

October 25, 1994, regarding the administration of this part.

(b) Contents

The report shall—

(1) identify the relative costs and benefits of Self-Governance;

(2) identify, with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to Self-Governance tribes and their members;

(3) identify the funds transferred to each Self-Governance tribe and the corresponding reduction in the Federal bureaucracy;

(4) include the separate views of the tribes; and

(5) include the funding formula for individual tribal shares of Central Office funds, together with the comments of affected Indian tribes, developed under subsection (d) of this section.

(c) Report on non-BIA programs

(1) In order to optimize opportunities for including non-Bureau of Indian Affairs programs, services, functions, and activities, or portions thereof, in agreements with tribes participating in Self-Governance under this part, the Secretary shall—

(A) review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned; and

(B) not later than 90 days after October 25, 1994, provide to the appropriate committees of Congress a listing of all such programs, services, functions, and activities, or portions thereof, that the Secretary determines, with the concurrence of tribes participating in Self-Governance under this part, are eligible for inclusion in such agreements at the request of a participating Indian tribe.

(2) The Secretary shall establish programmatic targets, after consultation with tribes participating in Self-Governance under this part, to encourage bureaus of the Department to assure that a significant portion of such programs, services, functions, and activities are actually included in the agreements negotiated under section 458cc of this title.

(3) The listing and targets under paragraphs (1) and (2) shall be published in the Federal Register and be made available to any Indian tribe participating in Self-Governance under this part. The list shall be published before January 1, 1995, and annually thereafter by January 1 preceding the fiscal year in which the targets are to be met.

(4) Thereafter, the Secretary shall annually review and publish in the Federal Register, after consultation with tribes participating in Self-Governance under this part, a revised listing and programmatic targets.

(d) Report on Central Office funds

Within 90 days after October 25, 1994, 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 for inclusion in the Self-Governance compacts. The Secretary shall include such formula in the annual report submitted to the Congress under subsection (b) of this section, together with the views of the affected Indian tribes.

(Pub. L. 93-638, title IV, §405, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4276.)

§ 458ff. Disclaimers

(a) Other services, contracts, and funds

Nothing in this part shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 450f of this title or any other applicable Federal law.

(b) Federal trust responsibilities

Nothing in this subchapter shall be construed to diminish the Federal trust responsibility to Indian tribes, individual Indians, or Indians with trust allotments.

(c) Application of other sections of subchapter

All provisions of sections 450c(d), 450d, 450f(c), 450i, 450j(f), 450m-1, and 450n of this title shall apply to agreements provided under this part.

(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.)

REFERENCES IN TEXT

This subchapter, 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 subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-277 inserted “450c(d),” after “sections”.

§ 458gg. Regulations

(a) In general

Not later than 90 days after October 25, 1994, at the request of a majority of the Indian tribes with agreements under this part, 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 part.

(b) Committee

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 representatives of Indian tribes with agreements under this part.

(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 the Indian tribes.

(d) Effect

The lack of promulgated regulations shall not limit the effect of this part.

(Pub. L. 93-638, title IV, §407, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4277.)

§ 458hh. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this part.

(Pub. L. 93-638, title IV, §408, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4278.)

PART E—TRIBAL SELF-GOVERNANCE—INDIAN HEALTH SERVICE

CODIFICATION

This part is comprised of title V of Pub. L. 93-638, as added by Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712. A former title V of Pub. L. 93-638 was added by Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936, was redesignated title VIII, and is classified to part H (§458ddd et seq.) of this subchapter.

§ 458aaa. Definitions

(a) In general

In this part:

(1) Construction project

The term “construction project”—

(A) means an organized noncontinuous undertaking to complete a specific set of predetermined 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 450b(m) of this title, that may otherwise be included in a funding agreement under this part.

(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 two¹ 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 458aaa-1 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 activities (or portions thereof) on its behalf under this part, 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 part). In such event, the term “Indian tribe” as used in this part 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.)

CODIFICATION

Another section 501 of Pub. L. 93-638 was renumbered section 801 and is classified to section 458ddd of this title.

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 part, amending sections 450f, 450j, and 450j-1 of this title, enacting provisions set out as notes under this section and sections 450 and 450f of this title, and repealing provisions set out as a note under 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;

¹ So in original. Probably should be followed by “or”.