

## AMENDMENTS

2017—Pub. L. 115-93 amended section generally. Prior to amendment, text read as follows: “The programs that may be integrated in a demonstration project under any such plan referred to in section 3403 of this title shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing Indian Youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities.”

2000—Pub. L. 106-568 substituted “assisting Indian youth and adults to succeed in the workforce, encouraging self-sufficiency, familiarizing Indian Youth and adults with the world of work, facilitating the creation of job opportunities and any services related to these activities” for “job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training”.

**§ 3405. Plan requirements**

A plan submitted to the Secretary for approval under this chapter shall—

- (1) identify the programs to be integrated and consolidated;
- (2) be consistent with the purposes of this chapter;
- (3) describe—
  - (A) a comprehensive strategy identifying the full range of potential employment opportunities on and near the service area of the Indian tribe;
  - (B) the education, training, and related services to be provided to assist Indians to access those employment opportunities;
  - (C) the way in which services and program funds are to be integrated, consolidated, and delivered; and
  - (D) the results expected, including the expected number of program participants in unsubsidized employment during the second quarter after exit from the program, from the plan;
- (4) identify the projected expenditures under the plan in a single budget covering all consolidated funds;
- (5) identify any agency of the Indian tribe to be involved in the delivery of the services integrated under the plan;
- (6) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe believes need to be waived to implement the plan; and
- (7) be approved by the governing body of the Indian tribe.

(Pub. L. 102-477, § 6, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 115-93, § 7, Dec. 18, 2017, 131 Stat. 2028.)

## AMENDMENTS

2017—Pub. L. 115-93 amended section generally. Prior to amendment, section related to plan requirements, consisting of eight pars.

**§ 3406. Plan review****(a) In general**

Upon receipt of a plan from an Indian tribe, the Secretary shall consult with—

- (1) the head of each Federal agency overseeing a program identified in the plan; and

(2) the Indian tribe that submitted the plan.

**(b) Identification of waivers**

The parties identified in subsection (a) shall identify any waivers of applicable statutory, regulatory, or administrative requirements, or of Federal agency policies or procedures necessary to enable the Indian tribe to efficiently implement the plan.

**(c) Tribal waiver request**

In consultation with the Secretary, a participating Indian tribe may request that the head of each affected agency waive any statutory, regulatory, or administrative requirement, policy, or procedure identified subsection<sup>1</sup> (b).

**(d) Waiver authority****(1) In general**

Except as provided in paragraph (2), notwithstanding any other provision of law, the head of each affected Federal agency shall waive any applicable statutory, regulatory, or administrative requirement, regulation, policy, or procedure promulgated by the agency that has been identified by the parties under subparagraph<sup>2</sup> (b).

**(2) Exception**

The head of an affected Federal agency shall not grant a waiver under paragraph (1) if the head of the affected agency determines that a waiver will be inconsistent with—

- (A) the purposes of this chapter; or
- (B) the provision of law from which the program included in the plan derives its authority that is specifically applicable to Indians.

**(e) Decision on waiver request****(1) In general**

Not later than 90 days after the head of an affected agency receives a waiver request, the head of the affected agency shall decide whether to grant or deny the request.

**(2) Denial of request**

If the head of the affected agency denies a waiver request, not later than 30 days after the date on which the denial is made, the head of the affected agency shall provide the requesting Indian tribe and the Secretary with written notice of the denial and the reasons for the denial.

**(3) Failure to act on request**

If the head of an affected agency does not make a decision under paragraph (1) by the deadline identified in that paragraph, the request shall be considered to be granted.

**(f) Secretarial review**

If the head of an affected agency denies a waiver request under subsection (e)(2), not later than 30 days after the date on which the request is denied, the Secretary shall review the denial and determine whether granting the waiver—

- (1) will be inconsistent with the provisions of this chapter; or
- (2) will prevent the affected agency from fulfilling the obligations of the affected agency under this chapter.

<sup>1</sup> So in original.

<sup>2</sup> So in original. Probably should be “subsection”.

**(g) Interagency dispute resolution****(1) In general**

Not later than 30 days after the date on which the Secretary determines that granting the waiver will not be inconsistent with the provisions of this chapter and will not prevent the affected agency from fulfilling the obligations of the affected agency under this chapter, the Secretary shall establish and initiate an interagency dispute resolution process involving—

- (A) the Secretary;
- (B) the participating Indian tribe; and
- (C) the head of the affected agency.

**(2) Duration**

A dispute subject to paragraph (1) shall be resolved not later than 30 days after the date on which the process is initiated.

**(h) Final authority**

If the dispute resolution process fails to resolve the dispute between a participating Indian tribe and an affected agency, the head of the affected agency shall have the final authority to resolve the dispute.

**(i) Final decision**

Not later than 10 days after the date on which the dispute is resolved under this section, the Secretary shall provide the requesting Indian tribe with—

- (1) the final decision on the waiver request; and
- (2) notice of the right to file an appeal in accordance with the applicable provisions described in section 3407(d) of this title.

(Pub. L. 102-477, § 7, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106-568, title XI, § 1103(c), Dec. 27, 2000, 114 Stat. 2932; Pub. L. 115-93, § 8, Dec. 18, 2017, 131 Stat. 2029.)

## AMENDMENTS

2017—Pub. L. 115-93 amended section generally. Prior to amendment, text read as follows: “Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal agency providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by that agency that has been so identified by such tribal government or agency, unless the Secretary of the affected agency determines that such a waiver is inconsistent with the purposes of this chapter or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.”

2000—Pub. L. 106-568 substituted “Federal agency” for “Federal department” and “Federal agency regulations” for “Federal departmental regulations”, substituted “agency” for “department” wherever appearing, and inserted “statutory requirement,” after “to waive any”.

**§ 3407. Plan approval; Secretarial authority; review of decision****(a) In general**

The Secretary shall have exclusive authority to approve or disapprove a plan submitted by an

Indian tribe in accordance with section 3405 of this title.

**(b) Approval process****(1) In general**

Not later than 90 days after the date on which the Secretary receives a plan, the Secretary shall, after coordinating with the Secretary of each Federal agency providing funds to be used to implement the plan, approve or deny the plan.

**(2) Approval**

If the Secretary approves a plan under paragraph (1), the Secretary shall authorize the transfer of program funds identified in the plan in accordance with section 3412 of this title.

**(3) Denial**

If the Secretary denies the plan under paragraph (1), the Secretary shall provide to the Indian tribe a written notification of disapproval of the plan that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the plan does not meet the requirements described in section 3405 of this title.

**(4) Partial approval****(A) In general**

If a plan is denied under paragraph (3) solely on the basis that a request for a waiver that is part of the plan has not been approved (or is subject to dispute resolution) under section 3406 of this title, the Secretary shall, upon a request from the tribe, grant partial approval for those portions of the plan not affected by the request for a waiver.

**(B) Approval after resolution**

With respect to a plan described in subparagraph (A), on resolution of the request for a waiver under section 3406 of this title, the Secretary shall, on a request from the tribe, approve the plan or amended plan not later than 90 days after the date on which the Secretary receives the request.

**(5) Failure to act**

If the Secretary does not make a decision under paragraph (1) within 90 days of the date on which the Secretary receives the plan, the plan shall be considered to be approved.

**(c) Extension of time**

Notwithstanding any other provision of law, the Secretary may extend or otherwise alter the 90-day period identified in subsection (b)(1) for not more than 90 additional days, if, before the expiration of the period, the Secretary obtains the express written consent of the Indian tribe.

**(d) Review of denial****(1) Procedure upon refusal to approve plan**

If the Secretary denies a plan under subsection (b)(3), the Secretary shall—

- (A) state any objections in writing to the Indian tribe;
- (B) provide assistance to the Indian tribe to overcome the stated objections; and
- (C) unless the Indian tribe brings a civil action under paragraph (2), provide the In-