

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 Indian tribe with a hearing on the record with the right to engage in full discovery relevant to any issue raised in the matter and the opportunity for appeal on the objections raised, under such rules and regulations as the Secretary may promulgate.

(2) Civil actions

(A) In general

The district courts of the United States shall have original jurisdiction of a civil action against the appropriate Secretary arising under this section.

(B) Administrative hearing and appeal not required

An Indian tribe may bring a civil action under this paragraph without regard to whether the Indian tribe had a hearing or filed an appeal under paragraph (1).

(C) Relief

In an action brought under this paragraph, the court may order appropriate relief (including injunctive relief to reverse a denial of a plan under this section or to compel an officer or employee of the United States, or any agency thereof, to perform a duty provided under this chapter or regulations promulgated thereunder) against any action by an officer or employee of the United States or any agency thereof contrary to this chapter or regulations promulgated thereunder.

(3) Final agency action

Notwithstanding any other provision of law, a decision by an official of the Department of the Interior or the Department of Health and Human Services, as appropriate (collectively referred to in this paragraph as the “Department”) that constitutes final agency action and that relates to an appeal within the Department that is conducted under paragraph (1)(C) shall be made—

(A) by an official of the Department who holds a position at a higher organizational level within the Department than the level of the departmental agency (such as the Indian Health Service or the Bureau of Indian Affairs) in which the decision that is the subject of the appeal was made; or

(B) by an administrative law judge.

(Pub. L. 102-477, §8, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106-568, title XI, §1103(d), Dec. 27, 2000,

114 Stat. 2932; Pub. L. 115–93, §9, Dec. 18, 2017, 131 Stat. 2030.)

AMENDMENTS

2017—Pub. L. 115–93 amended section generally. Prior to amendment, text read as follows: “Within 90 days after the receipt of a tribal government’s plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary’s approval or disapproval of the plan, including any request for a waiver that is made as part of the plan submitted by the tribal government. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.”

2000—Pub. L. 106–568 inserted “, including any request for a waiver that is made as part of the plan submitted by the tribal government” after “disapproval of the plan” and “, including reconsidering the disapproval of any waiver requested by the Indian tribe” after “reconsider such disapproval”.

§ 3408. Job creation activities authorized

(a) In general

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

(b) Job creation opportunities

(1) In general

Notwithstanding any other provisions of law, including any requirement of a program that is integrated under a plan under this chapter, a tribal government may use a percentage of the funds made available under this chapter (as determined under paragraph (2)) for the creation of employment opportunities, including providing private sector training placement under section 3409 of this title.

(2) Determination of percentage

The percentage of funds that a tribal government may use under this subsection is the greater of—

- (A) the rate of unemployment in the service area of the tribe up to a maximum of 25 percent; or
- (B) 10 percent.

(c) Limitation

The funds used for an expenditure described in subsection (a) may only include funds made available to the Indian tribe by a Federal agency under a statutory or administrative formula.

(Pub. L. 102–477, §9, Oct. 23, 1992, 106 Stat. 2303; Pub. L. 106–568, title XI, §1103(e), Dec. 27, 2000, 114 Stat. 2932.)

AMENDMENTS

2000—Pub. L. 106–568 designated existing provisions as subsec. (a), inserted heading, and added subsecs. (b) and (c).

§ 3409. Employer training placements

(a) In general

Subject to subsection (b), an Indian tribe that has in place an approved plan under this chapter may use the funds made available for the plan under this chapter—

- (1) to place participants in training positions with employers; and
- (2) to pay the participants a training allowance or wage for a training period of not more than 24 months, which may be nonconsecutive.

(b) Requirements

An Indian tribe may carry out subsection (a) only if the Indian tribe enters into a written agreement with each applicable employer under which the employer shall agree—

- (1) to provide on-the-job training to the participants; and
- (2) on satisfactory completion of the training period described in subsection (a)(2), to prioritize the provision of permanent employment to the participants.

(Pub. L. 102–477, §10, Oct. 23, 1992, 106 Stat. 2304; Pub. L. 115–93, §10, Dec. 18, 2017, 131 Stat. 2032.)

AMENDMENTS

2017—Pub. L. 115–93 amended section generally. Prior to amendment, text read as follows: “A tribal government participating in a demonstration program under this chapter is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.”

§ 3410. Federal responsibilities

(a) Lead agency

(1) In general

Notwithstanding any other provision of law, the lead agency responsible for implementation of this chapter shall be the Bureau of Indian Affairs.

(2) Inclusions

The responsibilities of the Director of the Bureau of Indian Affairs in carrying out this chapter shall include—

- (A) in coordination with the head of each Federal agency overseeing a program identified in the plan, the development of a single model report for each Indian tribe that has in place an approved plan under this chapter to submit to the Director reports on any consolidated activities undertaken and joint expenditures made under the plan;
- (B) the provision, directly or through contract, of appropriate voluntary and technical assistance to participating Indian tribes;
- (C) the development and use of a single monitoring and oversight system for plans approved under this chapter;
- (D)(i) the receipt of all funds covered by a plan approved under this chapter; and
- (ii) the distribution of the funds to the respective Indian tribes by not later than 45