

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.)

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 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**

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.)

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.)

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 chap-