

**§ 5208. Application of provisions to Osage County**

This chapter shall not relate to or affect Osage County, Oklahoma.

(June 26, 1936, ch. 831, § 8, 49 Stat. 1968.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 508 of this title prior to editorial reclassification and renumbering as this section.

**§ 5209. Rules and regulations; repeals**

The Secretary of the Interior is authorized to prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter. All Acts or parts of Acts inconsistent with this chapter are repealed.

(June 26, 1936, ch. 831, § 9, 49 Stat. 1968.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 509 of this title prior to editorial reclassification and renumbering as this section.

**§ 5210. Payment of gross production taxes; method**

Whenever restricted Indian lands in the State of Oklahoma are subject to gross production tax on minerals, including oil and gas, the Secretary of the Interior, in his discretion, may cause such tax or taxes due the State of Oklahoma to be paid in the manner provided for by the statutes of the State of Oklahoma.

(Aug. 25, 1937, ch. 772, 50 Stat. 806.)

**Editorial Notes**

**CODIFICATION**

This section was not enacted as part of act June 26, 1936, ch. 831, 49 Stat. 1967, which comprises this chapter.

Section was formerly classified to section 510 of this title prior to editorial reclassification and renumbering as this section.

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**(a) Findings respecting historical and special legal relationship, and resultant responsibilities**

The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

**(b) Further findings**

The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not

effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

(Pub. L. 93-638, § 2, Jan. 4, 1975, 88 Stat. 2203.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 450 of this title prior to editorial reclassification and renumbering as this section.

**Statutory Notes and Related Subsidiaries**

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116-260, div. DD, § 1, Dec. 27, 2020, 134 Stat. 3008, provided that: "This division [amending section 5363 of this title and repealing in part and omitting in part section 671 of Title 16, Conservation] may be cited as the 'Montana Water Rights Protection Act'."

Pub. L. 116-180, § 1(a), Oct. 21, 2020, 134 Stat. 857, provided that: "This Act [enacting sections 5364 to 5377 of this title, amending sections 5304, 5305, 5321, 5324, 5325, 5329, and 5361 to 5363 of this title, repealing sections 5364 to 5368 of this title, and enacting provisions set out as notes under sections 5305 and 5361 of this title] may be cited as the 'Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019' or the 'PROGRESS for Indian Tribes Act'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115-404, § 1, Dec. 31, 2018, 132 Stat. 5349, provided that: "This Act [enacting section 5348 of this title] may be cited as the 'Johnson-O'Malley Supplemental Indian Education Program Modernization Act'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-568, title VIII, § 801, Dec. 27, 2000, 114 Stat. 2916, provided that: "This title [see Tables for classification] may be cited as the 'Native American Laws Technical Corrections Act of 2000'."

Pub. L. 106-568, title XIII, § 1301, Dec. 27, 2000, 114 Stat. 2936, provided that: "This title [enacting subchapter VII of this chapter] may be cited as the 'American Indian Education Foundation Act of 2000'."

Pub. L. 106-260, § 1, Aug. 18, 2000, 114 Stat. 711, provided that: "This Act [see Tables for classification] may be cited as the 'Tribal Self-Governance Amendments of 2000'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103-413, § 1, Oct. 25, 1994, 108 Stat. 4250, provided that: "This Act [see Tables for classification] may be cited as the 'Indian Self-Determination Act Amendments of 1994'."

Pub. L. 103-413, title I, § 101, Oct. 25, 1994, 108 Stat. 4250, provided that: "This title [see Tables for classification] may be cited as the 'Indian Self-Determination Contract Reform Act of 1994'."

Pub. L. 103-413, title II, § 201, Oct. 25, 1994, 108 Stat. 4270, provided that: "This title [enacting subchapter IV (§ 5361 et seq.) of this chapter and provisions set out as notes under section 5361 of this title] may be cited as the 'Tribal Self-Governance Act of 1994'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-644, title II, § 201, Nov. 29, 1990, 104 Stat. 4665, provided that: "This title [see Tables for classification] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1990'."

## SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-472, title I, §101, Oct. 5, 1988, 102 Stat. 2285, provided that: "This Act [see Tables for classification] may be cited as the 'Indian Self-Determination and Education Assistance Act Amendments of 1988'."

## SHORT TITLE

Pub. L. 93-638, §1, Jan. 4, 1975, 88 Stat. 2203, provided: "That this Act [enacting this chapter, section 13a of this title, and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 3806 of Title 50, War and National Defense] may be cited as the 'Indian Self-Determination and Education Assistance Act'."

Pub. L. 93-638, title I, §101, Jan. 4, 1975, 88 Stat. 2206, provided that: "This title [enacting subchapter I (§5321 et seq.) of this chapter and section 2004b of Title 42, The Public Health and Welfare, and amending section 3371 of Title 5, Government Organization and Employees, section 4762 of Title 42, and section 3806 of Title 50, War and National Defense] may be cited as the 'Indian Self-Determination Act'."

Pub. L. 93-638, title II, §201, Jan. 4, 1975, 88 Stat. 2213, provided that: "This title [enacting subchapter III (§5351 et seq.) of this chapter, sections 5345 to 5347 of this title, and provisions set out as a note under section 5347 of this title] may be cited as the 'Indian Education Assistance Act'."

Act April 16, 1934, ch. 147, 48 Stat. 596, which enacted sections 5342 to 5348 of this title, is popularly known as the "Johnson-O'Malley Act".

## SAVINGS PROVISIONS

Pub. L. 100-472, title II, §210, Oct. 5, 1988, 102 Stat. 2298, provided that: "Nothing in this Act [see Tables for classification] shall be construed as—

"(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

"(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to Indian people."

## SEVERABILITY

Pub. L. 100-472, title II, §211, Oct. 5, 1988, 102 Stat. 2298, provided that: "If any provision of this Act [see Tables for classification] or the application thereof to any Indian tribe, entity, person or circumstance is held invalid, neither the remainder of this Act, nor the application of any provisions herein to other Indian tribes, entities, persons, or circumstances, shall be affected thereby."

## CONSULTATION WITH ALASKA NATIVE CORPORATIONS

Pub. L. 108-199, div. H, §161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108-447, div. H, title V, §518, Dec. 8, 2004, 118 Stat. 3267, provided that: "The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175 [set out below]."

**Executive Documents**

## EX. ORD. NO. 13175. CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

Ex. Ord. No. 13175, Nov. 6, 2000, 65 F.R. 67249, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

SECTION 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more 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.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a [now 25 U.S.C. 5130].

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

SEC. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

SEC. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) encourage Indian tribes to develop their own policies to achieve program objectives;

(2) where possible, defer to Indian tribes to establish standards; and

(3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

SEC. 4. *Special Requirements for Legislative Proposals.* Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

SEC. 5. *Consultation.* (a) Each agency shall have an accountable process to ensure meaningful and timely

input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

(1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or

(2) the agency, prior to the formal promulgation of the regulation,

(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

**SEC. 6. *Increasing Flexibility for Indian Tribal Waivers.***

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant

with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

**SEC. 7. *Accountability.***

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993 [5 U.S.C. 601 note], each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

**SEC. 8. *Independent Agencies.*** Independent regulatory agencies are encouraged to comply with the provisions of this order.

**SEC. 9. *General Provisions.*** (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review) [5 U.S.C. 601 note], Executive Order 12988 (Civil Justice Reform) [28 U.S.C. 519 note], OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments [set out below].

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism) [5 U.S.C. 601 note].

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) [former 25 U.S.C. 450 note] is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

**SEC. 10. *Judicial Review.*** This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13647. ESTABLISHING THE WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS

Ex. Ord. No. 13647, June 26, 2013, 78 F.R. 39539, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote and sustain prosperous and resilient Native American tribal governments, it is hereby ordered as follows:

**SECTION 1. *Policy.*** The United States recognizes a government-to-government relationship, as well as a unique legal and political relationship, with federally recognized tribes. This relationship is set forth in the Constitution of the United States, treaties, statutes, Executive Orders, administrative rules and regulations, and judicial decisions. Honoring these relationships and respecting the sovereignty of tribal nations is critical to advancing tribal self-determination and prosperity.

As we work together to forge a brighter future for all Americans, we cannot ignore a history of mistreatment and destructive policies that have hurt tribal communities. The United States seeks to continue restoring and healing relations with Native Americans and to strengthen its partnership with tribal governments, for our more recent history demonstrates that tribal self-determination—the ability of tribal governments to determine how to build and sustain their own communities—is necessary for successful and prospering com-

munities. We further recognize that restoring tribal lands through appropriate means helps foster tribal self-determination.

This order establishes a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities. This policy is established as a means of promoting and sustaining prosperous and resilient tribal communities. Greater engagement and meaningful consultation with tribes is of paramount importance in developing any policies affecting tribal nations.

To honor treaties and recognize tribes' inherent sovereignty and right to self-government under U.S. law, it is the policy of the United States to promote the development of prosperous and resilient tribal communities, including by:

(a) promoting sustainable economic development, particularly energy, transportation, housing, other infrastructure, entrepreneurial, and workforce development to drive future economic growth and security;

(b) supporting greater access to, and control over, nutrition and healthcare, including special efforts to confront historic health disparities and chronic diseases;

(c) supporting efforts to improve the effectiveness and efficiency of tribal justice systems and protect tribal communities;

(d) expanding and improving lifelong educational opportunities for American Indians and Alaska Natives, while respecting demands for greater tribal control over tribal education, consistent with Executive Order 13592 of December 2, 2011 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities); and

(e) protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures.

SEC. 2. *Establishment.* There is established the White House Council on Native American Affairs (Council). The Council shall improve coordination of Federal programs and the use of resources available to tribal communities.

SEC. 3. *Membership.* (a) The Secretary of the Interior shall serve as the Chair of the Council, which shall also include the heads of the following executive departments, agencies, and offices:

(i) the Department of State;  
 (ii) the Department of the Treasury;  
 (iii) the Department of Defense;  
 (iv) the Department of Justice;  
 (v) the Department of Agriculture;  
 (vi) the Department of Commerce;  
 (vii) the Department of Labor;  
 (viii) the Department of Health and Human Services;  
 (ix) the Department of Housing and Urban Development;

(x) the Department of Transportation;  
 (xi) the Department of Energy;  
 (xii) the Department of Education;  
 (xiii) the Department of Veterans Affairs;  
 (xiv) the Department of Homeland Security;  
 (xv) the Social Security Administration;  
 (xvi) the Office of Personnel Management;  
 (xvii) the Office of the United States Trade Representative;

(xviii) the Office of Management and Budget;  
 (xix) the Environmental Protection Agency;  
 (xx) the Small Business Administration;  
 (xxi) the Council of Economic Advisers;  
 (xxii) the Office of National Drug Control Policy;  
 (xxiii) the Domestic Policy Council;  
 (xxiv) the National Economic Council;  
 (xxv) the Office of Science and Technology Policy;  
 (xxvi) the Council on Environmental Quality;  
 (xxvii) the White House Office of Public Engagement and Intergovernmental Affairs;  
 (xxviii) the Advisory Council on Historic Preservation;  
 (xxix) the Denali Commission;

(xxx) the White House Office of Cabinet Affairs; and  
 (xxxi) such other executive departments, agencies, and offices as the Chair may, from time to time, designate.

(b) A member of the Council may designate a senior-level official, who is a full-time officer or employee of the Federal Government, to perform his or her functions.

(c) The Department of the Interior shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council.

(e) The Council shall coordinate its outreach to federally recognized tribes through the White House Office of Public Engagement and Intergovernmental Affairs.

(f) The Council shall meet three times a year, with any additional meetings convened as deemed necessary by the Chair.

The Chair may invite other interested agencies and offices to attend meetings as appropriate.

SEC. 4. *Mission and Function of the Council.* The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to support tribal self-governance and improve the quality of life for Native Americans, and shall coordinate the United States Government's engagement with tribal governments and their communities. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council, concerning policy priorities, including improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans;

(b) coordinate, through the Director of the Office of Public Engagement and Intergovernmental Affairs, Federal engagement with tribal governments and Native American stakeholders regarding issues important to Native Americans, including with tribal consortia, small businesses, education and training institutions including tribal colleges and universities, health-care providers, trade associations, research and grant institutions, law enforcement, State and local governments, and community and non-profit organizations;

(c) coordinate a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to tribal consultation as set forth in Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), and my memorandum of November 5, 2009 (Tribal Consultation); and

(d) assist the White House Office of Public Engagement and Intergovernmental Affairs in organizing the White House Tribal Nations Conference each year by bringing together leaders invited from all federally recognized Indian tribes and senior officials from the Federal Government to provide for direct government-to-government discussion of the Federal Government's Indian country policy priorities.

SEC. 5. *General Provisions.* (a) The heads of executive departments, agencies, and offices shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) For purposes of this order, "federally recognized tribe" means an Indian or Alaska Native tribe, band,

nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a [now 25 U.S.C. 5130].

(e) For purposes of this order, "American Indian and Alaska Native" means a member of an Indian tribe, as membership is defined by the tribe.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

GOVERNMENT-TO-GOVERNMENT RELATIONS WITH NATIVE  
AMERICAN TRIBAL GOVERNMENTS

Memorandum of President of the United States, Apr. 29, 1994, 59 F.R. 22951, provided:

Memorandum for the Heads of Executive Departments and Agencies

The United States Government has a unique legal relationship with Native American tribal governments as set forth in the Constitution of the United States, treaties, statutes, and court decisions. As executive departments and agencies undertake activities affecting Native American tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respectful of tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with federally recognized Native American tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign tribal governments.

In order to ensure that the rights of sovereign tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with federally recognized tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on tribal trust resources and assure that tribal government rights and concerns are considered during the development of such plans, projects, programs, and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with tribal governments on activities that affect the trust property and/or governmental rights of the tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support in cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") [former 5 U.S.C. 601 note] and 12866 ("Regulatory Planning and Review") [5 U.S.C. 601 note] to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

TRIBAL CONSULTATION

Memorandum of President of the United States, Nov. 5, 2009, 74 F.R. 57881, provided:

Memorandum for the Heads of Executive Departments And Agencies

The United States has a unique legal and political relationship with Indian tribal governments, established through and confirmed by the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In recognition of that special relationship, pursuant to Executive Order 13175 of November 6, 2000, executive departments and agencies (agencies) are charged with engaging in regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, and are responsible for strengthening the government-to-government relationship between the United States and Indian tribes.

History has shown that failure to include the voices of tribal officials in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. By contrast, meaningful dialogue between Federal officials and tribal officials has greatly improved Federal policy toward Indian tribes. Consultation is a critical ingredient of a sound and productive Federal-tribal relationship.

My Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, I hereby direct each agency head to submit to the Director of the Office of Management and Budget (OMB), within 90 days after the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. This plan shall be developed after consultation by the agency with Indian tribes and tribal officials as defined in Executive Order 13175. I also direct each agency head to submit to the Director of the OMB, within 270 days after the date of this memorandum, and annually thereafter, a progress report on the status of each action included in its plan together with any proposed updates to its plan.

Each agency's plan and subsequent reports shall designate an appropriate official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. The Assistant to the President for Domestic Policy and the Director of the OMB shall review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

In addition, the Director of the OMB, in coordination with the Assistant to the President for Domestic Policy, shall submit to me, within 1 year from the date of this memorandum, a report on the implementation of Executive Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the tribal consultation process more effective, if any, should be included in this report.

The terms “Indian tribe,” “tribal officials,” and “policies that have tribal implications” as used in this memorandum are as defined in Executive Order 13175.

The Director of the OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

BARACK OBAMA.

### § 5302. Congressional declaration of policy

#### (a) Recognition of obligation of United States

The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

#### (b) Declaration of commitment

The Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services. In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

#### (c) Declaration of national goal

The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

(Pub. L. 93–638, §3, Jan. 4, 1975, 88 Stat. 2203; Pub. L. 100–472, title I, §102, Oct. 5, 1988, 102 Stat. 2285.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 450a of this title prior to editorial reclassification and renumbering as this section.

##### AMENDMENTS

1988—Subsec. (b). Pub. L. 100–472 added subsec. (b) and struck out former subsec. (b) which read as follows: “The Congress declares its commitment to the maintenance

of the Federal Government’s unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.”

### § 5303. Tribal and Federal advisory committees

Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93–638) [25 U.S.C. 5301 et seq.].

(Pub. L. 101–644, title II, §204, as added Pub. L. 103–435, §22(b), Nov. 2, 1994, 108 Stat. 4575.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was enacted as part of the Indian Self-Determination and Education Assistance Act Amendments of 1990, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450a–1 of this title prior to editorial reclassification and renumbering as this section.

### § 5304. Definitions

For purposes of this chapter, the term—

(a) “construction programs” means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities;

(b) “contract funding base” means the base level from which contract funding needs are determined, including all contract costs;

(c) “direct program costs” means costs that can be identified specifically with a particular contract objective;

(d) “Indian” means a person who is a member of an Indian tribe;

(e) “Indian tribe” or “Indian Tribe” means any Indian 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 (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special pro-

grams and services provided by the United States to Indians because of their status as Indians;

(f) “indirect costs” means costs incurred for a common or joint purpose benefiting more than one contract objective, or which are not readily assignable to the contract objectives specifically benefited without effort disproportionate to the results achieved;

(g) “indirect cost rate” means the rate arrived at through negotiation between an Indian tribe or tribal organization and the appropriate Federal agency;

(h) “mature contract” means a self-determination contract that has been continuously operated by a tribal organization for three or more years, and for which there are no significant and material audit exceptions in the annual financial audit of the tribal organization: *Provided*, That upon the request of a tribal organization or the tribal organization’s Indian tribe for purposes of section 5321(a) of this title, a contract of the tribal organization which meets this definition shall be considered to be a mature contract;

(i) “Secretary”, unless otherwise designated, means either the Secretary of Health and Human Services or the Secretary of the Interior or both;

(j) “self-determination contract” means a contract entered into under subchapter I (or a grant or cooperative agreement used under section 5308 of this title) between a Tribal organization and the appropriate Secretary for the planning, conduct, and administration of programs or services that are otherwise provided to Indian Tribes and members of Indian Tribes pursuant to Federal law, subject to the condition that, except as provided in section 5324(a)(3) of this title, no contract entered into under subchapter I (or grant or cooperative agreement used under section 5308 of this title) shall be—

(1) considered to be a procurement contract; or

(2) except as provided in section 5328(a)(1) of this title, subject to any Federal procurement law (including regulations);

(k) “State education agency” means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law;

(l) “Tribal organization” or “tribal organization” means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant; and

(m) “construction contract” means a fixed-price or cost-reimbursement self-determination contract for a construction project, except that such term does not include any contract—

(1) that is limited to providing planning services and construction management services (or a combination of such services);

(2) for the Housing Improvement Program or roads maintenance program of the Bureau of Indian Affairs administered by the Secretary of the Interior; or

(3) for the health facility maintenance and improvement program administered by the Secretary of Health and Human Services.

(Pub. L. 93-638, § 4, Jan. 4, 1975, 88 Stat. 2204; Pub. L. 100-472, title I, § 103, Oct. 5, 1988, 102 Stat. 2286; Pub. L. 100-581, title II, § 208, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, § 2(a)(1)-(3), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, § 202(1), (2), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, § 102(1), Oct. 25, 1994, 108 Stat. 4250; Pub. L. 116-180, title II, § 201(a), Oct. 21, 2020, 134 Stat. 878.)

### Editorial Notes

#### REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (e), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43, and Tables.

Subchapter I, referred to in subsec. (j), was in the original “title I”, meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§ 5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 450b of this title prior to editorial reclassification and renumbering as this section.

#### AMENDMENTS

2020—Subsec. (e). Pub. L. 116-180, § 201(a)(2)(A), substituted “‘Indian tribe’ or ‘Indian Tribe’ means” for “‘Indian tribe’ means”.

Subsec. (j). Pub. L. 116-180, § 201(a)(1), added subsec. (j) and struck out former subsec. (j) which defined “self-determination contract”.

Subsec. (l). Pub. L. 116-180, § 201(a)(2)(B), substituted “‘Tribal organization’ or ‘tribal organization’ means” for “‘tribal organization’ means”.

1994—Subsec. (g). Pub. L. 103-413, § 102(1)(A), substituted “indirect cost rate” for “indirect costs rate”.

Subsec. (m). Pub. L. 103-413, § 102(1)(B)-(D), added subsec. (m).

1990—Subsec. (e). Pub. L. 101-301, § 2(a)(1), inserted a comma before “which is recognized”.

Subsec. (h). Pub. L. 101-644, § 202(1), struck out “in existence on October 5, 1988,” before “which meets this definition”.

Subsec. (j). Pub. L. 101-644, § 202(2), substituted “contract (or grant or cooperative agreement utilized under



section 5308 of this title) entered” for “contract entered” in two places.

Pub. L. 101-301, §2(a)(2), (3), substituted “under this chapter” for “pursuant to this Act” in two places and struck out “the” before “Secretary”.

1988—Pub. L. 100-472 amended section generally, substituting subsecs. (a) to (l) for former subsecs. (a) to (d) and (f) which defined “Indian”, “Indian tribe”, “Tribal organization”, “Secretary”, and “State education agency”.

Subsec. (h). Pub. L. 100-581, §208(a)(1), substituted “by a tribal organization” for “by tribal organization”.

Pub. L. 100-581, §208(a)(2), which directed the amendment of subsec. (h) by substituting “a tribal organization or the tribal organization’s Indian tribe for purposes of section 5321(a) of this title” for “a tribal organization or a tribal governing body” was executed by substituting the new language for “a tribal organization or tribal governing body” to reflect the probable intent of Congress.

Subsec. (j). Pub. L. 100-581, §208(b), substituted “the Secretary for the planning” for “Secretary the planning” and “except as provided the last proviso in section 5324(a) of this title, no contract” for “no contract”.

### § 5305. Reporting and audit requirements for recipients of Federal financial assistance

#### (a) Maintenance of records

(1) Each recipient of Federal financial assistance under this chapter shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose—

(A) the amount and disposition by such recipient of the proceeds of such assistance,

(B) the cost of the project or undertaking in connection with which such assistance is given or used,

(C) the amount of that portion of the cost of the project or undertaking supplied by other sources, and

(D) such other information as will facilitate an effective audit.

(2) For the purposes of this subsection, such records for a mature contract shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single-agency audit required by chapter 75 of title 31<sup>1</sup> and a brief annual program report.

#### (b) Access to books, documents, papers, and records for audit and examination by Comptroller General, etc.

The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after the retention period for the report that is submitted to the Secretary under subsection (a), have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection. The retention period shall be defined in regulations promulgated by the Secretary pursuant to section 5373 of this title.

<sup>1</sup> So in original. Probably should be followed by a comma.

#### (c) Availability by recipient of required reports and information to Indian people served or represented

Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

#### (d) Repayment to Treasury by recipient of unexpended or unused funds

Except as provided in section 13a or 5325(a)(3)<sup>2</sup> of this title, funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States through the respective Secretary.

#### (e) Annual report to tribes

The Secretary shall report annually in writing to each tribe regarding projected and actual staffing levels, funding obligations, and expenditures for programs operated directly by the Secretary serving that tribe.

#### (f) Single-agency audit report; additional information; declination criteria and procedures

(1) For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract entered into, or grant made, under this chapter, the tribal organization that requested such contract or grant shall submit to the appropriate Secretary a single-agency audit report required by chapter 75 of title 31.

(2) In addition to submitting a single-agency audit report pursuant to paragraph (1), a tribal organization referred to in such paragraph shall submit such additional information concerning the conduct of the program, function, service, or activity carried out pursuant to the contract or grant that is the subject of the report as the tribal organization may negotiate with the Secretary.

(3) Any disagreement over reporting requirements shall be subject to the declination criteria and procedures set forth in section 5321 of this title.

(Pub. L. 93-638, §5, formerly §5 and title I, §108, Jan. 4, 1975, 88 Stat. 2204, 2212; renumbered and amended Pub. L. 100-472, title I, §104, title II, §208, Oct. 5, 1988, 102 Stat. 2287, 2296; Pub. L. 100-581, title II, §209, Nov. 1, 1988, 102 Stat. 2940; Pub. L. 101-301, §2(a)(4), May 24, 1990, 104 Stat. 206; Pub. L. 101-644, title II, §202(3), Nov. 29, 1990, 104 Stat. 4665; Pub. L. 103-413, title I, §102(2), Oct. 25, 1994, 108 Stat. 4250; Pub. L. 116-180, title II, §201(b), Oct. 21, 2020, 134 Stat. 879.)

#### AMENDMENT OF SUBSECTION (f)(1)

*Pub. L. 116-180, title II, §201(b)(2), (c), Oct. 21, 2020, 134 Stat. 879, provided that, effective 14 months after Oct. 21, 2020, subsection (f)(1) of this section is amended by inserting “if the Indian Tribal organization expends \$500,000 or more in Federal awards during such fiscal year” after “under this chapter.”. See 2020 Amendment note below.*

<sup>2</sup> See References in Text note below.

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1) and (f)(1), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 5325(a)(3) of this title, referred to in subsec. (d), was repealed and a new subsec. (a)(3) of section 5325 was added by Pub. L. 103-413, title I, §102(14)(C), Oct. 25, 1994, 108 Stat. 4257. See section 5325(a)(4) of this title.

## CODIFICATION

Section was formerly classified to section 450c of this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

2020—Subsec. (b). Pub. L. 116-180, §201(b)(1), substituted “after the retention period for the report that is submitted to the Secretary under subsection (a)” for “after completion of the project or undertaking referred to in the preceding subsection of this section” and inserted at end “The retention period shall be defined in regulations promulgated by the Secretary pursuant to section 5373 of this title.”

Subsec. (f)(1). Pub. L. 116-180, §201(b)(2), inserted “if the Indian Tribal organization expends \$500,000 or more in Federal awards during such fiscal year” after “under this chapter.”

1994—Subsec. (f). Pub. L. 103-413 added subsec. (f) and struck out former subsec. (f) which read as follows: “For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this chapter, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request through regulations promulgated under sections 552 and 553 of title 5.”

1990—Subsec. (a)(2). Pub. L. 101-301 substituted “chapter 75 of title 31” for “the Single Audit Act of 1984 (98 Stat. 2327, 31 U.S.C. 7501 et seq.).”

Subsec. (d). Pub. L. 101-644 substituted “Except as provided in section 13a or 5325(a)(3) of this title,” for “Any” and inserted “through the respective Secretary” before period at end.

1988—Subsec. (a). Pub. L. 100-472, §104(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this chapter, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.”

Subsec. (e). Pub. L. 100-581 substituted “to each tribe” for “to tribes”.

Pub. L. 100-472, §104(b), added subsec. (e).

Subsec. (f). Pub. L. 100-472, §208, redesignated former section 450f of this title as subsec. (f) of this section and inserted “through regulations promulgated under sections 552 and 553 of title 5”.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-180, title II, §201(c), Oct. 21, 2020, 134 Stat. 879, provided that: “The amendment made by sub-

section (b)(2) [amending this section] shall not take effect until 14 months after the date of enactment of this Act [Oct. 21, 2020].”

**§ 5306. Criminal activities involving grants, contracts, etc.; penalties**

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this chapter or the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.], embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subcontract, or subcontract, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Pub. L. 93-638, §6, Jan. 4, 1975, 88 Stat. 2205.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 450d of this title prior to editorial reclassification and renumbering as this section.

**§ 5307. Wage and labor standards****(a) Similar construction in locality**

All laborers and mechanics employed by contractors or subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this chapter, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with sections 3141-3144, 3146, and 3147 of title 40. With respect to construction, alteration, or repair work to which the Act of March 3, 1921<sup>1</sup> is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14, of 1950, and section 3145 of title 40.

**(b) Preference requirements for wages and grants**

Any contract, subcontract, grant, or subgrant pursuant to this chapter, the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et

<sup>1</sup> See References in Text note below.

seq.], or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible—

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 1452 of this title.

**(c) Self-determination contracts**

Notwithstanding subsections (a) and (b) of this section, with respect to any self-determination contract, or portion of a self-determination contract, that is intended to benefit one tribe, the tribal employment or contract preference laws adopted by such tribe shall govern with respect to the administration of the contract or portion of the contract.

(Pub. L. 93-638, §7, Jan. 4, 1975, 88 Stat. 2205; Pub. L. 103-413, title I, §102(3), (4), Oct. 25, 1994, 108 Stat. 4251.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of March 3, 1921, referred to in subsec. (a), probably means the act of March 3, 1931, ch. 411, 46 Stat. 1494, known as the Davis Bacon Act, which was classified generally to sections 276a to 276a-5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141-3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a), is set out in the Appendix to Title 5, Government Organization and Employees.

Act of April 16, 1934, referred to in subsec. (b), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O’Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 450e of this title prior to editorial reclassification and renumbering as this section.

In subsec. (a), “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended” and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-413, §102(3), substituted “or subcontractors (excluding tribes and tribal organizations)” for “of subcontractors”.

Subsec. (c). Pub. L. 103-413, §102(4), added subsec. (c).

**§ 5308. Grant and cooperative agreements**

The provisions of this chapter shall not be subject to the requirements of chapter 63 of title 31: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under section 5321<sup>1</sup> of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(Pub. L. 93-638, §9, as added Pub. L. 98-250, §1, Apr. 3, 1984, 98 Stat. 118; amended Pub. L. 101-301, §2(a)(5), May 24, 1990, 104 Stat. 206.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section 5321 of this title, referred to in text, was in the original “sections 102 and 103 of this Act”, and was translated as meaning section 102 of Pub. L. 93-638 because section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed and the remainder of section 103 of Pub. L. 93-638 was redesignated as section 102(d) by Pub. L. 100-472, title II, §201(b)(1), Oct. 5, 1988, 102 Stat. 2289.

Section was formerly classified to section 450e-1 of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1990—Pub. L. 101-301 substituted “chapter 63 of title 31” for “the Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224; 92 Stat. 3)”.

**§ 5309. Use of excess funds**

Beginning in fiscal year 1998 and thereafter, where the actual costs of construction projects under self-determination contracts, compacts, or grants, pursuant to Public Laws 93-638, 103-413, or 100-297, are less than the estimated costs thereof, use of the resulting excess funds shall be determined by the appropriate Secretary after consultation with the tribes.

(Pub. L. 105-83, title III, §310, Nov. 14, 1997, 111 Stat. 1590.)

**Editorial Notes**

REFERENCES IN TEXT

Public Law 93-638, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Public Law 103-413, referred to in text, is Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, known as the Indian Self-Determination Act Amendments of 1994, which is classified principally to subchapter IV (§5361 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 5301 of this title and Tables.

Public Law 100-297, referred to in text, is Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 130, known as the August-

<sup>1</sup> See Codification note below.

tus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 6301 of Title 20, Education, and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1998, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-2 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, § 101(d) [title III, § 310], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, § 101(c) [title III, § 310], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, § 1(a), May 2, 1996, 110 Stat. 1327.

#### § 5310. Investment of advance payments; restrictions

Advance payments made by the Department of the Interior to Indian tribes, tribal organizations, and tribal consortia pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> or the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) may on and after December 8, 2004, be invested by the Indian tribe, tribal organization, or consortium before such funds are expended for the purposes of the grant, compact, or annual funding agreement so long as such funds are—

- (1) invested by the Indian tribe, tribal organization, or consortium only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States or securities that are guaranteed or insured by the United States; or
- (2) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(Pub. L. 108-447, div. E, title I, § 111, Dec. 8, 2004, 118 Stat. 3064.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title prior to editorial reclassification as this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Tribally Controlled Schools Act of 1988, referred to in text, is part B (§§ 5201-5212) of title V of Pub. L. 100-297, Apr. 28, 1988, 102 Stat. 385, which is classified generally to chapter 27 (§ 2501 et seq.) of this title. For complete classification of this Act to the Code, see

<sup>1</sup> See References in Text note below.

Short Title note set out under section 2501 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2005, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450e-3 of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Pub. L. 108-108, title I, § 111, Nov. 10, 2003, 117 Stat. 1266.

Pub. L. 108-7, div. F, title I, § 111, Feb. 20, 2003, 117 Stat. 239.

Pub. L. 107-63, title I, § 111, Nov. 5, 2001, 115 Stat. 438.

Pub. L. 106-291, title I, § 111, Oct. 11, 2000, 114 Stat. 942.

Pub. L. 106-113, div. B, § 1000(a)(3), [title I, § 111], Nov. 29, 1999, 113 Stat. 1535, 1501A-156.

Pub. L. 105-277, div. A, § 101(e), [title I, § 111], Oct. 21, 1998, 112 Stat. 2681-231, 2681-254.

Pub. L. 105-83, title I, § 112, Nov. 14, 1997, 111 Stat. 1562.

#### SUBCHAPTER I—INDIAN SELF-DETERMINATION

#### § 5321. Self-determination contracts

##### (a) Request by tribe; authorized programs

(1) The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs—

(A) provided for in the Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.];

(B) which the Secretary is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208) [25 U.S.C. 13], and any Act subsequent thereto;

(C) provided by the Secretary of Health and Human Services under the Act of August 5, 1954 (68 Stat. 674), as amended [42 U.S.C. 2001 et seq.];

(D) administered by the Secretary for the benefit of Indians for which appropriations are made to agencies other than the Department of Health and Human Services or the Department of the Interior; and

(E) for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The programs, functions, services, or activities that are contracted under this paragraph shall include administrative functions of the Department of the Interior and the Department of Health and Human Services (whichever is applicable) that support the delivery of services to Indians, including those administrative activities supportive of, but not included as part of, the service delivery programs described in this paragraph that are otherwise contractable. The administrative functions referred to in the pre-

ceding sentence shall be contractable without regard to the organizational level within the Department that carries out such functions.

(2) If so authorized by an Indian tribe under paragraph (1) of this subsection, a tribal organization may submit a proposal for a self-determination contract, or a proposal to amend or renew a self-determination contract, to the Secretary for review. Subject to the provisions of paragraph (4), the Secretary shall, within ninety days after receipt of the proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that—

(A) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

(B) adequate protection of trust resources is not assured;

(C) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

(D) the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 5325(a) of this title; or

(E) the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor.

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period specified in the second sentence of this subsection,<sup>1</sup> if before the expiration of such period, the Secretary obtains the voluntary and express written consent of the tribe or tribal organization to extend or otherwise alter such period. The contractor shall include in the proposal of the contractor the standards under which the tribal organization will operate the contracted program, service, function, or activity, including in the area of construction, provisions regarding the use of licensed and qualified architects, applicable health and safety standards, adherence to applicable Federal, State, local, or tribal building codes and engineering standards. The standards referred to in the preceding sentence shall ensure structural integrity, accountability of funds, adequate competition for subcontracting under tribal or other applicable law, the commencement, performance, and completion of the contract, adherence to project plans and specifications (including any applicable Federal construction guidelines and manuals), the use of proper materials and workmanship, necessary inspection and testing, and changes, modifications, stop work, and termination of the work when warranted.

(3) Upon the request of a tribal organization that operates two or more mature self-determination contracts, those contracts may be consolidated into one single contract.

(4) The Secretary shall approve any severable portion of a contract proposal that does not support a declination finding described in paragraph (2). If the Secretary determines under such paragraph that a contract proposal—

(A) proposes in part to plan, conduct, or administer a program, function, service, or activity that is beyond the scope of programs covered under paragraph (1), or

(B) proposes a level of funding that is in excess of the applicable level determined under section 5325(a) of this title,

subject to any alteration in the scope of the proposal that the Secretary and the tribal organization agree to, the Secretary shall, as appropriate, approve such portion of the program, function, service, or activity as is authorized under paragraph (1) or approve a level of funding authorized under section 5325(a) of this title. If a tribal organization elects to carry out a severable portion of a contract proposal pursuant to this paragraph, subsection (b) of this section shall only apply to the portion of the contract that is declined by the Secretary pursuant to this subsection.

**(b) Procedure upon refusal of request to contract**

Whenever the Secretary declines to enter into a self-determination contract or contracts pursuant to subsection (a) of this section, the Secretary shall—

(1) state any objections in writing to the tribal organization,

(2) provide assistance to the tribal organization to overcome the stated objections, and

(3) provide the tribal organization with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate, except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 5331(a) of this title.

**(c) Liability insurance; waiver of defense**

(1) Beginning in 1990, the Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to this chapter. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act.

(2) In obtaining or providing such coverage, the Secretary shall, to the greatest extent practicable, give a preference to coverage underwritten by Indian-owned economic enterprises (as defined in section 1452 of this title), except that, for the purposes of this subsection, such enterprises may include non-profit corporations.

(3)(A) Any policy of insurance obtained or provided by the Secretary pursuant to this subsection shall contain a provision that the insurance carrier shall waive any right it may have

<sup>1</sup> So in original. Probably should be "paragraph."

to raise as a defense the sovereign immunity of an Indian tribe from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage or limits of the policy of insurance.

(B) No waiver of the sovereign immunity of an Indian tribe pursuant to this paragraph shall include a waiver to the extent of any potential liability for interest prior to judgment or for punitive damages or for any other limitation on liability imposed by the law of the State in which the alleged injury occurs.

**(d) Tribal organizations and Indian contractors deemed part of Public Health Service**

For purposes of section 233 of title 42, with respect to claims by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations for personal injury, including death, resulting from the performance prior to, including, or after December 22, 1987, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle, an Indian tribe, a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement under sections<sup>2</sup> 5321 or 5322 of this title is deemed to be part of the Public Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees (including those acting on behalf of the organization or contractor as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor.

**(e) Burden of proof at hearing or appeal declining contract; final agency action**

(1) With respect to any hearing or appeal conducted pursuant to subsection (b)(3) of this section or any civil action conducted pursuant to section 5331(a) of this title, the Secretary shall

have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof).

(2) Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (referred to in this paragraph as the "Department") that constitutes final agency action and that relates to an appeal within the Department that is conducted under subsection (b)(3) of this section shall be made either—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative judge.

**(f) Good faith requirement**

In the negotiation of contracts and funding agreements, the Secretary shall—

(1) at all times negotiate in good faith to maximize implementation of the self-determination policy; and

(2) carry out this chapter in a manner that maximizes the policy of Tribal self-determination, in a manner consistent with—

(A) the purposes specified in section 5302 of this title; and

(B) the PROGRESS for Indian Tribes Act.

**(g) Rule of construction**

Subject to section 101(a) of the PROGRESS for Indian Tribes Act, each provision of this chapter and each provision of a contract or funding agreement shall be liberally construed for the benefit of the Indian Tribe participating in self-determination, and any ambiguity shall be resolved in favor of the Indian Tribe.

(Pub. L. 93-638, title I, §102, formerly §§102 and 103(c), Jan. 4, 1975, 88 Stat. 2206; Pub. L. 100-202, §101(g) [title II, §201], Dec. 22, 1987, 101 Stat. 1329-213, 1329-246; Pub. L. 100-446, title II, §201, Sept. 27, 1988, 102 Stat. 1817; renumbered §102 and amended Pub. L. 100-472, title II, §201(a), (b)(1), Oct. 5, 1988, 102 Stat. 2288, 2289; Pub. L. 100-581, title II, §210, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-644, title II, §203(b), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §102(5)-(9), Oct. 25, 1994, 108 Stat. 4251-4253; Pub. L. 106-260, §6, Aug. 18, 2000, 114 Stat. 732; Pub. L. 116-180, title II, §202, Oct. 21, 2020, 134 Stat. 879.)

**Editorial Notes**

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (a)(1)(A), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (a)(1)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

This chapter, referred to in subsecs. (c)(1), (f)(2), and (g), was in the original "this Act", meaning Pub. L.

<sup>2</sup>So in original. Probably should be "section".

93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Federal Tort Claims Act, referred to in subsec. (c)(1), is title IV of act Aug. 2, 1946, ch. 753, 60 Stat. 842, which was classified principally to chapter 20 (§§ 921, 922, 931-934, 941-946) of former Title 28, Judiciary Code and Judiciary. Title IV of act Aug. 2, 1946, was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of Title 28, Judiciary and Judicial Procedure, by act June 25, 1948, ch. 646, 62 Stat. 992, the first section of which enacted Title 28. The Federal Tort Claims Act is also commonly used to refer to chapter 171 of Title 28, Judiciary and Judicial Procedure. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into the revised Title 28, see Table at the beginning of Title 28.

The PROGRESS for Indian Tribes Act, referred to in subsec. (f)(2)(B), is Pub. L. 116-180, Oct. 21, 2020, 134 Stat. 857, also known as the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019. For complete classification of this Act to the Code, see Short Title of 2020 Amendment note set out under section 5301 of this title and Tables.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (g), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

#### CODIFICATION

Except as provided below, section was formerly classified to section 450f of this title prior to editorial reclassification and renumbering as this section.

Subsec. (d) of this section was formerly classified to the last sentence of subsec. (c) of former section 450g of this title prior to redesignation as subsec. (d) of former section 450f of this title by Pub. L. 100-472, § 201(b)(1), and editorial reclassification and renumbering of former section 450f of this title as this section. See 1988 Amendment note below.

#### AMENDMENTS

2020—Subsec. (c)(2). Pub. L. 116-180, § 202(1), substituted “economic enterprises (as defined in section 1452 of this title), except that” for “economic enterprises as defined in section 1452 of this title, except that”.

Subsecs. (f), (g). Pub. L. 116-180, § 202(2), added subsecs. (f) and (g).

2000—Subsec. (e)(1). Pub. L. 106-260 inserted “or any civil action conducted pursuant to section 5331(a) of this title” after “subsection (b)(3) of this section”.

1994—Subsec. (a)(1). Pub. L. 103-413, § 102(5), inserted concluding provisions.

Subsec. (a)(2). Pub. L. 103-413, § 102(6)(A)(i), (ii), (vi), inserted “, or a proposal to amend or renew a self-determination contract,” before “to the Secretary for review” in first sentence and, in second sentence, substituted “Subject to the provisions of paragraph (4), the Secretary” for “The Secretary”, inserted “and award the contract” after “approve the proposal”, substituted “the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that” for “, within sixty days of receipt of the proposal, a specific finding is made that”, and inserted concluding provisions.

Subsec. (a)(2)(D), (E). Pub. L. 103-413, § 102(6)(A)(iii)-(v), added subpars. (D) and (E).

Subsec. (a)(4). Pub. L. 103-413, § 102(6)(B), added par. (4).

Subsec. (b)(3). Pub. L. 103-413, § 102(7), inserted “with the right to engage in full discovery relevant to any issue raised in the matter” after “record” and

“; except that the tribe or tribal organization may, in lieu of filing such appeal, exercise the option to initiate an action in a Federal district court and proceed directly to such court pursuant to section 5331(a) of this title” before period at end.

Subsec. (d). Pub. L. 103-413, § 102(8), substituted “as provided in section 2671 of title 28 and including an individual who provides health care services pursuant to a personal services contract with a tribal organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service)” for “as provided in section 2671 of title 28”.

Subsec. (e). Pub. L. 103-413, § 102(9), added subsec. (e). 1990—Subsec. (d). Pub. L. 101-644 inserted “or for purposes of section 2679, title 28, with respect to claims by any such person, on or after November 29, 1990, for personal injury, including death, resulting from the operation of an emergency motor vehicle,” after “investigations,”.

1988—Pub. L. 100-472, § 201(a), amended section generally, revising and restating provisions of subsecs. (a) to (c).

Subsec. (c)(2). Pub. L. 100-581 which directed amendment of par. (2) by substituting “section 1452 of this title” for “section 1425 of title 25, United States Code” was executed by making the substitution for “section 1425, title 25, United States Code” to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 100-472, § 201(b)(1), redesignated the last sentence of subsec. (c) of former section 450g of this title as subsec. (d) of this section and substituted reference to sections 5321 or 5322 of this title for reference to former sections 450g and 450h(b) of this title. See Codification notes above and set out under section 5322 of this title.

Pub. L. 100-446 inserted into sentence beginning “For purposes of” the words “by any person, initially filed on or after December 22, 1987, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations” after “claims”, “prior to, including, or after December 22, 1987,” after “performance”, “an Indian tribe,” after “investigations,” and “; *Provided*, That such employees shall be deemed to be acting within the scope of their employment in carrying out such contract or agreement when they are required, by reason of such employment, to perform medical, surgical, dental or related functions at a facility other than the facility operated pursuant to such contract or agreement, but only if such employees are not compensated for the performance of such functions by a person or entity other than such Indian tribe, tribal organization or Indian contractor” after “the contract or agreement”.

1987—Subsec. (d). Pub. L. 100-202 inserted sentence at end deeming a tribal organization or Indian contractor carrying out a contract, grant agreement, or cooperative agreement to be part of the Public Health Service while carrying out any such contract or agreement and its employees to be employees of the Service while acting within the scope of their employment in carrying out the contract or agreement.

#### Statutory Notes and Related Subsidiaries

##### SHORT TITLE

For short title of this subchapter as the “Indian Self-Determination Act”, see section 101 of Pub. L. 93-638, set out as a note under section 5301 of this title.

##### SAVINGS PROVISION

Pub. L. 106-260, § 11, Aug. 18, 2000, 114 Stat. 734, provided that: “Funds appropriated for title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93-638, former] 25 U.S.C. 450f note) shall be available for use under title V of such Act [25 U.S.C. 5381 et seq.]”.

## INDIAN TRIBAL TORT CLAIMS AND RISK MANAGEMENT

Pub. L. 105-277, div. A, §101(e) [title VII], Oct. 21, 1998, 112 Stat. 2681-231, 2681-335, provided that:

## “SEC. 701. SHORT TITLE.

“This title may be cited as the ‘Indian Tribal Tort Claims and Risk Management Act of 1998’.”

## “SEC. 702. FINDINGS AND PURPOSE.

“(a) FINDINGS.—Congress finds that—

“(1) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

“(2) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

“(3) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) [now 25 U.S.C. 5301 et seq.]; and

“(4) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

“(b) PURPOSE.—The purpose of this title is to provide for a study to facilitate relief for a person who is injured as a result of an official action of a tribal government.

## “SEC. 703. DEFINITIONS.

“In this title:

“(1) INDIAN TRIBE.—The term ‘Indian tribe’ has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) [now 25 U.S.C. 5304(e)].

“(2) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior.

“(3) TRIBAL ORGANIZATION.—The term ‘tribal organization’ has the meaning given that term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) [now 25 U.S.C. 5304(l)].

## “SEC. 704. STUDY AND REPORT TO CONGRESS.

“(a) IN GENERAL.—

“(1) STUDY.—In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance to Indian tribes is cost-effective, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

“(2) CONTENTS OF STUDY.—The study conducted under this subsection shall include—

“(A) an analysis of loss data;

“(B) risk assessments;

“(C) projected exposure to liability, and related matters; and

“(D) the category of risk and coverage involved, which may include—

“(i) general liability;

“(ii) automobile liability;

“(iii) the liability of officials of the Indian tribe;

“(iv) law enforcement liability;

“(v) workers’ compensation; and

“(vi) other types of liability contingencies.

“(3) ASSESSMENT OF COVERAGE BY CATEGORIES OF RISK.—For each Indian tribe, for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance

coverage or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

“(b) REPORT.—Not later than June 1, 1999, and annually thereafter, the Secretary shall submit a report to Congress that contains legislative recommendations that the Secretary determines to—

“(1) be appropriate to improve the provision of insurance coverage to Indian tribes; or

“(2) otherwise achieve the purpose of providing relief to persons who are injured as a result of an official action of a tribal government.

## “SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out this title.”

## CLAIMS RESULTING FROM PERFORMANCE OF CONTRACT, GRANT AGREEMENT, OR COOPERATIVE AGREEMENT; CIVIL ACTION AGAINST TRIBE, TRIBAL ORGANIZATION, ETC., DEEMED ACTION AGAINST UNITED STATES; REIMBURSEMENT OF TREASURY FOR PAYMENT OF CLAIMS

Pub. L. 101-512, title III, §314, Nov. 5, 1990, 104 Stat. 1959, as amended by Pub. L. 103-138, title III, §308, Nov. 11, 1993, 107 Stat. 1416, provided that: “With respect to claims resulting from the performance of functions during fiscal year 1991 and thereafter, or claims asserted after September 30, 1990, but resulting from the performance of functions prior to fiscal year 1991, under a contract, grant agreement, or any other agreement or compact authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq. [now 25 U.S.C. 5301 et seq.]) [Pub. L. 93-638, see Short Title note set out under section 5301 of this title and Tables] or by title V, part B, Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501 et seq.), an Indian tribe, tribal organization or Indian contractor is deemed hereafter to be part of the Bureau of Indian Affairs in the Department of the Interior or the Indian Health Service in the Department of Health and Human Services while carrying out any such contract or agreement and its employees are deemed employees of the Bureau or Service while acting within the scope of their employment in carrying out the contract or agreement: *Provided*, That after September 30, 1990, any civil action or proceeding involving such claims brought hereafter against any tribe, tribal organization, Indian contractor or tribal employee covered by this provision shall be deemed to be an action against the United States and will be defended by the Attorney General and be afforded the full protection and coverage of the Federal Tort Claims Act [See Short Title note under section 2671 of Title 28, Judiciary and Judicial Procedure]: *Provided further*, That beginning with the fiscal year ending September 30, 1991, and thereafter, the appropriate Secretary shall request through annual appropriations funds sufficient to reimburse the Treasury for any claims paid in the prior fiscal year pursuant to the foregoing provisions: *Provided further*, That nothing in this section shall in any way affect the provisions of section 102(d) of the Indian Self-Determination and Education Assistance Act of 1975, as amended (88 Stat. 2203; 25 U.S.C. 450 et seq. [now 25 U.S.C. 5301 et seq.]) [25 U.S.C. 5321(d)].”

## REFERENCE TO FORMER SECTION 450g(c) IN PUBLIC LAW 100-446

Pub. L. 100-472, title II, §201(b)(2), Oct. 5, 1988, 102 Stat. 2289, provided that: “Any reference to section 103(c) [§103(c) of Pub. L. 93-638, former 25 U.S.C. 450g(c)] contained in an Act making appropriations for the Department of the Interior and Related Agencies for fiscal year 1989 [Pub. L. 100-446, see Tables for classification] shall be deemed to apply to section 102(d) of such Act [§102(d) of Pub. L. 93-638, former 25 U.S.C. 450f(d), now 25 U.S.C. 5321(d)] as amended by this Act.”

See Codification notes above.



**§ 5322. Grants to tribal organizations or tribes****(a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities**

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 5321 of this title and the additional costs associated with the initial years of operation under such a contract or contracts; or

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within Indian country (as defined in chapter 53 of title 18) or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of<sup>1</sup> Interior may (upon request of the tribe) acquire such land in trust for the tribe.

**(b) Grants by Secretary of Health and Human Services for development, maintenance, etc., of health facilities or services and improvement of contract capabilities implementing hospital and health facility functions**

The Secretary of Health and Human Services may, in accordance with regulations adopted pursuant to section 5328 of this title, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.<sup>2</sup>

**(c) Use as matching shares for other similar Federal grant programs**

The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

<sup>1</sup> So in original. Probably should be followed by "the".

<sup>2</sup> See References in Text note below.

**(d) Technical assistance**

The Secretary is directed, upon the request of any tribal organization and subject to the availability of appropriations, to provide technical assistance on a nonreimbursable basis to such tribal organization—

(1) to develop any new self-determination contract authorized pursuant to this chapter;

(2) to provide for the assumption by such tribal organization of any program, or portion thereof, provided for in section 5321(a)(1) of this title; or

(3) to develop modifications to any proposal for a self-determination contract which the Secretary has declined to approve pursuant to section 5321 of this title.

**(e) Grants for technical assistance and for planning, etc., Federal programs for tribe**

The Secretary is authorized, upon the request of an Indian tribe, to make a grant to any tribal organization for—

(1) obtaining technical assistance from providers designated by the tribal organization, including tribal organizations that operate mature contracts, for the purposes of program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates; and

(2) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe, including Federal administrative functions.

(Pub. L. 93-638, title I, § 103, formerly § 104, Jan. 4, 1975, 88 Stat. 2207; renumbered § 103 and amended Pub. L. 100-472, title II, § 202, Oct. 5, 1988, 102 Stat. 2289; Pub. L. 101-644, title II, § 203(g)(1), Nov. 29, 1990, 104 Stat. 4666.)

**Editorial Notes**

## REFERENCES IN TEXT

Section 103 of this Act, referred to in subsec. (b)(2), probably means former section 103 of Pub. L. 93-638, which was classified to former section 450g of this title, prior to repeal in part and transfer in part to former section 450f(d) of this title by Pub. L. 100-472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289, and editorial reclassification and renumbering of former section 450f(d) as section 5321(d) of this title. See Prior Provisions note below.

This chapter, referred to in subsec. (d)(1), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 450h of this title prior to editorial reclassification and renumbering as this section.

## PRIOR PROVISIONS

A prior section 103 of Pub. L. 93-638 was classified to former section 450g of this title prior to repeal in part and transfer in part to former section 450f(d) of this title by Pub. L. 100-472, title II, § 201(b)(1), Oct. 5, 1988, 102 Stat. 2289, and editorial reclassification and renumbering of former section 450f(d) as section 5321(d) of this title.

## AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101-644, which directed the substitution of “Indian country (as defined in chapter 53 of title 18)” for “reservation boundaries” in “section 301(a)(3) of the Indian Self-Determination Act”, was executed to this section, which is section 103(a)(3) of that Act, to reflect the probable intent of Congress.

1988—Subsec. (a). Pub. L. 100-472, §202(b), inserted “or” at end of par. (2), substituted a period for “; or” at end of par. (3), and struck out par. (4) which read as follows: “the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.”

Subsec. (b). Pub. L. 100-472, §202(c), substituted “Health and Human Services” for “Health, Education, and Welfare”.

Subsecs. (d), (e). Pub. L. 100-472, §202(d), added subsecs. (d) and (e).

**Statutory Notes and Related Subsidiaries**

## AUTHORITY OF SECRETARY TO ACQUIRE LANDS IN TRUST

Pub. L. 101-644, title II, §203(g)(2), Nov. 29, 1990, 104 Stat. 4666, provided that: “The amendment made by paragraph (1) [amending this section] shall not alter or otherwise modify or affect existing prohibitions or limitations on the Secretary’s authority to acquire lands in trust.”

**§ 5323. Retention of Federal employee coverage, rights and benefits by employees of tribal organizations****(a) to (d) Omitted****(e) Eligible employees; Federal employee programs subject to retention**

Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 (“Compensation for Work Injuries”) of title 5, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

(2) To retain coverage, rights, and benefits under chapter 83 (“Retirement”) or chapter 84 (“Federal Employees Retirement System”) of title 5, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

(3) To retain coverage, rights, and benefits under chapter 89 (“Health Insurance”) of title 5, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee’s Health Benefit Fund (section 8909 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5.

(4) To retain coverage, rights, and benefits under chapter 87 (“Life Insurance”) of title 5, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee’s Life Insurance Fund (section 8714 of title 5); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5.

**(f) Deposit by tribal organization of employee deductions and agency contributions in appropriate funds**

During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

**(g) Election for retention by employee and tribal organization before date of employment by tribal organization; transfer of employee to another tribal organization**

An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

**(h) “Employee” defined**

For the purposes of subsections (e), (f), and (g) of this section, the term “employee” means an employee as defined in section 2105 of title 5.

**(i) Promulgation of implementation regulations by President**

The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

**(j) Additional employee employment rights**

Anything in sections 205 and 207 of title 18 to the contrary notwithstanding—

(1) an officer or employee of the United States assigned to a tribal organization (as defined in section 5304(l) of this title) or an inter-tribal consortium (as defined in section 5381 of this title), as authorized under section 3372 of title 5 or section 48 of this title may act as agent or attorney for, and appear on behalf of, such tribal organization or inter-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That such officer or employee must advise in writing the head of the department, agency, court, or commission with which the officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement with the matter involved; and

(2) a former officer or employee of the United States who is carrying out official duties as an employee or as an elected or appointed official of a tribal organization (as defined in section 5304(l) of this title) or inter-tribal consortium (as defined in section 5381 of this title) may act as agent or attorney for, and appear on behalf of, such tribal organization or intra-tribal consortium in connection with any matter related to a tribal governmental activity or Federal Indian program or service pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That such former officer or employee must advise in writing the head of the department, agency, court, or commission with which the former officer or employee is dealing or appearing on behalf of the tribal organization or inter-tribal consortium of any personal and substantial involvement that he or she may have had as an officer or employee of the United States in connection with the matter involved.

**(k), (l) Omitted****(m) Conversion to career appointment**

The status of an Indian (as defined in section 5129 of this title) appointed (except temporary appointments) to the Federal service under an

excepted appointment under the authority of section 5116 of this title, or any other provision of law granting a preference to Indians in personnel actions, shall be converted to a career appointment in the competitive service after three years of continuous service and satisfactory performance. The conversion shall not alter the Indian’s eligibility for preference in personnel actions.

(Pub. L. 93-638, title I, §104, formerly §105, Jan. 4, 1975, 88 Stat. 2208; Pub. L. 89-702, title II, §210(a), as added Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 843; Pub. L. 99-221, §3(a), Dec. 26, 1985, 99 Stat. 1735; renumbered §104 and amended Pub. L. 100-472, title II, §203, Oct. 5, 1988, 102 Stat. 2290; Pub. L. 101-301, §2(a)(6), May 24, 1990, 104 Stat. 206; Pub. L. 110-81, title I, §104(b), Sept. 14, 2007, 121 Stat. 740.)

**Editorial Notes****CODIFICATION**

Section was formerly classified to section 450i of this title prior to editorial reclassification and renumbering as this section.

Section is comprised of section 104 of Pub. L. 93-638. Subsecs. (a) to (d) of section 104 of Pub. L. 93-638 are classified to section 3371 of Title 5, Government Organization and Employees, section 2004b of Title 42, The Public Health and Welfare, section 3806 of Title 50, War and National Defense, and section 4762 of Title 42, respectively. Subsecs. (k) and (l) of section 104 of Pub. L. 93-638 are classified to section 3372 of Title 5.

**PRIOR PROVISIONS**

A prior section 104 of Pub. L. 93-638 was renumbered section 103 by Pub. L. 100-472 and is classified to section 5322 of this title.

**AMENDMENTS**

2007—Subsec. (j). Pub. L. 110-81 amended subsec. (j) generally. Prior to amendment, text read as follows: “Anything in sections 205 and 207 of title 18 to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, or section 48 of this title and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection with [sic] any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.”

1990—Subsec. (m). Pub. L. 101-301 substituted “an Indian (as defined in section 5129 of this title) appointed (except temporary appointments)” for “an Indian appointed”.

1988—Subsecs. (a), (b). Pub. L. 100-472, §203(b), (c), amended subsecs. (a) and (b). See Codification note above.

Subsec. (e). Pub. L. 100-472, §203(d), (e), in introductory provisions, substituted “Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5” for “Notwithstanding any other law” and struck out “on or before December 31, 1988” after “title 43”, and in par. (2), inserted “or chapter 84 (‘Federal Employees Retirement System’)”. Notwithstanding directory language that the substitution of “Notwithstanding the provisions of sections 8347(o), 8713, and 8914 of title 5” be

made in par. (2) of subsec. (e), the substitution was made in introductory provisions of subsec. (e) to reflect the probable intent of Congress because the language replaced appeared only in those introductory provisions.

Subsecs. (k), (l). Pub. L. 100-472, §203(f), added subsecs. (k) and (l). See Codification note above.

Subsec. (m). Pub. L. 100-472, §203(f), added subsec. (m).

1985—Subsec. (e). Pub. L. 99-221 substituted “1988” for “1985”.

1983—Subsec. (e). Pub. L. 89-702, §210(a), as added by Pub. L. 98-129, inserted “, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-81, title I, §105(d), Sept. 14, 2007, 121 Stat. 741, provided that: “The amendments made by section 104 [amending this section and section 207 of Title 18, Crimes and Criminal Procedure] shall take effect on the date of the enactment of this Act [Sept. 14, 2007], except that section 104(j)(2) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(j)(2)] (as amended by section 104(b)) shall apply to individuals who leave Federal office or employment to which such amendments apply on or after the 60th day after the date of the enactment of this Act.”

##### PRIBILOF ISLAND NATIVES EMPLOYED BY FEDERAL GOVERNMENT ON OCTOBER 28, 1983

Pub. L. 89-702, title II, §210(b), as added by Pub. L. 98-129, §2, Oct. 14, 1983, 97 Stat. 844, provided that: “Notwithstanding any other provision of law, any Native of the Pribilof Islands employed by the Federal government on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93-638), known as the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(e)].”

#### Executive Documents

EX. ORD. NO. 11899. PROVIDING FOR PROTECTION OF CERTAIN CIVIL SERVICE EMPLOYMENT RIGHTS OF FEDERAL PERSONNEL WHO LEAVE FEDERAL EMPLOYMENT TO BE EMPLOYED BY TRIBAL ORGANIZATIONS

Ex. Ord. No. 11899, Jan. 26, 1976, 41 F.R. 3459, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by section 105(i) of the Indian Self-Determination and Education Assistance Act (88 Stat. 2210, 25 U.S.C. 450i) [now 25 U.S.C. 5323], section 3301 of title 5 of the United States Code, section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Office of Personnel Management is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, but after consultation with the Department of the Interior and the Department of Health and Human Services, the authority vested in the President by Section 105(i) of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5323(i)] (hereinafter referred to as the Act), to issue regulations necessary to carry out the provisions of subsections (e)(2), (e)(3), (e)(4), (f), (g) and (h) of section 105 of the act [25 U.S.C. 5323(e)(2), (3), (4), (f), (g), (h)], to carry out the provisions of subsection (e)(1) of section 105 of the act [25 U.S.C. 5323(e)(1)] pertains to section 8151 of title 5 of the United States Code, and to protect and assure any other civil service employment rights which it finds appropriate.

SEC. 2. The Office of Personnel Management shall, after consultation with the Department of the Interior and the Department of Health and Human Services, issue regulations, as it deems appropriate, providing for the establishment, granting, and exercise of reemployment rights for employees who leave Federal employment for employment by an Indian tribal organization under provisions of the act.

SEC. 3. The Secretary of Labor is hereby designated and empowered to exercise, without approval, ratification, or other action by the President, the authority vested in the President by section 105(i) of the act [25 U.S.C. 5323(i)] to issue regulations necessary to carry out the provisions of section 105(e)(1) of the act [25 U.S.C. 5323(e)(1)], except as provided in section 1 of this order.

#### § 5324. Contract or grant provisions and administration

##### (a) Applicability of Federal contracting laws and regulations; waiver of requirements

(1) Notwithstanding any other provision of law, subject to paragraph (3), the contracts and cooperative agreements entered into with tribal organizations pursuant to section 5321 of this title shall not be subject to Federal contracting or cooperative agreement laws (including any regulations), except to the extent that such laws expressly apply to Indian tribes.

(2) Program standards applicable to a non-construction self-determination contract shall be set forth in the contract proposal and the final contract of the tribe or tribal organization.

(3)(A) With respect to a construction contract (or a subcontract of such a construction contract), the provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and the regulations relating to acquisitions promulgated under division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 shall apply only to the extent that the application of such provision<sup>1</sup> to the construction contract (or subcontract) is—

(i) necessary to ensure that the contract may be carried out in a satisfactory manner;

(ii) directly related to the construction activity; and

(iii) not inconsistent with this chapter.

(B) A list of the Federal requirements that meet the requirements of clauses (i) through (iii) of subparagraph (A) shall be included in an attachment to the contract pursuant to negotiations between the Secretary and the tribal organization.

(C)(i) Except as provided in subparagraph (B), no Federal law listed in clause (ii) or any other provision of Federal law (including an Executive order) relating to acquisition by the Federal Government shall apply to a construction contract that a tribe or tribal organization enters into under this chapter, unless expressly provided in such law.

(ii) The laws listed in this paragraph are as follows:

(I) Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(II) Section 6101 of title 41.

(III) Section 9(c)<sup>2</sup> of the Act of Aug. 2, 1946 (60 Stat. 809, chapter 744).

<sup>1</sup> So in original. Probably should be “provisions”.

<sup>2</sup> See References in Text note below.

(IV) Division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(V) Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479).

(VI) Chapters 21, 25, 27, 29, and 31 of title 44.

(VII) Section 3145 of title 40.

(VIII) Chapter 65 of title 41.

(IX) Chapter 67 of title 41.

(X) The Small Business Act (15 U.S.C. 631 et seq.).

(XI) Executive Order Nos. 12138, 11246, 11701 and 11758.

**(b) Payments; transfer of funds by Treasury for disbursement by tribal organization; accountability for interest accrued prior to disbursement**

Payments of any grants or under any contracts pursuant to sections 5321 and 5322 of this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the appropriate Secretary deems necessary to carry out the purposes of this subchapter. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

**(c) Term of self-determination contracts; annual renegotiation**

(1) A self-determination contract shall be—

(A) for a term not to exceed three years in the case of other than a mature contract, unless the appropriate Secretary and the tribe agree that a longer term would be advisable, and

(B) for a definite or an indefinite term, as requested by the tribe (or, to the extent not limited by tribal resolution, by the tribal organization), in the case of a mature contract.

The amounts of such contracts shall be subject to the availability of appropriations.

(2) The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization.

**(d) Calendar year basis for contracts**

(1) Beginning in fiscal year 1990, upon the election of a tribal organization, the Secretary shall use the calendar year as the basis for any contracts or agreements under this chapter, unless the Secretary and the Indian tribe or tribal organization agree on a different period.

(2) The Secretary shall, on or before April 1 of each year beginning in 1992, submit a report to the Congress on the amounts of any additional obligation authority needed to implement this subsection in the next following fiscal year.

**(e) Effective date for retrocession of contract**

If an Indian tribe, or a tribal organization authorized by a tribe, requests retrocession of the

appropriate Secretary for any contract or portion of a contract entered into pursuant to this chapter, unless the tribe or tribal organization rescinds the request for retrocession, such retrocession shall become effective on—

(1) the earlier of—

(A) the date that is 1 year after the date the Indian tribe or tribal organization submits such request; or

(B) the date on which the contract expires; or

(2) such date as may be mutually agreed by the Secretary and the Indian tribe.

**(f) Use of existing school buildings, hospitals, and other facilities and equipment therein; acquisition and donation of excess or surplus Government personal property**

In connection with any self-determination contract or grant made pursuant to section 5321 or 5322 of this title, the appropriate Secretary may—

(1) permit an Indian tribe or tribal organization in carrying out such contract or grant, to utilize existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance;

(2) 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, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of the retrocession, rescission, or termination of the self-determination contract or grant agreement, at the option of the Secretary, upon the retrocession, rescission, or termination, title to such property and equipment shall revert to the Department of the Interior or the Department of Health and Human Services, as appropriate; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement on the same basis as if title to such property were vested in the United States; and

(3) acquire excess or surplus Government personal or real property for donation to an Indian tribe or tribal organization if the Secretary determines the property is appropriate for use by the tribe or tribal organization for a purpose for which a self-determination contract or grant agreement is authorized under this chapter.

**(g) Performance of personal services**

The contracts authorized under section 5321 of this title and grants pursuant to section 5322 of

this title may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

**(h) Fair and uniform provision by tribal organization of services and assistance to covered Indians**

Contracts and grants with tribal organizations pursuant to sections 5321 and 5322 of this title shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

**(i) Division of administration of program**

(1) If a self-determination contract requires the Secretary to divide the administration of a program that has previously been administered for the benefit of a greater number of tribes than are represented by the tribal organization that is a party to the contract, the Secretary shall take such action as may be necessary to ensure that services are provided to the tribes not served by a self-determination contract, including program redesign in consultation with the tribal organization and all affected tribes.

(2) Nothing in this subchapter shall be construed to limit or reduce in any way the funding for any program, project, or activity serving a tribe under this or other applicable Federal law. Any tribe or tribal organization that alleges that a self-determination contract is in violation of this section may apply the provisions of section 5331 of this title.

**(j) Proposal to redesign program, activity, function, or service**

Upon providing notice to the Secretary, a tribal organization that carries out a nonconstruction self-determination contract may propose a redesign of a program, activity, function, or service carried out by the tribal organization under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function, or service provided under the contract. With respect to declining to approve a redesigned program, activity, function, or service under this subsection, the Secretary shall apply the criteria and procedures set forth in section 5321 of this title.

**(k) Access to Federal sources of supply**

For purposes of section 501 of title 40 (relating to Federal sources of supply, including lodging providers, airlines and other transportation pro-

viders), a tribal organization carrying out a contract, grant, or cooperative agreement under this chapter shall be deemed an executive agency and part of the Indian Health Service when carrying out such contract, grant, or agreement and the employees of the tribal organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access. For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.

**(l) Lease of facility used for administration and delivery of services**

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this chapter.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

**(m) Statutory requirements; technical assistance; precontract negotiation phase; fixed price construction contract**

(1) Each construction contract requested, approved, or awarded under this chapter, shall be subject to—

(A) except as otherwise provided in this chapter, the provisions of this chapter, other than sections 5321(a)(2), 5325(l), 5329 and 5330 of this title; and

(B) section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (104 Stat. 1959).

(2) In providing technical assistance to tribes and tribal organizations in the development of construction contract proposals, the Secretary shall provide, not later than 30 days after receiving a request from a tribe or tribal organization, all information available to the Secretary regarding the construction project, including construction drawings, maps, engineering reports, design reports, plans of requirements, cost estimates, environmental assessments or environmental impact reports, and archaeological reports.

(3) Prior to finalizing a construction contract proposal pursuant to section 5321(a) of this title,

and upon request of the tribe or tribal organization that submits the proposal, the Secretary shall provide for a precontract negotiation phase in the development of a contract proposal. Such phase shall include, at a minimum, the following elements:

(A) The provision of technical assistance pursuant to section 5322 of this title and paragraph (2).

(B) A joint scoping session between the Secretary and the tribe or tribal organization to review all plans, specifications, engineering reports, cost estimates, and other information available to the parties, for the purpose of identifying all areas of agreement and disagreement.

(C) An opportunity for the Secretary to revise the plans, designs, or cost estimates of the Secretary in response to concerns raised, or information provided by, the tribe or tribal organization.

(D) A negotiation session during which the Secretary and the tribe or tribal organization shall seek to develop a mutually agreeable contract proposal.

(E) Upon the request of the tribe or tribal organization, the use of an alternative dispute resolution mechanism to seek resolution of all remaining areas of disagreement pursuant to the dispute resolution provisions under subchapter IV of chapter 5 of title 5.

(F) The submission to the Secretary by the tribe or tribal organization of a final contract proposal pursuant to section 5321(a) of this title.

(4)(A) Subject to subparagraph (B), in funding a fixed-price construction contract pursuant to section 5325(a) of this title, the Secretary shall provide for the following:

(i) The reasonable costs to the tribe or tribal organization for general administration incurred in connection with the project that is the subject of the contract.

(ii) The ability of the contractor that carries out the construction contract to make a reasonable profit, taking into consideration the risks associated with carrying out the contract and other relevant considerations.

(B) In establishing a contract budget for a construction project, the Secretary shall not be required to separately identify the components described in clauses (i) and (ii) of subparagraph (A).

(C) The total amount awarded under a construction contract shall reflect an overall fair and reasonable price to the parties, including the following costs:

(i) The reasonable costs to the tribal organization of performing the contract, taking into consideration the terms of the contract and the requirements of this chapter and any other applicable law.

(ii) The costs of preparing the contract proposal and supporting cost data.

(iii) The costs associated with auditing the general and administrative costs of the tribal organization associated with the management of the construction contract.

(iv) In the case of a fixed-price contract, a fair profit determined by taking into consider-

ation the relevant risks and local market conditions.

(v) If the Secretary and the tribe or tribal organization are unable to develop a mutually agreeable construction contract proposal pursuant to the procedures set forth in this subsection, the tribe or tribal organization may submit a final contract proposal to the Secretary. Not later than 30 days after receiving such final contract proposal, the Secretary shall approve the contract proposal and award the contract, unless, during such period the Secretary declines the proposal pursuant to subsections (a)(2) and (b)<sup>2</sup> of section 5321 of this title (including providing opportunity for an appeal pursuant to section 5321(b) of this title).

**(n) Rental rates for housing for Government employees in Alaska**

Notwithstanding any other provision of law, the rental rates for housing provided to an employee by the Federal Government in Alaska pursuant to a self-determination contract shall be determined on the basis of—

(1) the reasonable value of the quarters and facilities (as such terms are defined under section 5911 of title 5) to such employee, and

(2) the circumstances under which such quarters and facilities are provided to such employee,

as based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

**(o) Patient records**

**(1) In general**

At the option of an Indian tribe or tribal organization, patient records may be deemed to be Federal records under those provisions of title 44 that are commonly referred to as the “Federal Records Act of 1950” for the limited purposes of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records.

**(2) Treatment of records**

Patient records that are deemed to be Federal records under those provisions of title 44 that are commonly referred to as the “Federal Records Act of 1950” pursuant to this subsection shall not be considered Federal records for the purposes of chapter 5 of title 5.

**(p) Interpretation by Secretary**

Except as otherwise provided by law, the Secretary shall interpret all Federal laws (including regulations) and Executive orders in a manner that facilitates, to the maximum extent practicable—

(1) the inclusion in self-determination contracts and funding agreements of—

(A) applicable programs, services, functions, and activities (or portions thereof); and

(B) funds associated with those programs, services, functions, and activities;

(2) the implementation of self-determination contracts and funding agreements; and

(3) the achievement of Tribal health objectives.

**(q) Technical assistance for internal controls**

(1) TECHNICAL ASSISTANCE FOR INTERNAL CONTROLS.—<sup>3</sup>In considering proposals for, amendments to, or in the course of, a contract under this subchapter and compacts under subchapters IV and V of this chapter, if the Secretary determines that the Indian Tribe lacks adequate internal controls necessary to manage the contracted program or programs, the Secretary shall, as soon as practicable, provide the necessary technical assistance to assist the Indian Tribe in developing adequate internal controls. As part of that technical assistance, the Secretary and the Tribe shall develop a plan for assessing the subsequent effectiveness of such technical assistance. The inability of the Secretary to provide technical assistance or lack of a plan under this subsection shall not result in the reassumption of an existing agreement, contract, or compact, or declination or rejection of a new agreement, contract, or compact.

(2) The Secretary shall prepare a report to be included in the information required for the reports under sections 5372(b)(2)(A) and 5394(b)(2)(A) of this title. The Secretary shall include in this report, in the aggregate, a description of the internal controls that were inadequate, the technical assistance provided, and a description of Secretarial actions taken to address any remaining inadequate internal controls after the provision of technical assistance and implementation of the plan required by paragraph (1).

(Pub. L. 93-638, title I, §105, formerly §106, Jan. 4, 1975, 88 Stat. 2210; renumbered §105 and amended Pub. L. 100-472, title II, §204, Oct. 5, 1988, 102 Stat. 2291; Pub. L. 101-301, §2(a)(7), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, title II, §203(c)-(e), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §§102(10)-(13), 106, Oct. 25, 1994, 108 Stat. 4253-4255, 4270; Pub. L. 104-109, §7, Feb. 12, 1996, 110 Stat. 764; Pub. L. 106-260, §§7, 8, Aug. 18, 2000, 114 Stat. 732, 733; Pub. L. 116-180, title II, §203, Oct. 21, 2020, 134 Stat. 880.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(3)(A)(iii), (C)(i), (d)(1), (e), (f)(3), (k), (l)(1), and (m)(1), (4)(C)(i), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 9(c) of the Act of Aug. 2, 1946, referred to in subsec. (a)(3)(C)(ii)(III), was section 9(c) of act Aug. 2, 1946, ch. 744, 60 Stat. 809, which amended section 5 of former Title 41, Public Contracts, and was repealed by Pub. L. 111-350, §7(b), Jan. 4, 2011, 124 Stat. 3855, which Act enacted Title 41, Public Contracts.

Section 13 of the Act of Oct. 3, 1944 (58 Stat. 770; chapter 479), referred to in subsec. (a)(3)(C)(ii)(V), is act Oct. 3, 1944, ch. 479, §13, 58 Stat. 770, which is set out as a note under section 545 of Title 40, Public Buildings, Property, and Works.

<sup>3</sup>So in original. The heading of par. (1) was probably meant for subsec. (q), the heading of which was editorially supplied.

The Small Business Act, referred to in subsec. (a)(3)(C)(ii)(X), is Pub. L. 85-536, §2(c) et seq., July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Executive Order Nos. 12138, 11246, 11701 and 11758, referred to in subsec. (a)(3)(C)(ii)(XL), are Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, which is set out as a note under section 631 of Title 15, Commerce and Trade, Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, which is set out as a note under section 2000e of Title 42, The Public Health and Welfare, Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, which is set out as a note under section 4212 of Title 38, Veterans' Benefits, and Ex. Ord. No. 11758, Jan. 15, 1974, 39 F.R. 2075, which is set out as a note under section 701 of Title 29, Labor.

This subchapter, referred to in subsecs. (b), (i)(2), and (q)(1), was in the original “this title”, meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to this subchapter (§5321 et seq.). For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in subsec. (m)(1)(B), is section 314 of Pub. L. 101-512, which is set out as a note under section 5321 of this title.

Subsections (a)(2) and (b) of section 5321 of this title, referred to in subsec. (m)(4)(C)(v), was in the original “sections 102(a)(2) and 102(b) of section 102”, and was translated as reading “subsections (a)(2) and (b) of section 102”, meaning section 102 of Pub. L. 93-638, to reflect the probable intent of Congress.

The Federal Records Act of 1950, referred to in subsec. (o), was title V of act June 30, 1949, ch. 288, as added Sept. 5, 1950, ch. 849, §6(d), 64 Stat. 583, which was classified generally to sections 392 to 396 and 397 to 401 of former Title 44, Public Printing and Documents. Section 6(d) of act Sept. 5, 1950, was repealed by Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1238, the first section of which enacted Title 44, Public Printing and Documents. For disposition of sections of former Title 44, see Table at the beginning of Title 44. Title V of act June 30, 1949, was repealed by Pub. L. 107-217, §4, Aug. 21, 2002, 116 Stat. 1303.

CODIFICATION

Section was formerly classified to section 450j of this title prior to editorial reclassification and renumbering as this section.

In subsec. (a)(3)(A), “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” substituted for “the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)” and for “such Act” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(I), “Chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works, and Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(II), “Section 6101 of title 41” substituted for “Section 3709 of the Revised Statutes” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(IV), “Division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41” substituted for “Title III of the Federal Property and Administrative Services Act of 1949 (63 Stat. 393 et seq., chapter 288)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.



In subsec. (a)(3)(C)(ii)(VII), “Section 3145 of title 40” substituted for “Section 2 of the Act of June 13, 1934 (48 Stat. 948, chapter 483 [482])” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

In subsec. (a)(3)(C)(ii)(VIII), “Chapter 65 of title 41” substituted for “Sections 1 through 12 of the Act of June 30, 1936 (49 Stat. 2036 et seq. chapter 881)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (a)(3)(C)(ii)(IX), “Chapter 67 of title 41” substituted for “The Service Control [Contract] Act of 1965 (41 U.S.C. 351 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (k), “section 501 of title 40” substituted for “section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a))” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, which Act enacted Title 40, Public Buildings, Property, and Works.

#### PRIOR PROVISIONS

A prior section 105 of Pub. L. 93-638 was renumbered section 104 by Pub. L. 100-472 and is classified to section 5323 of this title.

#### AMENDMENTS

2020—Subsec. (b). Pub. L. 116-180, §203(1), substituted reference to sections 5321 and 5322 of this title for reference to section 5321 of this title, former section 103 of Pub. L. 93-638, or section 5322 of this title. For disposition of former section 103 of Pub. L. 93-638, see Prior Provisions note set out under section 5322 of this title.

Subsecs. (p), (q). Pub. L. 116-180, §203(2), added subsecs. (p) and (q).

2000—Subsec. (k). Pub. L. 106-260, §7, substituted “deemed an executive agency and part of the Indian Health Service” for “deemed an executive agency” and inserted at end “For purposes of carrying out such contract, grant, or agreement, the Secretary shall, at the request of an Indian tribe, enter into an agreement for the acquisition, on behalf of the Indian tribe, of any goods, services, or supplies available to the Secretary from the General Services Administration or other Federal agencies that are not directly available to the Indian tribe under this section or under any other Federal law, including acquisitions from prime vendors. All such acquisitions shall be undertaken through the most efficient and speedy means practicable, including electronic ordering arrangements.”

Subsec. (o). Pub. L. 106-260, §8, added subsec. (o).

1996—Subsec. (e). Pub. L. 104-109 made technical amendment to directory language of Pub. L. 103-413, §102(11). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-413, §102(10), added subsec. (a) and struck out former subsec. (a) which read as follows: “Contracts with tribal organizations pursuant to section 5321 of this title shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of sections 270a to 270d of title 40: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistent with the provisions of this Act: *Provided further*, That, except for construction contracts (or sub-contracts of such a construction contract), the Office of Federal Procurement Policy Act (88 Stat. 796; 41 U.S.C. 401 et seq.) and Federal acquisition regulations promulgated thereunder shall not apply to self-determination contracts.”

Subsec. (e). Pub. L. 103-413, §102(11), as amended by Pub. L. 104-109, added subsec. (e) and struck out former subsec. (e) which read as follows: “Whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act,

such retrocession shall become effective one year from the date of the request by the Indian tribe or at such date as may be mutually agreed by the Secretary and the Indian tribe.”

Subsec. (f)(2). Pub. L. 103-413, §102(12), added par. (2) and struck out former par. (2) which read as follows: “donate to an Indian tribe or tribal organization the 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, including property and equipment purchased with funds under any self-determination contract or grant agreement; and”.

Subsec. (h). Pub. L. 103-413, §106, struck out “and the rules and regulations adopted by the Secretaries of the Interior and Health and Human Services pursuant to section 5328 of this title” after “sections 5321 and 5322 of this title”.

Subsecs. (i) to (n). Pub. L. 103-413, §102(13), added subsecs. (i) to (n).

1990—Subsec. (a). Pub. L. 101-301 substituted “sub-contracts of such a construction contract” for “sub-contracts in such cases where the tribal contractor has sub-contracted the activity”.

Subsec. (c)(1)(B). Pub. L. 101-644, §203(c), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “for an indefinite term in the case of a mature contract.”

Subsec. (d). Pub. L. 101-644, §203(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(1) No later than fiscal year 1990, the Secretary shall begin using the calendar year as the basis for contracts and agreements under this Act except for instances where the Secretary and the Indian tribe or tribal organization agree on a different period.

“(2) The Secretary shall submit a report to the Congress within ninety days of October 5, 1988, on the amounts of any additional obligational authority needed to implement this subsection in fiscal year 1989.”

Subsec. (f)(2), (3). Pub. L. 101-644, §203(e), inserted “or real” after “personal”.

1988—Subsec. (a). Pub. L. 100-472, §204(b), (c), substituted reference to section 5321 of this title for reference to section 5321 of this title and former section 103 of Pub. L. 93-638 and inserted proviso relating to nonapplication of Office of Federal Procurement Policy Act to self-determination contracts. See Prior Provisions note set out under section 5322 of this title.

Subsec. (b). Pub. L. 100-472, §204(d), which directed the amendment of subsec. (b) by substituting reference to sections 5321 and 5322 of this title for text in original Act reading “sections 102, 103, and 104”, could not be executed because text enacted by Pub. L. 93-638 read “section 102, 103, or 104”. Intended amendment was reenacted by Pub. L. 116-180, §203(1), see 2020 Amendment note above.

Subsec. (c). Pub. L. 100-472, §204(e), added subsec. (c) and struck out former subsec. (c) which related to limitation on term of any contract requested by a tribe pursuant to section 5321 of this title and former section 103 of Pub. L. 93-638 and annual renegotiation of amounts. See Prior Provisions note set out under section 5322 of this title.

Subsec. (d). Pub. L. 100-472, §204(e), added subsec. (d) and struck out former subsec. (d) which related to revision or amendment of contracts or grants at request or with consent of tribal organization and effective date for retrocession of contracts.

Subsec. (e). Pub. L. 100-472, §204(e), added subsec. (e) and struck out former subsec. (e) which authorized the Secretary to permit tribal organizations to use existing school buildings, hospitals, and other facilities and equipment therein in carrying out grants or contracts.

Subsec. (f). Pub. L. 100-472, §204(e), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-472, §204(f), redesignated former subsec. (f) as (g) and substituted reference to section 5321 of this title for reference to section 5321 of this title and former section 103 of Pub. L. 93-638.

Former subsec. (g) redesignated (h). See Prior Provisions note set out under section 5322 of this title.

Subsec. (h). Pub. L. 100-472, §204(g), (h), redesignated former subsec. (g) as (h), substituted reference to sections 5321 and 5322 of this title for reference to section 5321 of this title, former section 103 of Pub. L. 93-638, and section 5322 of this title, and reference to Health and Human Services for reference to Health, Education, and Welfare. Former subsec. (h), which related to minimum amount of funds under terms of contracts, was struck out. See Prior Provisions note set out under section 5322 of this title.

#### Statutory Notes and Related Subsidiaries

##### CONTINUED AVAILABILITY OF CERTAIN FUNDS

Pub. L. 105-277, div. A, §101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-246, provided in part that: "hereafter funds made available to tribes and tribal organizations through contracts, compact agreements, or grants, as authorized by the Indian Self-Determination Act of 1975 [25 U.S.C. 5321 et seq.] or grants authorized by the Indian Education Amendments of 1988 (25 U.S.C. 2001 and 2008A [probably means prior versions of 25 U.S.C. 2001 and 2008a]) shall remain available until expended by the contractor or grantee".

#### § 5325. Contract funding and indirect costs

##### (a) Amount of funds provided

(1) The amount of funds provided under the terms of self-determination contracts entered into pursuant to this chapter shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated.

(2) There shall be added to the amount required by paragraph (1) contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management, but which—

(A) normally are not carried on by the respective Secretary in his direct operation of the program; or

(B) are provided by the Secretary in support of the contracted program from resources other than those under contract.

(3)(A) The contract support costs that are eligible costs for the purposes of receiving funding under this chapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract; and

(ii) any additional administrative or other expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section.

(B) In calculating the reimbursement rate for expenses described in subparagraph (A)(ii), not less than 50 percent of the expenses described in subparagraph (A)(ii) that are incurred by the governing body of an Indian Tribe or Tribal organization relating to a Federal program, function, service, or activity carried out pursuant to the contract shall be considered to be reasonable and allowable.

(C) On an annual basis, during such period as a tribe or tribal organization operates a Federal program, function, service, or activity pursuant to a contract entered into under this chapter, the tribe or tribal organization shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.

(4) For each fiscal year during which a self-determination contract is in effect, any savings attributable to the operation of a Federal program, function, service, or activity under a self-determination contract by a tribe or tribal organization (including a cost reimbursement construction contract) shall—

(A) be used to provide additional services or benefits under the contract; or

(B) be expended by the tribe or tribal organization in the succeeding fiscal year, as provided in section 13a of this title.

(5) Subject to paragraph (6), during the initial year that a self-determination contract is in effect, the amount required to be paid under paragraph (2) shall include startup costs consisting of the reasonable costs that have been incurred or will be incurred on a one-time basis pursuant to the contract necessary—

(A) to plan, prepare for, and assume operation of the program, function, service, or activity that is the subject of the contract; and

(B) to ensure compliance with the terms of the contract and prudent management.

(6) Costs incurred before the initial year that a self-determination contract is in effect may not be included in the amount required to be paid under paragraph (2) if the Secretary does not receive a written notification of the nature and extent of the costs prior to the date on which such costs are incurred.

##### (b) Reductions and increases in amount of funds provided

The amount of funds required by subsection (a) of this section—

(1) shall not be reduced to make funding available for contract monitoring or administration by the Secretary;

(2) shall not be reduced by the Secretary in subsequent years except pursuant to—

(A) a reduction in appropriations from the previous fiscal year for the program or function to be contracted;

(B) a directive in the statement of the managers accompanying a conference report on an appropriation bill or continuing resolution;

(C) a tribal authorization;

(D) a change in the amount of pass-through funds needed under a contract; or

(E) completion of a contracted project, activity, or program;

(3) shall not be reduced by the Secretary to pay for Federal functions, including, but not limited to, Federal pay costs, Federal employee retirement benefits, automated data processing, contract technical assistance or contract monitoring;

(4) shall not be reduced by the Secretary to pay for the costs of Federal personnel displaced by a self-determination contract; and

(5) may, at the request of the tribal organization, be increased by the Secretary if necessary to carry out this chapter or as provided in section 5324(c) of this title.

Notwithstanding any other provision in this chapter, the provision of funds under this chapter is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization under this chapter.

**(c) Annual reports**

Not later than May 15 of each year, the Secretary shall prepare and submit to Congress an annual report on the implementation of this chapter. Such report shall include—

(1) an accounting of the total amounts of funds provided for each program and the budget activity for direct program costs and contract support costs of tribal organizations under self-determination;

(2) an accounting of any deficiency in funds needed to provide required contract support costs to all contractors for the fiscal year for which the report is being submitted;

(3) the indirect cost rate and type of rate for each tribal organization that has been negotiated with the appropriate Secretary;

(4) the direct cost base and type of base from which the indirect cost rate is determined for each tribal organization;

(5) the indirect cost pool amounts and the types of costs included in the indirect cost pool; and

(6) an accounting of any deficiency in funds needed to maintain the preexisting level of services to any Indian tribes affected by contracting activities under this chapter, and a statement of the amount of funds needed for transitional purposes to enable contractors to convert from a Federal fiscal year accounting cycle, as authorized by section 5324(d) of this title.

**(d) Treatment of shortfalls in indirect cost recoveries**

(1) Where a tribal organization's allowable indirect cost recoveries are below the level of indirect costs that the tribal organizations should have received for any given year pursuant to its approved indirect cost rate, and such shortfall is the result of lack of full indirect cost funding by any Federal, State, or other agency, such shortfall in recoveries shall not form the basis for any theoretical over-recovery or other adverse adjustment to any future years' indirect cost rate or amount for such tribal organization, nor shall any agency seek to collect such shortfall from the tribal organization.

(2) Nothing in this subsection shall be construed to authorize the Secretary to fund less

than the full amount of need for indirect costs associated with a self-determination contract.

**(e) Liability for indebtedness incurred before fiscal year 1992**

Indian tribes and tribal organizations shall not be held liable for amounts of indebtedness attributable to theoretical or actual under-recoveries or theoretical over-recoveries of indirect costs, as defined in Office of Management and Budget Circular A-87, incurred for fiscal years prior to fiscal year 1992.

**(f) Limitation on remedies relating to cost disallowances**

Any right of action or other remedy (other than those relating to a criminal offense) relating to any disallowance of costs shall be barred unless the Secretary has given notice of any such disallowance within three hundred and sixty-five days of receiving any required annual single agency audit report or, for any period covered by law or regulation in force prior to October 19, 1984, any other required final audit report. Such notice shall set forth the right of appeal and hearing to the board of contract appeals pursuant to section 5331 of this title. For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to noncompliance with chapter 75 of title 31 or noncompliance with any other applicable law. Nothing in this subsection shall be deemed to enlarge the rights of the Secretary with respect to section 5123 of this title.

**(g) Addition to contract of full amount contractor entitled; adjustment**

Upon the approval of a self-determination contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under subsection (a) of this section, subject to adjustments for each subsequent year that such tribe or tribal organization administers a Federal program, function, service, or activity under such contract.

**(h) Indirect costs for contracts for construction programs**

In calculating the indirect costs associated with a self-determination contract for a construction program, the Secretary shall take into consideration only those costs associated with the administration of the contract and shall not take into consideration those moneys actually passed on by the tribal organization to construction contractors and subcontractors.

**(i) Indian Health Service and Bureau of Indian Affairs budget consultations**

On an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31).

**(j) Use of funds for matching or cost participation requirements**

Notwithstanding any other provision of law, a tribal organization may use funds provided under a self-determination contract to meet matching or cost participation requirements under other Federal and non-Federal programs.

**(k) Allowable uses of funds without approval of Secretary**

Without intending any limitation, a tribal organization may, without the approval of the Secretary, expend funds provided under a self-determination contract for the following purposes, to the extent that the expenditure of the funds is supportive of a contracted program:

- (1) Depreciation and use allowances not otherwise specifically prohibited by law, including the depreciation of facilities owned by the tribe or tribal organization.
- (2) Publication and printing costs.
- (3) Building, realty, and facilities costs, including rental costs or mortgage expenses.
- (4) Automated data processing and similar equipment or services.
- (5) Costs for capital assets and repairs.
- (6) Management studies.
- (7) Professional services, other than services provided in connection with judicial proceedings by or against the United States.
- (8) Insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with the contract without regard to the ownership of such property.
- (9) Costs incurred to raise funds or contributions from non-Federal sources for the purpose of furthering the goals and objectives of the self-determination contract.
- (10) Interest expenses paid on capital expenditures such as buildings, building renovation, or acquisition or fabrication of capital equipment, and interest expenses on loans necessitated due to delays by the Secretary in providing funds under a contract.
- (11) Expenses of a governing body of a tribal organization that are attributable to the management or operation of programs under this chapter.
- (12) Costs associated with the management of pension funds, self-insurance funds, and other funds of the tribal organization that provide for participation by the Federal Government.

**(l) Suspension, withholding, or delay in payment of funds**

(1) The Secretary may only suspend, withhold, or delay the payment of funds for a period of 30 days beginning on the date the Secretary makes a determination under this paragraph to a tribal organization under a self-determination contract, if the Secretary determines that the tribal organization has failed to substantially carry out the contract without good cause. In any such case, the Secretary shall provide the tribal organization with reasonable advance written notice, technical assistance (subject to available resources) to assist the tribal organization, a hearing on the record not later than 10 days after the date of such determination or such

later date as the tribal organization shall approve, and promptly release any funds withheld upon subsequent compliance.

(2) With respect to any hearing or appeal conducted pursuant to this subsection, the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for suspending, withholding, or delaying payment of funds.

**(m) Use of program income earned**

The program income earned by a tribal organization in the course of carrying out a self-determination contract—

(1) shall be used by the tribal organization to further the general purposes of the contract; and

(2) shall not be a basis for reducing the amount of funds otherwise obligated to the contract.

**(n) Reduction of administrative or other responsibilities of Secretary; use of savings**

To the extent that programs, functions, services, or activities carried out by tribal organizations pursuant to contracts entered into under this chapter reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of contract funds determined under subsection (a) of this section, the Secretary shall make such savings available for the provision of additional services to program beneficiaries, either directly or through contractors, in a manner equitable to both direct and contracted programs.

**(o) Rebudgeting by tribal organization**

Notwithstanding any other provision of law (including any regulation), a tribal organization that carries out a self-determination contract may, with respect to allocations within the approved budget of the contract, rebudget to meet contract requirements, if such rebudgeting would not have an adverse effect on the performance of the contract.

(Pub. L. 93-638, title I, §106, as added Pub. L. 100-472, title II, §205, Oct. 5, 1988, 102 Stat. 2292; amended Pub. L. 101-301, §2(a)(8), (9), May 24, 1990, 104 Stat. 207; Pub. L. 101-644, title II, §203(a), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §102(14)-(19), Oct. 25, 1994, 108 Stat. 4257-4259; Pub. L. 105-362, title VIII, §801(g), Nov. 10, 1998, 112 Stat. 3288; Pub. L. 106-260, §9, Aug. 18, 2000, 114 Stat. 733; Pub. L. 116-180, title II, §204, Oct. 21, 2020, 134 Stat. 880.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (3), (b), (c), (k)(11), and (n), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 450j-1 of this title prior to editorial reclassification and renumbering as this section.

## PRIOR PROVISIONS

A prior section 106 of Pub. L. 93-638 was renumbered section 105 by Pub. L. 100-472 and is classified to section 5324 of this title.

## AMENDMENTS

2020—Subsec. (a)(3)(A). Pub. L. 116-180, §204(1), substituted “; and” for “, and” in cl. (i) and “expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred” for “expense related to the overhead incurred” in cl. (ii).

Subsec. (a)(3)(B), (C). Pub. L. 116-180, §204(2), (3), added subpar. (B) and redesignated former subpar. (B) as (C).

2000—Subsecs. (c) to (o). Pub. L. 106-260 added subsec. (c) and redesignated former subsecs. (c) to (n) as (d) to (o), respectively.

1998—Subsecs. (c) to (o). Pub. L. 105-362 redesignated subsecs. (d) to (o) as (c) to (n), respectively, and struck out former subsec. (c) which related to Secretary’s annual report to Congress on implementation of this chapter.

1994—Subsec. (a)(1). Pub. L. 103-413, §102(14)(A), inserted before period at end “, without regard to any organizational level within the Department of the Interior or the Department of Health and Human Services, as appropriate, at which the program, function, service, or activity or portion thereof, including supportive administrative functions that are otherwise contractable, is operated”.

Subsec. (a)(2). Pub. L. 103-413, §102(14)(B), inserted “an amount for” after “consist of”.

Subsec. (a)(3). Pub. L. 103-413, §102(14)(C), added par. (3) and struck out former par. (3) which read as follows: “Any savings in operation under a self-determination contract shall be utilized to provide additional services or benefits under the contract or be expended in the succeeding fiscal year as provided in section 13a of this title.”

Subsec. (a)(4) to (6). Pub. L. 103-413, §102(14)(C), added pars. (4) to (6).

Subsec. (c). Pub. L. 103-413, §102(15)(A), substituted “May 15” for “March 15” in introductory provisions.

Subsec. (c)(1), (2). Pub. L. 103-413, §102(15)(B), substituted “contract support costs” for “indirect costs”.

Subsec. (c)(6). Pub. L. 103-413, §102(15)(C)–(E), added par. (6).

Subsec. (f). Pub. L. 103-413, §102(16), inserted after second sentence “For the purpose of determining the 365-day period specified in this paragraph, an audit report shall be deemed to have been received on the date of actual receipt by the Secretary, if, within 60 days after receiving the report, the Secretary does not give notice of a determination by the Secretary to reject the single-agency report as insufficient due to non-compliance with chapter 75 of title 31 or noncompliance with any other applicable law.”

Subsec. (g). Pub. L. 103-413, §102(17), added subsec. (g) and struck out former subsec. (g) which read as follows: “Upon the approval of a self-determination contract and at the request of an Indian tribe or tribal organization, the Secretary shall add the indirect cost funding amount awarded for a self-determination contract to the amount awarded for direct program funding for the first year and, subject to adjustments in the amount of direct program costs for the contract, for each subsequent year that the program remains continuously under contract.”

Subsec. (i). Pub. L. 103-413, §102(18), added subsec. (i) and struck out former subsec. (i) which read as follows: “Within one month after October 5, 1988, the Secretary is mandated to establish a team in each area of the Bureau of Indian Affairs which consists of agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency) and tribal representatives for the purpose of analyzing the ‘Indian Priority System’ and other aspects of the budgeting and funding allocation process of the Bureau of

Indian Affairs for the purpose of making a report to Congress with appropriate recommendations for changes and legislative actions to achieve greater tribal decision-making authority over the use of funds appropriated for the benefit of the tribes and their members. The report along with the analysis, findings and recommendations of the area teams shall be submitted to Congress within six months of October 5, 1988. The Secretary may submit to Congress separate comments on the information and recommendations on the report.”

Subsecs. (j) to (o). Pub. L. 103-413, §102(19), added subsecs. (j) to (o).

1990—Subsec. (e). Pub. L. 101-644 substituted “1992” for “1988”.

Subsec. (f). Pub. L. 101-301, §2(a)(8), substituted “prior to enactment of chapter 75 of title 31” for “prior to enactment of the Single Agency Audit Act of 1984 (chapter 75 of title 31)”, which for purposes of codification was translated as “prior to October 19, 1984”, requiring no change in text.

Subsec. (i). Pub. L. 101-301, §2(a)(9), substituted “agency personnel (area personnel in the Navajo Area and in the case of Indian tribes not served by an agency)” for “agency personnel”.

### §5326. Indian Health Service: availability of funds for Indian self-determination or self-governance contract or grant support costs

Before, on, and after October 21, 1998, and notwithstanding any other provision of law, funds available to the Indian Health Service in this Act or any other Act for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act [25 U.S.C. 5321 et seq.] and no funds appropriated by this or any other Act shall be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact, or funding agreement entered into between an Indian tribe or tribal organization and any entity other than the Indian Health Service.

(Pub. L. 105-277, div. A, §101(e) [title II], Oct. 21, 1998, 112 Stat. 2681-231, 2681-280.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in text, is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to this subchapter (§5321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1999, and also as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450j-2 of this title prior to editorial reclassification and renumbering as this section.

### §5327. Department of the Interior: availability of funds for Indian self-determination or self-governance contract or grant support costs

Notwithstanding any other provision of law, including but not limited to the Indian Self-De-

termination Act of 1975, as amended [25 U.S.C. 5321 et seq.], on and after November 29, 1999, funds available to the Department of the Interior for Indian self-determination or self-governance contract or grant support costs may be expended only for costs directly attributable to contracts, grants and compacts pursuant to the Indian Self-Determination Act of 1975 and on and after November 29, 1999, funds appropriated in this title<sup>1</sup> shall not be available for any contract support costs or indirect costs associated with any contract, grant, cooperative agreement, self-governance compact or funding agreement entered into between an Indian tribe or tribal organization and any entity other than an agency of the Department of the Interior.

(Pub. L. 106-113, div. B, § 1000(a)(3) [title I, § 113], Nov. 29, 1999, 113 Stat. 1535, 1501A-157.)

#### Editorial Notes

##### REFERENCES IN TEXT

The Indian Self-Determination Act of 1975, referred to in text, probably means the Indian Self-Determination Act, title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to this subchapter (§ 5321 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

This title, referred to in text, is title I of the Department of the Interior and Related Agencies Appropriations Act, 2000, as enacted by Pub. L. 106-113, div. B, § 1000(a)(3), Nov. 29, 1999, 113 Stat. 1535, 1501A-135. For complete classification of this title to the Code, see Tables.

##### CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2000, and not as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 450j-3 of this title prior to editorial reclassification and renumbering as this section.

#### Statutory Notes and Related Subsidiaries

##### SIMILAR PROVISIONS

Similar provisions were contained in Pub. L. 105-277, div. A, § 101(e) [title I, § 114], Oct. 21, 1998, 112 Stat. 2681-231, 2681-255.

### § 5328. Rules and regulations

#### (a) Authority of Secretaries of the Interior and of Health and Human Services to promulgate; time restriction

(1) Except as may be specifically authorized in this subsection, or in any other provision of this chapter, the Secretary of the Interior and the Secretary of Health and Human Services may not promulgate any regulation, nor impose any nonregulatory requirement, relating to self-determination contracts or the approval, award, or declination of such contracts, except that the Secretary of the Interior and the Secretary of Health and Human Services may promulgate regulations under this chapter relating to chapter 171 of title 28, commonly known as the "Federal Tort Claims Act", chapter 71 of title 41, declination and waiver procedures, appeal procedures, reassumption procedures, discretionary grant procedures for grants awarded under section 5322 of this title, property donation procedures arising under section 5324(f) of this title, internal agency procedures relating to the implementation of this chapter, retrocession and tribal organization relinquishment procedures, contract proposal contents, conflicts of interest, construction, programmatic reports and data requirements, procurement standards, property management standards, and financial management standards.

(2)(A) The regulations promulgated under this chapter, including the regulations referred to in this subsection, shall be promulgated—

(i) in conformance with sections 552 and 553 of title 5 and subsections (c), (d), and (e) of this section; and

(ii) as a single set of regulations in title 25 of the Code of Federal Regulations.

(B) The authority to promulgate regulations set forth in this chapter shall expire if final regulations are not promulgated within 20 months after October 25, 1994.

#### (b) Conflicting laws and regulations

The provisions of this chapter shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before October 25, 1994, and the Secretary is authorized to repeal any regulation inconsistent with the provisions of this chapter.

#### (c) Revisions and amendments; procedures applicable

The Secretary of the Interior and the Secretary of Health and Human Services are authorized, with the participation of Indian tribes and tribal organizations, to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

#### (d) Consultation in drafting and promulgating; negotiation process; interagency committees; extension of deadlines

(1) In drafting and promulgating regulations as provided in subsection (a) of this section (including drafting and promulgating any revised regulations), the Secretary of the Interior and the Secretary of Health and Human Services shall confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members.

(2)(A) In carrying out rulemaking processes under this chapter, the Secretary of the Interior and the Secretary of Health and Human Services shall follow the guidance of—

<sup>1</sup> See References in Text note below.

(i) subchapter III of chapter 5 of title 5, commonly known as the “Negotiated Rulemaking Act of 1990”; and

(ii) the recommendations of the Administrative Conference of the United States numbered 82-4 and 85-5 entitled “Procedures for Negotiating Proposed Regulations” under sections 305.82-4 and 305.85-5 of title 1, Code of Federal Regulations, and any successor recommendation or law (including any successor regulation).

(B) The tribal participants in the negotiation process referred to in subparagraph (A) shall be nominated by and shall represent the groups described in this paragraph and shall include tribal representatives from all geographic regions.

(C) The negotiations referred to in subparagraph (B) shall be conducted in a timely manner. Proposed regulations to implement the amendments made by the Indian Self-Determination Contract Reform Act of 1994 shall be published in the Federal Register by the Secretary of the Interior and the Secretary of Health and Human Services not later than 180 days after October 25, 1994.

(D) Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this chapter.

(E) If the Secretary determines that an extension of the deadlines under subsection (a)(2)(B) of this section and subparagraph (C) of this paragraph is appropriate, the Secretary may submit proposed legislation to Congress for the extension of such deadlines.

**(e) Exceptions in or waiver of regulations**

The Secretary may, with respect to a contract entered into under this chapter, make exceptions in the regulations promulgated to carry out this chapter, or waive such regulations, if the Secretary finds that such exception or waiver is in the best interest of the Indians served by the contract or is consistent with the policies of this chapter, and is not contrary to statutory law. In reviewing each request, the Secretary shall follow the timeline, findings, assistance, hearing, and appeal procedures set forth in section 5321 of this title.

(Pub. L. 93-638, title I, §107, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 100-472, title II, §207, Oct. 5, 1988, 102 Stat. 2295; Pub. L. 101-644, title II, §203(f), Nov. 29, 1990, 104 Stat. 4666; Pub. L. 103-413, title I, §105, Oct. 25, 1994, 108 Stat. 4269; Pub. L. 103-435, §22(a)(1), Nov. 2, 1994, 108 Stat. 4575; Pub. L. 103-437, §10(c)(2), Nov. 2, 1994, 108 Stat. 4589; Pub. L. 104-133, §1, Apr. 25, 1996, 110 Stat. 1320; Pub. L. 104-287, §6(e), Oct. 11, 1996, 110 Stat. 3399.)

**Editorial Notes**

**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (a), (b), (d)(2)(A), (D), and (e), was in the original “this Act”, meaning

Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Self-Determination Contract Reform Act of 1994, referred to in subsec. (d)(2)(C), is title I of Pub. L. 103-413, Oct. 25, 1994, 108 Stat. 4250, which enacted section 5329 of this title, amended this section and sections 5304, 5305, 5307, 5321, 5324, 5325, 5330, and 5331 of this title, and enacted provisions set out as a note under section 5301 of this title. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 5301 of this title and Tables.

**CODIFICATION**

Section was formerly classified to section 450k of this title prior to editorial reclassification and renumbering as this section.

In subsec. (a)(1), “chapter 71 of title 41” substituted for “the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

**AMENDMENTS**

1996—Subsec. (a)(2)(B). Pub. L. 104-133 substituted “20 months” for “18 months”.

Subsec. (b). Pub. L. 104-287 repealed Pub. L. 103-437, §10(c)(2)(A). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-413, §105(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The Secretaries of the Interior and of Health and Human Services are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this chapter: *Provided, however,* That all Federal requirements for self-determination contracts and grants under this Act shall be promulgated as regulations in conformity with sections 552 and 553 of title 5.”

Subsec. (b). Pub. L. 103-437, §10(c)(2)(A), which directed that subsec. (b) be repealed, was itself repealed by Pub. L. 104-287, §6(e). See Effective Date and Construction of 1996 Amendment note below.

Pub. L. 103-435, which directed substitution of “Committee on Natural Resources” for “Committee on Interior and Insular Affairs” in par. (2), could not be executed because “Committee on Interior and Insular Affairs” did not appear in text subsequent to amendment by Pub. L. 103-413, §105(1). See below.

Pub. L. 103-413, §105(1), added subsec. (b) and struck out former subsec. (b) which read as follows:

“(b)(1) Within three months from October 5, 1988, the Secretary shall consider and formulate appropriate regulations to implement the provisions of this Act, with the participation of Indian tribes. Such proposed regulations shall contain all Federal requirements applicable to self-determination contracts and grants under this Act.

“(2) Within six months from October 5, 1988, the Secretary shall present the proposed regulations to the Select Committee on Indian Affairs of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

“(3) Within seven months from October 5, 1988, the Secretary shall publish proposed regulations in the Federal Register for the purpose of receiving comments from tribes and other interested parties.

“(4) Within ten months from October 5, 1988, the Secretary shall promulgate regulations to implement the provisions of such Act.”

Subsec. (c). Pub. L. 103-437, §10(c)(2)(B), substituted “Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives” for “Committees on Interior and Insular Affairs of the United States Senate and House of Representatives”.

Subsecs. (d), (e). Pub. L. 103-413, §105(2), added subsecs. (d) and (e).

1990—Subsec. (c). Pub. L. 101-644 inserted “, with the participation of Indian tribes and tribal organizations,” after “authorized”.

1988—Subsec. (a). Pub. L. 100-472, §207(a), substituted “Health and Human Services” for “Health, Education, and Welfare”, and inserted proviso relating to promulgation of Federal requirements for self-determination contracts as regulations.

Subsec. (b). Pub. L. 100-472, §207(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) Within six months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this chapter.

“(2) Within seven months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

“(3) Within eight months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

“(4) Within ten months from January 4, 1975, the Secretary of the Interior and the Secretary of Health and Human Services shall promulgate rules and regulations to implement the provisions of this chapter.”

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (c), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

##### EFFECTIVE DATE AND CONSTRUCTION OF 1996 AMENDMENT

Pub. L. 104-287, §6(e), Oct. 11, 1996, 110 Stat. 3399, provided that: “Effective November 2, 1994, section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4589) [amending this section], is repealed and section 107(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450k(b)) [now 25 U.S.C. 5328(b)], as amended by section 105(1) of the Indian Self-Determination Act (Public Law 103-413, 108 Stat. 4269), is revived and shall read as if section 10(c)(2)(A) of the Act of November 2, 1994 (Public Law 103-437, 108 Stat. 4589), had not been enacted.”

#### § 5329. Contract or grant specifications

##### (a) Terms

Each self-determination contract entered into under this chapter shall—

(1) contain, or incorporate by reference, the provisions of the model agreement described in subsection (c) of this section (with modifications where indicated and the blanks appropriately filled in), and

(2) subject to subsections (a) and (b) of section 5321 of this title, contain such other provisions as are agreed to by the parties.

##### (b) Payments; Federal records

Notwithstanding any other provision of law, the Secretary may make payments pursuant to section 1(b)(6) of such model agreement. As pro-

vided in section 1(b)(7) of the model agreement, the records of the tribal government or tribal organization specified in such section shall not be considered Federal records for purposes of chapter 5 of title 5.

##### (c) Model agreement

The model agreement referred to in subsection (a)(1) of this section reads as follows:

#### “SECTION 1. AGREEMENT BETWEEN THE SECRETARY AND THE \_\_\_\_\_ TRIBAL GOVERNMENT.

##### “(a) AUTHORITY AND PURPOSE.—

“(1) AUTHORITY.—This agreement, denoted a Self-Determination Contract (referred to in this agreement as the ‘Contract’), is entered into by the Secretary of the Interior or the Secretary of Health and Human Services (referred to in this agreement as the ‘Secretary’), for and on behalf of the United States pursuant to title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> and by the authority of the \_\_\_\_\_ tribal government or tribal organization (referred to in this agreement as the ‘Contractor’). The provisions of title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> are incorporated in this agreement.

“(2) PURPOSE.—Each provision of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> and each provision of this Contract shall be liberally construed for the benefit of the Contractor to transfer the funding and the following related functions, services, activities, and programs (or portions thereof), that are otherwise contractable under section 102(a) of such Act, including all related administrative functions, from the Federal Government to the Contractor: (List functions, services, activities, and programs).

##### “(b) TERMS, PROVISIONS, AND CONDITIONS.—

“(1) TERM.—Pursuant to section 105(c)(1) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(1)),<sup>1</sup> the term of this contract shall be \_\_\_ years. Pursuant to section 105(d)(1) of such Act (25 U.S.C. 450j(d))<sup>1</sup>, upon the election by the Contractor, the period of this Contract shall be determined on the basis of a calendar year, unless the Secretary and the Contractor agree on a different period in the annual funding agreement incorporated by reference in subsection (f)(2).

“(2) EFFECTIVE DATE.—This Contract shall become effective upon the date of the approval and execution by the Contractor and the Secretary, unless the Contractor and the Secretary agree on an effective date other than the date specified in this paragraph.

“(3) PROGRAM STANDARD.—The Contractor agrees to administer the program, services, functions and activities (or portions thereof) listed in subsection (a)(2) of the Contract in conformity with the following standards: (list standards).

“(4) FUNDING AMOUNT.—Subject to the availability of appropriations, the Secretary shall make available to the Contractor the total amount specified in the annual funding agree-

<sup>1</sup> See References in Text note below.



ment incorporated by reference in subsection (f)(2). Such amount shall not be less than the applicable amount determined pursuant to section 106(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j-1).<sup>1</sup>

“(5) LIMITATION OF COSTS.—The Contractor shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under this Contract. If, at any time, the Contractor has reason to believe that the total amount required for performance of this Contract or a specific activity conducted under this Contract would be greater than the amount of funds awarded under this Contract, the Contractor shall provide reasonable notice to the appropriate Secretary. If the appropriate Secretary does not take such action as may be necessary to increase the amount of funds awarded under this Contract, the Contractor may suspend performance of the Contract until such time as additional funds are awarded.

“(6) PAYMENT.—

“(A) IN GENERAL.—Payments to the Contractor under this Contract shall—

“(i) be made as expeditiously as practicable; and

“(ii) include financial arrangements to cover funding during periods covered by joint resolutions adopted by Congress making continuing appropriations, to the extent permitted by such resolutions.

“(B) QUARTERLY, SEMIANNUAL, LUMP-SUM, AND OTHER METHODS OF PAYMENT.—

“(i) IN GENERAL.—Pursuant to section 108(b) of the Indian Self-Determination and Education Assistance Act, and notwithstanding any other provision of law, for each fiscal year covered by this Contract, the Secretary shall make available to the Contractor the funds specified for the fiscal year under the annual funding agreement incorporated by reference pursuant to subsection (f)(2) by paying to the Contractor, on a quarterly basis, one-quarter of the total amount provided for in the annual funding agreement for that fiscal year, in a lump-sum payment or as semi-annual payments, or any other method of payment authorized by law, in accordance with such method as may be requested by the Contractor and specified in the annual funding agreement.

“(ii) METHOD OF QUARTERLY PAYMENT.—If quarterly payments are specified in the annual funding agreement incorporated by reference pursuant to subsection (f)(2), each quarterly payment made pursuant to clause (i) shall be made on the first day of each quarter of the fiscal year, except that in any case in which the Contract year coincides with the Federal fiscal year, payment for the first quarter shall be made not later than the date that is 10 calendar days after the date on which the Office of Management and Budget apportions the appropriations for the fiscal year for the programs, services, functions, and activities subject to this Contract.

“(iii) APPLICABILITY.—Chapter 39 of title 31, United States Code, shall apply to the payment of funds due under this Contract and the annual funding agreement referred to in clause (i).

“(7) RECORDS AND MONITORING.—

“(A) IN GENERAL.—Except for previously provided copies of tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record-keeping system of the Department of the Interior or the Department of Health and Human Services (or both), records of the Contractor shall not be considered Federal records for purposes of chapter 5 of title 5, United States Code.

“(B) RECORDKEEPING SYSTEM.—The Contractor shall maintain a recordkeeping system and, upon reasonable advance request, provide reasonable access to such records to the Secretary.

“(C) RESPONSIBILITIES OF CONTRACTOR.—The Contractor shall be responsible for managing the day-to-day operations conducted under this Contract and for monitoring activities conducted under this Contract to ensure compliance with the Contract and applicable Federal requirements. With respect to the monitoring activities of the Secretary, the routine monitoring visits shall be limited to not more than two performance monitoring visits for this Contract by the head of each operating division, departmental bureau, or departmental agency, or duly authorized representative of such head unless—

“(i) the Contractor agrees to one or more additional visits; or

“(ii) the appropriate official determines that there is reasonable cause to believe that grounds for reassumption of the Contract, suspension of Contract payments, or other serious Contract performance deficiency may exist.

No additional visit referred to in clause (ii) shall be made until such time as reasonable advance notice that includes a description of the nature of the problem that requires the additional visit has been given to the Contractor.

“(8) PROPERTY.—

“(A) IN GENERAL.—As provided in section 105(f) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(f)),<sup>1</sup> at the request of the Contractor, the Secretary may make available, or transfer to the Contractor, all reasonably divisible real property, facilities, equipment, and personal property that the Secretary has used to provide or administer the programs, services, functions, and activities covered by this Contract. A mutually agreed upon list specifying the property, facilities, and equipment so furnished shall also be prepared by the Secretary, with the concurrence of the Contractor, and periodically revised by the Secretary, with the concurrence of the Contractor.

“(B) RECORDS.—The Contractor shall maintain a record of all property referred to

in subparagraph (A) or other property acquired by the Contractor under section 105(f)(2)(A) of such Act for purposes of replacement.

“(C) JOINT USE AGREEMENTS.—Upon the request of the Contractor, the Secretary and the Contractor shall enter into a separate joint use agreement to address the shared use by the parties of real or personal property that is not reasonably divisible.

“(D) ACQUISITION OF PROPERTY.—The Contractor is granted the authority to acquire such excess property as the Contractor may determine to be appropriate in the judgment of the Contractor to support the programs, services, functions, and activities operated pursuant to this Contract.

“(E) CONFISCATED OR EXCESS PROPERTY.—The Secretary shall assist the Contractor in obtaining such confiscated or excess property as may become available to tribes, tribal organizations, or local governments.

“(F) SCREENER IDENTIFICATION CARD.—A screener identification card (General Services Administration form numbered 2946) shall be issued to the Contractor not later than the effective date of this Contract. The designated official shall, upon request, assist the Contractor in securing the use of the card.

“(G) CAPITAL EQUIPMENT.—The Contractor shall determine the capital equipment, leases, rentals, property, or services the Contractor requires to perform the obligations of the Contractor under this subsection, and shall acquire and maintain records of such capital equipment, property rentals, leases, property, or services through applicable procurement procedures of the Contractor.

“(9) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law, any funds provided under this Contract—

“(A) shall remain available until expended; and

“(B) with respect to such funds, no further—

“(i) approval by the Secretary, or

“(ii) justifying documentation from the Contractor,

shall be required prior to the expenditure of such funds.

“(10) TRANSPORTATION.—Beginning on the effective date of this Contract, the Secretary shall authorize the Contractor to obtain inter-agency motor pool vehicles and related services for performance of any activities carried out under this Contract.

“(11) FEDERAL PROGRAM GUIDELINES, MANUALS, OR POLICY DIRECTIVES.—Except as specifically provided in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)<sup>1</sup> the Contractor is not required to abide by program guidelines, manuals, or policy directives of the Secretary, unless otherwise agreed to by the Contractor and the Secretary, or otherwise required by law.

“(12) DISPUTES.—

“(A) THIRD-PARTY MEDIATION DEFINED.—For the purposes of this Contract, the term

‘third-party mediation’ means a form of mediation whereby the Secretary and the Contractor nominate a third party who is not employed by or significantly involved with the Secretary of the Interior, the Secretary of Health and Human Services, or the Contractor, to serve as a third-party mediator to mediate disputes under this Contract.

“(B) ALTERNATIVE PROCEDURES.—In addition to, or as an alternative to, remedies and procedures prescribed by section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m-1),<sup>1</sup> the parties to this Contract may jointly—

“(i) submit disputes under this Contract to third-party mediation;

“(ii) submit the dispute to the adjudicatory body of the Contractor, including the tribal court of the Contractor;

“(iii) submit the dispute to mediation processes provided for under the laws, policies, or procedures of the Contractor; or

“(iv) use the administrative dispute resolution processes authorized in subchapter IV of chapter 5 of title 5, United States Code.

“(C) EFFECT OF DECISIONS.—The Secretary shall be bound by decisions made pursuant to the processes set forth in subparagraph (B), except that the Secretary shall not be bound by any decision that significantly conflicts with the interests of Indians or the United States.

“(13) ADMINISTRATIVE PROCEDURES OF CONTRACTOR.—Pursuant to the Indian Civil Rights Act of 1968 (25 U.S.C. 1301 et seq.), the laws, policies, and procedures of the Contractor shall provide for administrative due process (or the equivalent of administrative due process) with respect to programs, services, functions, and activities that are provided by the Contractor pursuant to this Contract.

“(14) SUCCESSOR ANNUAL FUNDING AGREEMENT.—

“(A) IN GENERAL.—Negotiations for a successor annual funding agreement, provided for in subsection (f)(2), shall begin not later than 120 days prior to the conclusion of the preceding annual funding agreement. Except as provided in section 105(c)(2) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450j(c)(2))<sup>1</sup> the funding for each such successor annual funding agreement shall only be reduced pursuant to section 106(b) of such Act (25 U.S.C. 450j-1(b)).<sup>1</sup>

“(B) INFORMATION.—The Secretary shall prepare and supply relevant information, and promptly comply with any request by the Contractor for information that the Contractor reasonably needs to determine the amount of funds that may be available for a successor annual funding agreement, as provided for in subsection (f)(2) of this Contract.

“(15) CONTRACT REQUIREMENTS; APPROVAL BY SECRETARY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), for the term of the Contract, section 2103 of the Revised Statutes (25 U.S.C. 81), section 16 of the Act of June

18, 1934 (48 Stat. 987, chapter 576; 25 U.S.C. 476),<sup>1</sup> and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to any contract entered into in connection with this Contract.

“(B) REQUIREMENTS.—Each Contract entered into by the Contractor with a third party in connection with performing the obligations of the Contractor under this Contract shall—

- “(i) be in writing;
- “(ii) identify the interested parties, the authorities of such parties, and purposes of the Contract;
- “(iii) state the work to be performed under the Contract; and
- “(iv) state the process for making any claim, the payments to be made, and the terms of the Contract, which shall be fixed.

“(c) OBLIGATION OF THE CONTRACTOR.—

“(1) CONTRACT PERFORMANCE.—Except as provided in subsection (d)(2), the Contractor shall perform the programs, services, functions, and activities as provided in the annual funding agreement under subsection (f)(2) of this Contract.

“(2) AMOUNT OF FUNDS.—The total amount of funds to be paid under this Contract pursuant to section 106(a) shall be determined in an annual funding agreement entered into between the Secretary and the Contractor, which shall be incorporated into this Contract.

“(3) CONTRACTED PROGRAMS.—Subject to the availability of appropriated funds, the Contractor shall administer the programs, services, functions, and activities identified in this Contract and funded through the annual funding agreement under subsection (f)(2).

“(4) TRUST SERVICES FOR INDIVIDUAL INDIANS.—

“(A) IN GENERAL.—To the extent that the annual funding agreement provides funding for the delivery of trust services to individual Indians that have been provided by the Secretary, the Contractor shall maintain at least the same level of service as the Secretary provided for such individual Indians, subject to the availability of appropriated funds for such services.

“(B) TRUST SERVICES TO INDIVIDUAL INDIANS.—For the purposes of this paragraph only, the term ‘trust services for individual Indians’ means only those services that pertain to land or financial management connected to individually held allotments.

“(5) FAIR AND UNIFORM SERVICES.—The Contractor shall provide services under this Contract in a fair and uniform manner and shall provide access to an administrative or judicial body empowered to adjudicate or otherwise resolve complaints, claims, and grievances brought by program beneficiaries against the Contractor arising out of the performance of the Contract.

“(d) OBLIGATION OF THE UNITED STATES.—

“(1) TRUST RESPONSIBILITY.—

“(A) IN GENERAL.—The United States reaffirms the trust responsibility of the United States to the \_\_\_\_\_ Indian tribe(s) to protect and conserve the trust resources of

the Indian tribe(s) and the trust resources of individual Indians.

“(B) CONSTRUCTION OF CONTRACT.—Nothing in this Contract may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

“(2) GOOD FAITH.—To the extent that health programs are included in this Contract, and within available funds, the Secretary shall act in good faith in cooperating with the Contractor to achieve the goals set forth in the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

“(3) PROGRAMS RETAINED.—As specified in the annual funding agreement, the United States hereby retains the programs, services, functions, and activities with respect to the tribe(s) that are not specifically assumed by the Contractor in the annual funding agreement under subsection (f)(2).

“(e) OTHER PROVISIONS.—

“(1) DESIGNATED OFFICIALS.—Not later than the effective date of this Contract, the United States shall provide to the Contractor, and the Contractor shall provide to the United States, a written designation of a senior official to serve as a representative for notices, proposed amendments to the Contract, and other purposes for this Contract.

“(2) CONTRACT MODIFICATIONS OR AMENDMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), no modification to this Contract shall take effect unless such modification is made in the form of a written amendment to the Contract, and the Contractor and the Secretary provide written consent for the modification.

“(B) EXCEPTION.—The addition of supplemental funds for programs, functions, and activities (or portions thereof) already included in the annual funding agreement under subsection (f)(2), and the reduction of funds pursuant to section 106(b)(2), shall not be subject to subparagraph (A).

“(3) OFFICIALS NOT TO BENEFIT.—No Member of Congress, or resident commissioner, shall be admitted to any share or part of any contract executed pursuant to this Contract, or to any benefit that may arise from such contract. This paragraph may not be construed to apply to any contract with a third party entered into under this Contract if such contract is made with a corporation for the general benefit of the corporation.

“(4) COVENANT AGAINST CONTINGENT FEES.—The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

“(f) ATTACHMENTS.—

“(1) APPROVAL OF CONTRACT.—Unless previously furnished to the Secretary, the resolution of the \_\_\_\_\_ Indian tribe(s) authorizing the contracting of the programs, services, functions, and activities identified in this Contract is attached to this Contract as attachment 1.

“(2) ANNUAL FUNDING AGREEMENT.—

“(A) IN GENERAL.—The annual funding agreement under this Contract shall only contain—

“(i) terms that identify the programs, services, functions, and activities to be performed or administered, the general budget category assigned, the funds to be provided, and the time and method of payment; and

“(ii) subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321), such other provisions, including a brief description of the programs, services, functions, and activities to be performed (including those supported by financial resources other than those provided by the Secretary), to which the parties agree.

“(B) INCORPORATION BY REFERENCE.—The annual funding agreement is hereby incorporated in its entirety in this Contract and attached to this Contract as attachment 2.”

(Pub. L. 93-638, title I, §108, as added Pub. L. 103-413, title I, §103, Oct. 25, 1994, 108 Stat. 4260; amended Pub. L. 106-568, title VIII, §812(a), Dec. 27, 2000, 114 Stat. 2917; Pub. L. 116-180, title II, §205, Oct. 21, 2020, 134 Stat. 881.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Self-Determination and Education Assistance Act, referred to in the provisions of subsec. (c) setting out the model agreement, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, which was classified principally to subchapter II (§450 et seq.) of chapter 14 of this title prior to editorial reclassification as this chapter. Title I of the Act was classified principally to part A (§450f et seq.) of chapter 14 of this title prior to editorial reclassification as this subchapter. Sections 105, 106, and 110 of the Act were classified to sections 450j, 450j-1, and 450m-1, respectively, of this title prior to editorial reclassification as sections 5324, 5325, and 5331, respectively, of this title. Section 102(a) of the Act is classified to section 5321(a) of this title. Section 108(b) of the Act is classified to subsec. (b) of this section. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Civil Rights Act of 1968, referred to in section 1(b)(13) of the provisions of subsec. (c) setting out the model agreement, is title II of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 77, which is classified generally to subchapter I (§1301 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

Section 16 of the Act of June 18, 1934, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) set-

ting out the model agreement, is section 16 of act June 18, 1934, ch. 576, 48 Stat. 987, which was classified to section 476 of this title prior to editorial reclassification as section 5123 of this title.

The Act of July 3, 1952, referred to in section 1(b)(15)(A) of the provisions of subsec. (c) setting out the model agreement, is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

The Indian Health Care Improvement Act, referred to in section 1(d)(2) of the provisions of subsec. (c) setting out the model agreement, is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 450f of this title prior to editorial reclassification and renumbering as this section.

#### PRIOR PROVISIONS

A prior section 108 of Pub. L. 93-638 was renumbered section 5(f) and was classified to section 450c(f) of this title prior to editorial reclassification as section 5305(f) of this title.

#### AMENDMENTS

2020—Subsec. (a)(2). Pub. L. 116-180, §205(1), inserted “subject to subsections (a) and (b) of section 5321 of this title,” before “contain”.

Subsec. (c). Pub. L. 116-180, §205(3), substituted “two performance monitoring visits” for “one performance monitoring visit” in the introductory provisions of section 1(b)(7)(C) of the provisions setting out the model agreement.

Pub. L. 116-180, §205(2), inserted “subject to subsections (a) and (b) of section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5321),” before “such other provisions” in section 1(f)(2)(A)(ii) of the provisions setting out the model agreement.

2000—Subsec. (c). Pub. L. 106-568 substituted “section 16 of the Act of June 18, 1934” for “and section 16 of the Act of June 18, 1934” and “and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply” for “shall not apply” in section 1(b)(15)(A) of the provisions setting out the model agreement.

#### Statutory Notes and Related Subsidiaries

##### QUARTERLY PAYMENTS OF FUNDS TO TRIBES

Pub. L. 105-83, title III, §311, Nov. 14, 1997, 111 Stat. 1590, provided that: “Notwithstanding Public Law 103-413 [see Short Title of 1994 Amendment note set out under section 5301 of this title], quarterly payments of funds to tribes and tribal organizations under annual funding agreements pursuant to section 108 of Public Law 93-638 [25 U.S.C. 5329], as amended, beginning in fiscal year 1998 and thereafter [sic], may be made on the first business day following the first day of a fiscal quarter.”

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104-208, div. A, title I, §101(d) [title III, §311], Sept. 30, 1996, 110 Stat. 3009-181, 3009-221.

Pub. L. 104-134, title I, §101(c) [title III, §311], Apr. 26, 1996, 110 Stat. 1321-156, 1321-197; renumbered title I, Pub. L. 104-140, §1(a), May 2, 1996, 110 Stat. 1327.

**§ 5330. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements**

Each contract or grant agreement entered into pursuant to sections 5321 and 5322<sup>1</sup> of this title shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement, such Secretary may, under regulations prescribed by him and after providing notice and a hearing on the record to such tribal organization, rescind such contract or grant agreement, in whole or in part, and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970, as amended [29 U.S.C. 651 et seq.].

(Pub. L. 93-638, title I, § 109, Jan. 4, 1975, 88 Stat. 2212; Pub. L. 100-581, title II, § 211, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-301, § 2(a)(10), May 24, 1990, 104 Stat. 207; Pub. L. 103-413, title I, § 104(1), Oct. 25, 1994, 108 Stat. 4268.)

<sup>1</sup> See Codification note below.

**Editorial Notes**

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in text, is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Sections 5321 and 5322 of this title, referred to in text, was in the original "sections 102, 103, and 104 of this Act", and was translated as meaning sections 102 and 103 of Pub. L. 93-638 because section 104 of Pub. L. 93-638 was renumbered section 103 and former section 103(a) and (b) and the first sentence of section 103(c) of Pub. L. 93-638 were repealed and the remainder of section 103 of Pub. L. 93-638 was redesignated as section 102(d) by Pub. L. 100-472, title II, §§ 201(b)(1), 202, Oct. 5, 1988, 102 Stat. 2289.

Section was formerly classified to section 450m of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1994—Pub. L. 103-413 inserted "or in the management of trust fund, trust lands or interests in such lands pursuant to such contract or grant agreement," after "pursuant to such contract or grant agreement," and "in whole or in part," after "rescind such contract or grant agreement", substituted "action as prescribed by the Secretary to remedy the contract deficiency, except that the appropriate Secretary may, upon written notice to a tribal organization, and the tribe served by the tribal organization, immediately rescind a contract or grant, in whole or in part, and resume control or operation of a program, activity, function, or service, if the Secretary finds that (i) there is an immediate threat of imminent harm to the safety of any person, or imminent substantial and irreparable harm to trust funds, trust lands, or interests in such lands, and (ii) such threat arises from the failure of the contractor to fulfill the requirements of the contract. In such cases, the Secretary" for "action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he", struck out second period after "the tribal organization may approve", and inserted before last sentence "In any hearing or appeal provided for under this section, the Secretary shall have the burden of proof to establish, by clearly demonstrating the validity of the grounds for rescinding, assuming, or reassuming the contract that is the subject of the hearing."

1990—Pub. L. 101-301 substituted "providing notice and a hearing" for "providing notice and hearing".

1988—Pub. L. 100-581 inserted "on the record" after "providing notice and hearing".

Pub. L. 100-581 which directed amendment of this section by substituting "in such cases, he shall provide the tribal organization with a hearing on the record within ten days or such later date as the tribal organization may approve." for "in such cases, he shall hold a hearing within ten days thereof" was executed by substituting the new language for "in such cases, he shall hold a hearing on such action within ten days thereof" to reflect the probable intent of Congress.

**§ 5331. Contract disputes and claims**

**(a) Civil actions; concurrent jurisdiction; relief**

The United States district courts shall have original jurisdiction over any civil action or claim against the appropriate Secretary arising under this chapter and, subject to the provisions

of subsection (d) of this section and concurrent with the United States Court of Claims, over any civil action or claim against the Secretary for money damages arising under contracts authorized by this chapter. In an action brought under this paragraph, the district courts may order appropriate relief including money damages, injunctive relief against any action by an officer of the United States or any agency thereof, or any agency thereof, to perform a duty provided under this chapter or regulations promulgated hereunder (including immediate injunctive relief to reverse a declination finding under section 5321(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract).

**(b) Revision of contracts**

The Secretary shall not revise or amend a self-determination contract with a tribal organization without the tribal organization's consent.

**(c) Application of laws to administrative appeals**

The Equal Access to Justice Act (Public<sup>1</sup> Law 96-481, Act of October 1,<sup>1</sup> 1980; 92<sup>1</sup> Stat. 2325, as amended), section 504 of title 5, and section 2412 of title 28 shall apply to administrative appeals pending on or filed after October 5, 1988, by tribal organizations regarding self-determination contracts.

**(d) Application of chapter 71 of title 41**

Chapter 71 of title 41 shall apply to self-determination contracts, except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607).<sup>2</sup>

**(e) Application of subsection (d)**

Subsection (d) of this section shall apply to any case pending or commenced on or after March 17, 1986, before the Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services<sup>2</sup> except that in any such cases finally disposed of before October 5, 1988, the thirty-day period referred to in section 504(a)(2) of title 5 shall be deemed to commence on October 5, 1988.

(Pub. L. 93-638, title I, §110, as added Pub. L. 100-472, title II, §206(a), Oct. 5, 1988, 102 Stat. 2294; amended Pub. L. 100-581, title II, §212, Nov. 1, 1988, 102 Stat. 2941; Pub. L. 101-301, §§1(a)(2), 2(b), May 24, 1990, 104 Stat. 206, 207; Pub. L. 103-413, title I, §104(2), (3), Oct. 25, 1994, 108 Stat. 4268.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

<sup>1</sup> So in original. Probably should be "Public", "21," and "94", respectively.

<sup>2</sup> See References in Text note below.

The Equal Access to Justice Act, referred to in subsec. (c), is Pub. L. 96-481, title II, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5, Government Organization and Employees, and Tables.

The Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607), referred to in subsec. (d), terminated effective 1 year after Jan. 6, 2006, pursuant to section 847(g) of Pub. L. 109-163, set out as an Effective Date of 2006 Amendment note under section 5372a of Title 5, Government Organization and Employees. Any reference to such Board to be treated as referring to the Civilian Board of Contract Appeals pursuant to Pub. L. 109-163, div. A, title VIII, §847(e), Jan. 6, 2006, 119 Stat. 3394, formerly set out in a note under section 607 of former Title 41, Public Contracts. The Civilian Board of Contract Appeals was established by section 42 of Pub. L. 93-400 which was classified to section 438 of former Title 41 prior to being repealed and restated as section 7105(b) of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

The Boards of Contract Appeals of the Department of the Interior or the Department of Health and Human Services, referred to in subsec. (e), terminated effective 1 year after Jan. 6, 2006, pursuant to section 847(g) of Pub. L. 109-163, set out as an Effective Date of 2006 Amendment note under section 5372a of Title 5, Government Organization and Employees. Any reference to such Boards to be treated as referring to the Civilian Board of Contract Appeals pursuant to Pub. L. 109-163, div. A, title VIII, §847(e), Jan. 6, 2006, 119 Stat. 3394, formerly set out in a note under section 607 of former Title 41, Public Contracts. The Civilian Board of Contract Appeals was established by section 42 of Pub. L. 93-400 which was classified to section 438 of former Title 41 prior to being repealed and restated as section 7105(b) of Title 41, Public Contracts, by Pub. L. 111-350, §§3, 7(b), Jan. 4, 2011, 124 Stat. 3677, 3855.

October 5, 1988, referred to in subsec. (e), was in the original "the date of enactment of these amendments" and "the date of enactment of this subsection", meaning the date of enactment of the Indian Self-Determination and Education Assistance Act Amendments of 1988, Pub. L. 100-472, which enacted this section.

CODIFICATION

Section was formerly classified to section 450m-1 of this title prior to editorial reclassification and renumbering as this section.

In subsec. (d), "Chapter 71 of title 41" substituted for "The Contract Disputes Act (Public Law 95-563, Act of November 1, 1978; 92 Stat. 2383, as amended)" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

PRIOR PROVISIONS

A prior section 110 of Pub. L. 93-638 was renumbered section 111 by Pub. L. 100-472 and is classified to section 5332 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-413, §104(2), inserted before period at end "(including immediate injunctive relief to reverse a declination finding under section 5321(a)(2) of this title or to compel the Secretary to award and fund an approved self-determination contract)".

Subsec. (d). Pub. L. 103-413, §104(3), inserted before period at end "except that all administrative appeals relating to such contracts shall be heard by the Interior Board of Contract Appeals established pursuant to section 8 of such Act (41 U.S.C. 607)".

1990—Subsec. (a). Pub. L. 101-301, §1(a)(2), made technical correction to directory language of Pub. L. 100-581, §212(a). See 1988 Amendment note below.

Subsec. (b). Pub. L. 101-301, §2(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as fol-

lows: "Unless otherwise agreed to by the resolution of tribal organization, the Secretary shall not revise or amend a self-determination contract with such tribal organization."

Subsec. (c). Pub. L. 101-301, §1(a)(2), made technical correction to directory language of Pub. L. 100-581, §212(c). See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100-581, §212(a), as amended by Pub. L. 101-301, §1(a)(2), substituted "over any civil action" for "over civil action" after "Court of Claims."

Subsec. (b). Pub. L. 100-581, §212(b), substituted "of tribal organization" for "of an Indian tribe" and "such tribal organization" for "such tribe".

Subsec. (c). Pub. L. 100-581, §212(c), as amended by Pub. L. 101-301, §1(a)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "The Equal Access to Justice Act (Public Law 96-481, Act of October 1 [21], 1980; 94 Stat. 2325, as amended) shall apply to administrative appeals by tribal organizations regarding self-determination contracts."

### § 5332. Sovereign immunity and trusteeship rights unaffected

Nothing in this chapter shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

(Pub. L. 93-638, title I, §111, formerly §110, Jan. 4, 1975, 88 Stat. 2213; renumbered §111, Pub. L. 100-472, title II, §206(b), Oct. 5, 1988, 102 Stat. 2295.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 450n of this title prior to editorial reclassification and renumbering as this section.

### SUBCHAPTER II—CONTRACTS WITH STATES

#### Editorial Notes

##### CODIFICATION

Subchapter, consisting of sections 5341 to 5347 of this title, was not enacted as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

### § 5341. Donations for Indians; use of gifts; annual report to Congress

The Secretary of the Interior may accept donations of funds or other property for the advancement of the Indian race, and he may use the donated property in accordance with the terms of the donation in furtherance of any program authorized by other provision of law for the benefit of Indians. An annual report shall be made to the Congress on donations received and

allocations made from such donations. This report shall include administrative costs and other pertinent data.

(Feb. 14, 1931, ch. 171, 46 Stat. 1106; Pub. L. 90-333, June 8, 1968, 82 Stat. 171.)

#### Editorial Notes

##### CODIFICATION

Section was not enacted as part of the Johnson-O'Malley Act which comprises this subchapter, nor as part of the Indian Self-Determination and Education Assistance Act which comprises this chapter.

Section was formerly classified to section 451 of this title prior to editorial reclassification and renumbering as this section.

##### AMENDMENTS

1968—Pub. L. 90-333 expanded area of permissible uses to which Secretary may put donated property by substituting provisions allowing inclusion of programs otherwise authorized by law intended to benefit Indians for provisions limiting permissible uses to programs otherwise authorized by law only if it could be shown that property would benefit a particular Indian institution or individual, and inserted provisions for an annual report to Congress on donations received and allocations made from such donations.

#### Statutory Notes and Related Subsidiaries

##### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to making an annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 113 of House Document No. 103-7.

### § 5342. Contracts for education, medical attention, relief and social welfare of Indians

The Secretary of the Interior is authorized, in his discretion, to enter into a contract or contracts with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution, for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory, through the agencies of the State or Territory or of the corporations and organizations hereinbefore named, and to expend under such contract or contracts, moneys appropriated by Congress for the education, medical attention, agricultural assistance, and social welfare, including relief of distress, of Indians in such State or Territory.

(Apr. 16, 1934, ch. 147, §1, 48 Stat. 596; June 4, 1936, ch. 490, §1, 49 Stat. 1458.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 452 of this title prior to editorial reclassification and renumbering as this section.

##### AMENDMENTS

1936—Act June 4, 1936, substituted "with any State or Territory, or political subdivision thereof, or with any State university, college, or school, or with any appropriate State or private corporation, agency, or institution", "through the agencies of the State or Territory

or of the corporations and organizations hereinbefore named," and "such State or Territory" for "any State or Territory having legal authority so to do," "through the qualified agencies of such State or Territory," and "such State", respectively.

#### Statutory Notes and Related Subsidiaries

##### SHORT TITLE

Sections 5342 to 5348 of this title popularly known as the "Johnson-O'Malley Act", see note under section 5301 of this title.

##### DISTRIBUTION OF PUBLIC SCHOOL ASSISTANCE

Pub. L. 100-446, title I, Sept. 27, 1988, 102 Stat. 1795, provided that: "notwithstanding any other provision of law, the amounts available for assistance to public schools under the Act of April 16, 1934 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.) [now 25 U.S.C. 5342 et seq.], shall be distributed on the basis of the formula recommended by the Assistant Secretary of Indian Affairs in a letter to the Committees on Appropriations dated June 27, 1988, except that for the fiscal year ending September 30, 1989, the minimum weight factor shall be 1.1 rather than 1.3 and for the fiscal year ending September 30, 1990, the minimum weight factor shall be 1.2 rather than 1.3".

Similar provisions were contained in the following prior appropriation act:

Pub. L. 100-202, § 101(g) [title I], Dec. 22, 1987, 101 Stat. 1329-213, 1329-228.

##### LIMITATION ON CONTRACT AUTHORITY

Pub. L. 99-190, § 101(d) [title I], Dec. 19, 1985, 99 Stat. 1224, 1235, provided that: "notwithstanding any law or regulation, in allocating funds for aid to public schools under the Act of April 16, 1934, as amended [25 U.S.C. 5342 et seq.], the Secretary shall enter into contracts only for the provision of supplementary educational services for Indian children".

#### § 5343. Use of Government property by States and Territories

The Secretary of the Interior, in making any contract authorized by sections 5342 to 5348 of this title, may permit such contracting party to utilize, for the purposes of said sections, existing school buildings, hospitals, and other facilities, and all equipment therein or appertaining thereto, including livestock and other personal property owned by the Government, under such terms and conditions as may be agreed upon for their use and maintenance.

(Apr. 16, 1934, ch. 147, § 2, 48 Stat. 596; June 4, 1936, ch. 490, § 2, 49 Stat. 1459.)

##### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 453 of this title prior to editorial reclassification and renumbering as this section.

##### AMENDMENTS

1936—Act June 4, 1936, substituted "may permit such contracting party" for "with any State or Territory, may permit such State or Territory".

#### § 5344. Rules and regulations; minimum standards of service

The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations, including minimum standards of service, as may be necessary and proper for

the purpose of carrying the provisions of sections 5342 to 5348 of this title into effect: *Provided*, That such minimum standards of service are not less than the highest maintained by the States or Territories within which said contract or contracts, as herein provided, are to be effective.

(Apr. 16, 1934, ch. 147, § 3, 48 Stat. 596; June 4, 1936, ch. 490, § 3, 49 Stat. 1459.)

##### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 454 of this title prior to editorial reclassification and renumbering as this section.

##### AMENDMENTS

1936—Act June 4, 1936, substituted "within which" for "with which".

#### § 5345. Contracts for education in public schools; submission of education plan by contractor as prerequisite; criteria for approval of plan by Secretary of the Interior; participation by non-Indian students

The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students.

(Apr. 16, 1934, ch. 147, § 4, as added Pub. L. 93-638, title II, § 202, Jan. 4, 1975, 88 Stat. 2213.)

##### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 455 of this title prior to editorial reclassification and renumbering as this section.

##### PRIOR PROVISIONS

A prior section 4 of act Apr. 16, 1934, ch. 147, 48 Stat. 596; June 4, 1936, ch. 490, 49 Stat. 1458, directed Secretary of the Interior to report to Congress any contracts made under provisions of sections 5342 to 5344 of this title, prior to repeal by Pub. L. 86-533, § 1(15), June 29, 1960, 74 Stat. 248.

#### § 5346. Local committee of Indian parents in school districts having school boards composed of non-Indian majority

##### (a) Election; functions

Whenever a school district affected by a contract or contracts for the education of Indians pursuant to sections 5342 to 5348 of this title has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such com-



mittee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 7424(c)(4) of title 20 or an Indian advisory school board or boards established pursuant to sections 5342 to 5348 of this title prior to January 4, 1975, exists in such school district, such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

**(b) Revocation of contracts**

The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a) of this section.

(Apr. 16, 1934, ch. 147, § 5, as added Pub. L. 93-638, title II, § 202, Jan. 4, 1975, 88 Stat. 2213; amended Pub. L. 103-382, title III, § 393(d), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 107-110, title VII, § 702(e), Jan. 8, 2002, 115 Stat. 1947; Pub. L. 114-95, title IX, § 9215(a), Dec. 10, 2015, 129 Stat. 2166.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 456 of this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 5 of act Apr. 16, 1934, ch. 147, 48 Stat. 596, which excluded Oklahoma from the application of contract provisions, was omitted in the general amendment of act Apr. 16, 1934, by act June 4, 1936, ch. 490, 49 Stat. 1458.

AMENDMENTS

2015—Subsec. (a). Pub. L. 114-95 made technical amendment to reference in original act which appears in text as reference to section 7424(c)(4) of title 20.

2002—Subsec. (a). Pub. L. 107-110 substituted reference to section 7424(c)(4) of title 20 for reference to section 7814(c)(4) of title 20.

1994—Subsec. (a). Pub. L. 103-382 substituted reference to section 7814(c)(4) of title 20 for reference to section 241dd(b)(2)(B)(ii) of title 20.

**Statutory Notes and Related Subsidiaries**

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of Title 20, Education.

**§ 5347. Reimbursement to school districts for educating non-resident students**

Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for

the full per capita costs of educating such Indian students.

(Apr. 16, 1934, ch. 147, § 6, as added Pub. L. 93-638, title II, § 202, Jan. 4, 1975, 88 Stat. 2214.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 457 of this title prior to editorial reclassification and renumbering as this section.

**§ 5348. Computation of student count**

**(a) Definitions**

For the purposes of sections 5342 to 5348 of this title, the following definitions apply:

**(1) Contracting party**

The term “contracting party” means an entity that has a contract through a program authorized under sections 5342 to 5348 of this title.

**(2) Eligible entity**

The term “eligible entity” means an entity that is eligible to apply for a contract for a supplemental or operational support program under sections 5342 to 5348 of this title, as outlined in section 5342 of this title.

**(3) Existing contracting party**

The term “existing contracting party” means a contracting party that has a contract under sections 5342 to 5348 of this title that is in effect on December 31, 2018.

**(4) JOM Modernization Act**

The term “JOM Modernization Act” means the Johnson-O’Malley Supplemental Indian Education Program Modernization Act.

**(5) New contracting party**

The term “new contracting party” means an entity that enters into a contract under sections 5342 to 5348 of this title after December 31, 2018.

**(6) Secretary**

The term “Secretary” means the Secretary of the Interior.

**(b) Determination of the number of eligible Indian students**

**(1) Initial determinations**

**(A) In general**

The Secretary shall make an initial determination of the number of eligible Indian students served or potentially served by each eligible entity in accordance with subparagraph (B).

**(B) Process for making the initial determination**

**(i) Preliminary report**

Not later than 180 days after December 31, 2018, the Secretary shall publish a preliminary report describing the number of eligible Indian students served or potentially served by each eligible entity, using the most applicable and accurate data (as determined by the Secretary in consultation with eligible entities) from the fiscal

year preceding the fiscal year for which the initial determination is to be made from—

- (I) the Bureau of the Census;
- (II) the National Center for Education Statistics; or
- (III) the Office of Indian Education of the Department of Education.

**(ii) Data reconciliation**

To improve the accuracy of the preliminary report described in clause (i) prior to publishing, the Secretary shall reconcile the data described in the preliminary report with—

- (I) each existing contracting party's data regarding the number of eligible Indian students served by the existing contracting party for the fiscal year preceding the fiscal year for which the initial determination is made; and
- (II) identifiable tribal enrollment information.

**(iii) Comment period**

After publishing the preliminary report under clause (i) in accordance with clause (ii), the Secretary shall establish a 60-day comment period to gain feedback about the preliminary report from eligible entities, which the Secretary shall take into consideration in preparing the final report described in clause (iv).

**(iv) Final report**

Not later than 120 days after concluding the consultation described in clause (iii), the Secretary shall publish a final report on the initial determination of the number of eligible Indian students served or potentially served by each eligible entity, including justification for not including any feedback gained during such consultation, if applicable.

**(2) Subsequent academic years**

For each academic year following the fiscal year for which an initial determination is made under paragraph (1) to determine the number of eligible Indian students served or potentially served by a contracting party, the Secretary shall determine the number of eligible Indian students served by the contracting party based on the reported eligible Indian student count numbers identified through the reporting process described in subsection (c).

**(c) Contracting party student count reporting compliance**

**(1) In general**

For each academic year following the fiscal year for which an initial determination is made under subsection (b) to determine the number of eligible Indian students served or potentially served by a contracting party, the contracting party shall submit to the Secretary a report describing the number of eligible Indian students who were served using amounts allocated to such party under sections 5342 to 5348 of this title during the previous fiscal year. The report shall also include an accounting of the amounts and purposes for which the contract funds were expended.

**(2) Failure to comply**

A contracting party that fails to submit a report under paragraph (1) shall receive no amounts under sections 5342 to 5348 of this title for the fiscal year following the academic year for which the report should have been submitted.

**(3) Notice**

The Secretary shall provide contracting parties with timely information relating to—

- (A) initial and final reporting deadlines; and
- (B) the consequences of failure to comply outlined in paragraph (2).

**(4) Technical assistance**

The Secretary, acting through the Director of the Bureau of Indian Education, shall provide technical assistance and training on compliance with the reporting requirements of this subsection to contracting parties.

**(d) Annual report**

**(1) In general**

The Secretary shall prepare an annual report, including the most recent determination of the number of eligible Indian students served by each contracting party, recommendations on appropriate funding levels for the program based on such determination, and an assessment of the contracts under sections 5342 to 5348 of this title that the Secretary—

- (A) may include in the budget request of the Department of the Interior for each fiscal year;
- (B) shall submit to—
  - (i) the Committee on Indian Affairs of the Senate;
  - (ii) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate;
  - (iii) the Committee on Education and the Workforce of the House of Representatives; and
  - (iv) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives; and
- (C) shall make publicly available.

**(2) Manner of preparation**

The Secretary shall prepare the report under paragraph (1) in a manner so as to prevent or minimize new administrative burdens on contracting parties receiving funds under sections 5342 to 5348 of this title.

**(e) Hold harmless**

**(1) Initial hold harmless**

**(A) In general**

Except as provided under subparagraph (B) and subject to subparagraphs (C) and (D), for a fiscal year, an existing contracting party shall not receive an amount under sections 5342 to 5348 of this title that is less than the amount that such existing contracting party received under sections 5342 to 5348 of this title for the fiscal year preceding December 31, 2018.

**(B) Exceptions****(i) In general**

An existing contracting party shall receive an amount under sections 5342 to 5348 of this title for a fiscal year that is less than the amount that the existing contracting party received under sections 5342 to 5348 of this title for the fiscal year preceding December 31, 2018, if one or more of the following conditions is met:

**(I) Failure to report**

The existing contracting party failed to submit a complete report described in subsection (c) that was most recently due from the date of the determination.

**(II) Violations of contract or law**

The Secretary has found that the existing contracting party has violated the terms of a contract entered into under sections 5342 to 5348 of this title or has otherwise violated Federal law.

**(III) Student count decrease**

The number of eligible Indian students reported by such existing contracting party under subsection (c) has decreased below the number of eligible Indian students served by the existing contracting party in the fiscal year preceding December 31, 2018.

**(ii) Amount of funding reduction for existing contracting parties reporting decreased student counts**

A reduction in an amount pursuant to clause (i)(III) shall not be done in such a manner that the existing contracting party receives an amount of funding per eligible Indian student that is less than the amount of funding per eligible Indian student such party received for the fiscal year preceding December 31, 2018.

**(C) Ratable reductions in appropriations**

If the funds available under sections 5342 to 5348 of this title for a fiscal year are insufficient to pay the full amounts that all existing contracting parties are eligible to receive under subparagraph (A) for the fiscal year, the Secretary shall ratably reduce those amounts for the fiscal year.

**(D) Sunset**

This paragraph shall cease to be effective 4 years after December 31, 2018.

**(2) Maximum decrease after 4 years**

Beginning 4 years after December 31, 2018, no contracting party shall receive for a fiscal year more than a 10 percent decrease in funding per eligible Indian student from the previous fiscal year.

**(f) Funding allocation and reform****(1) Funding reform**

The Secretary may make recommendations for legislation to increase the amount of funds available per eligible Indian student through contracts under sections 5342 to 5348 of this title to equal to or greater than the amount of funds that were available per eligible Indian

student through contracts under sections 5342 to 5348 of this title for fiscal year 1995, and attempt to identify additional sources of funding that do not reallocate existing funds otherwise utilized by Indian students served—

(A) by the Bureau of Indian Education; or

(B) under title VI of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7401 et seq.).

**(2) Increases in program funding****(A) In general**

Subject to subsection (e) and subparagraph (B), for any fiscal year for which the amount appropriated to carry out sections 5342 to 5348 of this title exceeds the amount appropriated to carry out sections 5342 to 5348 of this title for the preceding fiscal year, the excess amounts shall—

(i) be allocated only to those contracting parties that did not receive their full per student funding allocation for the previous fiscal year; and

(ii) be allocated first to new contracting parties that did not receive their full per student funding allocation for the previous fiscal year.

**(B) Parity in funding**

Subparagraph (A) shall have no effect after the first fiscal year for which each contracting party receives their full per student funding allocation.

**(g) Increased geographical and tribal participation in the Johnson-O'Malley supplementary education program**

To the maximum extent practicable, the Secretary shall consult with Indian tribes and contact State educational agencies, local educational agencies, and Alaska Native organizations that have not previously entered into a contract under sections 5342 to 5348 of this title—

(1) to determine the interest of the Indian tribes, State educational agencies, local educational agencies, and Alaska Native organizations, in entering into such contracts; and

(2) to share information relating to the process for entering into a contract under sections 5342 to 5348 of this title.

**(h) Rulemaking****(1) In general**

Not later than 1 year after December 31, 2018, the Secretary, acting through the Director of the Bureau of Indian Education, shall undertake and complete a rulemaking process, following the provisions of subchapter II of chapter 5 of title 5, to—

(A) determine how the regulatory definition of “eligible Indian student” may be revised to clarify eligibility requirements for contracting parties under sections 5342 to 5348 of this title;

(B) determine, as necessary, how the funding formula described in section 273.31 of title 25, Code of Federal Regulations (as in effect on the day before December 31, 2018) may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process under sections 5342 to 5348 of this title; and

(C) otherwise reconcile and modernize the rules to comport with the activities of the contracting parties under sections 5342 to 5348 of this title as of December 31, 2018.

**(2) Report**

Not later than 30 days after the date the rulemaking under paragraph (1) is complete, the Secretary shall submit a report to Congress describing the results of such rulemaking and necessary recommendations to ensure the full implementation of such rulemaking.

**(i) Student privacy**

The Secretary shall ensure that data is collected and each report is prepared under this section in a manner that protects the rights of eligible Indian students in accordance with section 1232g of title 20 (commonly referred to as the Family Educational Rights and Privacy Act of 1974).

**(j) GAO Report**

Not later than 18 months after the final report described in subsection (b)(1)(B)(iv) is published, the Comptroller General shall—

(1) conduct a review of the implementation of this section during the preceding 2-year period, including any factors impacting—

(A) the accuracy of the determinations of the number of eligible Indian students under this section;

(B) the communication between the Bureau of Indian Education and contracting parties; and

(C) the efforts by the Bureau of Indian Education to ensure accurate and sufficient distribution of funding for Indian students;

(2) submit a report describing the results of the review under paragraph (1) to—

(A) the Committee on Indian Affairs of the Senate;

(B) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the Senate;

(C) the Subcommittee on Indian, Insular and Alaska Native Affairs of the Committee on Natural Resources of the House of Representatives; and

(D) the Subcommittee on Interior, Environment, and Related Agencies of the Committee on Appropriations of the House of Representatives; and

(3) make such report publicly available.

**(k) Effect**

Nothing in this section—

(1) creates a new program or duplicates program activities under sections 5342 to 5348 of this title; or

(2) replaces or diminishes the effect of regulations to carry out sections 5342 to 5348 of this title existing on the day before December 31, 2018, unless expressly provided in this section.

(Apr. 16, 1934, ch. 147, §7, as added Pub. L. 115-404, §2, Dec. 31, 2018, 132 Stat. 5349.)

**Editorial Notes**

REFERENCES IN TEXT

The Johnson-O'Malley Supplemental Indian Education Program Modernization Act, referred to subsec.

(a)(4), is Pub. L. 115-404, Dec. 31, 2018, 132 Stat. 5349, which enacted this section and provisions set out as a note under section 5301 of this title. For complete classification of this Act to the Code, see Short Title of 2018 Amendment note set out under section 5301 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (f)(1)(B), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title VI of the Act is classified generally to subchapter VI (§7401 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

**Statutory Notes and Related Subsidiaries**

CHANGE OF NAME

Committee on Education and the Workforce of House of Representatives changed to Committee on Education and Labor of House of Representatives by House Resolution No. 6, One Hundred Sixteenth Congress, Jan. 9, 2019.

SUBCHAPTER III—INDIAN EDUCATION ASSISTANCE

**§ 5351. School construction, acquisition, or renovation contracts**

**(a) Authorization; prerequisites**

The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

**(b) Eligibility requirements for assistance in federally-affected areas; applicability to projects in determining maximum amount, allocation, of funds, etc.**

The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this section on those projects which meet the eligibility requirements under subsections (a) and (b) of section 644<sup>1</sup> of title 20. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the Secretary of Education under subsections (a) and (b) of section 644<sup>1</sup> of title 20. The Secretary of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after January 4, 1975, a list of those projects eligible for funding under subsections (a) and (b) of section 644<sup>1</sup> of title 20.

**(c) Eligibility of private schools to receive funds; maximum amount**

The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this section on any school eligible to receive funds under section 5355 of this title.

**(d) Duties of State education agencies pursuant to contracts**

Any contract entered into by the Secretary pursuant to this section shall contain provisions

<sup>1</sup> See References in Text note below.

requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

**(e) Advisory consultations by Secretary with affected entities and governing bodies prior to contracts; applicability**

The Secretary shall consult with the entity designated pursuant to section 5346 of this title, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

**(f) Evaluation and report to Congress of effectiveness of construction, etc., programs; scope and content of report**

Within ninety days following the expiration of the three year period following January 4, 1975, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include—

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;<sup>1</sup>

(2) a description of the working relationship between the Department of the Interior and the Department of Education including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 644<sup>1</sup> of title 20 from the Department of Education to the Department of the Interior.

**(g) Authorization of appropriations**

For the purpose of carrying out the provisions of this section, there is authorized to be appro-

riated the sum of \$35,000,000 for the fiscal year ending June 30, 1974; \$35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

(Pub. L. 93-638, title II, § 204, Jan. 4, 1975, 88 Stat. 2214; Pub. L. 96-88, title III, § 301, title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692.)

**Editorial Notes**

REFERENCES IN TEXT

Section 644 of title 20, referred to in subsecs. (b) and (f)(5), was repealed by Pub. L. 103-382, title III, § 331(a), Oct. 20, 1994, 108 Stat. 3965.

Act of March 3, 1921, referred to in subsec. (f)(1), probably means the act of Mar. 3, 1931, ch. 411, 46 Stat. 1494, known as the Davis-Bacon Act, which was classified generally to sections 276a to 276a-5 of former Title 40, Public Buildings, Property, and Works, and was repealed and reenacted as sections 3141-3144, 3146, and 3147 of Title 40, Public Buildings, Property, and Works, by Pub. L. 107-217, §§ 1, 6(b), Aug. 21, 2002, 116 Stat. 1062, 1304.

CODIFICATION

Section was formerly classified to section 458 of this title prior to editorial reclassification and renumbering as this section.

SHORT TITLE

For short title of this subchapter as the "Indian Education Assistance Act", see section 201 of Pub. L. 93-638, set out as a note under section 5301 of this title.

**Statutory Notes and Related Subsidiaries**

TRANSFER OF FUNCTIONS

"Secretary of Education" substituted for "United States Commissioner of Education" in subsec. (b), and "Department of Education" substituted for "Department of Health, Education, and Welfare" in subsec. (f)(2), (5), pursuant to sections 301 and 507 of Pub. L. 96-88, which is classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Commissioner of Education and Department of Health, Education, and Welfare to Secretary and Department of Education.

**§ 5352. General education contract and grant provisions and requirements; school district quality and standards of excellence**

No funds from any grant or contract pursuant to this subchapter shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this subchapter, available to the local school district.

(Pub. L. 93-638, title II, § 205, Jan. 4, 1975, 88 Stat. 2216.)

**Editorial Notes**

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 93-638, known as the Indian Education Assistance Act, which is classified principally to this subchapter. For complete classification of title II to the Code, see Short

Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458a of this title prior to editorial reclassification and renumbering as this section.

**§ 5353. Availability of funds to agencies, institutions, and organizations**

No funds from any contract or grant pursuant to this subchapter shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this subchapter may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

(Pub. L. 93-638, title II, § 206, Jan. 4, 1975, 88 Stat. 2216.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458b of this title prior to editorial reclassification and renumbering as this section.

**§ 5354. Rules and regulations**

**(a) Prerequisites for promulgation**

(1) Within six months from January 4, 1975, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this subchapter.

(2) Within seven months from January 4, 1975, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

(3) Within eight months from January 4, 1975, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from January 4, 1975, the Secretary shall promulgate rules and regulations to implement the provisions of this subchapter.

**(b) Revision and amendment**

The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

(Pub. L. 93-638, title II, § 207, Jan. 4, 1975, 88 Stat. 2216.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458c of this title prior to editorial reclassification and renumbering as this section.

**Statutory Notes and Related Subsidiaries**

CHANGE OF NAME

Committee on Interior and Insular Affairs of the Senate abolished and replaced by Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of Standing Rules of the Senate, as amended by Senate Resolution No. 4, Ninety-fifth Congress (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977. Section 105 of Senate Resolution No. 4 established a temporary Select Committee on Indian Affairs having jurisdiction over matters relating to Indian affairs (such matters previously having been within the jurisdiction of the Committee on Interior and Insular Affairs). Senate Resolution No. 127, June 6, 1984, Ninety-eighth Congress, established the Select Committee on Indian Affairs as a permanent committee of the Senate, and section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress, redesignated the Select Committee on Indian Affairs as the Committee on Indian Affairs.

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

**§ 5355. Eligibility for funds of tribe or tribal organization controlling or managing private schools**

The Secretary is authorized and directed to provide funds, pursuant to this chapter; the the<sup>1</sup> Act of April 16, 1934 (48 Stat. 596), as amended [25 U.S.C. 5342 et seq.]; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private school.

(Pub. L. 93-638, title II, § 208, Jan. 4, 1975, 88 Stat. 2216; Pub. L. 97-375, title I, § 108(d), Dec. 21, 1982, 96 Stat. 1820.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of April 16, 1934, referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which is classified generally to section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458d of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1982—Pub. L. 97-375 struck out provisions relating to annual reporting requirements of Secretary to Congress-

<sup>1</sup> So in original.

sional committees respecting educational assistance program conducted pursuant to this section.

**§ 5356. Supplemental assistance to funds provided to local educational agencies**

The assistance provided in this chapter for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title VI of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 7401 et seq.].

(Pub. L. 93-638, title II, § 209, Jan. 4, 1975, 88 Stat. 2217; Pub. L. 103-382, title III, § 393(c), Oct. 20, 1994, 108 Stat. 4027; Pub. L. 114-95, title IX, § 9215(rr), Dec. 10, 2015, 129 Stat. 2181.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended. Title VI of the Act is classified generally to subchapter VI (§7401 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

Section was formerly classified to section 458e of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2015—Pub. L. 114-95 substituted “assistance provided under title VI of the Elementary and Secondary Education Act of 1965.” for “assistance provided under title IX of the Elementary and Secondary Education Act of 1965.”

1994—Pub. L. 103-382 substituted “title IX of the Elementary and Secondary Education Act of 1965” for “title IV of the Act of June 23, 1972 (86 Stat. 235)”.

SUBCHAPTER IV—TRIBAL SELF-GOVERNANCE—DEPARTMENT OF THE INTERIOR

**§ 5361. Definitions**

**In this subchapter:**

**(1) Compact**

The term “compact” means a self-governance compact entered into under section 5364 of this title.

**(2) Construction program; construction project**

The term “construction program” or “construction project” means a Tribal undertaking relating to the administration, planning, environmental determination, design, construction, repair, improvement, or expansion of roads, bridges, buildings, structures, systems, or other facilities for purposes of housing, law enforcement, detention, sanitation, water supply, education, administration, community, health, irrigation, agriculture, conservation, flood control, transportation, or port facilities, or for other Tribal purposes.

**(3) Department**

The term “Department” means the Department of the Interior.

**(4) Funding agreement**

The term “funding agreement” means a funding agreement entered into under section 5363 of this title.

**(5) Gross mismanagement**

The term “gross mismanagement” means a significant violation, shown by a preponderance of the evidence, of a compact, funding agreement, or statutory or regulatory requirement applicable to Federal funds for a program administered by an Indian Tribe under a compact or funding agreement.

**(6) Inherent Federal function**

The term “inherent Federal function” means a Federal function that may not legally be delegated to an Indian Tribe.

**(7) Non-BIA program**

The term “non-BIA program” means all or a portion of a program, function, service, or activity that is administered by any bureau, service, office, or agency of the Department of the Interior other than—

(A) the Bureau of Indian Affairs;

(B) the Office of the Assistant Secretary for Indian Affairs; or

(C) the Office of the Special Trustee for American Indians.

**(8) Program**

The term “program” means any program, function, service, or activity (or portion thereof) within the Department that is included in a funding agreement.

**(9) Secretary**

The term “Secretary” means the Secretary of the Interior.

**(10) Self-determination contract**

The term “self-determination contract” means a self-determination contract entered into under section 5321 of this title.

**(11) Self-governance**

The term “self-governance” means the Tribal Self-Governance Program established under section 5362 of this title.

**(12) Tribal share**

The term “Tribal share” means the portion of all funds and resources of an Indian Tribe that—

(A) support any program within the Bureau of Indian Affairs, the Office of the Special Trustee for American Indians, or the Office of the Assistant Secretary for Indian Affairs; and

(B) are not required by the Secretary for the performance of an inherent Federal function.

**(13) Tribal water rights settlement**

The term “Tribal water rights settlement” means any settlement, compact, or other agreement expressly ratified or approved by an Act of Congress that—

(A) includes an Indian Tribe and the United States as parties; and

(B) quantifies or otherwise defines any water right of the Indian Tribe.

(Pub. L. 93-638, title IV, § 401, as added Pub. L. 103-413, title II, § 204, Oct. 25, 1994, 108 Stat. 4271;

Pub. L. 116-180, title I, §101(b), Oct. 21, 2020, 134 Stat. 858.)

### Editorial Notes

#### CODIFICATION

Section was formerly classified to section 458aa of this title prior to editorial reclassification and renumbering as this section.

#### AMENDMENTS

2020—Pub. L. 116-180 amended section generally. Prior to amendment, section related to establishment of a Tribal Self-Governance program. See section 5362 of this title.

### Statutory Notes and Related Subsidiaries

#### SHORT TITLE

For short title of this subchapter as the “Tribal Self-Governance Act of 1994”, see section 201 of Pub. L. 103-413, set out as a Short Title of 1994 Amendment note under section 5301 of this title.

#### CONSTRUCTION OF 2020 AMENDMENT

Pub. L. 116-180, title I, §101(a), Oct. 21, 2020, 134 Stat. 857, provided that: “Nothing in this Act [see Short Title of 2020 Amendment note set out under section 5301 of this title], or the amendments made by this Act, shall be construed—

“(1) to modify, limit, expand, or otherwise affect—

“(A) the authority of the Secretary of the Interior, as provided for under the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] (as in effect on the day before the date of enactment of this Act [Oct. 21, 2020]), regarding—

“(i) the inclusion of any non-BIA program (as defined in section 401 of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5361]) in a self-determination contract or funding agreement under section 403(c) of such Act [25 U.S.C. 5363(c)] (as so in effect); or

“(ii) the implementation of any contract or agreement described in clause (i) that is in effect on the day described in subparagraph (A);

“(B) the meaning, application, or effect of any Tribal water rights settlement, including the performance required of a party thereto or any payment or funding obligation thereunder;

“(C) the authority, jurisdiction, or responsibility of a State to manage, control, or regulate fish and wildlife under State law (including regulations) on land or water in the State, including Federal public land;

“(D) except for the authority provided to the Secretary as described in subparagraph (A), the applicability or effect of any Federal law related to the protection or management of fish or wildlife; or

“(E) any treaty-reserved right or other right of any Indian Tribe as recognized by any other means, including treaties or agreements with the United States, Executive orders, statutes, regulations, or case law; or

“(2) to authorize any provision of a contract or agreement that is not consistent with the terms of a Tribal water rights settlement.”

#### APPLICATION OF OTHER PROVISIONS

Pub. L. 116-180, title II, §201(d), Oct. 21, 2020, 134 Stat. 879, provided that: “Sections 4, 5, 6, 7, 102(c), 104, 105(a)(1), 105(f), 110, and 111 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304, 5305, 5306, 5307, 5321(c), 5323, 5324(a)(1), 5324(f), 5331, and 5332) and section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959) [25 U.S.C. 5321 note], apply to compacts and funding agreements entered into under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5361 et seq.).”

#### CONGRESSIONAL STATEMENT OF FINDINGS

Pub. L. 103-413, title II, §202, Oct. 25, 1994, 108 Stat. 4270, provided that: “Congress finds that—

“(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

“(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

“(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

“(4) the Tribal Self-Governance Demonstration Project [see Pub. L. 93-638, title III, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, formerly set out as a note under former 25 U.S.C. 450f] was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management; and

“(5) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that—

“(A) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities, or portions thereof, is an effective way to implement the Federal policy of government-to-government relations with Indian tribes; and

“(B) transferring control to tribal governments, upon tribal request, over funding and decision-making for Federal programs, services, functions, and activities strengthens the Federal policy of Indian self-determination.”

#### CONGRESSIONAL DECLARATION OF POLICY

Pub. L. 103-413, title II, §203, Oct. 25, 1994, 108 Stat. 4271, provided that: “It is the policy of this title [enacting this subchapter] to permanently establish and implement tribal self-governance—

“(1) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

“(2) to permit each Indian tribe to choose the extent of the participation of such tribe in self-governance;

“(3) to coexist with the provisions of the Indian Self-Determination Act [title I of Pub. L. 93-638, see Short Title note set out under section 5301 of this title] relating to the provision of Indian services by designated Federal agencies;

“(4) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(5) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

“(6) to provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy.”

### § 5362. Tribal Self-Governance Program

#### (a) Establishment

The Secretary shall establish and carry out a program within the Department to be known as the “Tribal Self-Governance Program”.

#### (b) Selection of participating Indian Tribes

##### (1) In general

##### (A) Eligibility

The Secretary, acting through the Director of the Office of Self-Governance, may se-



lect not more than 50 new Indian Tribes per year from those tribes eligible under subsection (c) to participate in self-governance.

**(B) Joint participation**

On the request of each participating Indian Tribe, 2 or more otherwise eligible Indian Tribes may be treated as a single Indian Tribe for the purpose of participating in self-governance.

**(2) Other authorized Indian Tribe or Tribal organization**

If an Indian Tribe authorizes another Indian Tribe or a Tribal organization to plan for or carry out a program on its behalf under this subchapter, the authorized Indian Tribe or Tribal organization shall have the rights and responsibilities of the authorizing Indian Tribe (except as otherwise provided in the authorizing resolution).

**(3) Joint participation as organization**

Two or more Indian Tribes that are not otherwise eligible under subsection (c) may be treated as a single Indian Tribe for the purpose of participating in self-governance as a Tribal organization if—

(A) each Indian Tribe so requests; and

(B) the Tribal organization itself, or at least one of the Indian Tribes participating in the Tribal organization, is eligible under subsection (c).

**(4) Tribal withdrawal from a Tribal organization**

**(A) In general**

An Indian Tribe that withdraws from participation in a Tribal organization, in whole or in part, shall be entitled to participate in self-governance if the Indian Tribe is eligible under subsection (c).

**(B) Effect of withdrawal**

If an Indian Tribe withdraws from participation in a Tribal organization, the Indian Tribe shall be entitled to its Tribal share of funds and resources supporting the programs that the Indian Tribe is entitled to carry out under the compact and funding agreement of the Indian Tribe.

**(C) Participation in self-governance**

The withdrawal of an Indian Tribe from a Tribal organization shall not affect the eligibility of the Tribal organization to participate in self-governance on behalf of one or more other Indian Tribes, if the Tribal organization still qualifies under subsection (c).

**(D) Withdrawal process**

**(i) In general**

An Indian Tribe may, by Tribal resolution, fully or partially withdraw its Tribal share of any program in a funding agreement from a participating Tribal organization.

**(ii) Notification**

The Indian Tribe shall provide a copy of the Tribal resolution described in clause (i) to the Secretary.

**(iii) Effective date**

**(I) In general**

A withdrawal under clause (i) shall become effective on the date that is specified in the Tribal resolution and mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

**(II) No specified date**

In the absence of a date specified in the resolution, the withdrawal shall become effective on—

(aa) the earlier of—

(AA) 1 year after the date of submission of the request; and

(BB) the date on which the funding agreement expires; or

(bb) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian Tribe, and the Tribal organization that signed the compact and funding agreement on behalf of the withdrawing Indian Tribe or Tribal organization.

**(E) Distribution of funds**

If an Indian Tribe or Tribal organization eligible to enter into a self-determination contract or a compact or funding agreement fully or partially withdraws from a participating Tribal organization, the withdrawing Indian Tribe—

(i) may elect to enter into a self-determination contract or compact, in which case—

(I) the withdrawing Indian Tribe or Tribal organization shall be entitled to its Tribal share of unexpended funds and resources supporting the programs that the Indian Tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds were initially allocated to the funding agreement of the Tribal organization); and

(II) the funds referred to in subclause (I) shall be withdrawn by the Secretary from the funding agreement of the Tribal organization and transferred to the withdrawing Indian Tribe, on the condition that sections 5321 and 5324(i) of this title, as appropriate, shall apply to the withdrawing Indian Tribe; or

(ii) may elect not to enter into a self-determination contract or compact, in which case all unexpended funds and resources associated with the withdrawing Indian Tribe's returned programs (calculated on the same basis as the funds were initially allocated to the funding agreement of the Tribal organization) shall be returned by the Tribal organization to the Secretary for operation of the programs included in the withdrawal.

**(F) Return to mature contract status**

If an Indian Tribe elects to operate all or some programs carried out under a compact or funding agreement under this subchapter through a self-determination contract under subchapter I, at the option of the Indian Tribe, the resulting self-determination contract shall be a mature self-determination contract as long as the Indian Tribe meets the requirements set forth in section 5304(h) of this title.

**(c) Eligibility**

To be eligible to participate in self-governance, an Indian Tribe shall—

- (1) successfully complete the planning phase described in subsection (d);
- (2) request participation in self-governance by resolution or other official action by the Tribal governing body; and
- (3) demonstrate, for the 3 fiscal years preceding the date on which the Indian Tribe requests participation, financial stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and material audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

**(d) Planning phase****(1) In general**

An Indian Tribe seeking to begin participation in self-governance shall complete a planning phase as provided in this subsection.

**(2) Activities**

The planning phase shall—

- (A) be conducted to the satisfaction of the Indian Tribe; and
- (B) include—
  - (i) legal and budgetary research; and
  - (ii) internal Tribal government planning, training, and organizational preparation.

**(e) Grants****(1) In general**

Subject to the availability of appropriations, an Indian Tribe or Tribal organization that meets the requirements of paragraphs (2) and (3) of subsection (c) shall be eligible for grants—

- (A) to plan for participation in self-governance; and
- (B) to negotiate the terms of participation by the Indian Tribe or Tribal organization in self-governance, as set forth in a compact and a funding agreement.

**(2) Receipt of grant not required**

Receipt of a grant under paragraph (1) shall not be a requirement of participation in self-governance.

(Pub. L. 93-638, title IV, §402, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104-208, div. A, title I, §101(d) [title I, §117], Sept. 30, 1996, 110 Stat. 3009-181, 3009-201; Pub. L. 116-180, title I, §101(c), Oct. 21, 2020, 134 Stat. 859.)

**Editorial Notes**

## REFERENCES IN TEXT

Subchapter I, referred to in subsec. (b)(4)(F), was in the original “title I”, meaning title I of Pub. L. 93-638,

known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

## CODIFICATION

Section was formerly classified to section 458bb of this title prior to editorial reclassification and renumbering as this section.

## AMENDMENTS

2020—Pub. L. 116-180 amended section generally. Prior to amendment, section related to selection of Indian tribes to participate in Self-Governance.

1996—Subsec. (b)(1). Pub. L. 104-208 amended par. (1) generally. Prior to amendment, par. (1) read as follows: “In addition to those Indian tribes participating in Self-Governance under subsection (a) of this section, the Secretary, acting through the Director of the Office of Self-Governance, may select up to 20 new tribes per year from the applicant pool described in subsection (c) of this section to participate in Self-Governance.”

**§ 5363. Funding agreements****(a) Authorization**

The Secretary shall, on the request of any Indian Tribe or Tribal organization, negotiate and enter into a written funding agreement with the governing body of the Indian Tribe or the Tribal organization in a manner consistent with—

- (1) the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States; and
- (2) subsection (b).

**(b) Contents**

Each funding agreement shall—

(1) authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices within which the program, service, function, and activity, or portion thereof, is performed, including funding for agency, area, and central office functions in accordance with subsection (g)(3) of this section, and including—

(A) any program, service, function, and activity, or portion thereof, administered under the authority of—

- (i) the Act of April 16, 1934 (25 U.S.C. 452 et seq.);<sup>1</sup> and
- (ii) section 13 of this title;

(B) programs, services, functions, and activities or portions thereof administered by the Secretary of the Interior that are otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior; and

(C) any other program, service, function, or activity (or portion thereof) that is provided through the Bureau of Indian Affairs,

<sup>1</sup> See References in Text note below.

the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians with respect to which Indian Tribes or Indians are primary or significant beneficiaries;

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 5372(c) of this title, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law; and

(3) subject to the terms of the agreement, authorize the tribe to redesign or consolidate programs, services, functions, and activities, or portions thereof, and reallocate funds for such programs, services, functions, and activities, or portions thereof, except that, with respect to the reallocation, consolidation, and redesign of programs described in paragraph (2), a joint agreement between the Secretary and the tribe shall be required.

**(c) Additional activities**

Each funding agreement negotiated pursuant to subsections (a) and (b) of this section may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

**(d) Provisions relating to Secretary**

Funding agreements negotiated between the Secretary and an Indian tribe shall include provisions—

(1) to monitor the performance of trust functions by the tribe through the annual trust evaluation, and

(2) for the Secretary to reassume a program, service, function, or activity, or portions thereof, if there is a finding of imminent jeopardy to a physical trust asset, natural resources, or public health and safety.

**(e) Construction projects**

(1) Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and Federal acquisition regulations in any funding agreement entered into under this chapter. Absent a negotiated agreement, such provisions and regulatory requirements shall not apply.

(2) In all construction projects performed pursuant to this subchapter, the Secretary shall ensure that proper health and safety standards are provided for in the funding agreements.

**(f) Submission**

Not later than 90 days before the proposed effective date of an agreement entered into under

this section, the Secretary shall submit a copy of such agreement to each Indian Tribe that is served by the Agency that is serving the tribe that is a party to the funding agreement.

**(g) Payment**

(1) At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

(2) The funding agreements authorized by this subchapter and title III of this Act shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b) of this section, the Secretary shall provide funds to the tribe under an agreement under this subchapter for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this chapter, including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.

(4) Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

**(h) Civil actions**

(1) Except as provided in paragraph (2), for the purposes of section 5331 of this title, the term "contract" shall include agreements entered into under this subchapter.

(2) For the period that an agreement entered into under this subchapter is in effect, the provisions of section 81 of this title, section 5123 of this title, and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply to attorney and other professional contracts by Indian tribal governments participating in Self-Governance under this subchapter.

**(i) Facilitation**

(1) Except as otherwise provided by law, the Secretary shall interpret each Federal law and regulation in a manner that will facilitate—

(A) the inclusion of programs, services, functions, and activities in the agreements entered into under this section; and

(B) the implementation of agreements entered into under this section.

(2)(A) A tribe may submit a written request for a waiver to the Secretary identifying the regulation sought to be waived and the basis for the request.

(B) Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the requested waiver in writing to the tribe. A denial

may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

**(j) Funds**

All funds provided under funding agreements entered into pursuant to this chapter, and all funds provided under contracts or grants made pursuant to this chapter, shall be treated as non-Federal funds for purposes of meeting matching requirements under any other Federal law.

**(k) Disclaimer**

Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under subsection (b)(2) of this section and section 5372(c) of this title with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under subsection (b)(2) of this section.

**(l) Incorporate self-determination provisions**

At the option of a participating tribe or tribes, any or all provisions of subchapter I of this chapter shall be made part of an agreement entered into under title III of this Act or this subchapter. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in title III or this subchapter.

**(m) Other provisions**

**(1) Excluded funding**

A funding agreement shall not authorize an Indian Tribe to plan, conduct, administer, or receive Tribal share funding under any program that—

(A) is provided under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.); or

(B) is provided for elementary and secondary schools under the formula developed under section 2007 of this title.

**(2) Services, functions, and responsibilities**

A funding agreement shall specify—

(A) the services to be provided under the funding agreement;

(B) the functions to be performed under the funding agreement; and

(C) the responsibilities of the Indian Tribe and the Secretary under the funding agreement.

**(3) Base budget**

**(A) In general**

A funding agreement shall, at the option of the Indian Tribe, provide for a stable base budget specifying the recurring funds (which may include funds available under section 5325(a) of this title) to be transferred to the

Indian Tribe, for such period as the Indian Tribe specifies in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations.

**(B) Limitations**

Notwithstanding subparagraph (A), a funding agreement shall not specify funding associated with a program described in subsection (b)(2) or (c) unless the Secretary agrees.

**(4) No waiver of trust responsibility**

A funding agreement shall prohibit the Secretary from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, court decisions, and other laws.

**(n) Amendment**

The Secretary shall not revise, amend, or require additional terms in a new or subsequent funding agreement without the consent of the Indian Tribe, unless such terms are required by Federal law.

**(o) Effective date**

A funding agreement shall become effective on the date specified in the funding agreement.

**(p) Existing and subsequent funding agreements**

**(1) Subsequent funding agreements**

Absent notification from an Indian Tribe that the Indian Tribe is withdrawing or retroceding the operation of one or more programs identified in a funding agreement, or unless otherwise agreed to by the parties to the funding agreement or by the nature of any noncontinuing program, service, function, or activity contained in a funding agreement—

(A) a funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, with funding paid annually for each fiscal year the agreement is in effect; and

(B) the term of the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement for the purposes of calculating the amount of funding to which the Indian Tribe is entitled.

**(2) Disputes**

Disputes over the implementation of paragraph (1)(A) shall be subject to section 5366(c) of this title.

**(3) Existing funding agreements**

An Indian Tribe that was participating in self-governance under this subchapter on October 21, 2020, shall have the option at any time after that date—

(A) to retain its existing funding agreement (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this subchapter; or

(B) to negotiate a new funding agreement in a manner consistent with this subchapter.

**(4) Multiyear funding agreements**

An Indian Tribe may, at the discretion of the Indian Tribe, negotiate with the Secretary

for a funding agreement with a term that exceeds 1 year.

(Pub. L. 93-638, title IV, §403, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4272; amended Pub. L. 104-109, §19, Feb. 12, 1996, 110 Stat. 766; Pub. L. 105-244, title IX, §901(d), Oct. 7, 1998, 112 Stat. 1828; Pub. L. 106-568, title VIII, §812(b), Dec. 27, 2000, 114 Stat. 2917; Pub. L. 110-315, title IX, §941(k)(2)(H), Aug. 14, 2008, 122 Stat. 3467; Pub. L. 116-180, title I, §101(d), Oct. 21, 2020, 134 Stat. 862; Pub. L. 116-260, div. DD, §13(a)(3), Dec. 27, 2020, 134 Stat. 3033.)

### Editorial Notes

#### REFERENCES IN TEXT

Act of April 16, 1934 (25 U.S.C. 452 et seq.), referred to in subsec. (b)(1)(A)(i), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which was classified generally to section 452 et seq. of this title prior to editorial reclassification as section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in subsecs. (e)(1), (g)(3), and (j), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Title III of this Act, referred to in subsecs. (g)(2) and (l), is title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

The Act of July 3, 1952, referred to in subsec. (h)(2), is act July 3, 1952, ch. 549, 66 Stat. 323, which enacted section 82a of this title and provisions set out as a note under section 82a of this title.

Subchapter I of this chapter, referred to in subsec. (l), was in the original "title I of this Act", meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in subsec. (m)(1)(A), is Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 458cc of this title prior to editorial reclassification and renumbering as this section.

In subsec. (e)(1), "division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41" substituted for "the Office of Federal Procurement and Policy Act" on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### AMENDMENTS

2020—Subsec. (a). Pub. L. 116-180, §101(d)(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government in a manner consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people."

Subsec. (b)(1). Pub. L. 116-180, §101(d)(2)(A), in introductory provisions, substituted "the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices" for "without regard to the agency or office of the Bureau of Indian Affairs" and "and including—" for "and including", inserted subpar. (A) designation before "any program", added subpar. (C), and redesignated former subpars. (A), (B), and (C) as subpars. (A)(i), (A)(ii), and (B), respectively, and realigned margins.

Subsec. (b)(2). Pub. L. 116-180, §101(d)(2)(B), substituted "section 5372(c) of this title" for "section 5365(c) of this title" and inserted "and" at end.

Subsec. (b)(3). Pub. L. 116-180, §101(d)(2)(C), substituted period for semicolon at end.

Subsec. (b)(4). Pub. L. 116-260, which directed amendment of par. (4) by adding "and" at end of subpar. (A), striking out "and" at end of subpar. (B), and striking out subpar. (C), could not be executed due to intervening amendment by Pub. L. 116-180, §101(d)(2)(D). See note below.

Pub. L. 116-180, §101(d)(2)(D), struck out par. (4) which read as follows: "prohibit the inclusion of funds provided—

"(A) pursuant to the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

"(B) for elementary and secondary schools under the formula developed pursuant to section 2008 of this title; and

"(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 5321 of this title;"

Subsec. (b)(5) to (9). Pub. L. 116-180, §101(d)(2)(D), struck out pars. (5) to (9) which set out various requirements and responsibilities related to funding agreements.

Subsec. (f). Pub. L. 116-180, §101(d)(3), struck out "for review" after "Submission" in heading, substituted "such agreement to" for "such agreement to—", struck out par. (1) designation before "each Indian tribe", substituted "agreement;" for "agreement;", and struck out pars. (2) and (3) which read as follows:

"(2) the Committee on Indian Affairs of the Senate; and

"(3) the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives."

Subsec. (k). Pub. L. 116-180, §101(d)(4), substituted "section 5372(c) of this title" for "section 5365(c)(1) of this title".

Subsecs. (m) to (p). Pub. L. 116-180, §101(d)(5), added subsecs. (m) to (p).

2008—Subsec. (b)(4)(A). Pub. L. 110-315 substituted "the Tribally Controlled Colleges and Universities Assistance Act of 1978" for "the Tribally Controlled College or University Assistance Act of 1978".

2000—Subsec. (h)(2). Pub. L. 106-568 struck out "and" before "section 5123 of this title" and substituted "and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply" for "shall not apply".

1998—Subsec. (b)(4)(A). Pub. L. 105-244 substituted "Tribally Controlled College or University Assistance Act of 1978" for "Tribally Controlled Community College Assistance Act of 1978".

1996—Subsec. (l). Pub. L. 104-109 added subsec. (l).

### Statutory Notes and Related Subsidiaries

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

**§ 5364. Compacts****(a) In general**

The Secretary shall negotiate and enter into a written compact with each Indian Tribe participating in self-governance in a manner consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States.

**(b) Contents**

A compact under subsection (a) shall—

- (1) specify and affirm the general terms of the government-to-government relationship between the Indian Tribe and the Secretary; and
- (2) include such terms as the parties intend shall control during the term of the compact.

**(c) Amendment**

A compact under subsection (a) may be amended only by agreement of the parties.

**(d) Effective date**

The effective date of a compact under subsection (a) shall be—

- (1) the date of the execution of the compact by the parties; or
- (2) such date as is mutually agreed upon by the parties.

**(e) Duration**

A compact under subsection (a) shall remain in effect—

- (1) for so long as permitted by Federal law; or
- (2) until termination by written agreement, retrocession, or reassumption.

**(f) Existing compacts**

An Indian Tribe participating in self-governance under this subchapter, as in effect on October 21, 2020, shall have the option at any time after that date—

- (1) to retain its negotiated compact (in whole or in part) to the extent that the provisions of the compact are not directly contrary to any express provision of this subchapter; or
- (2) to negotiate a new compact in a manner consistent with this subchapter.

(Pub. L. 93-638, title IV, §404, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864.)

**Editorial Notes****PRIOR PROVISIONS**

A prior section 5364, Pub. L. 93-638, title IV, §404, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4275, related to identification of funds in annual budget request, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5371 of this title. Such section was formerly classified to section 458dd of this title prior to editorial reclassification and renumbering as section 5364.

**§ 5365. General provisions****(a) Applicability**

An Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter.

**(b) Conflicts of interest**

An Indian Tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to Tribal law and procedures, conflicts of interest in the administration of programs.

**(c) Audits****(1) Single Agency Audit Act**

Chapter 75 of title 31 shall apply to a funding agreement under this subchapter.

**(2) Cost principles**

An Indian Tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

- (A) any provision of law, including section 5325 of this title; or
- (B) any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget.

**(3) Federal claims**

Any claim by the Federal Government against an Indian Tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to section 5325(f) of this title.

**(d) Redesign and consolidation**

Except as provided in section 5367 of this title, an Indian Tribe may redesign or consolidate programs, or reallocate funds for programs, in a compact or funding agreement in any manner that the Indian Tribe determines to be in the best interest of the Indian community being served—

- (1) so long as the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law; and
- (2) except that, with respect to the reallocation, consolidation, and redesign of programs described in subsection (b)(2) or (c) of section 5363 of this title, a joint agreement between the Secretary and the Indian Tribe shall be required.

**(e) Retrocession****(1) In general**

An Indian Tribe may fully or partially retrocede to the Secretary any program under a compact or funding agreement.

**(2) Effective date****(A) Agreement**

Unless an Indian Tribe rescinds a request for retrocession under paragraph (1), the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

**(B) No agreement**

In the absence of a specification of an effective date in the compact or funding agreement, the retrocession shall become effective on—

- (i) the earlier of—
  - (I) 1 year after the date on which the request is submitted; and

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the Secretary and the Indian Tribe.

**(f) Nonduplication**

A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian Tribe under this subchapter, the Indian Tribe—

(1) shall not be entitled to contract with the Secretary for funds under section 5321 of this title, except that the Indian Tribe shall be eligible for new programs on the same basis as other Indian Tribes; and

(2) shall be responsible for the administration of programs in accordance with the compact or funding agreement.

**(g) Records**

**(1) In general**

Unless an Indian Tribe specifies otherwise in the compact or funding agreement, records of an Indian Tribe shall not be considered to be Federal records for purposes of chapter 5 of title 5.

**(2) Recordkeeping system**

An Indian Tribe shall—

(A) maintain a recordkeeping system; and

(B) on a notice period of not less than 30 days, provide the Secretary with reasonable access to the records to enable the Department to meet the requirements of sections 3101 through 3106 of title 44.

(Pub. L. 93-638, title IV, §405, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 865.)

**Editorial Notes**

**PRIOR PROVISIONS**

A prior section 5365, Pub. L. 93-638, title IV, §405, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4276, related to reports, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5372 of this title. Such section was formerly classified to section 458ee of this title prior to editorial reclassification and renumbering as section 5365.

**§ 5366. Provisions relating to the Secretary**

**(a) Trust evaluations**

A funding agreement shall include a provision to monitor the performance of trust functions by the Indian Tribe through the annual trust evaluation.

**(b) Reassumption**

**(1) In general**

A compact or funding agreement shall include provisions for the Secretary to reassume a program and associated funding if there is a specific finding relating to that program of—

(A) imminent jeopardy to a trust asset, a natural resource, or public health and safety that—

(i) is caused by an act or omission of the Indian Tribe; and

(ii) arises out of a failure to carry out the compact or funding agreement; or

(B) gross mismanagement with respect to funds transferred to an Indian Tribe under a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

**(2) Prohibition**

The Secretary shall not reassume operation of a program, in whole or part, unless—

(A) the Secretary first provides written notice and a hearing on the record to the Indian Tribe; and

(B) the Indian Tribe does not take corrective action to remedy the mismanagement of the funds or programs, or the imminent jeopardy to a trust asset, natural resource, or public health and safety.

**(3) Exception**

**(A) In general**

Notwithstanding paragraph (2), the Secretary may, on written notice to the Indian Tribe, immediately reassume operation of a program if—

(i) the Secretary makes a finding of imminent and substantial jeopardy and irreparable harm to a trust asset, a natural resource, or the public health and safety caused by an act or omission of the Indian Tribe; and

(ii) the imminent and substantial jeopardy and irreparable harm to the trust asset, natural resource, or public health and safety arises out of a failure by the Indian Tribe to carry out the terms of an applicable compact or funding agreement.

**(B) Reassumption**

If the Secretary reassumes operation of a program under subparagraph (A), the Secretary shall provide the Indian Tribe with a hearing on the record not later than 10 days after the date of reassumption.

**(c) Inability to agree on compact or funding agreement**

**(1) Final offer**

If the Secretary and a participating Indian Tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian Tribe may submit a final offer to the Secretary.

**(2) Determination**

Not more than 60 days after the date of receipt of a final offer by one or more of the officials designated pursuant to paragraph (4), the Secretary shall review and make a determination with respect to the final offer, except that the 60-day period may be extended for up to 30 days for circumstances beyond the control of the Secretary, upon written request by the Secretary to the Indian tribe.

**(3) Extensions**

The deadline described in paragraph (2) may be extended for any length of time, as agreed upon by both the Indian Tribe and the Secretary.

**(4) Designated officials**

**(A) In general**

The Secretary shall designate one or more appropriate officials in the Department to

receive a copy of the final offer described in paragraph (1).

**(B) No designation**

If no official is designated, the Director of the Office of the Executive Secretariat and Regulatory Affairs shall be the designated official.

**(5) No timely determination**

If the Secretary fails to make a determination with respect to a final offer within the period specified in paragraph (2), including any extension agreed to under paragraph (3), the Secretary shall be deemed to have agreed to the offer, except that with respect to any compact or funding agreement provision concerning a program described under section 5363(c) of this title, the Secretary shall be deemed to have rejected the offer with respect to such provision and the terms of clauses (ii) through (iv) of paragraphs<sup>1</sup> (6)(A) shall apply.

**(6) Rejection of final offer**

**(A) In general**

If the Secretary rejects a final offer (or one or more provisions or funding levels in a final offer), the Secretary shall—

(i) provide timely written notification to the Indian Tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

(I) the amount of funds proposed in the final offer exceeds the applicable funding level as determined under section 5325(a)(1) of this title;

(II) the program that is the subject of the final offer is an inherent Federal function or is subject to the discretion of the Secretary under section 5363(c) of this title;

(III) the Indian Tribe cannot carry out the program in a manner that would not result in significant danger or risk to the public health or safety, to natural resources, or to trust resources;

(IV) the Indian Tribe is not eligible to participate in self-governance under section 5362(c) of this title;

(V) the funding agreement would violate a Federal statute or regulation; or

(VI) with respect to a program or portion of a program included in a final offer pursuant to section 5363(b)(2) of this title, the program or the portion of the program is not otherwise available to Indian Tribes or Indians under section 5321(a)(1)(E) of this title;

(ii) provide technical assistance to overcome the objections stated in the notification required by clause (i);

(iii) provide the Indian Tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter, and the opportunity for appeal on the objections raised, except that the Indian Tribe may, in lieu of filing such appeal, directly proceed to initiate an

action in a United States district court under section 5331(a) of this title; and

(iv) provide the Indian Tribe the option of entering into the severable portions of a final proposed compact or funding agreement (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

**(B) Effect of exercising certain option**

If an Indian Tribe exercises the option specified in subparagraph (A)(iv)—

(i) the Indian Tribe shall retain the right to appeal the rejection by the Secretary under this section; and

(ii) clauses (i), (ii), and (iii) of subparagraph (A) shall apply only to the portion of the proposed final compact or funding agreement that was rejected by the Secretary.

**(d) Burden of proof**

In any administrative action, hearing, appeal, or civil action brought under this section, the Secretary shall have the burden of proof—

(1) of demonstrating, by a preponderance of the evidence, the validity of the grounds for a reassumption under subsection (b); and

(2) of clearly demonstrating the validity of the grounds for rejecting a final offer made under subsection (c).

**(e) Good faith**

**(1) In general**

In the negotiation of compacts and funding agreements, the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy.

**(2) Policy**

The Secretary shall carry out this subchapter in a manner that maximizes the policy of Tribal self-governance.

**(f) Savings**

**(1) In general**

To the extent that programs carried out for the benefit of Indian Tribes and Tribal organizations under this subchapter reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of Tribal shares and other funds determined under section 5368(c) of this title, except for funding agreements entered into for programs under section 5363(c) of this title, the Secretary shall make such savings available to the Indian Tribes or Tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

**(2) Discretionary programs of special significance**

For any savings generated as a result of the assumption of a program by an Indian Tribe under section 5363(c) of this title, such savings shall be made available to that Indian Tribe.

**(g) Trust responsibility**

The Secretary may not waive, modify, or diminish in any way the trust responsibility of the

<sup>1</sup> So in original. Probably should be "paragraph".



United States with respect to Indian Tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

**(h) Decision maker**

A decision that constitutes final agency action and relates to an appeal within the Department conducted under subsection (c)(6)(A)(iii) may be made by—

- (1) an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or
- (2) an administrative law judge.

**(i) Rules of construction**

Subject to section 101(a) of the PROGRESS for Indian Tribes Act, each provision of this subchapter and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian Tribe participating in self-governance, and any ambiguity shall be resolved in favor of the Indian Tribe.

(Pub. L. 93-638, title IV, §406, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 866.)

REFERENCES IN TEXT

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (i), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

Editorial Notes

PRIOR PROVISIONS

A prior section 5366, Pub. L. 93-638, title IV, §406, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4277; amended Pub. L. 105-277, div. A, §101(e) [title I, §133], Oct. 21, 1998, 112 Stat. 2681-231, 2681-264, set out disclaimers regarding construction of provisions of this chapter and subchapter. Such section was formerly classified to section 458ff of this title prior to editorial reclassification and renumbering as section 5366.

**§ 5367. Construction programs and projects**

**(a) In general**

Indian Tribes participating in Tribal self-governance may carry out any construction project included in a compact or funding agreement under this subchapter.

**(b) Tribal option to carry out certain Federal environmental activities**

In carrying out a construction project under this subchapter, an Indian Tribe may, subject to the agreement of the Secretary, elect to assume some Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and related provisions of other law and regulations that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

- (1) designating a certifying Tribal officer to represent the Indian Tribe and to assume the status of a responsible Federal official under those Acts, laws, or regulations; and
- (2) accepting the jurisdiction of the United States courts for the purpose of enforcing the responsibilities of the certifying Tribal officer

assuming the status of a responsible Federal official under those Acts, laws, or regulations.

**(c) Savings clause**

Notwithstanding subsection (b), nothing in this section authorizes the Secretary to include in any compact or funding agreement duties of the Secretary under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and other related provisions of law that are inherent Federal functions.

**(d) Codes and standards**

In carrying out a construction project under this subchapter, an Indian Tribe shall—

- (1) adhere to applicable Federal, State, local, and Tribal building codes, architectural and engineering standards, and applicable Federal guidelines regarding design, space, and operational standards, appropriate for the particular project; and
- (2) use only architects and engineers who—
  - (A) are licensed to practice in the State in which the facility will be built; and
  - (B) certify that—
    - (i) they are qualified to perform the work required by the specific construction involved; and
    - (ii) upon completion of design, the plans and specifications meet or exceed the applicable construction and safety codes.

**(e) Tribal accountability**

**(1) In general**

In carrying out a construction project under this subchapter, an Indian Tribe shall assume responsibility for the successful completion of the construction project and of a facility that is usable for the purpose for which the Indian Tribe received funding.

**(2) Requirements**

For each construction project carried out by an Indian Tribe under this subchapter, the Indian Tribe and the Secretary shall negotiate a provision to be included in the funding agreement that identifies—

- (A) the approximate start and completion dates for the project, which may extend over a period of one or more years;
- (B) a general description of the project, including the scope of work, references to design criteria, and other terms and conditions;
- (C) the responsibilities of the Indian Tribe and the Secretary for the project;
- (D) how project-related environmental considerations will be addressed;
- (E) the amount of funds provided for the project;
- (F) the obligations of the Indian Tribe to comply with the codes referenced in subsection (d)(1) and applicable Federal laws and regulations;
- (G) the agreement of the parties over who will bear any additional costs necessary to meet changes in scope, or errors or omissions in design and construction; and
- (H) the agreement of the Secretary to issue a certificate of occupancy, if requested by the Indian Tribe, based upon the review

and verification by the Secretary, to the satisfaction of the Secretary, that the Indian Tribe has secured upon completion the review and approval of the plans and specifications, sufficiency of design, life safety, and code compliance by qualified, licensed, and independent architects and engineers.

**(f) Funding**

**(1) In general**

Funding appropriated for construction projects carried out under this subchapter shall be included in funding agreements as annual or semiannual advance payments at the option of the Indian Tribe.

**(2) Advance payments**

The Secretary shall include all associated project contingency funds with each advance payment, and the Indian Tribe shall be responsible for the management of such contingency funds.

**(g) Negotiations**

At the option of the Indian Tribe, construction project funding proposals shall be negotiated pursuant to the statutory process in section 5324 of this title, and any resulting construction project agreement shall be incorporated into the funding agreement as addenda.

**(h) Federal review and verification**

**(1) In general**

On a schedule negotiated by the Secretary and the Indian Tribe—

(A) the Secretary shall review and verify, to the satisfaction of the Secretary, that project planning and design documents prepared by the Indian Tribe in advance of initial construction are in conformity with the obligations of the Indian Tribe under subsection (d); and

(B) before the project planning and design documents are implemented, the Secretary shall review and verify to the satisfaction of the Secretary that subsequent document amendments which result in a significant change in construction are in conformity with the obligations of the Indian Tribe under subsection (d).

**(2) Reports**

The Indian Tribe shall provide the Secretary with project progress and financial reports not less than semiannually.

**(3) Oversight visits**

The Secretary may conduct onsite project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian Tribe.

**(i) Application of other laws**

Unless otherwise agreed to by the Indian Tribe and except as otherwise provided in this chapter, no provision of title 41, the Federal Acquisition Regulation, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction program or project carried out under this subchapter.

**(j) Future funding**

Upon completion of a facility constructed under this subchapter, the Secretary shall in-

clude the facility among those eligible for annual operation and maintenance funding support comparable to that provided for similar facilities funded by the Department as annual appropriations are available and to the extent that the facility size and complexity and other factors do not exceed the funding formula criteria for comparable buildings.

(Pub. L. 93-638, title IV, §407, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 870.)

**Editorial Notes**

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsecs. (b) and (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsec. (i), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

PRIOR PROVISIONS

A prior section 5367, Pub. L. 93-638, title IV, §407, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4277, related to regulations to carry out this subchapter, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5373 of this title. Such section was formerly classified to section 458gg of this title prior to editorial reclassification and renumbering as section 5367.

**§ 5368. Payment**

**(a) In general**

At the request of the governing body of an Indian Tribe and under the terms of an applicable funding agreement, the Secretary shall provide funding to the Indian Tribe to carry out the funding agreement.

**(b) Advance annual payment**

At the option of the Indian Tribe, a funding agreement shall provide for an advance annual payment to an Indian Tribe.

**(c) Amount**

**(1) In general**

Subject to subsection (e) and sections 5363 and 5365 of this title, the Secretary shall provide funds to the Indian Tribe under a funding agreement for programs in an amount that is equal to the amount that the Indian Tribe would have been entitled to receive under contracts and grants under this chapter (including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian Tribe or its members) without regard to the organization level within the Department at which the programs are carried out.

**(2) Savings clause**

Nothing in this section reduces programs, services, or funds of, or provided to, another Indian Tribe.

**(d) Timing****(1) In general**

Pursuant to the terms of any compact or funding agreement entered into under this subchapter, the Secretary shall transfer to the Indian Tribe all funds provided for in the funding agreement, pursuant to subsection (c), and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolution.

**(2) Transfers**

Not later than 1 year after October 21, 2020, in any instance in which a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

**(e) Availability**

Funds for trust services to individual Indians shall be available under a funding agreement only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the Indian Tribe.

**(f) Multiyear funding**

A funding agreement may provide for multiyear funding.

**(g) Limitations on authority of the Secretary**

The Secretary shall not—

(1) fail to transfer to an Indian Tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this subchapter for programs eligible under paragraph (1) or (2) of section 5363(b) of this title, except as required by Federal law;

(2) withhold any portion of such funds for transfer over a period of years; or

(3) reduce the amount of funds required under this subchapter—

(A) to make funding available for self-governance monitoring or administration by the Secretary;

(B) in subsequent years, except as necessary as a result of—

(i) a reduction in appropriations from the previous fiscal year for the program to be included in a compact or funding agreement;

(ii) a congressional directive in legislation or an accompanying report;

(iii) a Tribal authorization;

(iv) a change in the amount of pass-through funds subject to the terms of the funding agreement; or

(v) completion of an activity under a program for which the funds were provided;

(C) to pay for Federal functions, including—

(i) Federal pay costs;

(ii) Federal employee retirement benefits;

(iii) automated data processing;

(iv) technical assistance; and

(v) monitoring of activities under this subchapter; or

(D) to pay for costs of Federal personnel displaced by self-determination contracts under this chapter or self-governance under this subchapter.

**(h) Federal resources**

If an Indian Tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation, including the use of interagency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall, as soon as practicable, acquire and transfer such personnel, supplies, or resources to the Indian Tribe under this subchapter.

**(i) Prompt Payment Act**

Chapter 39 of title 31 shall apply to the transfer of funds due under a compact or funding agreement authorized under this subchapter.

**(j) Interest or other income****(1) In general**

An Indian Tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

**(2) No effect on other amounts**

The retention of interest or income under paragraph (1) shall not diminish the amount of funds an Indian Tribe is entitled to receive under a funding agreement in the year the interest or income is earned or in any subsequent fiscal year.

**(3) Investment standard**

Funds transferred under this subchapter shall be managed by the Indian Tribe using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Indian Tribe that are not otherwise guaranteed or insured by the Federal Government.

**(k) Carryover of funds****(1) In general**

Notwithstanding any provision of an appropriations Act, all funds paid to an Indian Tribe in accordance with a compact or funding agreement shall remain available until expended.

**(2) Effect of carryover**

If an Indian Tribe elects to carry over funding from one year to the next, the carryover shall not diminish the amount of funds the Indian Tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

**(l) Limitation of costs****(1) In general**

An Indian Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

**(2) Notice of insufficiency**

If at any time the Indian Tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Indian Tribe shall provide reasonable notice of such insufficiency to the Secretary.

**(3) Suspension of performance**

If, after notice under paragraph (2), the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian Tribe may suspend performance of the activity until such time as additional funds are transferred.

**(4) Savings clause**

Nothing in this section reduces any programs, services, or funds of, or provided to, another Indian Tribe.

**(m) Distribution of funds**

The Office of Self-Governance shall be responsible for distribution of all Bureau of Indian Affairs funds provided under this subchapter unless otherwise agreed by the parties to an applicable funding agreement.

**(n) Applicability**

Notwithstanding any other provision of this section, section 101(a) of the PROGRESS for Indian Tribes Act applies to subsections (a) through (m).

(Pub. L. 93-638, title IV, § 408, as added Pub. L. 116-180, title I, § 101(e), Oct. 21, 2020, 134 Stat. 872.)

**Editorial Notes**

## REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1) and (g)(3)(D), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (n), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

## PRIOR PROVISIONS

A prior section 5368, Pub. L. 93-638, title IV, § 408, as added Pub. L. 103-413, title II, § 204, Oct. 25, 1994, 108 Stat. 4278, authorized appropriations, prior to repeal by Pub. L. 116-180, title I, § 101(e), Oct. 21, 2020, 134 Stat. 864, 872. See section 5377 of this title. Such section was formerly classified to section 458hh of this title prior to editorial reclassification and renumbering as section 5368.

**§ 5369. Facilitation****(a) In general**

Except as otherwise provided by law (including section 101(a) of the PROGRESS for Indian

Tribes Act), the Secretary shall interpret each Federal law and regulation in a manner that facilitates—

(1) the inclusion of programs in funding agreements; and

(2) the implementation of funding agreements.

**(b) Regulation waiver****(1) Request**

An Indian Tribe may submit to the Secretary a written request for a waiver of applicability of a Federal regulation, including—

(A) an identification of the specific text in the regulation sought to be waived; and

(B) the basis for the request.

**(2) Determination by the secretary**

Not later than 120 days after receipt by the Secretary and the designated officials under paragraph (4) of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian Tribe.

**(3) Extensions**

The deadline described in paragraph (2) may be extended for any length of time, as agreed upon by both the Indian Tribe and the Secretary.

**(4) Designated officials**

The Secretary shall designate one or more appropriate officials in the Department to receive a copy of the waiver request described in paragraph (1).

**(5) Grounds for denial**

The Secretary may deny a request under paragraph (1) upon a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

**(6) Failure to make determination**

If the Secretary fails to make a determination with respect to a waiver request within the period specified in paragraph (2) (including any extension agreed to under paragraph (3)), the Secretary shall be deemed to have agreed to the request, except that for a waiver request relating to programs eligible under section 5363(b)(2) or section 5363(c) of this title, the Secretary shall be deemed to have denied the request.

**(7) Finality**

A decision of the Secretary under this section shall be final for the Department.

(Pub. L. 93-638, title IV, § 409, as added Pub. L. 116-180, title I, § 101(e), Oct. 21, 2020, 134 Stat. 874.)

**Editorial Notes**

## REFERENCES IN TEXT

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (a), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

**§ 5370. Discretionary application of other sections****(a) In general**

Except as otherwise provided in section 201(d) of the PROGRESS for Indian Tribes Act, at the

option of a participating Indian Tribe or Indian Tribes, any of the provisions of subchapter I may be incorporated in any compact or funding agreement under this subchapter. The inclusion of any such provision shall be subject to, and shall not conflict with, section 101(a) of such Act.

**(b) Effect**

Each incorporated provision under subsection (a) shall—

- (1) have the same force and effect as if set out in full in this subchapter;
- (2) supplement or replace any related provision in this subchapter; and
- (3) apply to any agency otherwise governed by this subchapter.

**(c) Effective date**

If an Indian Tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation shall—

- (1) be effective immediately; and
- (2) control the negotiation and resulting compact and funding agreement.

(Pub. L. 93-638, title IV, §410, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 875.)

**Editorial Notes**

REFERENCES IN TEXT

Sections 101(a) and 201(d) of the PROGRESS for Indian Tribes Act, referred to in subsec. (a), are sections 101(a) and 201(d) of Pub. L. 116-180, which are set out as notes under section 5361 of this title.

Subchapter I, referred to in subsec. (a), was in the original “title I”, meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

**§ 5371. Annual budget list**

The Secretary shall list, in the annual budget request submitted to Congress under section 1105 of title 31, any funds proposed to be included in funding agreements authorized under this subchapter.

(Pub. L. 93-638, title IV, §411, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

**Editorial Notes**

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5364 of this title prior to repeal by Pub. L. 116-180.

**§ 5372. Reports**

**(a) In general**

**(1) Requirement**

On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this subchapter.

**(2) Analysis**

Any Indian Tribe may submit to the Office of Self-Governance and to the appropriate

committees of Congress a detailed annual analysis of unmet Tribal needs for funding agreements under this subchapter.

**(b) Contents**

The report under subsection (a)(1) shall—

(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds;

(2) identify—

(A) the relative costs and benefits of self-governance;

(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian Tribes and members of Indian Tribes;

(C) the funds transferred to each Indian Tribe and the corresponding reduction in the Federal employees and workload; and

(D) the funding formula for individual Tribal shares of all Central Office funds, together with the comments of affected Indian Tribes, developed under subsection (d);

(3) before being submitted to Congress, be distributed to the Indian Tribes for comment (with a comment period of not less than 30 days);

(4) include the separate views and comments of each Indian Tribe or Tribal organization; and

(5) include a list of—

(A) all such programs that the Secretary determines, in consultation with Indian Tribes participating in self-governance, are eligible for negotiation to be included in a funding agreement at the request of a participating Indian Tribe; and

(B) all such programs which Indian Tribes have formally requested to include in a funding agreement under section 5363(c) of this title due to the special geographic, historical, or cultural significance of the program to the Indian Tribe, indicating whether each request was granted or denied, and stating the grounds for any denial.

**(c) Report on non-BIA programs**

**(1) In general**

In order to optimize opportunities for including non-BIA programs in agreements with Indian Tribes participating in self-governance under this subchapter, the Secretary shall review all programs administered by the Department, other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians, without regard to the agency or office concerned.

**(2) Programmatic targets**

The Secretary shall establish programmatic targets, after consultation with Indian Tribes participating in self-governance, to encourage bureaus of the Department to ensure that an appropriate portion of those programs are available to be included in funding agreements.

**(3) Publication**

The lists under subsection (b)(5) and targets under paragraph (2) shall be published in the

Federal Register and made available to any Indian Tribe participating in self-governance.

**(4) Annual review**

**(A) In general**

The Secretary shall annually review and publish in the Federal Register, after consultation with Indian Tribes participating in self-governance, revised lists and programmatic targets.

**(B) Contents**

In preparing the revised lists and programmatic targets, the Secretary shall consider all programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for programs specifically determined not to be contractible as a matter of law.

**(d) Report on Central Office funds**

Not later than January 1, 2020, the Secretary shall, in consultation with Indian Tribes, develop a funding formula to determine the individual Tribal share of funds controlled by the Central Office of the Bureau of Indian Affairs and the Office of the Special Trustee for inclusion in the compacts.

(Pub. L. 93-638, title IV, §412, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

**Editorial Notes**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 5365 of this title prior to repeal by Pub. L. 116-180.

**§ 5373. Regulations**

**(a) In general**

**(1) Promulgation**

Not later than 90 days after October 21, 2020, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this subchapter.

**(2) Publication of proposed regulations**

Proposed regulations to implement this subchapter shall be published in the Federal Register not later than 21 months after October 21, 2020.

**(3) Expiration of authority**

The authority to promulgate regulations under paragraph (1) shall expire on the date that is 30 months after October 21, 2020.

**(b) Committee**

**(1) Membership**

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only representatives of the Federal Government and Tribal government.

**(2) Lead agency**

Among the Federal representatives described in paragraph (1), the Office of Self-Governance shall be the lead agency for the Department.

**(c) Adaptation of procedures**

The Secretary shall adapt the negotiated rule-making procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

**(d) Effect**

**(1) Repeal**

The Secretary may repeal any regulation that is inconsistent with this chapter.

**(2) Conflicting provisions**

Subject to section 101(a) of the PROGRESS for Indian Tribes Act and except with respect to programs described under section 5363(c) of this title, this subchapter shall supersede any conflicting provision of law (including any conflicting regulations).

**(3) Effectiveness without regard to regulations**

The lack of promulgated regulations on an issue shall not limit the effect or implementation of this subchapter.

(Pub. L. 93-638, title IV, §413, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 877.)

**Editorial Notes**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (d)(1), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (d)(2), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in section 5367 of this title prior to repeal by Pub. L. 116-180.

**§ 5374. Effect of circulars, policies, manuals, guidance, and rules**

Unless expressly agreed to by a participating Indian Tribe in a compact or funding agreement, the participating Indian Tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

(1) the eligibility provisions of section 5324(g) of this title; and

(2) regulations promulgated pursuant to section 5373 of this title.

(Pub. L. 93-638, title IV, §414, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

**§ 5375. Appeals**

Except as provided in section 5366(d) of this title, in any administrative action, appeal, or civil action for judicial review of any decision made by the Secretary under this subchapter, the Secretary shall have the burden of proof of demonstrating by a preponderance of the evidence—

(1) the validity of the grounds for the decision; and

(2) the consistency of the decision with the requirements and policies of this subchapter.

(Pub. L. 93-638, title IV, §415, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### § 5376. Application of other provisions

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959), shall apply to compacts and funding agreements entered into under this subchapter.

(Pub. L. 93-638, title IV, §416, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in text, is section 314 of Pub. L. 101-512, which is set out as a note under section 5321 of this title.

#### § 5377. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(Pub. L. 93-638, title IV, §417, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

#### Editorial Notes

##### PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5368 of this title prior to repeal by Pub. L. 116-180.

#### SUBCHAPTER V—TRIBAL SELF-GOVERNANCE—INDIAN HEALTH SERVICE

#### Editorial Notes

##### CODIFICATION

Subchapter is comprised of title V of Pub. L. 93-638, as added by Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712. Another title V of Pub. L. 93-638, as added by Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936, was redesignated title VIII, and is classified to subchapter VII (§5421 et seq.) of this chapter.

#### § 5381. Definitions

##### (a) In general

In this subchapter:

##### (1) Construction project

The term “construction project”—

(A) means an organized noncontinuous undertaking to complete a specific set of pre-determined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement; and

(B) does not include construction program administration and activities described in paragraphs (1) through (3) of section 5304(m)

of this title, that may otherwise be included in a funding agreement under this subchapter.

##### (2) Construction project agreement

The term “construction project agreement” means a negotiated agreement between the Secretary and an Indian tribe, that at a minimum—

(A) establishes project phase start and completion dates;

(B) defines a specific scope of work and standards by which it will be accomplished;

(C) identifies the responsibilities of the Indian tribe and the Secretary;

(D) addresses environmental considerations;

(E) identifies the owner and operations and maintenance entity of the proposed work;

(F) provides a budget;

(G) provides a payment process; and

(H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

##### (3) Gross mismanagement

The term “gross mismanagement” means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe.

##### (4) Inherent Federal functions

The term “inherent Federal functions” means those Federal functions which cannot legally be delegated to Indian tribes.

##### (5) Inter-tribal consortium

The term “inter-tribal consortium” means a coalition of two<sup>1</sup> more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

##### (6) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

##### (7) Self-governance

The term “self-governance” means the program of self-governance established under section 5382 of this title.

##### (8) Tribal share

The term “tribal share” means an Indian tribe’s portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions.

##### (b) Indian tribe

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or ac-

<sup>1</sup> So in original. Probably should be followed by “or”.

tivities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term “Indian tribe” as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

(Pub. L. 93-638, title V, §501, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 458aaa of this title prior to editorial reclassification and renumbering as this section.

Another section 501 of Pub. L. 93-638 was renumbered section 801 and is classified to section 5421 of this title.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 106-260, §13, Aug. 18, 2000, 114 Stat. 734, provided that: “Except as otherwise provided, the provisions of this Act [enacting this subchapter, amending sections 5321, 5324, and 5325 of this title, enacting provisions set out as notes under this section and sections 5301 and 5321 of this title, and repealing provisions set out as a note under former section 450f of this title] shall take effect on the date of the enactment of this Act [Aug. 18, 2000].”

##### FINDINGS

Pub. L. 106-260, §2, Aug. 18, 2000, 114 Stat. 711, provided that: “Congress finds that—

“(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

“(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

“(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

“(4) the Tribal Self-Governance Demonstration Project, established under title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93-638, former] 25 U.S.C. 450f note) was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management;

“(5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities and to satisfy its obligations to the Indian tribes under treaties and other laws; and

“(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)—

“(A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian tribes; and

“(B) strengthens the Federal policy of Indian self-determination.”

##### DECLARATION OF POLICY

Pub. L. 106-260, §3, Aug. 18, 2000, 114 Stat. 712, provided that: “It is the policy of Congress—

“(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

“(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

“(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

“(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] relating to the provision of Federal services to Indian tribes;

“(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

“(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

“(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

“(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portion thereof) are assumed by Indian tribes;

“(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act [see Short Title of 2000 Amendments note set out under section 5301 of this title] and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

“(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.”

#### § 5382. Establishment

The Secretary shall establish and carry out a program within the Indian Health Service of the Department of Health and Human Services to be known as the “Tribal Self-Governance Program” in accordance with this subchapter.

(Pub. L. 93-638, title V, §502, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 714.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 458aaa-1 of this title prior to editorial reclassification and renumbering as this section.

Another section 502 of Pub. L. 93-638 was renumbered section 802 and is classified to section 5422 of this title.

#### § 5383. Selection of participating Indian tribes

##### (a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III<sup>1</sup> on August 18, 2000, may elect to

<sup>1</sup> See References in Text note below.



participate in self-governance under this subchapter under existing authority as reflected in tribal resolution.

**(b) Additional participants**

**(1) In general**

In addition to those Indian tribes participating in self-governance under subsection (a) of this section, each year an additional 50 Indian tribes that meet the eligibility criteria specified in subsection (c) of this section shall be entitled to participate in self-governance.

**(2) Treatment of certain Indian tribes**

**(A) In general**

An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the Indian tribe meets the eligibility criteria specified in subsection (c) of this section.

**(B) Effect of withdrawal**

If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those programs, services, functions, and activities (or portions thereof) that the Indian tribe will be carrying out under the compact and funding agreement of the Indian tribe.

**(C) Participation in self-governance**

In no event shall the withdrawal of an Indian tribe from an inter-tribal consortium or tribal organization affect the eligibility of the inter-tribal consortium or tribal organization to participate in self-governance.

**(c) Applicant pool**

**(1) In general**

The qualified applicant pool for self-governance shall consist of each Indian tribe that—

(A) successfully completes the planning phase described in subsection (d) of this section;

(B) has requested participation in self-governance by resolution or other official action by the governing body of each Indian tribe to be served; and

(C) has demonstrated, for 3 fiscal years, financial stability and financial management capability.

**(2) Criteria for determining financial stability and financial management capacity**

For purposes of this subsection, evidence that, during the 3-year period referred to in paragraph (1)(C), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

**(d) Planning phase**

Each Indian tribe seeking participation in self-governance shall complete a planning phase. The planning phase shall be conducted to the

satisfaction of the Indian tribe and shall include—

(1) legal and budgetary research; and

(2) internal tribal government planning and organizational preparation relating to the administration of health care programs.

**(e) Grants**

Subject to the availability of appropriations, any Indian tribe meeting the requirements of paragraph (1)(B) and (C) of subsection (c) of this section shall be eligible for grants—

(1) to plan for participation in self-governance; and

(2) to negotiate the terms of participation by the Indian tribe or tribal organization in self-governance, as set forth in a compact and a funding agreement.

**(f) Receipt of grant not required**

Receipt of a grant under subsection (e) of this section shall not be a requirement of participation in self-governance.

(Pub. L. 93-638, title V, §503, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 714.)

**Editorial Notes**

REFERENCES IN TEXT

Title III, referred to in subsec. (a), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

CODIFICATION

Section was formerly classified to section 458aaa-2 of this title prior to editorial reclassification and renumbering as this section.

Another section 503 of Pub. L. 93-638 was renumbered section 803 and is classified to section 5423 of this title.

**§ 5384. Compacts**

**(a) Compact required**

The Secretary shall negotiate and enter into a written compact with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

**(b) Contents**

Each compact required under subsection (a) of this section shall set forth the general terms of the government-to-government relationship between the Indian tribe and the Secretary, including such terms as the parties intend shall control year after year. Such compacts may only be amended by mutual agreement of the parties.

**(c) Existing compacts**

An Indian tribe participating in the Tribal Self-Governance Demonstration Project under title III<sup>1</sup> on August 18, 2000, shall have the option at any time after August 18, 2000, to—

(1) retain the Tribal Self-Governance Demonstration Project compact of that Indian tribe (in whole or in part) to the extent that

<sup>1</sup> See References in Text note below.

the provisions of that funding agreement are not directly contrary to any express provision of this subchapter; or

(2) instead of retaining a compact or portion thereof under paragraph (1), negotiate a new compact in a manner consistent with the requirements of this subchapter.

**(d) Term and effective date**

The effective date of a compact shall be the date of the approval and execution by the Indian tribe or another date agreed upon by the parties, and shall remain in effect for so long as permitted by Federal law or until terminated by mutual written agreement, retrocession, or re-assumption.

(Pub. L. 93-638, title V, §504, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 715.)

**Editorial Notes**

**REFERENCES IN TEXT**

Title III, referred to in subsec. (c), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, and amended, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

**CODIFICATION**

Section was formerly classified to section 458aaa-3 of this title prior to editorial reclassification and renumbering as this section.

**§ 5385. Funding agreements**

**(a) Funding agreement required**

The Secretary shall negotiate and enter into a written funding agreement with each Indian tribe participating in self-governance in a manner consistent with the Federal Government's trust responsibility, treaty obligations, and the government-to-government relationship between Indian tribes and the United States.

**(b) Contents**

**(1) In general**

Each funding agreement required under subsection (a) of this section shall, as determined by the Indian tribe, authorize the Indian tribe to plan, conduct, consolidate, administer, and receive full tribal share funding, including tribal shares of discretionary Indian Health Service competitive grants (excluding congressionally earmarked competitive grants), for all programs, services, functions, and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

**(2) Inclusion of certain programs, services, functions, and activities**

Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof), including grants (which may be added to a funding agreement after an award of such grants), with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department

of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of—

(A) section 13 of this title;

(B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. 452 et seq.);<sup>1</sup>

(C) the Act of August 5, 1954 (68 Stat. 674; chapter 658) [42 U.S.C. 2001 et seq.];

(D) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

(E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);

(F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or

(G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

**(c) Inclusion in compact or funding agreement**

It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this subchapter.

**(d) Funding agreement terms**

Each funding agreement under this subchapter shall set forth—

(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

(2) for the items identified in paragraph (1)—

(A) the general budget category assigned;

(B) the funds to be provided, including those funds to be provided on a recurring basis;

(C) the time and method of transfer of the funds;

(D) the responsibilities of the Secretary; and

(E) any other provision with respect to which the Indian tribe and the Secretary agree.

**(e) Subsequent funding agreements**

Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of

<sup>1</sup> See References in Text note below.

the subsequent funding agreement shall be retroactive to the end of the term of the preceding funding agreement.

**(f) Existing funding agreements**

Each Indian tribe participating in the Tribal Self-Governance Demonstration Project established under title III<sup>1</sup> on August 18, 2000, shall have the option at any time thereafter to—

(1) retain the Tribal Self-Governance Demonstration Project funding agreement of that Indian tribe (in whole or in part) to the extent that the provisions of that funding agreement are not directly contrary to any express provision of this subchapter; or

(2) instead of retaining a funding agreement or portion thereof under paragraph (1), negotiate a new funding agreement in a manner consistent with the requirements of this subchapter.

**(g) Stable base funding**

At the option of an Indian tribe, a funding agreement may provide for a stable base budget specifying the recurring funds (including, for purposes of this provision, funds available under section 5325(a) of this title) to be transferred to such Indian tribe, for such period as may be specified in the funding agreement, subject to annual adjustment only to reflect changes in congressional appropriations by sub-sub activity excluding earmarks.

(Pub. L. 93-638, title V, §505, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 716.)

**Editorial Notes**

REFERENCES IN TEXT

Act of April 16, 1934, referred to in subsec. (b)(2)(B), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, popularly known as the Johnson-O'Malley Act, which was classified generally to section 452 et seq. of this title prior to editorial reclassification as section 5342 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Act of August 5, 1954, referred to in subsec. (b)(2)(C), is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§2001 et seq.) of chapter 22 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, referred to in subsec. (b)(2)(E), is subtitle C of title IV of Pub. L. 99-570, Oct. 27, 1986, 100 Stat. 3207-137, which is classified generally to chapter 26 (§2401 et seq.) of this title. For complete classification of subtitle C to the Code, see Short Title note set out under section 2401 of this title and Tables.

Title III, referred to in subsec. (f), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

CODIFICATION

Section was formerly classified to section 458aaa-4 of this title prior to editorial reclassification and renumbering as this section.

**§ 5386. General provisions**

**(a) Applicability**

The provisions of this section shall apply to compacts and funding agreements negotiated under this subchapter and an Indian tribe may, at its option, include provisions that reflect such requirements in a compact or funding agreement.

**(b) Conflicts of interest**

Indian tribes participating in self-governance under this subchapter shall ensure that internal measures are in place to address conflicts of interest in the administration of self-governance programs, services, functions, or activities (or portions thereof).

**(c) Audits**

**(1) Single Agency Audit Act**

The provisions of chapter 75 of title 31 requiring a single agency audit report shall apply to funding agreements under this subchapter.

**(2) Cost principles**

An Indian tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by section 5325 of this title<sup>1</sup> other provisions of law, or by any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Indian tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to the provisions of section 5325(f) of this title.

**(d) Records**

**(1) In general**

Unless an Indian tribe specifies otherwise in the compact or funding agreement, records of the Indian tribe shall not be considered Federal records for purposes of chapter 5 of title 5.

**(2) Recordkeeping system**

The Indian tribe shall maintain a recordkeeping system, and, after 30 days advance notice, provide the Secretary with reasonable access to such records to enable the Department of Health and Human Services to meet its minimum legal recordkeeping system requirements under sections 3101 through 3106 of title 44.

**(e) Redesign and consolidation**

An Indian tribe may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a funding agreement under section 5385 of this title and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which the Indian tribe deems to be in the best interest of the health and welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to

<sup>1</sup> So in original.

population groups otherwise eligible to be served under applicable Federal law.

**(f) Retrocession**

An Indian tribe may retrocede, fully or partially, to the Secretary programs, services, functions, or activities (or portions thereof) included in the compact or funding agreement. Unless the Indian tribe rescinds the request for retrocession, such retrocession will become effective within the timeframe specified by the parties in the compact or funding agreement. In the absence of such a specification, such retrocession shall become effective on—

(1) the earlier of—

(A) 1 year after the date of submission of such request; or

(B) the date on which the funding agreement expires; or

(2) such date as may be mutually agreed upon by the Secretary and the Indian tribe.

**(g) Withdrawal**

**(1) Process**

**(A) In general**

An Indian tribe may fully or partially withdraw from a participating inter-tribal consortium or tribal organization its share of any program, function, service, or activity (or portions thereof) included in a compact or funding agreement.

**(B) Effective date**

The withdrawal referred to in subparagraph (A) shall become effective within the timeframe specified in the resolution which authorizes transfer to the participating tribal organization or inter-tribal consortium. In the absence of a specific timeframe set forth in the resolution, such withdrawal shall become effective on—

(i) the earlier of—

(I) 1 year after the date of submission of such request; or

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the Secretary, the withdrawing Indian tribe, and the participating tribal organization or inter-tribal consortium that has signed the compact or funding agreement on behalf of the withdrawing Indian tribe, inter-tribal consortium, or tribal organization.

**(2) Distribution of funds**

When an Indian tribe or tribal organization eligible to enter into a self-determination contract under subchapter I of this chapter or a compact or funding agreement under this subchapter fully or partially withdraws from a participating inter-tribal consortium or tribal organization—

(A) the withdrawing Indian tribe or tribal organization shall be entitled to its tribal share of funds supporting those programs, services, functions, or activities (or portions thereof) that the Indian tribe will be carrying out under its own self-determination contract or compact and funding agreement (calculated on the same basis as the funds

were initially allocated in the funding agreement of the inter-tribal consortium or tribal organization); and

(B) the funds referred to in subparagraph (A) shall be transferred from the funding agreement of the inter-tribal consortium or tribal organization, on the condition that the provisions of sections 5321 and 5324(i) of this title, as appropriate, shall apply to that withdrawing Indian tribe.

**(3) Regaining mature contract status**

If an Indian tribe elects to operate all or some programs, services, functions, or activities (or portions thereof) carried out under a compact or funding agreement under this subchapter through a self-determination contract under subchapter I of this chapter, at the option of the Indian tribe, the resulting self-determination contract shall be a mature self-determination contract.

**(h) Nonduplication**

For the period for which, and to the extent to which, funding is provided under this subchapter or under the compact or funding agreement, the Indian tribe shall not be entitled to contract with the Secretary for such funds under section 5321 of this title, except that such Indian tribe shall be eligible for new programs on the same basis as other Indian tribes.

(Pub. L. 93-638, title V, §506, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 717.)

**Editorial Notes**

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (g)(2), (3), was in the original "title I", meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-5 of this title prior to editorial reclassification and renumbering as this section.

**§ 5387. Provisions relating to the Secretary**

**(a) Mandatory provisions**

**(1) Health status reports**

Compacts or funding agreements negotiated between the Secretary and an Indian tribe shall include a provision that requires the Indian tribe to report on health status and service delivery—

(A) to the extent such data is not otherwise available to the Secretary and specific funds for this purpose are provided by the Secretary under the funding agreement; and

(B) if such reporting shall impose minimal burdens on the participating Indian tribe and such requirements are promulgated under section 5397 of this title.

**(2) Reassumption**

**(A) In general**

Compacts or funding agreements negotiated between the Secretary and an Indian

tribe shall include a provision authorizing the Secretary to reassume operation of a program, service, function, or activity (or portions thereof) and associated funding if there is a specific finding relative to that program, service, function, or activity (or portion thereof) of—

(i) imminent endangerment of the public health caused by an act or omission of the Indian tribe, and the imminent endangerment arises out of a failure to carry out the compact or funding agreement; or

(ii) gross mismanagement with respect to funds transferred to a tribe by a compact or funding agreement, as determined by the Secretary in consultation with the Inspector General, as appropriate.

#### **(B) Prohibition**

The Secretary shall not reassume operation of a program, service, function, or activity (or portions thereof) unless—

(i) the Secretary has first provided written notice and a hearing on the record to the Indian tribe; and

(ii) the Indian tribe has not taken corrective action to remedy the imminent endangerment to public health or gross mismanagement.

#### **(C) Exception**

##### **(i) In general**

Notwithstanding subparagraph (B), the Secretary may, upon written notification to the Indian tribe, immediately reassume operation of a program, service, function, or activity (or portion thereof) if—

(I) the Secretary makes a finding of imminent substantial and irreparable endangerment of the public health caused by an act or omission of the Indian tribe; and

(II) the endangerment arises out of a failure to carry out the compact or funding agreement.

##### **(ii) Reassumption**

If the Secretary reassumes operation of a program, service, function, or activity (or portion thereof) under this subparagraph, the Secretary shall provide the Indian tribe with a hearing on the record not later than 10 days after such reassumption.

#### **(D) Hearings**

In any hearing or appeal involving a decision to reassume operation of a program, service, function, or activity (or portion thereof), the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence the validity of the grounds for the reassumption.

#### **(b) Final offer**

In the event the Secretary and a participating Indian tribe are unable to agree, in whole or in part, on the terms of a compact or funding agreement (including funding levels), the Indian tribe may submit a final offer to the Secretary. Not more than 45 days after such submission, or within a longer time agreed upon by the Indian

tribe, the Secretary shall review and make a determination with respect to such offer. In the absence of a timely rejection of the offer, in whole or in part, made in compliance with subsection (c) of this section, the offer shall be deemed agreed to by the Secretary.

#### **(c) Rejection of final offers**

##### **(1) In general**

If the Secretary rejects an offer made under subsection (b) of this section (or one or more provisions or funding levels in such offer), the Secretary shall provide—

(A) a timely written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that—

(i) the amount of funds proposed in the final offer exceeds the applicable funding level to which the Indian tribe is entitled under this subchapter;

(ii) 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;

(iii) 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

(iv) the Indian tribe is not eligible to participate in self-governance under section 5383 of this title;

(B) technical assistance to overcome the objections stated in the notification required by subparagraph (A);

(C) the Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, except that the Indian tribe may, in lieu of filing such appeal, directly proceed to initiate an action in a Federal district court pursuant to section 5331(a) of this title; and

(D) the Indian tribe with the option of entering into the severable portions of a final proposed compact or funding agreement, or provision thereof, (including a lesser funding amount, if any), that the Secretary did not reject, subject to any additional alterations necessary to conform the compact or funding agreement to the severed provisions.

##### **(2) Effect of exercising certain option**

If an Indian tribe exercises the option specified in paragraph (1)(D), that Indian tribe shall retain the right to appeal the Secretary's rejection under this section, and subparagraphs (A), (B), and (C) of that paragraph shall only apply to that portion of the proposed final compact, funding agreement, or provision thereof that was rejected by the Secretary.

##### **(d) Burden of proof**

With respect to any hearing or appeal or civil action conducted pursuant to this section, the Secretary shall have the burden of demonstrating by clear and convincing evidence the

validity of the grounds for rejecting the offer (or a provision thereof) made under subsection (b) of this section.

**(e) Good faith**

In the negotiation of compacts and funding agreements the Secretary shall at all times negotiate in good faith to maximize implementation of the self-governance policy. The Secretary shall carry out this subchapter in a manner that maximizes the policy of tribal self-governance, in a manner consistent with the purposes specified in section 3 of the Tribal Self-Governance Amendments of 2000.

**(f) Savings**

To the extent that programs, functions, services, or activities (or portions thereof) carried out by Indian tribes under this subchapter reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under section 5388(c) of this title, the Secretary shall make such savings available to the Indian tribes, inter-tribal consortia, or tribal organizations for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs.

**(g) Trust responsibility**

The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Indian tribes and individual Indians that exists under treaties, Executive orders, other laws, or court decisions.

**(h) Decisionmaker**

A decision that constitutes final agency action and relates to an appeal within the Department of Health and Human Services conducted under subsection (c) of this section shall be made either—

- (1) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency in which the decision that is the subject of the appeal was made; or
- (2) by an administrative judge.

(Pub. L. 93-638, title V, §507, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 719.)

**Editorial Notes**

REFERENCES IN TEXT

Section 3 of the Tribal Self-Governance Amendments of 2000, referred to in subsec. (e), is section 3 of Pub. L. 106-260, which is set out as a note under section 5381 of this title.

CODIFICATION

Section was formerly classified to section 458aaa-6 of this title prior to editorial reclassification and renumbering as this section.

**§ 5388. Transfer of funds**

**(a) In general**

Pursuant to the terms of any compact or funding agreement entered into under this sub-

chapter, the Secretary shall transfer to the Indian tribe all funds provided for in the funding agreement, pursuant to subsection (c) of this section, and provide funding for periods covered by joint resolution adopted by Congress making continuing appropriations, to the extent permitted by such resolutions. In any instance where a funding agreement requires an annual transfer of funding to be made at the beginning of a fiscal year, or requires semiannual or other periodic transfers of funding to be made commencing at the beginning of a fiscal year, the first such transfer shall be made not later than 10 days after the apportionment of such funds by the Office of Management and Budget to the Department, unless the funding agreement provides otherwise.

**(b) Multiyear funding**

The Secretary is authorized to employ, upon tribal request, multiyear funding agreements. References in this subchapter to funding agreements shall include such multiyear funding agreements.

**(c) Amount of funding**

The Secretary shall provide funds under a funding agreement under this subchapter in an amount equal to the amount that the Indian tribe would have been entitled to receive under self-determination contracts under this chapter, including amounts for direct program costs specified under section 5325(a)(1) of this title and amounts for contract support costs specified under section 5325(a)(2), (3), (5), and (6) of this title, including any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the Indian tribe or its members, all without regard to the organizational level within the Department where such functions are carried out.

**(d) Prohibitions**

**(1) In general**

Except as provided in paragraph (2), the Secretary is expressly prohibited from—

- (A) failing or refusing to transfer to an Indian tribe its full share of any central, headquarters, regional, area, or service unit office or other funds due under this chapter, except as required by Federal law;
- (B) withholding portions of such funds for transfer over a period of years; and
- (C) reducing the amount of funds required under this chapter—

- (i) to make funding available for self-governance monitoring or administration by the Secretary;
- (ii) in subsequent years, except pursuant to—

- (I) a reduction in appropriations from the previous fiscal year for the program or function to be included in a compact or funding agreement;
- (II) a congressional directive in legislation or accompanying report;
- (III) a tribal authorization;
- (IV) a change in the amount of pass-through funds subject to the terms of the funding agreement; or
- (V) completion of a project, activity, or program for which such funds were provided;

(iii) to pay for Federal functions, including Federal pay costs, Federal employee retirement benefits, automated data processing, technical assistance, and monitoring of activities under this chapter; or

(iv) to pay for costs of Federal personnel displaced by self-determination contracts under this chapter or self-governance;

**(2) Exception**

The funds described in paragraph (1)(C) may be increased by the Secretary if necessary to carry out this chapter or as provided in section 5324(c)(2) of this title.

**(e) Other resources**

In the event an Indian tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Indian tribe.

**(f) Reimbursement to Indian Health Service**

With respect to functions transferred by the Indian Health Service to an Indian tribe, the Indian Health Service shall provide goods and services to the Indian tribe, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Indian tribe pursuant to this subchapter, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

**(g) Prompt Payment Act**

Chapter 39 of title 31 shall apply to the transfer of funds due under a compact or funding agreement authorized under this subchapter.

**(h) Interest or other income on transfers**

An Indian tribe is entitled to retain interest earned on any funds paid under a compact or funding agreement to carry out governmental or health purposes and such interest shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the interest is earned or in any subsequent fiscal year. Funds transferred under this subchapter shall be managed using the prudent investment standard.

**(i) Carryover of funds**

All funds paid to an Indian tribe in accordance with a compact or funding agreement shall remain available until expended. In the event that an Indian tribe elects to carry over funding from 1 year to the next, such carryover shall not diminish the amount of funds the Indian tribe is authorized to receive under its funding agreement in that or any subsequent fiscal year.

**(j) Program income**

All Medicare, Medicaid, or other program income earned by an Indian tribe shall be treated

as supplemental funding to that negotiated in the funding agreement. The Indian tribe may retain all such income and expend such funds in the current year or in future years except to the extent that the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) provides otherwise for Medicare and Medicaid receipts. Such funds shall not result in any offset or reduction in the amount of funds the Indian tribe is authorized to receive under its funding agreement in the year the program income is received or for any subsequent fiscal year.

**(k) Limitation of costs**

An Indian tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement. If at any time the Indian tribe has reason to believe that the total amount provided for a specific activity in the compact or funding agreement is insufficient the Indian tribe shall provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian tribe may suspend performance of the activity until such time as additional funds are transferred.

(Pub. L. 93-638, title V, §508, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 722.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (j), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, which is classified principally to chapter 18 (§1601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-7 of this title prior to editorial reclassification and renumbering as this section.

**§ 5389. Construction projects**

**(a) In general**

Indian tribes participating in tribal self-governance may carry out construction projects under this subchapter if they elect to assume all Federal responsibilities under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), division A of subtitle III of title 54, and related provisions of law that would apply if the Secretary were to undertake a construction project, by adopting a resolution—

(1) designating a certifying officer to represent the Indian tribe and to assume the status of a responsible Federal official under such laws; and

(2) accepting the jurisdiction of the Federal court for the purpose of enforcement of the responsibilities of the responsible Federal official under such environmental laws.

**(b) Negotiations**

Construction project proposals shall be negotiated pursuant to the statutory process in section 5324(m) of this title and resulting construction project agreements shall be incorporated into funding agreements as addenda.

**(c) Codes and standards**

The Indian tribe and the Secretary shall agree upon and specify appropriate building codes and architectural and engineering standards (including health and safety) which shall be in conformity with nationally recognized standards for comparable projects.

**(d) Responsibility for completion**

The Indian tribe shall assume responsibility for the successful completion of the construction project in accordance with the negotiated construction project agreement.

**(e) Funding**

Funding for construction projects carried out under this subchapter shall be included in funding agreements as annual advance payments, with semiannual payments at the option of the Indian tribe. Annual advance and semiannual payment amounts shall be determined based on mutually agreeable project schedules reflecting work to be accomplished within the advance payment period, work accomplished and funds expended in previous payment periods, and the total prior payments. The Secretary shall include associated project contingency funds with each advance payment installment. The Indian tribe shall be responsible for the management of the contingency funds included in funding agreements.

**(f) Approval**

The Secretary shall have at least one opportunity to approve project planning and design documents prepared by the Indian tribe in advance of construction of the facilities specified in the scope of work for each negotiated construction project agreement or amendment thereof which results in a significant change in the original scope of work. The Indian tribe shall provide the Secretary with project progress and financial reports not less than semiannually. The Secretary may conduct on-site project oversight visits semiannually or on an alternate schedule agreed to by the Secretary and the Indian tribe.

**(g) Wages**

All laborers and mechanics employed by contractors and subcontractors (excluding tribes and tribal organizations) in the construction, alteration, or repair, including painting or decorating of a building or other facilities in connection with construction projects funded by the United States under this chapter shall be paid wages at not less than those prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with sections 3141–3144, 3146, and 3147 of title 40. With respect to construction alteration, or repair work to which sections 3141–3144, 3146, and 3147 of title 40 are applicable under this section, the Secretary of Labor shall have the authority and functions set forth in the Reorganization

Plan numbered 14, of 1950, and section 3145 of title 40.

**(h) Application of other laws**

Unless otherwise agreed to by the Indian tribe, no provision of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41, the Federal Acquisition Regulations issued pursuant thereto, or any other law or regulation pertaining to Federal procurement (including Executive orders) shall apply to any construction project conducted under this subchapter.

(Pub. L. 93–638, title V, §509, as added Pub. L. 106–260, §4, Aug. 18, 2000, 114 Stat. 724; amended Pub. L. 113–287, §5(g), Dec. 19, 2014, 128 Stat. 3269.)

**Editorial Notes**

## REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

This chapter, referred to in subsec. (g), was in the original “this Act”, meaning Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Reorganization Plan numbered 14, of 1950, referred to in subsec. (g), is set out in the Appendix to Title 5, Government Organization and Employees.

## CODIFICATION

Section was formerly classified to section 458aaa–8 of this title prior to editorial reclassification and renumbering as this section.

In subsec. (g), “sections 3141–3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494)”, “sections 3141–3144, 3146, and 3147 of title 40 are” substituted for “the Act of March 3, 1931, is”, and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934 (48 Stat. 948)” on authority of Pub. L. 107–217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (h), “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” substituted for “the Office of Federal Procurement Policy Act” on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

## AMENDMENTS

2014—Subsec. (a). Pub. L. 113–287, which directed substitution of “division A of subtitle III of title 54” for “the National Historic Preservation Act (16 U.S.C. 470et seq.)”, was executed by making the substitution for “the National Historic Preservation Act (16 U.S.C. 470 et seq.)” in introductory provisions to reflect the probable intent of Congress.

**§5390. Federal procurement laws and regulations**

Regarding construction programs or projects, the Secretary and Indian tribes may negotiate for the inclusion of specific provisions of division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41 and Federal acquisition regulations in any funding agreement entered into under this subchapter. Absent a negotiated



agreement, such provisions and regulatory requirements shall not apply.

(Pub. L. 93-638, title V, §510, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### Editorial Notes

##### CODIFICATION

Section was formerly classified to section 458aaa-9 of this title prior to editorial reclassification and renumbering as this section.

In text, “division B (except sections 1123, 2303, 2304, and 2313) of subtitle I of title 41” substituted for “the Office of Federal Procurement and Policy Act (41 U.S.C. 401 et seq.)” on authority of Pub. L. 111-350, §6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

#### § 5391. Civil actions

##### (a) Contract defined

For the purposes of section 5331 of this title, the term “contract” shall include compacts and funding agreements entered into under this subchapter.

##### (b) Applicability of certain laws

Section 81 of this title and section 5123 of this title, shall not apply to attorney and other professional contracts entered into by Indian tribes participating in self-governance under this subchapter.

##### (c) References

All references in this chapter to section 5201 of this title are hereby deemed to include section 82a of this title.

(Pub. L. 93-638, title V, §511, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 726.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 458aaa-10 of this title prior to editorial reclassification and renumbering as this section.

#### § 5392. Facilitation

##### (a) Secretarial interpretation

Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate—

(1) the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, in the agreements entered into under this section;

(2) the implementation of compacts and funding agreements entered into under this subchapter; and

(3) the achievement of tribal health goals and objectives.

##### (b) Regulation waiver

###### (1) In general

An Indian tribe may submit a written request to waive application of a regulation pro-

mulgated under section 5397 of this title or the authorities specified in section 5385(b) of this title for a compact or funding agreement entered into with the Indian Health Service under this subchapter, to the Secretary identifying the applicable Federal regulation sought to be waived and the basis for the request.

##### (2) Approval

Not later than 90 days after receipt by the Secretary of a written request by an Indian tribe to waive application of a regulation for a compact or funding agreement entered into under this subchapter, the Secretary shall either approve or deny the requested waiver in writing. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. A failure to approve or deny a waiver request not later than 90 days after receipt shall be deemed an approval of such request. The Secretary’s decision shall be final for the Department.

##### (c) Access to Federal property

In connection with any compact or funding agreement executed pursuant to this subchapter or an agreement negotiated under the Tribal Self-Governance Demonstration Project established under title III,<sup>1</sup> as in effect before August 18, 2000, upon the request of an Indian tribe, the Secretary—

(1) shall permit an Indian tribe to use existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within the Secretary’s jurisdiction under such terms and conditions as may be agreed upon by the Secretary and the Indian tribe for their use and maintenance;

(2) may donate to an Indian tribe title to any personal or real property found to be excess to the needs of any agency of the Department, or the General Services Administration, except that—

(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the compact or funding agreement or purchased with funds under any compact or funding agreement shall, unless otherwise requested by the Indian tribe, vest in the appropriate Indian tribe;

(B) if property described in subparagraph (A) has a value in excess of \$5,000 at the time of retrocession, withdrawal, or reassumption, at the option of the Secretary upon the retrocession, withdrawal, or reassumption, title to such property and equipment shall revert to the Department of Health and Human Services; and

(C) all property referred to in subparagraph (A) shall remain eligible for replacement, maintenance, and improvement on the same basis as if title to such property were vested in the United States; and

(3) shall acquire excess or surplus Government personal or real property for donation to

<sup>1</sup> See References in Text note below.

an Indian tribe if the Secretary determines the property is appropriate for use by the Indian tribe for any purpose for which a compact or funding agreement is authorized under this subchapter.

**(d) Matching or cost-participation requirement**

All funds provided under compacts, funding agreements, or grants made pursuant to this chapter, shall be treated as non-Federal funds for purposes of meeting matching or cost participation requirements under any other Federal or non-Federal program.

**(e) State facilitation**

States are hereby authorized and encouraged to enact legislation, and to enter into agreements with Indian tribes to facilitate and supplement the initiatives, programs, and policies authorized by this subchapter and other Federal laws benefiting Indians and Indian tribes.

**(f) Rules of construction**

Each provision of this subchapter and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.

(Pub. L. 93-638, title V, §512, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 726.)

**Editorial Notes**

REFERENCES IN TEXT

Title III, referred to in subsec. (c), means title III of Pub. L. 93-638, as added by Pub. L. 100-472, title II, §209, Oct. 5, 1988, 102 Stat. 2296, which was set out as a note under former section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-11 of this title prior to editorial reclassification and renumbering as this section.

**§ 5393. Budget request**

**(a) Requirement of annual budget request**

**(1) In general**

The President shall identify in the annual budget request submitted to Congress under section 1105 of title 31 all funds necessary to fully fund all funding agreements authorized under this subchapter, including funds specifically identified to fund tribal base budgets. All funds so appropriated shall be apportioned to the Indian Health Service. Such funds shall be provided to the Office of Tribal Self-Governance which shall be responsible for distribution of all funds provided under section 5385 of this title.

**(2) Rule of construction**

Nothing in this subsection shall be construed to authorize the Indian Health Service to reduce the amount of funds that a self-gov-

ernance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

**(b) Present funding; shortfalls**

In such budget request, the President shall identify the level of need presently funded and any shortfall in funding (including direct program and contract support costs) for each Indian tribe, either directly by the Secretary of Health and Human Services, under self-determination contracts, or under compacts and funding agreements authorized under this subchapter.

(Pub. L. 93-638, title V, §513, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 727.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458aaa-12 of this title prior to editorial reclassification and renumbering as this section.

**§ 5394. Reports**

**(a) Annual report**

**(1) In general**

Not later than January 1 of each year after August 18, 2000, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a written report regarding the administration of this subchapter.

**(2) Analysis**

The report under paragraph (1) shall include a detailed analysis of the level of need being presently funded or unfunded for each Indian tribe, either directly by the Secretary, under self-determination contracts under subchapter I of this chapter, or under compacts and funding agreements authorized under this chapter. In compiling reports pursuant to this section, the Secretary may not impose any reporting requirements on participating Indian tribes or tribal organizations, not otherwise provided in this chapter.

**(b) Contents**

The report under subsection (a) of this section shall—

(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds; and

(2) identify—

(A) the relative costs and benefits of self-governance;

(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian tribes and their members;

(C) the funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

(D) the funding formula for individual tribal shares of all headquarters funds, together with the comments of affected Indian tribes or tribal organizations, developed under subsection (c) of this section; and

(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

(3) contain a description of the method or methods (or any revisions thereof) used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements;

(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of no less than 30 days, beginning on the date of distribution); and

(5) include the separate views and comments of the Indian tribes or tribal organizations.

#### (c) Report on fund distribution method

Not later than 180 days after August 18, 2000, the Secretary shall, after consultation with Indian tribes, submit a written report to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs of the Senate that describes the method or methods used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements.

(Pub. L. 93-638, title V, §514, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 728.)

#### Editorial Notes

##### REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (a)(2), was in the original "title I", meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This chapter, referred to in subsec. (a)(2), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 458aaa-13 of this title prior to editorial reclassification and renumbering as this section.

#### Statutory Notes and Related Subsidiaries

##### CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### § 5395. Disclaimers

##### (a) No funding reduction

Nothing in this subchapter shall be construed to limit or reduce in any way the funding for any program, project, or activity serving an Indian tribe under this or other applicable Federal

law. Any Indian tribe that alleges that a compact or funding agreement is in violation of this section may apply the provisions of section 5331 of this title.

##### (b) Federal trust and treaty responsibilities

Nothing in this chapter shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians that exists under treaties, Executive orders, or other laws and court decisions.

##### (c) Obligations of the United States

The Indian Health Service under this chapter shall neither bill nor charge those Indians who may have the economic means to pay for services, nor require any Indian tribe to do so.

(Pub. L. 93-638, title V, §515, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 729.)

#### Editorial Notes

##### REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

##### CODIFICATION

Section was formerly classified to section 458aaa-14 of this title prior to editorial reclassification and renumbering as this section.

#### § 5396. Application of other sections of this chapter

##### (a) Mandatory application

All provisions of sections 5305(b), 5306, 5307, 5321(c) and (d), 5323, 5324(k) and (l), 5325(a) through (k), and 5332 of this title and section 314 of Public Law 101-512 (coverage under chapter 171 of title 28, commonly known as the "Federal Tort Claims Act"), to the extent not in conflict with this subchapter, shall apply to compacts and funding agreements authorized by this subchapter.

##### (b) Discretionary application

At the request of a participating Indian tribe, any other provision of subchapter I of this chapter, to the extent such provision is not in conflict with this subchapter, shall be made a part of a funding agreement or compact entered into under this subchapter. The Secretary is obligated to include such provision at the option of the participating Indian tribe or tribes. If such provision is incorporated it shall have the same force and effect as if it were set out in full in this subchapter. In the event an Indian tribe requests such incorporation at the negotiation stage of a compact or funding agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting compact and funding agreement.

(Pub. L. 93-638, title V, §516, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 729.)

#### Editorial Notes

##### REFERENCES IN TEXT

Section 314 of Pub. L. 101-512, referred to in subsec. (a), is section 314 of Pub. L. 101-512, as amended, which is set out as a note under section 5321 of this title.

Subchapter I of this chapter, referred to in subsec. (b), was in the original "title I", meaning title I of Pub. L. 93-638, known as the Indian Self-Determination Act, which is classified principally to subchapter I (§5321 et seq.) of this chapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-15 of this title prior to editorial reclassification and renumbering as this section.

**§ 5397. Regulations**

**(a) In general**

**(1) Promulgation**

Not later than 90 days after August 18, 2000, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5 to negotiate and promulgate such regulations as are necessary to carry out this subchapter.

**(2) Publication of proposed regulations**

Proposed regulations to implement this subchapter shall be published in the Federal Register by the Secretary no later than 1 year after August 18, 2000.

**(3) Expiration of authority**

The authority to promulgate regulations under paragraph (1) shall expire 21 months after August 18, 2000.

**(b) Committee**

**(1) In general**

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this chapter.

**(2) Requirements**

The committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

**(c) Adaptation of procedures**

The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

**(d) Effect**

The lack of promulgated regulations shall not limit the effect of this subchapter.

**(e) Effect of circulars, policies, manuals, guidelines, and rules**

Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 5324(g) of this title and regulations promulgated under this section.

(Pub. L. 93-638, title V, §517, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 730.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(1), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-16 of this title prior to editorial reclassification and renumbering as this section.

**§ 5398. Appeals**

In any appeal (including civil actions) involving decisions made by the Secretary under this subchapter, the Secretary shall have the burden of proof of demonstrating by clear and convincing evidence—

(1) the validity of the grounds for the decision made; and

(2) that the decision is fully consistent with provisions and policies of this subchapter.

(Pub. L. 93-638, title V, §518, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 730.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458aaa-17 of this title prior to editorial reclassification and renumbering as this section.

**§ 5399. Authorization of appropriations**

**(a) In general**

There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

**(b) Availability of appropriations**

Notwithstanding any other provision of this chapter, the provision of funds under this chapter shall be subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe in order to make funds available to another tribe or tribal organization under this chapter.

(Pub. L. 93-638, title V, §519, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 731.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458aaa-18 of this title prior to editorial reclassification and renumbering as this section.

SUBCHAPTER VI—INDIAN LAW  
ENFORCEMENT FOUNDATION

**§ 5411. Definitions**

In this subchapter:

**(1) Board**

The term “Board” means the Board of Directors of the Foundation.

**(2) Bureau**

The term “Bureau” means the Office of Justice Services of the Bureau of Indian Affairs.

**(3) Committee**

The term “Committee” means the Committee for the Establishment of the Indian Law Enforcement Foundation established under section 5412(e)(1) of this title.

**(4) Foundation**

The term “Foundation” means the Indian Law Enforcement Foundation established under section 5412 of this title.

**(5) Secretary**

The term “Secretary” means the Secretary of the Interior.

(Pub. L. 93-638, title VII, §701, as added Pub. L. 111-211, title II, §231(c), July 29, 2010, 124 Stat. 2274.)

**Editorial Notes****CODIFICATION**

Section was formerly classified to section 458ccc of this title prior to editorial reclassification and renumbering as this section.

**§ 5412. Indian Law Enforcement Foundation****(a) Establishment****(1) In general**

As soon as practicable after July 29, 2010, the Secretary shall establish, under the laws of the District of Columbia and in accordance with this subchapter, a foundation, to be known as the “Indian Law Enforcement Foundation”.

**(2) Funding determinations**

No funds, gift, property, or other item of value (including any interest accrued on such an item) acquired by the Foundation shall—

(A) be taken into consideration for purposes of determining Federal appropriations relating to the provision of public safety or justice services to Indians; or

(B) otherwise limit, diminish, or affect the Federal responsibility for the provision of public safety or justice services to Indians.

**(b) Nature of corporation**

The Foundation—

(1) shall be a charitable and nonprofit federally chartered corporation; and

(2) shall not be an agency or instrumentality of the United States.

**(c) Place of incorporation and domicile**

The Foundation shall be incorporated and domiciled in the District of Columbia.

**(d) Duties**

The Foundation shall—

(1) encourage, accept, and administer, in accordance with the terms of each donation, private gifts of real and personal property, and any income from or interest in such gifts, for

the benefit of, or in support of, public safety and justice services in American Indian and Alaska Native communities; and

(2) assist the Office of Justice Services of the Bureau of Indian Affairs and Indian tribal governments in funding and conducting activities and providing education to advance and support the provision of public safety and justice services in American Indian and Alaska Native communities.

**(e) Committee for the Establishment of the Indian Law Enforcement Foundation****(1) In general**

The Secretary shall establish a committee, to be known as the “Committee for the Establishment of the Indian Law Enforcement Foundation”, to assist the Secretary in establishing the Foundation.

**(2) Duties**

Not later than 180 days after July 29, 2010, the Committee shall—

(A) carry out such activities as are necessary to incorporate the Foundation under the laws of the District of Columbia, including acting as incorporators of the Foundation;

(B) ensure that the Foundation qualifies for and maintains the status required to carry out this section, until the date on which the Board is established;

(C) establish the constitution and initial bylaws of the Foundation;

(D) provide for the initial operation of the Foundation, including providing for temporary or interim quarters, equipment, and staff; and

(E) appoint the initial members of the Board in accordance with the constitution and initial bylaws of the Foundation.

**(f) Board of Directors****(1) In general**

The Board of Directors shall be the governing body of the Foundation.

**(2) Powers**

The Board may exercise, or provide for the exercise of, the powers of the Foundation.

**(3) Selection****(A) In general**

Subject to subparagraph (B), the number of members of the Board, the manner of selection of the members (including the filling of vacancies), and the terms of office of the members shall be as provided in the constitution and bylaws of the Foundation.

**(B) Requirements****(i) Number of members**

The Board shall be composed of not less than 7 members.

**(ii) Initial voting members**

The initial voting members of the Board—

(I) shall be appointed by the Committee not later than 180 days after the date on which the Foundation is established; and

(II) shall serve for staggered terms.

**(iii) Qualification**

The members of the Board shall be United States citizens with knowledge or experience regarding public safety and justice in Indian and Alaska Native communities.

**(C) Compensation**

A member of the Board shall not receive compensation for service as a member, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred in the performance of the duties of the Foundation.

**(g) Officers**

**(1) In general**

The officers of the Foundation shall be—

(A) a Secretary, elected from among the members of the Board; and

(B) any other officers provided for in the constitution and bylaws of the Foundation.

**(2) Chief operating officer**

**(A) Secretary**

Subject to subparagraph (B), the Secretary of the Foundation may serve, at the direction of the Board, as the chief operating officer of the Foundation.

**(B) Appointment**

The Board may appoint a chief operating officer in lieu of the Secretary of the Foundation under subparagraph (A), who shall serve at the direction of the Board.

**(3) Election**

The manner of election, term of office, and duties of the officers of the Foundation shall be as provided in the constitution and bylaws of the Foundation.

**(h) Powers**

The Foundation—

(1) shall adopt a constitution and bylaws for the management of the property of the Foundation and the regulation of the affairs of the Foundation;

(2) may adopt and alter a corporate seal;

(3) may enter into contracts;

(4) may acquire (through gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

(5) may sue and be sued; and

(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

**(i) Principal office**

**(1) In general**

The principal office of the Foundation shall be located in the District of Columbia.

**(2) Activities; offices**

The activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and bylaws of the Foundation.

**(j) Service of process**

The Foundation shall comply with the law on service of process of each State in which the

Foundation is incorporated and of each State in which the Foundation carries on activities.

**(k) Liability of officers, employees, and agents**

**(1) In general**

The Foundation shall be liable for the acts of the officers, employees, and agents of the Foundation acting within the scope of the authority of the officers, employees, and agents.

**(2) Personal liability**

A member of the Board shall be personally liable only for gross negligence in the performance of the duties of the member.

**(l) Restrictions**

**(1) Limitation on spending**

Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation shall not exceed the percentage described in paragraph (2) of the sum of—

(A) the amounts transferred to the Foundation under subsection (n) during the preceding fiscal year; and

(B) donations received from private sources during the preceding fiscal year.

**(2) Percentages**

The percentages referred to in paragraph (1) are—

(A) for the first 2 fiscal years described in that paragraph, 25 percent;

(B) for the following fiscal year, 20 percent; and

(C) for each fiscal year thereafter, 15 percent.

**(3) Appointment and hiring**

The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

**(4) Status**

A member of the Board or officer, employee, or agent of the Foundation shall not by reason of association with the Foundation be considered to be an officer, employee, or agent of the United States.

**(m) Audits**

The Foundation shall comply with section 10101 of title 36 as if the Foundation were a corporation under part B of subtitle II of that title.

**(n) Funding**

For each of fiscal years 2011 through 2015, out of any unobligated amounts available to the Secretary, the Secretary may use to carry out this section not more than \$500,000.

(Pub. L. 93-638, title VII, §702, as added Pub. L. 111-211, title II, §231(c), July 29, 2010, 124 Stat. 2274.)

**Editorial Notes**

CODIFICATION

Section was formerly classified to section 458ccc-1 of this title prior to editorial reclassification and renumbering as this section.

**§ 5413. Administrative services and support****(a) Provision of support by Secretary**

Subject to subsection (b), during the 5-year period beginning on the date on which the Foundation is established, the Secretary—

(1) may provide personnel, facilities, and other administrative support services to the Foundation;

(2) may provide funds for initial operating costs and to reimburse the travel expenses of the members of the Board; and

(3) shall require and accept reimbursements from the Foundation for—

(A) services provided under paragraph (1); and

(B) funds provided under paragraph (2).

**(b) Reimbursement**

Reimbursements accepted under subsection (a)(3)—

(1) shall be deposited in the Treasury of the United States to the credit of the applicable appropriations account; and

(2) shall be chargeable for the cost of providing services described in subsection (a)(1) and travel expenses described in subsection (a)(2).

**(c) Continuation of certain services**

The Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) if the facilities and services are—

(1) available; and

(2) provided on reimbursable cost basis.

(Pub. L. 93-638, title VII, §703, as added Pub. L. 111-211, title II, §231(c), July 29, 2010, 124 Stat. 2277.)

**Editorial Notes**

## CODIFICATION

Section was formerly classified to section 458ccc-2 of this title prior to editorial reclassification and renumbering as this section.

## SUBCHAPTER VII—NATIONAL FUND FOR EXCELLENCE IN AMERICAN INDIAN EDUCATION

**Editorial Notes**

## CODIFICATION

Subchapter is comprised of title VIII, formerly title V, of Pub. L. 93-638, which was formerly classified to part F (§458bbb et seq.) of subchapter II of chapter 14 of this title prior to redesignation by Pub. L. 111-211, title II, §231(d)(1), July 29, 2010, 124 Stat. 2278, transfer to former part H (§458ddd et seq.) of subchapter II of chapter 14 of this title, and editorial reclassification as this subchapter.

**§ 5421. National Fund for Excellence in American Indian Education****(a) In general**

As soon as practicable after December 27, 2000, the Secretary of the Interior shall establish, under the laws of the District of Columbia and in accordance with this subchapter, a foundation to be known as the “National Fund for Ex-

cellence in American Indian Education” (hereinafter referred to as the “Foundation”).

**(b) Perpetual existence**

Except as otherwise provided, the Foundation shall have perpetual existence.

**(c) Nature of corporation**

The Foundation shall be a charitable and non-profit federally chartered corporation and shall not be an agency or instrumentality of the United States.

**(d) Place of incorporation and domicile**

The Foundation shall be incorporated and domiciled in the District of Columbia.

**(e) Purposes**

The purposes of the Foundation shall be—

(1) to encourage, accept, and administer private gifts of real and personal property or any income therefrom or other interest therein for the benefit of, or in support of, the mission of the Office of Indian Education Programs of the Bureau of Indian Affairs (or its successor office);

(2) to undertake and conduct such other activities as will further the educational opportunities of American Indians who attend a Bureau funded school; and

(3) to participate with, and otherwise assist, Federal, State, and tribal governments, agencies, entities, and individuals in undertaking and conducting activities that will further the educational opportunities of American Indians attending Bureau funded schools.

**(f) Board of Directors****(1) In general**

The Board of Directors shall be the governing body of the Foundation. The Board may exercise, or provide for the exercise of, the powers of the Foundation.

**(2) Selection**

The number of members of the Board, the manner of their selection (including the filling of vacancies), and their terms of office shall be as provided in the constitution and bylaws of the Foundation. However, the Board shall have at least 11 members, two of whom shall be the Secretary and the Assistant Secretary of the Interior for Indian Affairs, who shall serve as ex officio nonvoting members, and the initial voting members of the Board shall be appointed by the Secretary not later than 6 months after the date that the Foundation is established and shall have staggered terms (as determined by the Secretary).

**(3) Qualification**

The members of the Board shall be United States citizens who are knowledgeable or experienced in American Indian education and shall, to the extent practicable, represent diverse points of view relating to the education of American Indians.

**(4) Compensation**

Members of the Board shall not receive compensation for their services as members, but shall be reimbursed for actual and necessary travel and subsistence expenses incurred by

them in the performance of the duties of the Foundation.

**(g) Officers**

**(1) In general**

The officers of the Foundation shall be a secretary, elected from among the members of the Board, and any other officers provided for in the constitution and bylaws of the Foundation.

**(2) Secretary of Foundation**

The secretary shall serve, at the direction of the Board, as its chief operating officer and shall be knowledgeable and experienced in matters relating to education in general and education of American Indians in particular.

**(3) Election**

The manner of election, term of office, and duties of the officers shall be as provided in the constitution and bylaws of the Foundation.

**(h) Powers**

The Foundation—

(1) shall adopt a constitution and bylaws for the management of its property and the regulation of its affairs, which may be amended;

(2) may adopt and alter a corporate seal;

(3) may make contracts, subject to the limitations of this chapter;

(4) may acquire (through a gift or otherwise), own, lease, encumber, and transfer real or personal property as necessary or convenient to carry out the purposes of the Foundation;

(5) may sue and be sued; and

(6) may perform any other act necessary and proper to carry out the purposes of the Foundation.

**(i) Principal office**

The principal office of the Foundation shall be in the District of Columbia. However, the activities of the Foundation may be conducted, and offices may be maintained, throughout the United States in accordance with the constitution and bylaws of the Foundation.

**(j) Service of process**

The Foundation shall comply with the law on service of process of each State in which it is incorporated and of each State in which the Foundation carries on activities.

**(k) Liability of officers and agents**

The Foundation shall be liable for the acts of its officers and agents acting within the scope of their authority. Members of the Board are personally liable only for gross negligence in the performance of their duties.

**(l) Restrictions**

**(1) Limitation on spending**

Beginning with the fiscal year following the first full fiscal year during which the Foundation is in operation, the administrative costs of the Foundation may not exceed 10 percent of the sum of—

(A) the amounts transferred to the Foundation under subsection (m) of this section during the preceding fiscal year; and

(B) donations received from private sources during the preceding fiscal year.

**(2) Appointment and hiring**

The appointment of officers and employees of the Foundation shall be subject to the availability of funds.

**(3) Status**

Members of the Board, and the officers, employees, and agents of the Foundation are not, by reason of their association with the Foundation, officers, employees, or agents of the United States.

**(m) Transfer of donated funds**

The Secretary may transfer to the Foundation funds held by the Department of the Interior under section 5341 of this title, if the transfer or use of such funds is not prohibited by any term under which the funds were donated.

**(n) Audits**

The Foundation shall comply with the audit requirements set forth in section 10101 of title 36, as if it were a corporation in part B of subtitle II of that title.

(Pub. L. 93-638, title VIII, §801, formerly title V, §501, as added Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936; amended Pub. L. 108-267, §1(a),(b)(2), July 2, 2004, 118 Stat. 797; renumbered title VIII, §801, Pub. L. 111-211, title II, §231(d)(1), (2), July 29, 2010, 124 Stat. 2278.)

**Editorial Notes**

REFERENCES IN TEXT

This chapter, referred to in subsec. (h)(3), was in the original “this Act”, meaning Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

CODIFICATION

Section was formerly classified to section 458ddd of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2004—Pub. L. 108-267, §1(b)(2), substituted “National Fund for Excellence in American Indian Education” for “American Indian Education Foundation” in section catchline.

Subsec. (a). Pub. L. 108-267, §1(a), substituted “a foundation to be known as the ‘National Fund for Excellence in American Indian Education’ (hereinafter referred to as the ‘Foundation’)” for “the American Indian Education Foundation”.

**Statutory Notes and Related Subsidiaries**

SHORT TITLE

For short title of this subchapter as the “American Indian Education Foundation Act of 2000”, see section 1301 of Pub. L. 106-568, set out as a Short Title of 2000 Amendment note under section 5301 of this title.

**§ 5422. Administrative services and support**

**(a) Provision of support by Secretary**

Subject to subsection (b) of this section, during the 5-year period beginning on the date that the Foundation is established, the Secretary—



(1) may provide personnel, facilities, and other administrative support services to the Foundation;

(2) may provide funds to reimburse the travel expenses of the members of the Board under section 5421 of this title; and

(3) shall require and accept reimbursements from the Foundation for any—

(A) services provided under paragraph (1); and

(B) funds provided under paragraph (2).

**(b) Reimbursements**

Reimbursements accepted under subsection (a)(3) of this section shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing services described in subsection (a)(1) of this section and the travel expenses described in subsection (a)(2) of this section.

**(c) Continuation of certain services**

Notwithstanding any other provision of this section, the Secretary may continue to provide facilities and necessary support services to the Foundation after the termination of the 5-year period specified in subsection (a) of this section, on a space available, reimbursable cost basis.

(Pub. L. 93-638, title VIII, §802, formerly title V, §502, as added Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2938; renumbered title VIII, §802, and amended Pub. L. 111-211, title II, §231(d), July 29, 2010, 124 Stat. 2278.)

**Editorial Notes**

**CODIFICATION**

Section was formerly classified to section 458ddd-1 of this title prior to editorial reclassification and renumbering as this section.

**AMENDMENTS**

2010—Subsec. (a)(2). Pub. L. 111-211, §231(d)(3), substituted reference to section 5421 of this title for reference to former section 458bbb of this title.

**§ 5423. Definitions**

For the purposes of this subchapter—

(1) the term “Bureau funded school” has the meaning given that term in title XI of the Education Amendments of 1978 [25 U.S.C. 2000 et seq.];

(2) the term “Foundation” means the Foundation established by the Secretary pursuant to section 5421 of this title; and

(3) the term “Secretary” means the Secretary of the Interior.

(Pub. L. 93-638, title VIII, §803, formerly title V, §503, as added Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2938; renumbered title VIII, §803, and amended Pub. L. 111-211, title II, §231(d), July 29, 2010, 124 Stat. 2278.)

**Editorial Notes**

**REFERENCES IN TEXT**

The Education Amendments of 1978, referred to in par. (1), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143. Title XI of the Act is classified principally to chapter 22 (§2000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20, Education, and Tables.

**CODIFICATION**

Section was formerly classified to section 458ddd-2 of this title prior to editorial reclassification and renumbering as this section.

**AMENDMENTS**

2010—Par. (2). Pub. L. 111-211, §231(d)(3), substituted reference to section 5421 of this title for reference to former section 458bbb of this title.

**CHAPTER 47—CONVEYANCE OF SUBMARGINAL LAND**

Sec. 5501.	Submarginal lands of United States held in trust for specified Indian tribes.
5502.	Designation of tribes.
5503.	Submarginal lands of United States held in trust for Stockbridge Munsee Indian Community.
5504.	Existing rights of possession, contract, interest, etc.
5505.	Gross receipts from conveyed lands.
5506.	Tax exemption for conveyed lands and gross receipts; distribution of gross receipts to tribal members.

**§ 5501. Submarginal lands of United States held in trust for specified Indian tribes**

**(a) Declaration; addition to reservations**

Except as hereinafter provided, all of the right, title, and interest of the United States of America in all of the land, and the improvements now thereon, that was acquired under title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and section 55 of the Act of August 24, 1935 (49 Stat. 750, 781), and that are now administered by the Secretary of the Interior for the use or benefit of the Indian tribes identified in section 5502(a) of this title, together with all minerals underlying any such land whether acquired pursuant to such Acts or otherwise owned by the United States, are hereby declared to be held by the United States in trust for each of said tribes, and (except in the case of the Cherokee Nation) shall be a part of the reservations heretofore established for each of said tribes.

**(b) Imposition of conditions on conveyed lands; lands excepted from conveying authority**

The property conveyed by this chapter shall be subject to the appropriation or disposition of any of the lands, or interests therein, within the Pine Ridge Indian Reservation, South Dakota, as authorized by sections 441j to 441o of title 16, and subject to a reservation in the United States of a right to prohibit or restrict improvements or structures on, and to continuously or intermittently inundate or otherwise use, lands in sections 25 and 26, township 48 north, range 3 west, at Odanah, Wisconsin, in connection with the Bad River flood control project as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311): *Provided*, That this chapter shall not convey the title to any part of the lands or any interest therein that prior to October 17, 1975, have been included in the authorized water resources development projects in the Missouri River Basin as authorized by section 203 of the Act of July 3, 1958 (72 Stat. 297, 311), as amended and supplemented: *Provided further*, That such