

option of a participating Indian Tribe or Indian Tribes, any of the provisions of subchapter I may be incorporated in any compact or funding agreement under this subchapter. The inclusion of any such provision shall be subject to, and shall not conflict with, section 101(a) of such Act.

(b) Effect

Each incorporated provision under subsection (a) shall—

- (1) have the same force and effect as if set out in full in this subchapter;
- (2) supplement or replace any related provision in this subchapter; and
- (3) apply to any agency otherwise governed by this subchapter.

(c) Effective date

If an Indian Tribe requests incorporation at the negotiation stage of a compact or funding agreement, the incorporation shall—

- (1) be effective immediately; and
- (2) control the negotiation and resulting compact and funding agreement.

(Pub. L. 93-638, title IV, §410, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 875.)

Editorial Notes

REFERENCES IN TEXT

Sections 101(a) and 201(d) of the PROGRESS for Indian Tribes Act, referred to in subsec. (a), are sections 101(a) and 201(d) of Pub. L. 116-180, which are set out as notes under section 5361 of this title.

Subchapter I, referred to in subsec. (a), 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.

§ 5371. Annual budget list

The Secretary shall list, in the annual budget request submitted to Congress under section 1105 of title 31, any funds proposed to be included in funding agreements authorized under this subchapter.

(Pub. L. 93-638, title IV, §411, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5364 of this title prior to repeal by Pub. L. 116-180.

§ 5372. Reports

(a) In general

(1) Requirement

On January 1 of each year, the Secretary shall submit to Congress a report regarding the administration of this subchapter.

(2) Analysis

Any Indian Tribe may submit to the Office of Self-Governance and to the appropriate

committees of Congress a detailed annual analysis of unmet Tribal needs for funding agreements under this subchapter.

(b) Contents

The report under subsection (a)(1) shall—

(1) be compiled from information contained in funding agreements, annual audit reports, and data of the Secretary regarding the disposition of Federal funds;

(2) identify—

(A) the relative costs and benefits of self-governance;

(B) with particularity, all funds that are specifically or functionally related to the provision by the Secretary of services and benefits to self-governance Indian Tribes and members of Indian Tribes;

(C) the funds transferred to each Indian Tribe and the corresponding reduction in the Federal employees and workload; and

(D) the funding formula for individual Tribal shares of all Central Office funds, together with the comments of affected Indian Tribes, developed under subsection (d);

(3) before being submitted to Congress, be distributed to the Indian Tribes for comment (with a comment period of not less than 30 days);

(4) include the separate views and comments of each Indian Tribe or Tribal organization; and

(5) include a list of—

(A) all such programs that the Secretary determines, in consultation with Indian Tribes participating in self-governance, are eligible for negotiation to be included in a funding agreement at the request of a participating Indian Tribe; and

(B) all such programs which Indian Tribes have formally requested to include in a funding agreement under section 5363(c) of this title due to the special geographic, historical, or cultural significance of the program to the Indian Tribe, indicating whether each request was granted or denied, and stating the grounds for any denial.

(c) Report on non-BIA programs

(1) In general

In order to optimize opportunities for including non-BIA programs in agreements with Indian Tribes participating in self-governance under this subchapter, the Secretary shall review all programs administered by the Department, other than through the Bureau of Indian Affairs, the Office of the Assistant Secretary for Indian Affairs, or the Office of the Special Trustee for American Indians, without regard to the agency or office concerned.

(2) Programmatic targets

The Secretary shall establish programmatic targets, after consultation with Indian Tribes participating in self-governance, to encourage bureaus of the Department to ensure that an appropriate portion of those programs are available to be included in funding agreements.

(3) Publication

The lists under subsection (b)(5) and targets under paragraph (2) shall be published in the

Federal Register and made available to any Indian Tribe participating in self-governance.

(4) Annual review

(A) In general

The Secretary shall annually review and publish in the Federal Register, after consultation with Indian Tribes participating in self-governance, revised lists and programmatic targets.

(B) Contents

In preparing the revised lists and programmatic targets, the Secretary shall consider all programs that were eligible for contracting in the original list published in the Federal Register in 1995, except for programs specifically determined not to be contractible as a matter of law.

(d) Report on Central Office funds

Not later than January 1, 2020, 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 and the Office of the Special Trustee for inclusion in the compacts.

(Pub. L. 93-638, title IV, §412, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 876.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5365 of this title prior to repeal by Pub. L. 116-180.

§ 5373. Regulations

(a) In general

(1) Promulgation

Not later than 90 days after October 21, 2020, 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 not later than 21 months after October 21, 2020.

(3) Expiration of authority

The authority to promulgate regulations under paragraph (1) shall expire on the date that is 30 months after October 21, 2020.

(b) Committee

(1) Membership

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only representatives of the Federal Government and Tribal government.

(2) Lead agency

Among the Federal representatives described in paragraph (1), the Office of Self-Governance shall be the lead agency for the Department.

(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

(1) Repeal

The Secretary may repeal any regulation that is inconsistent with this chapter.

(2) Conflicting provisions

Subject to section 101(a) of the PROGRESS for Indian Tribes Act and except with respect to programs described under section 5363(c) of this title, this subchapter shall supersede any conflicting provision of law (including any conflicting regulations).

(3) Effectiveness without regard to regulations

The lack of promulgated regulations on an issue shall not limit the effect or implementation of this subchapter.

(Pub. L. 93-638, title IV, §413, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 877.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsec. (d)(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.

Section 101(a) of the PROGRESS for Indian Tribes Act, referred to in subsec. (d)(2), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5367 of this title prior to repeal by Pub. L. 116-180.

§ 5374. Effect of circulars, policies, manuals, guidance, and rules

Unless expressly agreed to by a participating Indian Tribe in a compact or funding agreement, the participating Indian Tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Department, except for—

(1) the eligibility provisions of section 5324(g) of this title; and

(2) regulations promulgated pursuant to section 5373 of this title.

(Pub. L. 93-638, title IV, §414, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

§ 5375. Appeals

Except as provided in section 5366(d) of this title, in any administrative action, appeal, or civil action for judicial review of any decision made by the Secretary under this subchapter, the Secretary shall have the burden of proof of demonstrating by a preponderance of the evidence—