

Module 2: Introduction to Tribal Concepts

Module Objectives

Working effectively with tribal governments can be complex. It requires a familiarity with terms and concepts that pertain specifically to Indian tribes.

In this module, you'll be introduced to many of these key terms and concepts. The knowledge you gain will provide a foundation for the remainder of this training course, and for your future work with tribal governments.

Some of the key terms and concepts used throughout the course include the following:

- American Indian, Alaska Native, Native American.
- Federal Recognition.
- Treaties.
- Tribal Sovereignty.
- Tribal Governments.
- The Government-to-Government Relationship.
- Tribal Consultation.
- The Federal Trust Responsibility.
- Indian Country.



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The People

American Indian, Alaska Native, Native American. You have probably heard these terms used before but what do they really mean? For the purposes of this training course, each of these terms can refer to a person descended from ancestors indigenous to the lands that now constitute the United States.

The term "Alaska Native" is by definition exclusive to peoples indigenous to Alaska. But as is the case for tribes located in the lower 48 states, the tribes in Alaska are culturally diverse, with rich traditions rooted in their regional homelands. The language of the 1934 Indian Reorganization Act (or IRA) included in its definition of an Indian, "Eskimos and other aboriginal people of Alaska."

Generally, the term "Native American" includes both American Indians of the lower 48 states and Alaska Natives. Native Hawaiians are not discussed in this training course because they currently do not have the same government-to-government relationship, as Indian tribes do, with the federal government.

Although some people may use the terms "Indian" or "American Indian" to refer to themselves, others prefer the term "Native American." This course will use these terms interchangeably.

Keep in mind, however, that it is generally preferable to refer to an individual as a member of his or her particular tribe. Some tribes prefer to use the traditional tribal name.



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Native American Demographics

According to the U.S. Census Bureau

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Native American populations are increasing. As of 2005, there are an estimated 4.5 million American Indians and Alaska Natives, including those identifying as multi-racial. They make up 1.5 percent of the total U.S. population.

The median age of the Native American population is younger than that of the U.S. population as a whole. As of 2005, about 1.3 million American Indians and Alaska Natives were under 18 years of age, and 336,000 were 65 or older.

In 2005, there were approximately 170,000 Native American veterans of the U.S. armed forces. On a per capita basis, more Native Americans serve in the U.S. military than any other race of U.S. citizens.

The poverty rate of people who reported they were Native American and no other race was 25%.

Location and Concentration

Native Americans live in every state in the U.S., in small towns, villages, big cities, and on reservations or other forms of tribal land.

- The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for individual American Indians, Indian tribes, and Alaska Natives. There are currently over 560 federal recognized tribal governments in the United States. Developing tribal forest lands, leasing assets on tribal lands, directing tribal agricultural programs, protecting tribal water and land rights, and developing and maintaining tribal infrastructure and economic development are all part of the BIA's responsibility. In addition, the Bureau of Indian Education (BIE) provides education services to approximately 48,000 Native American students.
- There are many tribal communities scattered geographically throughout the United States.

According to the U.S. Census Bureau:

- As of 2005, the Native American population of California is the highest of any state, followed by Oklahoma and Arizona.
- As of 2003, the metropolitan area of Farmington, NM had the highest percentage of Native Americans, who made up approximately 40% of the population. Flagstaff, AZ follows with 31% of the population reporting Native American identity.



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Federally Recognized Indian Tribes

Another definition of a Native American is a person with tribal membership. What does tribal membership mean? Since tribes define their own membership criteria, different tribes have different requirements for tribal enrollment. There are individuals of Native American descent who nevertheless cannot meet the enrollment criteria of their tribe, or tribes, of origin. As a result, they would not be considered to hold tribal membership.

In a few cases, Congress gave specific direction to federal agencies that defines who is eligible for certain programs, which may or may not include membership in a federally recognized tribe.

A general definition of a tribe is a body of people bound together by blood ties who are socially, politically, and religiously organized. The people may live together in a defined territory and speak a common language. The term "Indian tribes," which appears in Article 1, § 8 of the United States Constitution, has been used in numerous pieces of legislation and, as a result, "Indian tribe" has become a frequently used legal term. You may also hear tribes referred to as "Nations," which is another way of expressing their sovereign status. For purposes of this training module, the term "Indian tribes" refers to federally recognized tribes.

Indian tribes have a unique legal relationship with the U.S. government and its agencies unlike that of any other group of Americans. This relationship is based in large part on the recognition of tribes as sovereign nations in the U.S. Constitution. This relationship is furthered in historic treaties that the federal government signed with Indian tribes, which acknowledged and recognized the tribes' inherent sovereignty as nations. Therefore, the relationship between the federal government and Indian tribes is a political one, based on this historic and evolving relationship between sovereign governments, and not on the ethnicity of Native Americans.

The fact that federally recognized Indian tribes possess this unique political status does not affect the ability of their individual tribal members to participate in programs that serve minority populations.





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Indian Tribe – A Statutory Definition

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"Indian tribe" means any tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (43 U.S.C. § 450b (e)).

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Federally Recognized Indian Tribes (continued)

Federal recognition is now normally achieved by a statutorily defined federal acknowledgment process through the Bureau of Indian Affairs (or BIA), or by an act of Congress. The BIA process requires tribes to show that they have maintained a substantially continuous tribal existence and have functioned as autonomous entities throughout history to the present.

Most tribes, however, were recognized by the U.S. government long before the present BIA process was implemented, usually by treaty, federal statute, or Presidential Executive Order. Federal recognition is a prerequisite for a tribe's participation in the special Indian programs and services administered by the departments and agencies of the U.S. government and for the United States to hold in trust. Trust lands are immune from state taxation as are most, but not necessarily all, transactions that occur on trust lands.

Legally, there is a distinction between Indian tribes who are federally recognized and those who are not. Federal recognition signifies that the U.S. government acknowledges the political sovereignty and Indian identity of a tribe, and from that recognition flows the obligation to conduct dealings with that tribe's leadership on a government-to-government basis. There will be more about the government-to-government relationship later in this module.

Today, there are over 560 tribes recognized by the U.S. government. This includes over 220 Alaska Native villages. We use these approximate numbers because there are tribes currently seeking recognition through the BIA process or by federal statute, and thus these numbers may increase over time.

Regardless of how it was recognized, each tribe has its own unique history and culture.

The Bureau of Indian Affairs website posts a link to the most current version of the official Tribal Leaders Directory, which provides the name of every federally recognized Indian tribe, the name of the current tribal leader, along with tribal contact information. It also provides links to Federal Register notices for information on any tribe or tribes that have received federal recognition.



- [U.S. Department of the Interior, Bureau of Indian Affairs](#)
- [Confederated Tribes](#)
- [Non-federally Recognized Tribes](#)



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Confederated Tribes

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When the federal government relocated two or more tribes onto one reservation, they were sometimes called confederated or affiliated tribes. Examples include the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of Grande Ronde. Reservations are discussed later in this module.



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Non-federally Recognized Tribes

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As noted earlier, not all tribes are federally recognized. These non-recognized tribes do not have government-to-government relations with the federal government and its agencies. Non-recognized tribes generally are ineligible for the federal services and assistance that federally recognized tribes receive, and they do not hold the same legal rights as federally recognized tribes. They may, however be eligible for other federal programs based on their status as a community. They may also be recognized by states and be eligible for state programs even though they do not have federal recognition.

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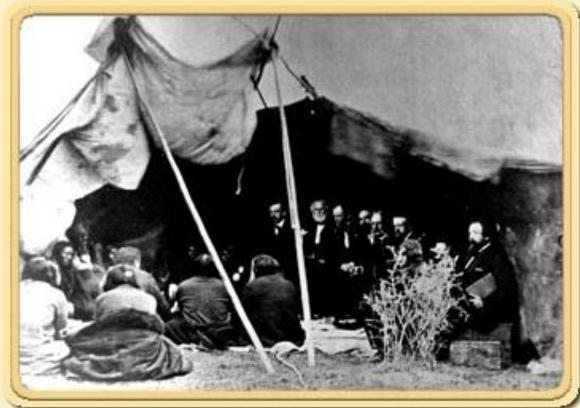
Treaties

A treaty is a legal agreement between sovereign nations. The treaties the U.S. signed with Indian tribes acknowledged and recognized the tribes' inherent sovereignty as distinct, independent nations. These treaties established the pattern of legal and political interaction between the U.S. government and Indian tribes, and serve to document the beginnings of the government-to-government relationship that we discuss later in this module.

Through treaties, many Indian tribes ceded, or relinquished, certain lands and rights to the U.S. government in exchange for various federal commitments that included provisions for the future of their people. In these treaties, tribes often reserved for themselves certain portions of land, called reservations. In some treaties, tribes also reserved the right to hunt, fish, gather resources, and access sacred sites on their former lands.

Time does not diminish the effect of treaties. Although the practice of Indian treaty-making was halted by Congress in 1871, treaties signed before that time remain the law of the land unless modified or abrogated by the passage of subsequent federal law. Federal agencies need to be mindful of treaty obligations when carrying out programs with the potential to impact a treaty provisions.

Not all tribes have treaties, and treaties are not the sole source of the federal government's responsibilities to tribes. The federal government's responsibilities to tribes also stem from court decisions, statutes, executive orders, and the historical relationships between the United States and Indian tribes.



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Tribal Sovereignty

One of the most significant issues for Indian tribes is the safeguarding of tribal sovereignty, or self-governing authority. Tribal sovereignty is recognized as being inherent, meaning that the traditional authority of tribal leaders to govern their people and lands existed long before their relationship with the U.S. government. Indian treaties were based on the sovereign power of Indian tribes to enter into agreements on a government-to-government basis with the United States. Because it is inherent, tribal sovereignty is something Indian tribes have retained, not something granted to them by the federal government.



Tribal sovereignty was reaffirmed in the landmark cases of *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), wherein the Supreme Court, in opinions penned by Chief Justice John Marshall, held that tribes retained a nationhood status and inherent powers of self-governance. These cases formed a large part of the foundation of present-day Indian law.

Tribal sovereignty includes the inherent right of Indian tribes to exercise self-determination and self-governance. Recognition of these powers is reflected in the Indian Self-Determination and Education Assistance Act of 1975, or ISDEAA. The ISDEAA encouraged "maximum Indian participation in the government and the education of Indian people." The Act established procedures by which tribes could assume the administration of their own social services, education, and other programs by contracts or grants from certain federal agencies. Subsequent amendments to the Act have encouraged self-governance, by which tribes have contracted to assume even greater control over the administration of programs serving their tribal members.

Because the ISDEAA is also known as Public Law 93-638, tribes that have assumed administration of federal programs under this authority are sometimes referred to as "638 tribes." The ISDEAA applies to a number of federal agencies and has codified a requirement for annual consultation with tribes in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs. In addition to the ISDEAA, tribes may administer federal programs under other statutes, such as the Clean Water Act.

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Tribal Sovereignty (continued)

Tribal sovereignty is the basis of a tribe's jurisdiction over people and activities on tribal lands. The complex topic of jurisdiction is discussed in the Federal Indian Law and Policy module.

Tribal Government

Federal laws recognize that tribes may adopt whatever form of government best suits their own practical, cultural, or religious needs.

For example:

- Many tribal government structures combine traditional features with Western forms.
- Leaders of traditional tribal governments may be chosen by clans, families, or in accordance with religious laws, and are often chosen by consensus.
- Some tribes use an electoral process to choose leaders and officials.
- Some tribal governments operate under written constitutions.

As part of the sovereign status of Indian tribes, their tribal governments generally have the authority to do the following:

- Define their tribal membership criteria.
- Enact civil, criminal, and regulatory legislation.
- Provide specific areas of law enforcement and establish a court system.
- Assert jurisdiction over their people and lands.
- Tax non-tribal members engaged in economic activity on tribal lands.

These rights are in effect unless waived by a tribe, or modified by treaty, statute, or Supreme Court decision.





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Sovereignty in Oklahoma

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Between 1812 and 1835, tribes located in the Southeast were compelled by the U.S. government to give up their lands and move west to Indian Territory, which is now the State of Oklahoma. Many tribes from the Northeast, Southwest and the Great Plains were also forced to resettle on reservations there. As a result, there are now over 30 tribes in Oklahoma.

Due to federal statutes that broke up these reservations into individual parcels, or allotments, in the late 1800s, there are still many open-ended legal questions about Indian lands in Oklahoma. The land status in Oklahoma should be viewed on a case by case basis.

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Sovereignty in Alaska

A Different Relationship

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There are over 220 federally recognized Alaska Native tribes. Controversy continues to surround the status of Alaska Native villages, their authority, and their lands. The relationship of the federal government with Alaska Natives has differed significantly from that of the Indian tribes of the lower 48 states.

The Alaska Native Claims Settlement Act of 1971 (ANCSA) extinguished the aboriginal title to all lands within the state, eliminated two of three Indian reservations, and provided funds and lands to corporations, the shareholders of which would be Alaska Natives. Unlike many of the tribal lands in the lower 48 states, these lands were not taken into trust status by the U.S. government. Placing them into a corporate model of ownership affected the ability of Alaska Native tribes to exercise territorial jurisdiction over those lands. ANCSA did not, however, terminate tribal governments or their inherent sovereign authority to govern their tribal members.

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The Government-to-Government Relationship

The government-to-government relationship between the U.S. government and Indian tribes is rooted in the historic signing of treaties. The U.S. Constitution established the exclusive power of the Congress to regulate commerce with Indian tribes in Article 1, § 8, Clause 3, known as the "Indian Commerce Clause."

The federal government's exclusive relationship with tribes was further solidified by the passage of multiple laws, called Trade and Intercourse Acts, which prohibited states from encroaching upon or purchasing land from tribes without congressional approval. Later, the 1832 U.S. Supreme Court decision in *Worcester v. Georgia* also served to establish, in the canons of Indian law, the precept that the states are specifically excluded from the relationship between two sovereign nations. The federal obligation to conduct what is known as "government-to-government" consultation with federally recognized Indian tribes springs from this exclusive relationship. Government-to-government consultation is discussed in Module 4: Tribal Consultation.



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The Government-to-Government Relationship (continued)

Since the 1970s, the U.S. presidents have consistently reaffirmed the primacy of the government-to-government relationship between the federal government and federally recognized Indian tribes.

Executive Order 13175: Consultation and Coordination with Tribal Governments, which provides direction to federal agencies on the subject of government-to-government consultation, was signed on November 6, 2000, by President William J. Clinton. Executive Order 13175 states that its purposes are to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications and to strengthen the United States' government-to-government relationship with Indian tribes.



It mandates that each federal agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulations, legislative comments or proposed legislation, and other policies or actions that have substantial direct effects on Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Executive Order 13175 continues to be valid today and it has been reaffirmed by President George W. Bush and President Barack Obama, in 2004 and 2009, respectively. President Obama, in his 2009 memorandum, Tribal Consultation, stated that his administration was committed to "complete and consistent implementation of Executive Order 13175."

[Summary of Executive Order 13175](#)

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Summary of Executive Order 13175

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Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," became effective in January 2001.

The order designed to establish regular and meaningful consultation and collaboration with tribal officials

- In the development of federal policies that have tribal implications.
- To strengthen the government-to-government relationships with Indian tribes.
- To reduce the imposition of unfunded mandates upon Indian tribes.

Among other things, the Order requires federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulations, legislative comments on proposed legislation, and other policies or actions that have substantial direct effects on:

- One or more Indian tribes.
- The relationship between the federal government and Indian tribes.
- The distribution of power and responsibilities between the federal government and Indian tribes.

The Order generally calls for consultation with tribal officials where such regulations either impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. It also includes additional requirements and considerations that apply to rule making and other agency actions.

[Executive Order 13175 \(Full Text\)](#)

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Federal Trust Responsibility

Another vital aspect of the unique relationship between the federal government and Indian tribes is the federal trust responsibility.

This trust responsibility requires the federal government to uphold rights reserved by, or granted to, Indian tribes and Indian individuals by treaties, federal statutes, and executive orders, which are sometimes further interpreted through court decisions and federal regulations.

The famous 1831 Supreme Court decision *Cherokee Nation v. Georgia* introduced the concept that while Indian tribes could not be considered to have the same status as foreign nations because they were located within the boundaries of the United States, they still retained their status as nations. Because tribes had ceded lands in exchange for certain promises of provisions and protection from the United States, Chief Justice John Marshall coined the term "domestic dependent nations" to refer to the status of the tribes.

Federal courts often discuss the trust responsibility in terms of a common-law trust, which generally has three elements: a trustee, which in this case is the U.S. government; a beneficiary, which may be a tribe or an individual Native American; and a corpus, meaning the "body" of the trust—for example, lands, resources, or funds. Unlike a common-law trust, however, the federal trust responsibility is defined by federal statutes and regulations.

Trust lands cannot be sold, leased, or otherwise alienated by the beneficiary without the approval of the trustee. In dealing with trust property, the trustee ensures that the desires of the trust beneficiary are taken into account but makes independent decisions based on the beneficiary's best interests.

The federal government must ensure that its actions are consistent with the protection of trust lands and tribal rights, while in keeping with its other statutory obligations. This means that harm to an Indian trust asset cannot be outweighed in favor of the "general public welfare" or any other considerations that do not directly compensate the trust beneficiaries for the harm to their trust assets. Rather, the government must balance its competing statutory obligations.

All federal agencies share in the trust responsibility.

Some individuals, including many tribal members, view the trust responsibility as including broader responsibilities than the federal government, or the courts, have recognized. In many cases, it is not essential to resolve these differences in order to find practical solutions to address issues arising from the implementation of federal programs or projects.

Trust responsibility issues can be complex, and may have legal consequences. When questions arise regarding a possible trust responsibility issue, federal employees should consult with their agency's legal counsel for further guidance. Agency legal counsel should consult with the Office of the Solicitor General in the Department of the Interior for assistance.



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Indian Country Definitions

"Indian country" is a significant legal term that refers to the lands set aside for federally recognized Indian tribes. It includes reservations, fee land within reservation boundaries, dependent Indian communities, Indian allotments, and trust land.

Generally, the designation of land as Indian country means that the tribe and the federal government have jurisdictional authority within its boundaries and the states are excluded.

There are some very important exceptions to this rule, which are discussed in the jurisdiction section of the Federal Indian Law and Policy module.





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Knowledge Check - Question 1

Is the following statement true or false?

Treaties with tribes only last for a designated period of time; therefore, most treaties have expired.

- A. [True](#)
- B. [False](#)



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Knowledge Check - Question 1

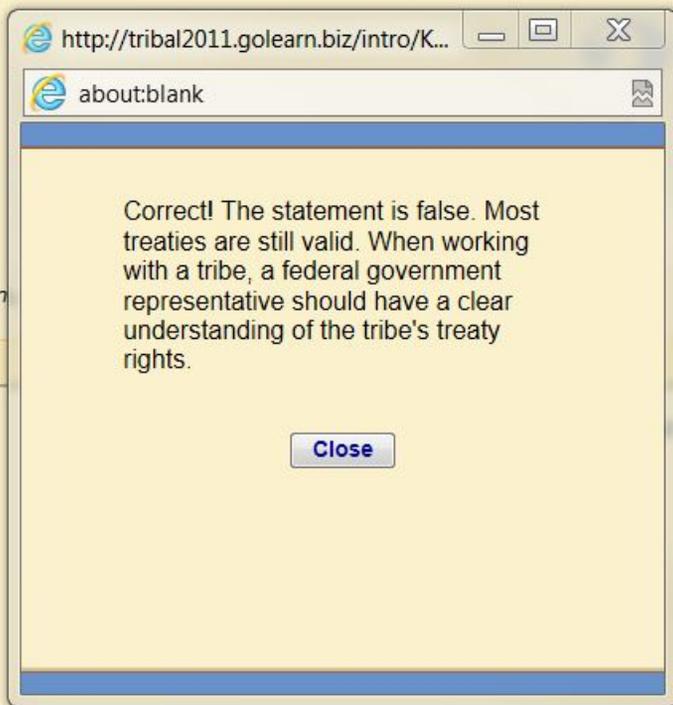
Is the following statement true or false?

Treaties with tribes only last for a designated period of time; therefore, most treaties have expired.

- A. [True](#)
- B. [False](#)

Select the correct answer. Then

Resources Exit/Save



The screenshot shows a web browser window with the address bar containing "http://tribal2011.golearn.biz/intro/K...". The main content area displays the text: "Correct! The statement is false. Most treaties are still valid. When working with a tribe, a federal government representative should have a clear understanding of the tribe's treaty rights." Below the text is a "Close" button.



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Knowledge Check - Question 2

Which of the following statements is false?

- A. Federal recognition of an Indian tribe means the tribe possesses a unique legal relationship with the federal government.
- B. Tribes that are not already federally recognized may seek recognition through an administrative acknowledgment process through the Bureau of Indian Affairs or by an act of Congress.
- C. State recognized Indian tribes have the same legal status as federally recognized tribes.



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Knowledge Check - Question 2

Which of the following statements is false?

- A. [Federal recognition of an Indian tribe means the tribe possesses a unique legal relationship with the federal government.](#)
- B. [Tribes that are not already federally recognized may seek recognition through an administrative acknowledgment process through the Bureau of Indian Affairs or by an act of Congress.](#)
- C. [State recognized Indian tribes have the same legal status as federally recognized tribes.](#)

Select the correct answer.

Resources Exit/Save

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A feedback window with a title bar containing the URL 'http://tribal2011.golearn.biz/intro/K...' and standard window controls. The address bar shows 'about:blank'. The main content area has a yellow background and contains the following text:

Correct! State recognized tribes do not have the same legal status as federally recognized tribes. Federally recognized tribes have a unique legal relationship to the federal government, and federal recognition is a prerequisite for a tribe's participation in the special Indian programs and services administered by the Department of Interior.

At the bottom center of the window is a 'Close' button.



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Knowledge Check - Question 3

Is the following statement true or false?

The only type of land that is considered Indian country is an Indian reservation.

- A. [True](#)
- B. [False](#)



Module 2: Introduction to Tribal Concepts

Knowledge Check - Question 3

Is the following statement true or false?

The only type of land that is considered Indian country is an Indian reservation.

- A. [True](#)
B. [False](#)

Select the correct answer. The

Resources Exit/Save

of 5



A feedback window with a title bar containing the URL "http://tribal2011.golearn.biz/intro/K...". The address bar shows "about:blank". The main content area has a yellow background and contains the following text:

Correct! The statement is false. Indian country generally includes:

1. All lands within the boundaries of Indian reservations, including individually owned fee lands,
2. Dependent Indian communities,
3. Indian allotments held in trust by the federal government or subject to a statutory restriction on sale or other form of alienation, and
4. Trust lands.

At the bottom center of the window is a "Close" button.



Module 2: Introduction to Tribal Concepts

Summary

You have now completed the *Introduction to Tribal Concepts* module.

In this module, you were introduced to key terms and concepts that will prepare you for the remainder of the course and your future work with tribal governments.

