions. To resolve recommendation, for the next six months the Office of Indian Services (OIS), Division of Self Determination (DSD) will conduct monthly meetings with Deputy Bureau Director, Field Operations to track and monitor the progress of actions taken by each Regional Office.

**Responsible Party:** Deputy Bureau Director, Office of Indian Services coordinated through Deputy Bureau Director, Field Operations

**Recommendation 2: (CONCUR)** Develop a method to track and monitor the closeout process of Public Law 93-638 Agreements.

**Actions Planned:** The current ISDEAA closeout process is outside of any electronic system and therefore can be difficult to track, therefore IA will be required to research the current PRISM (off the shelf contract software) currently being used to determine if enhancement features could be incorporated to enable an electronic system of which IA can incorporate to track and close ISDEAA agreements.

**Responsible Party:** Office of Indian Services, Division of Self Determination coordinated through Deputy Bureau Director, Field Operations.

**Target Date:** December 1, 2023

**Recommendation 3: (CONCUR)** Develop a methodology for identifying Public Law 93-638 agreements where the completion of specific administrative tasks would result in the ability to close the agreements.

**Actions Planned:** Current law, regulation and IA guidance require ISDEAA agreements to be fully expended and accounted for submission to IA as Financial Statements, Financial Status Reports (SF-425's) and/or submittal of Single Audit (if applicable). IA will be required to research all possible solutions to identify a methodology where the completion of specific administrative tasks could result in the ability to close the agreement.

**Responsible Party:** Office of Indian Services, Division of Self Determination coordinated through Deputy Bureau Director, Field Operations.

**Target Date:** December 1, 2023

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## Appendix 4: Status of Recommendations

Recommendation	Status	Action Required
<b>2020-CGD-060-01</b> We recommend that the Bureau of Indian Affairs take appropriate action on the 183 agreements with \$5,070,072 in unused funds identified in this report.	Resolved	We will refer the recommendation to the Office of Policy, Management and Budget (PMB) to track implementation.
<b>2020-CGD-060-02</b> We recommend that the Bureau of Indian Affairs develop a method to track and monitor the closeout process of Public Law 93-638 agreements.	Resolved	We will refer the recommendation to the PMB to track implementation.
<b>2020-CGD-060-03</b> We recommend that the Bureau of Indian Affairs develop a methodology for identifying Public Law 93-638 agreements where the completion of specific administrative tasks would result in the ability to close the agreements.	Resolved	We will refer the recommendation to the PMB to track implementation.

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