

# Indian Self-Determination and Education Assistant Act Title V Negotiations

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## Topics

- Introduction of the negotiation process
  - New/Renewed Compact & Funding Agreements
  - Amendments
- Negotiation stages
  1. Planning
  2. Pre-Negotiations
  3. Negotiations
  4. Post-Negotiations

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## Purpose of Negotiations

- Enables a Tribe to set its own priorities when assuming responsibility for IHS Programs, Services, Functions, or Activities (PSFAs)
- Observes the nation-to-nation relationship between the United States and each Tribe
- Involves the active participation of both Tribal and Federal representatives, including the Office of Tribal Self-Governance

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## Importance of Information Sharing



“Let us move from an era of confrontation to the era of negotiation.”  
Richard M. Nixon

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## Federal Negotiation Team

### Agency Lead Negotiator

**OTSG**  
(Office of Record)

**HQ Staff**  
(Finance/Program)

**Program Analyst**

**Financial Analyst**

**Area Staff**  
(Finance/Program)

**Office of the General Counsel**

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## Federal Technical Assistance

- Describe ISDEAA Title V provisions and regulations
- Assist Tribes in meeting eligibility criteria
- Provide information on Cooperative Agreements
- Provide information on PSFAs, staffing, timelines, funding agreement types
- OTSG Database – accessing information on payments and amendments

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## What are we negotiating?

- **Compact** – Sets forth the general terms of the nation-to-nation relationship between the Tribe and the HHS Secretary and includes other terms that the parties intend to control from year to year.
- **Funding Agreement** – Identifies Programs, Services, Functions, Activities (PSFAs), or portions thereof, assumed by the Tribe and specific funding associated with those PSFAs. Includes terms required by law and other terms agreed to by the parties.
- Amendments to the Compact or Funding Agreement

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## Negotiation Stages




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## Negotiation Stages: Planning

Planning Activities Include:

- Eligibility and mandatory planning phase for new Tribes
- Program assessment and possible additional assumptions




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### Negotiation Stages: Pre-Negotiations

- Reviewing and discussing issues identified during planning
- Drafting and editing language
- Reviewing Funding Tables
- Hosted in-person or by conference call



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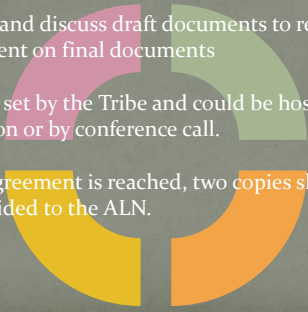
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### Negotiation Stages: Negotiations

- Review and discuss draft documents to reach agreement on final documents
- Agenda set by the Tribe and could be hosted in-person or by conference call.
- Once agreement is reached, two copies should be provided to the ALN.



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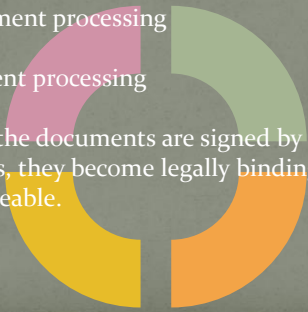
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### Negotiation Stages: Post-Negotiations

- Document processing
- Payment processing
- Once the documents are signed by both parties, they become legally binding and enforceable.



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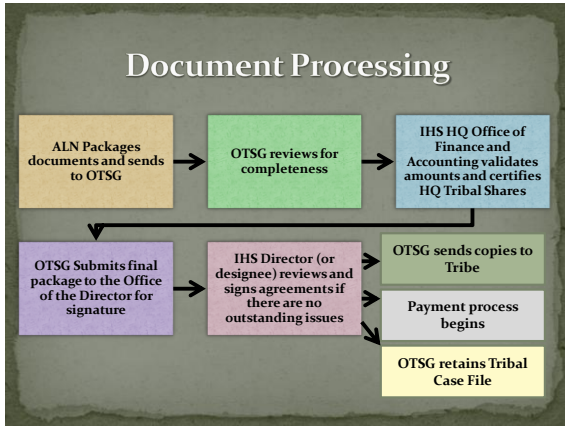
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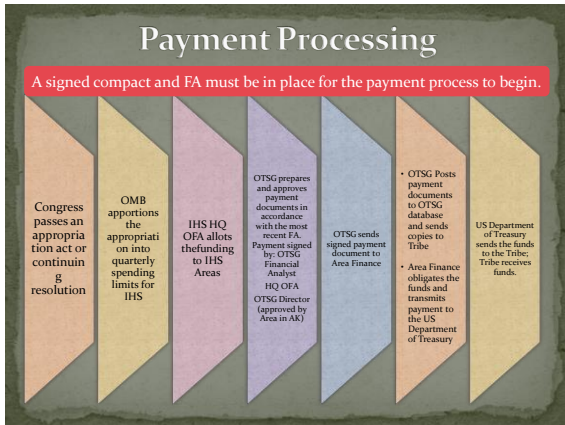
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- ### Things to Remember
- **Time**
    - Provide sufficient for document review, formulating questions, gathering information, identifying positions, and developing options for solutions.
  - **Communication**
    - Point of Contact
    - Including all team members on all correspondence
    - Internal team calls – Federal and Tribal
  - **Paperwork**
    - Agenda
    - Version control
    - Issue Tracking

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## Final Offer Rejection Criteria

The Secretary may reject a final offer on the following criteria:

- The amount of funding proposed in the Final Offer exceeds the applicable funding level to which the Indian Tribe is entitled under this Title
- The program, function, service, or activity (or portion thereof) that is the subject of the final offer is an inherent Federal function that cannot legally be delegated to an Indian Tribe.
- The Indian Tribe cannot carry out the program, function, service, or activity (or portion thereof) in a manner that would not result in significant danger or risk to the public health; or
- The Indian Tribe is not eligible to participate in Self-Governance under section 503.

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## Conclusion

- Negotiations are a nation-to-nation process specified by law
- Tribes set the agenda for negotiations
- This is a collaborative effort on both governments.

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## Questions?

Tribal Self-Governance Program  
Negotiations Handbook

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