

BUREAU OF INDIAN AFFAIRS
EXCESS REAL PROPERTY TRANSFERS
HANDBOOK
52 IAM 16-H



Bureau of Indian Affairs
Office of Trust Services
Division of Real Estate Services
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FOREWORD

This handbook provides guidance and requirements to Bureau of Indian Affairs (BIA) Division of Real Estate Services (DRES) personnel (Realty staff) in preparing, reviewing, and processing excess real properties pursuant to the Federal Property and Administrative Services Act (FPASA), the Indian Self-Determination and Education Assistance Act (ISDEAA), Base Realignment and Closure (BRAC), and through special legislation. This guide provides a step-by-step process for the acquisition, transfer, and disposal of excess land to Tribes. It can also be used to inform Tribes on the processes and requirements of excess government land transfers.

The corresponding Indian Affairs Manual (IAM) chapter, 52 IAM 16: Processing Excess Real Property Land Transfers, provides the general authorities and responsibilities, and is the official policy for processing excess real property land transfers. This handbook supersedes all procedures, handbooks, and other guidance related to processing excess real property land transfers on Indian land that have been created and/or distributed throughout Indian Affairs (IA) previously.



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Chapter 1 – Summary of Authorities

The following is a non-exclusive list of the many laws and regulations that grant the Department of Interior (Department or DOI) with the authority to acquire and/or transfer excess government real property to federally recognized Indian Tribes.

- **40 U.S.C. Section 101 *et seq.* – Federal Property and Administrative Services Act (FPASA) of 1949, as amended**

It was the intent of Congress in enacting this legislation to create an economical and efficient system for (1) the procurement and supply of personal and nonpersonal services, including related functions such as contracting, inspection, storage, issue, specifications, property identification and classification, transportation and traffic management, establishment of pools or systems for transportation of Government personnel and property by motor vehicle within specific areas, management of public utility services, repairing and converting, establishment of inventory levels, establishment of forms and procedures, and representation before Federal and State regulatory bodies; (2) the utilization of available excess property; (3) the disposal of surplus property; and (4) records management.

- **Public Law (P.L.) 93-638 – Indian Self-Determination and Education Assistance Act (ISDEAA), as amended**

The ISDEAA, also known as P.L. 93-638, authorizes Indian Tribes and Tribal Organizations to assume and to contract for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. Under the ISDEAA, Tribes and Tribal Organizations have the option to either (1) administer programs and services the BIA would otherwise provide (referred to as Title I Self-Determination Contracting, see 25 CFR Part 900) or (2) assume control over programs and services that the BIA would otherwise provide (referred to as Title V Self-Government Compacting or TSGP, see 42 CFR Part 137). Title IV of ISDEAA, as amended, created self-governance compacts as an option for tribes to negotiate broad agreements with BIA that could cover multiple programs. These options are not exclusive; Tribes may choose to combine, through negotiation, the options based on their individual needs and circumstances.

- **41 CFR Part 102-75-Real Property Disposal**

In accordance with procedures established by the Federal Management Regulations under 41 CFR § 102-75.100, an agency holding unneeded land withdrawn or reserved from the public domain must submit to the appropriate GSA regional office a Report of Excess Real Property (Standard Form 118) with appropriate Schedules A, B, and C, only when:

- 1) It has filed a notice of intention to relinquish with the Department of the Interior (43 CFR Part 2372 *et seq.*) and sent a copy of the notice to the appropriate GSA regional office;
- 2) The Department of the Interior has notified the agency that the Secretary of the Interior has determined that the lands are not suitable for return to the public domain for

disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

- 3) The Department of the Interior provides a report identifying whether any agency claims primary, joint, or secondary jurisdiction over the lands and whether its records show that the lands are encumbered by rights or privileges under the public land laws.

- **40 U.S.C. § 523 (“Section 523”) – Excess real property located with an Indian Reservation**

Requires that excess property located within the reservation of any group, band, or tribe of Indians that is recognized as eligible for services by the BIA, be transferred to the Secretary of the Interior who shall hold such property in trust for the benefit and use of the group, band, or Tribe of Indians, within whose reservation the excess property is located.

- **Acts of Congress —Legislative Transfers**

Specific congressional actions may provide for the transfer of public lands to certain Indian Tribes. Congress may add these lands to the Tribes’ existing reservations and may modify the official boundaries of reservations.

- **P.L. 100-526 (1988) - Base Closure and Realignment Act (BRAC), as amended**

The Secretary of Defense has been delegated, by GSA and as amended under various BRAC statutes, special authority to dispose of real property under their jurisdiction as excess or surplus property. This authority allows the Department of Defense (DOD) to designate property that is no longer required by that agency for operational purposes as excess without reporting the excess properties to GSA. DOD can declare the real property as excess and begin the screening process for transfer to other Federal agencies, but must follow applicable laws, regulations and policies governing the management and disposal of Federal real property in accordance with the Federal Property and Administrative Services Act of 1949, as amended, and 41 CFR Part 101-47.

- **Federal Management Regulation, Subchapter C - Real Property, Part 102-72, Delegation of Authority (41 CFR Part 102-72)**

Prescribes policy for agencies operating under a delegation of authority from the Administrator of General Services.

- **Federal Management Regulation, Subchapter C - Real Property, Part 102-73, Real Estate Acquisition (41 CFR Part 102-73)**

Prescribes policy guidance governing the acquisition of interests in real property.

- **Notice of Intention to Relinquish Action by Holding Agency (43 CFR § 2372.1)**

Prescribes policy for agencies holding withdrawn or reserved lands which they no longer need.

Chapter 2 – Transfer of Government Real Property under ISDEAA

2.1 BIA Held Properties Outside an Indian Reservation

When real property is under BIA’s custody, the BIA must determine whether the property is no longer needed to discharge the BIA’s or Bureau of Indian Education’s (BIE) responsibilities; the Department may designate the property as excess.

Step 1: If real property is under BIA’s custody outside of an Indian reservation, the BIA will make an Excess Property Determination.

- a) The BIA Regional Property Officers will prepare a Report of Survey, DI-103, action and documentation, on the improvements and on the excess land to be disposed; and a copy of Statement of Findings by the Facility, Safety and/or Environmental Manager on the building’s structural deficiency, condition of the building/structure, and any environmental problems, etc., in which the BIA will conduct and examine the properties for any structural deficiencies, condition of building(s), environmental problems, etc., according to 23 IAM 1, 40 CFR Part 373, 40 CFR Part 761, and any other applicable laws and regulations.

If the real property is to be transferred to a Tribe, copies of the administrative transfer; the quitclaim deed; rights-of-way, easements, covenants, etc., if any; land descriptions, plats, and site map(s); SF 118, Report of Excess Real Property; SF 118A-Schedule A for structures, buildings, utilities; SF 118B-Schedule B-Land; and SF 118C-Schedule C-Related Personal Property and any other applicable Federal environmental and historic preservation act regulations and disposal authorities will be included in the transfer package.

- b) The BIA Regional Property Officer will prepare a memorandum for the Regional Director (RD) describing the property and explaining why it is no longer needed for the BIA’s mission.
- c) The memorandum and Report of Survey must be submitted to the RD for review, approval, and signature.
- d) After the RD approves the property as excess, the BIA will “furnish to Tribes or Tribal organizations a listing of all excess BIA... property before reporting the property to GSA or to any other Federal agency as excess.”¹ Specifically, the BIA will alert the Tribe(s)

¹ 25 CFR 900.96.

with reservations or Tribal property nearby the excess federal property. Note that, in practice, before beginning this process the RD or designee may consider informally discussing the transfer with the Tribe.

If in response, a Tribe submits “a transfer request for specific property that includes a certification and justification that the property is intended for use in connection with a self-determination contract or grant,”² the BIA moves to Phase II. The Region must ensure that the Tribe’s proposed use of the property is consistent with its ISDEAA funding agreement because the authority to transfer excess federal property to Tribes is dependent on the property serving an ISDEAA-contracted function. The Department is authorized to donate BIA or BIE property to Tribes for use under an ISDEAA agreement.³

Step 2: Transfer Request.

The Regional Property Office and Realty staff must prepare a Transfer Request Package for the RD. The package must include:

- a) environmental compliance documents;
- b) DI-103, Report of Survey;
- c) a copy of the ISDEAA funding agreement;
- d) waiver of liability;
- e) the Tribal resolution requesting the excess property; and
- f) draft quitclaim deed.

Step 3: Close out.

- a) The Region will process the quitclaim(s), identify all encumbrances, and provide copies of all encumbrances for the land to the Tribe in fee simple status.

² 25 CFR 900.97. That section also provides:

(b) If more than one request for the same item of personal property is submitted, the Secretary shall award the item to the first requester. If there is a tie, the Secretary shall award the item to the requestor with the lowest transportation costs. The Secretary shall make the donation as expeditiously as possible.

(c) If more than one request for the same piece of real property is submitted, the Secretary shall award the property to the tribe or tribal organization whose reservation or trust land is closest to the real property requested.

³ See 25 U.S.C. § 5324(f)(2). The statute uses the verb “donate,” and makes no reference to any form of compensation. The common use of this term understands donation as a gift without compensation, and Black’s Law Dictionary defines “donate” as “to give (property or money) without receiving consideration for the transfer.” Black’s Law Dictionary (11th ed. 2019).

- b) The Tribe should then record the land in the relevant county land records office.
- c) The Regional Property Officer must update the BIA property system for BIA held property as no longer belonging to the Department, but rather to the Tribe in fee, and the Region will prepare a memorandum closing the file.

2.2 Other Landholding Federal Agency Real Properties Outside an Indian Reservation

Step 1: GSA notifies DRES with a Notice of Availability (NOA) of excess real property.

The NOA describes the property, its condition, acreage, utilities, maps, environmental and historic conditions, improvements, and other key information. If this information is missing from the NOA, DRES may request it from GSA. The NOAs are available through the GSA's website: <https://disposal.gsa.gov>. Other types of available real property (surplus and public sales) are also available on GSA's website.

Step 2: Expression of Tribal Interest.

The regional office will communicate with Tribe(s) that have reservations or Tribal property near the excess property. If a Tribe is interested in receiving the excess property for an ISDEAA-contracted function, the Tribe should prepare a Tribal resolution requesting the transfer of the excess real property.

- a) DRES will send NOAs to the Region within their area of jurisdiction.
- b) The Region will notify the Tribe or Tribes of the available excess real property along with the land description documentation.
- c) If a Tribe is interested in the property and intends to use it for a purpose contracted under ISDEAA, the regional office will ask DRES to submit an expression of interest to GSA. GSA seeks expressions of interest within 30 days after publication of the NOA.
- d) DRES submits expression of interest to GSA.

Step 3: Arrange Payment of Fair Market Value (FMV) for the Property.

There is no automatic waiver of payment under ISDEAA for excess Federal property, except property held by the BIA.⁴ As a part of administering the United States' trust responsibility, the BIA must submit a request for waiver of payment of FMV to the GSA. GSA in turn submits a recommendation for waiver to the White House Office of Management and Budget (OMB), who

⁴ 25 U.S.C. § 5324(f)(2) states that the Secretary may "donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration" This language shall be interpreted as authorizing the Secretary to acquire excess property from the IHS and GSA without paying fair market value.

has ultimate approval for the waiver request. GSA will perform an appraisal of the property consistent with 41 CFR 102-75.300-75.320 and provide the FMV⁵ to the Department along with a written request for payment with accounting details.

- a) If seeking a waiver request for FMV on behalf of a Tribe:
 - i. The Department must submit a letter requesting an exception to the FMV reimbursement requirement and explaining how an exception would further program objectives (lack of funds is not sufficient justification).
 - ii. GSA, if it supports the waiver request, will forward the letter to the Director, Office of Policy, Management and Budget (PMB), with its recommendation in support of the request for decision making.
- b) If the request to waive payment of the FMV is denied, the RD must immediately forward the transfer request package to the Director, Bureau of Indian Affairs (DBIA), who will elevate the denial to the AS-IA for further consideration.
- c) If the Tribe decides it is in its best interest, the Tribe may work with the BIA to arrange for payment of FMV for the property. The Department must prepare to collect funds to pay the FMV from the Tribe. DRES and the regional office will work together to arrange payment with the Tribe. This payment will occur before GSA issues the Letter of Transfer, as described in Step 6.

Step 4: Environmental and Historic Preservation Compliance.

The regional office will request a complete environmental and historic preservation analysis provided to GSA by the landholding agency.

- a) Environmental and Historic Preservation Analysis.
 - i. *Phase I ESA*. BIA will examine the property for hazardous substances before proceeding with a transfer.
 - ii. *NEPA*. Before the Department may donate the property to the Tribe, it must comply with NEPA. If the property will be used for similar purposes as it was previously, such as office space, the categorical exclusion for no change in land use under 516 DM 10.5(I) may be applied. The regional office will begin preparing a NEPA compliance document as soon as DRES has submitted an expression of interest.
 - iii. *NHPA Section 106*. Before the Department may donate the property to the Tribe, it must comply with NHPA. The transfer of property to the Department (a federal-to-federal transfer) is not an “undertaking” under Section 106 of the

⁵ Note that an FMV of zero may be applied by GSA where, for instance, properties are in poor shape and anticipated renovation, or remediation will cost more than the value of the property.

NHPA and therefore does not require NHPA compliance. GSA will provide the Department with all available historic preservation information it has on the property to be donated. It is then the responsibility of the Department to meet its legal obligations under NHPA Section 106 before donating the property to the Tribe, which is likely an “undertaking” under NHPA.⁶

b) Hazardous Substance Remediation.

If hazardous substances are discovered on the property that must be remediated by the landholding agency, the regional office or the Tribe will ensure a complete assessment of the costs of remediation. Given that appropriations for remediating such properties are very unlikely, the RD will consider what options are available to the Tribe to ensure the RD does not violate the Antideficiency Act.⁷ If remediation is required, the Department would likely need to enter into a Memorandum of Agreement with the Tribe wherein the Tribe agrees to perform remediation before the property is deeded to them by the Department. The GSA may be able to provide technical assistance to BIA to craft the transaction documents.

Step 5: Transfer Package.

- a) The BIA Region will submit a letter of interest from a Tribe requesting the transfer of the excess real property to be submitted to GSA by DRES.
- b) The BIA Region will review the Report of Excess that includes the following supporting documentation from the GSA Report of Excess:
 - i. Phase I Environmental Site Assessment;
 - ii. NEPA compliance document;
 - iii. NHPA compliance document; and
 - iv. Original Deed(s) including all applicable encumbrances and copies of all encumbrances;
- c) The BIA Region’s Transfer Request package must also include:
 - i. RD’s recommendation memorandum to DBIA;
 - ii. A recommendation memorandum prepared for the DBIA to AS-IA;
 - iii. Tribal Resolution;

⁶ If historic preservation concerns are present, NHPA might be satisfied by recording a historic covenant applying the same historic preservation responsibilities the government would possess onto the future owner.

⁷ 31 U.S.C. §§ 1341, 1517.

- iv. BILS Legal Land Description;
 - v. Location of Land and Maps;
 - vi. ISDEAA Funding Agreement;
 - vii. GSA's Report of Excess and NEPA documentation;
 - viii. GSA Form 1334;
 - ix. Letter of Transfer and Acceptance from GSA for signature, if applicable;⁸
 - x. Draft quitclaim deed to the Tribe as reviewed by SOL;
 - xi. Toolkit;
 - xii. Table of Contents; and
 - xiii. FMV/Appraisal
- d) After DRES receives the Region's Transfer Request package for review, DRES will submit the Transfer Request package with documentation in the Data Tracking System (DTS) for approval.

Step 6: Quitclaim Deed.

- a) The DBIA will sign the quitclaim deeds transferring the excess property to the Tribe in fee. DRES will forward the signed quitclaim deeds to the regional office.
- b) The regional office will send the quitclaim deeds to the Tribe for recording in the county land records office.

Step 7: Close Out.

- a) DRES will close the record in DTS after receiving the signed GSA Letter of Transfer and Acceptance and forward to the Region;
- b) The regional office will notify the Tribe that the transfer request has been completed and will close out and file in accordance with Federal Records Schedule.

⁸ The Letter of Transfer provided by GSA, which is provided after the BIA submits a signed Form 1334 to GSA, will have a signature line for AS-IA. When AS-IA signs the Letter of Transfer, custody and accountability of the land legally transfers to the Department.

Step 8: Trust Acquisition.

If the Tribe wishes to place the property into trust status, they must then follow the procedures outlined in 25 CFR Part 151.

Chapter 3 – Transfer of Excess Government Real Property Under 40 U.S.C. § 523

The transfers authorized by ISDEAA and described above are used only for off-reservation acquisitions, because for on-reservation acquisitions, Congress has provided a simpler and faster process for transferring excess federal land to Tribes through 40 U.S.C. § 523.⁹ That statute mandates the transfer, without compensation, of on-reservation excess real property belonging to any federal agency. The statute mandates that such transferred land will be held in trust, and therefore once the property is accepted by the Department, it enters trust status with no need for the receiving Tribe to apply through the 25 CFR Part 151 process. In addition, because the acquisition in trust is mandatory, compliance with NEPA, NHPA, and 59 IAM 5, by BIA is not required.

There are two related processes for acquisition here. First, if the excess property belongs to another federal agency, such as the Indian Health Service (IHS), the Department will learn of its availability through GSA's NOA process, as described in Chapter 2 above with regard to ISDEAA authorized transfers, and will request transfer in a similar, though simpler, manner. However, many on-reservation properties are held by BIA (or operated by BIE with custody held by BIA), and therefore, a second process is required. The Department must first designate its

⁹ The text of the statute provides:

(a) Procedures for Transfer.—

The Administrator of General Services shall prescribe procedures necessary to transfer to the Secretary of the Interior, without compensation, excess real property located within the reservation of any group, band, or tribe of Indians that is recognized as eligible for services by the Bureau of Indian Affairs.

(b) Property Held in Trust.—

(1) In general.—

Except as provided in paragraph (2), the Secretary shall hold excess real property transferred under this section in trust for the benefit and use of the group, band, or tribe of Indians, within whose reservation the excess real property is located.

(2) Special requirement for Oklahoma.—The Secretary shall hold excess real property that is located in Oklahoma and transferred under this section in trust for Oklahoma Indian tribes recognized by the Secretary if the real property—

(A)

is located within boundaries of former reservations in Oklahoma, as defined by the Secretary, and was held in trust by the Federal Government for an Indian tribe when the Government acquired it; or

(B)

is contiguous to real property presently held in trust by the Government for an Oklahoma Indian tribe and was held in trust by the Government for an Indian tribe at any time.

own properties as excess, and then transfer the property into trust for the benefit of the Tribe through Section 523.¹⁰

3.1 BIA Held Real Property

Step 1: If BIA has custody of excess property within an Indian reservation, BIA will make an Excess Property Determination.

- a) If BIA or BIE believes it holds property that is no longer needed for its mission, the BIA may declare it excess.
- b) The regional office will prepare a Report of Survey, DI-103, in which the BIA examines the properties for any structural deficiencies, condition of building(s), environmental problems, etc., according to 23 IAM 1; 40 CFR 373, 40 CFR 761, and any other applicable laws and regulations.
- c) The regional office will prepare a memorandum for the RD describing the property and explaining why it is no longer needed for the agency's mission.
- d) The memorandum and Report of Survey will be submitted to the RD for review, approval, and signature.
- e) After approval, the property is designated excess and is eligible for transfer to a Tribe under Section 523.

Step 2: Tribal Request.

The regional office will effectively communicate with the Tribe within whose reservation the excess real property is located. If the Tribe is interested in receiving the excess property, the Tribe should prepare a resolution requesting the property within the 30-day timeframe in order to secure the right to acquire the property.

Step 3: Environmental Analysis.

NEPA and 59 IAM 5 requirements are not applicable to mandatory trust acquisitions, including those under 40 U.S.C. § 523. However, if the Report of Survey did not assess whether hazardous substances are present on the property, to understand any environmental hazards or any potential legal liabilities that may be present, for due diligence a 59 IAM 5 Pre-Acquisition Environmental Site Assessment is recommended.

¹⁰ While counterintuitive, the law does not provide a method for direct disposal from the Department to a Tribe. GSA is the federal agency responsible for disposing of excess properties and must review and process our request. However, because § 523 results in a simple, cost-free, mandatory acquisition, it continues to provide a relatively efficient process for transferring land into trust for tribes.

Step 4: Transfer Package.¹¹

- a) The regional office will prepare the following Transfer Package. DRES will route the Transfer Package for the RD's approval and signature.
 - i. GSA NOA Information (if applicable);
 - ii. GSA Form 1334;
 - iii. GSA Forms SF 118, 118A, 118B, 118C Schedules;
 - iv. Tribal Resolution;
 - v. Location of Land (Maps);
 - vi. BILS Legal Land Description;
 - vii. Draft Quitclaim Deed (after SOL review) for RD signature;
 - viii. All encumbrances and copies of all encumbrances;
 - ix. Report of Survey;
 - x. Toolkit;
 - xi. Table of Contents; and
 - xii. NEPA.

Step 5: Notifying GSA.

- a) The regional office will notify GSA and provide a copy of the signed GSA Form 1334 by the RD; and
- b) The regional office will request from GSA a letter of transfer and acceptance.

Step 6: Recording with LTRO.

- a) The regional office will input the approved quitclaim deed, encumbrances, and signed GSA 1334 into the Trust Asset and Accounting Management System (TAAMS) and will request that the Land Titles and Records Office (LTRO) record the land in trust for the Tribe.
- b) The regional office will forward the recorded title status documents to DRES.

¹¹ If a Tribal resolution requesting transfer is provided early in the process, the region may combine the excess land designation and transfer package into one package for approval.

Step 7: Close out.

- a) The regional office will provide the recorded Title Status Report (TSR), approved quitclaim deed and encumbrances, and signed copy of the GSA 1334, to the Tribe, notify the Tribe that the transfer is complete, and close out the file in accordance with Federal Records Schedule.

3.2 Other Federal Agency Properties on an Indian Reservation

Step 1: GSA notifies DRES with a NOA of excess real property within a reservation from another federal agency.

Step 2: Expression of Interest or Tribal Resolution.

- a) DRES will send GSA NOAs by email to the regional offices, who in turn will provide notification to the Tribe that excess land has become available by another federal agency.
- b) Whenever excess lands are located within a reservation, the regional office will notify the Tribe that land has become available within the Reservation boundary that has been deemed excess by another federal agency and will be transferred under Section 523 authority.
- c) If the Tribe has an interest in the available land, the regional office will submit the Tribe's expression of interest letter or Tribal resolution to GSA after a determination of Section 523 eligibility.

Step 3: Transfer Request Package.

- a) After a Section 523 determination, the regional office will prepare a transfer request package with the following documents and submit to the RD as soon as possible:
 - i. Memorandum from the RD¹² to DBIA describing the Section 523 transfer request, including a general overview of the acquisition;
 - ii. GSA's NOA along with GSA's Report of Excess documentation from the land holding federal agency;
 - iii. Completed GSA Form 1334 signed by the RD and SF 118 Schedules;
 - iv. Expression of Interest/Tribal Resolution;
 - v. Table of Contents;

¹² No memorandum from the DBIA to AS-IA is required. The DBIA will surname the package in DTS, and this concurrence will be sufficient to move the package.

- vi. Toolkit;
 - vii. Quitclaim Deed(s) for DBIA signature;
 - viii. Encumbrances;
 - ix. Location of Land (Maps);
 - x. BILS Legal Land Description; and
 - xi. NEPA.
- b) The regional office will route the signed GSA 1334 and SF-118 Schedules to GSA and request a Letter of Transfer and Acceptance within 60 days of the letter of interest, pursuant to 41 CFR 102-75.1245.

Step 4: Environmental Analysis.

NEPA and 59 IAM 5 requirements are not applicable for mandatory fee-to-trust acquisitions, but to understand any environmental hazards or any potential legal liabilities that may be present, for due diligence a site inspection is recommended.

Step 5: Letter of Transfer and Acceptance, and Quitclaim Deed

GSA provides a Letter of Transfer and Acceptance to the RD for BIA approval and acceptance. Once signed, the property will transfer from GSA to the BIA, and the RD then quitclaims the property to the Tribe.

Step 6: Recording with LTRO.

- a) The regional office will forward the signed Letter of Transfer and Acceptance and signed Form 1334 to GSA.
- b) The regional office will submit the quitclaim deed, Form 1334, and GSA's Letter of Transfer and Acceptance to the LTRO for recordation.
- c) The regional office will forward the recorded title status documents to DRES.

Step 7: Close out.

The regional office closes out their file in accordance with Federal Records Schedule.

Chapter 4 – Transfer of Excess Lands Pursuant to Specific Legislation

Congress may pass targeted legislation transferring or restoring certain parcels of land into trust for a Tribe. These laws take two different forms. Some mandate that the Department take the land into trust, and the result is a mandatory acquisition following the procedures established by BIA for such acquisitions. The second is a “legislative transfer of title,” in which Congress has transferred title directly, without any need for administrative action, through the language of the statute itself.

In either case, however, the Department will need to coordinate internally and with the Tribe and will need to prepare recordation documents for filing with LTRO. The procedures below outline that process.

Step 1: After receiving the Public Law or Act, the BIA will contact the Office of the Regional or Field Solicitor for interpretation and guidance.

The Solicitor’s Office will analyze the legislation and determine if it represents a mandatory acquisition or a legislative transfer. If a mandatory acquisition, apply the procedures for mandatory acquisitions. If a legislative transfer of title, continue following these procedures.

Step 2: Develop legal land description.

- a) BIA will work with the landholding agency and the BLM Indian Lands Surveyor (BILS) to provide a valid legal description and acreage of the land, or a Land Description Review to be entered into the Trust Asset and Accounting Management System (TAAMS).
- b) Identify any encumbrances on the land.

Step 3: Record the land.

Record the land under its new ownership status with LTRO and update TAAMS. The DRES staff member will submit the following documents to LTRO to record:

- a) Public Law or Act
- b) Legal Description or Land Description Review
- c) Map, *if available*
- d) Listing of encumbrances, *if any*
- e) Listing of restrictions, *if any*
- f) Listing of improvements, *if any*

Step 4: Notification.

The BIA regional office must draft a letter notifying the Tribe of the Tribal Tract Number and provide the Tribe with a copy of the recorded documents.

Chapter 5 – Checklists, Templates, and Forms

All the checklists, templates, and forms mentioned in this handbook can be found on BIA's Online Forms website here: <https://www.bia.gov/policy-forms/online-forms>. The documents are also be found in the following locations:

- 1) The SF and GSA Forms mentioned in this handbook are found on the GSA Forms Library here: <https://www.gsa.gov/forms>
- 2) The DI forms mentioned in this handbook are found on the DOI Department Forms SharePoint site [here](#) (note: the DOI SharePoint site is only available to DOI employees).