

99 Stat. 1060; renumbered §406, Pub. L. 105-33, title X, §10116(c)(1), Aug. 5, 1997, 111 Stat. 692.)

PRIOR PROVISIONS

A prior section 406 of Pub. L. 93-344 was renumbered section 405 and is classified to section 655 of this title.

EFFECTIVE DATE

Section effective Dec. 12, 1985, and applicable with respect to fiscal years beginning after Sept. 30, 1985, see section 275(a)(1) of Pub. L. 99-177, formerly set out as an Effective and Termination Dates note under section 900 of this title prior to repeal by Pub. L. 112-25, title I, §104(a), Aug. 2, 2011, 125 Stat. 246.

PART B—FEDERAL MANDATES

§ 658. Definitions

For purposes of this part:

(1) Agency

The term “agency” has the same meaning as defined in section 551(1) of title 5, but does not include independent regulatory agencies.

(2) Amount

The term “amount”, with respect to an authorization of appropriations for Federal financial assistance, means the amount of budget authority for any Federal grant assistance program or any Federal program providing loan guarantees or direct loans.

(3) Direct costs

The term “direct costs”—

(A)(i) in the case of a Federal intergovernmental mandate, means the aggregate estimated amounts that all State, local, and tribal governments would be required to spend or would be prohibited from raising in revenues in order to comply with the Federal intergovernmental mandate; or

(ii) in the case of a provision referred to in paragraph (5)(A)(ii), means the amount of Federal financial assistance eliminated or reduced;

(B) in the case of a Federal private sector mandate, means the aggregate estimated amounts that the private sector will be required to spend in order to comply with the Federal private sector mandate;

(C) shall be determined on the assumption that—

(i) State, local, and tribal governments, and the private sector will take all reasonable steps necessary to mitigate the costs resulting from the Federal mandate, and will comply with applicable standards of practice and conduct established by recognized professional or trade associations; and

(ii) reasonable steps to mitigate the costs shall not include increases in State, local, or tribal taxes or fees; and

(D) shall not include—

(i) estimated amounts that the State, local, and tribal governments (in the case of a Federal intergovernmental mandate) or the private sector (in the case of a Federal private sector mandate) would spend—

(I) to comply with or carry out all applicable Federal, State, local, and tribal

laws and regulations in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that Federal mandate; or

(II) to comply with or carry out State, local, and tribal governmental programs, or private-sector business or other activities in effect at the time of the adoption of the Federal mandate for the same activity as is affected by that mandate; or

(ii) expenditures to the extent that such expenditures will be offset by any direct savings to the State, local, and tribal governments, or by the private sector, as a result of—

(I) compliance with the Federal mandate; or

(II) other changes in Federal law or regulation that are enacted or adopted in the same bill or joint resolution or proposed or final Federal regulation and that govern the same activity as is affected by the Federal mandate.

(4) Direct savings

The term “direct savings”, when used with respect to the result of compliance with the Federal mandate—

(A) in the case of a Federal intergovernmental mandate, means the aggregate estimated reduction in costs to any State, local, or tribal government as a result of compliance with the Federal intergovernmental mandate; and

(B) in the case of a Federal private sector mandate, means the aggregate estimated reduction in costs to the private sector as a result of compliance with the Federal private sector mandate.

(5) Federal intergovernmental mandate

The term “Federal intergovernmental mandate” means—

(A) any provision in legislation, statute, or regulation that—

(i) would impose an enforceable duty upon State, local, or tribal governments, except—

(I) a condition of Federal assistance; or

(II) a duty arising from participation in a voluntary Federal program, except as provided in subparagraph (B); or

(ii) would reduce or eliminate the amount of authorization of appropriations for—

(I) Federal financial assistance that would be provided to State, local, or tribal governments for the purpose of complying with any such previously imposed duty unless such duty is reduced or eliminated by a corresponding amount; or

(II) the control of borders by the Federal Government; or reimbursement to State, local, or tribal governments for the net cost associated with illegal, deportable, and excludable aliens, including court-mandated expenses related to emergency health care, education or criminal justice; when such a reduction

or elimination would result in increased net costs to State, local, or tribal governments in providing education or emergency health care to, or incarceration of, illegal aliens; except that this subclause shall not be in effect with respect to a State, local, or tribal government, to the extent that such government has not fully cooperated in the efforts of the Federal Government to locate, apprehend, and deport illegal aliens;

(B) any provision in legislation, statute, or regulation that relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority, if the provision—

(i)(I) would increase the stringency of conditions of assistance to State, local, or tribal governments under the program; or

(II) would place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding to State, local, or tribal governments under the program; and

(ii) the State, local, or tribal governments that participate in the Federal program lack authority under that program to amend their financial or programmatic responsibilities to continue providing required services that are affected by the legislation, statute, or regulation.

(6) Federal mandate

The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in paragraphs (5) and (7).

(7) Federal private sector mandate

The term “Federal private sector mandate” means any provision in legislation, statute, or regulation that—

(A) would impose an enforceable duty upon the private sector except—

(i) a condition of Federal assistance; or

(ii) a duty arising from participation in a voluntary Federal program; or

(B) would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.

(8) Local government

The term “local government” has the same meaning as defined in section 6501(6) of title 31.

(9) Private sector

The term “private sector” means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.

(10) Regulation; rule

The term “regulation” or “rule” (except with respect to a rule of either House of the Congress) has the meaning of “rule” as defined in section 601(2) of title 5.

(11) Small government

The term “small government” means any small governmental jurisdictions defined in section 601(5) of title 5 and any tribal government.

(12) State

The term “State” has the same meaning as defined in section 6501(9) of title 31.

(13) Tribal government

The term “tribal government” 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 programs and services provided by the United States to Indians because of their special status as Indians.

(Pub. L. 93-344, title IV, §421, as added Pub. L. 104-4, title I, §101(a)(2), Mar. 22, 1995, 109 Stat. 50; amended Pub. L. 113-67, div. A, title I, §122(14), Dec. 26, 2013, 127 Stat. 1176.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (13), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, 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.

AMENDMENTS

2013—Par. (5)(A)(i)(II). Pub. L. 113-67 substituted “subparagraph (B)” for “subparagraph (B)”.

EFFECTIVE DATE

Part effective Jan. 1, 1996, or on the date 90 days after appropriations are made available as authorized under section 1516 of this title, whichever is earlier, and applicable to legislation considered on and after such date, see section 110 of Pub. L. 104-4, set out as a note under section 1511 of this title.

§ 658a. Exclusions

This part shall not apply to any provision in a bill, joint resolution, amendment, motion, or conference report before Congress that—

(1) enforces constitutional rights of individuals;

(2) establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability;

(3) requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government;

(4) provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government;

(5) is necessary for the national security or the ratification or implementation of international treaty obligations;

(6) the President designates as emergency legislation and that the Congress so designates in statute; or

(7) relates to the old-age, survivors, and disability insurance program under title II of the