

“(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. 450 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 450 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, func-

tions, and activities (or portions thereof) from throughout the Department of Health and Human Services.”

§ 458aaa-1. 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 part.

(Pub. L. 93-638, title V, §502, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 714.)

CODIFICATION

Another section 502 of Pub. L. 93-638 was renumbered section 802 and is classified to section 458ddd-1 of this title.

§ 458aaa-2. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III¹ on August 18, 2000, may elect to participate in self-governance under this part 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—

¹ See References in Text note below.

(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.)

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, and amended, which was set out as a note under section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

CODIFICATION

Another section 503 of Pub. L. 93-638 was renumbered section 803 and is classified to section 458ddd-2 of this title.

§ 458aaa-3. 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 III¹ 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 the provisions of that funding agreement are not directly contrary to any express provision of this part; 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 part.

(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.)

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 section 450f of this title prior to repeal by Pub. L. 106-260, §10, Aug. 18, 2000, 114 Stat. 734.

§ 458aaa-4. 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

¹ See References in Text note below.