

participate in self-governance under this subchapter 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An Indian tribe that has withdrawn from participation in an inter-tribal consortium or tribal organization, in whole or in part, shall be entitled to participate in self-governance provided the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If an Indian tribe has withdrawn from participation in an inter-tribal consortium or tribal organization, that Indian tribe shall be entitled to its tribal share of funds supporting those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—

(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.)

Editorial Notes

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

CODIFICATION

Section was formerly classified to section 458aaa-2 of this title prior to editorial reclassification and renumbering as this section.

Another section 503 of Pub. L. 93-638 was renumbered section 803 and is classified to section 5423 of this title.

§ 5384. 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

¹ See References in Text note below.

the provisions of that funding agreement are not directly contrary to any express provision of this subchapter; 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 subchapter.

(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.)

Editorial Notes

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

CODIFICATION

Section was formerly classified to section 458aaa-3 of this title prior to editorial reclassification and renumbering as this section.

§ 5385. 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 out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, or activity (or portion thereof) is performed.

(2) Inclusion of certain programs, services, functions, and activities

Such programs, services, functions, or activities (or portions thereof) include all programs, services, functions, activities (or portions thereof), including grants (which may be added to a funding agreement after an award of such grants), with respect to which Indian tribes or Indians are primary or significant beneficiaries, administered by the Department

of Health and Human Services through the Indian Health Service and all local, field, service unit, area, regional, and central headquarters or national office functions so administered under the authority of—

(A) section 13 of this title;

(B) the Act of April 16, 1934 (48 Stat. 596; chapter 147; 25 U.S.C. 452 et seq.);¹

(C) the Act of August 5, 1954 (68 Stat. 674; chapter 658) [42 U.S.C. 2001 et seq.];

(D) the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.);

(E) the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.);

(F) any other Act of Congress authorizing any agency of the Department of Health and Human Services to administer, carry out, or provide financial assistance to such a program, service, function or activity (or portions thereof) described in this section that is carried out for the benefit of Indians because of their status as Indians; or

(G) any other Act of Congress authorizing such a program, service, function, or activity (or portions thereof) carried out for the benefit of Indians under which appropriations are made available to any agency other than an agency within the Department of Health and Human Services, in any case in which the Secretary administers that program, service, function, or activity (or portion thereof).

(c) Inclusion in compact or funding agreement

It shall not be a requirement that an Indian tribe or Indians be identified in the authorizing statute for a program or element of a program to be eligible for inclusion in a compact or funding agreement under this subchapter.

(d) Funding agreement terms

Each funding agreement under this subchapter shall set forth—

(1) terms that generally identify the programs, services, functions, and activities (or portions thereof) to be performed or administered; and

(2) for the items identified in paragraph (1)—

(A) the general budget category assigned;

(B) the funds to be provided, including those funds to be provided on a recurring basis;

(C) the time and method of transfer of the funds;

(D) the responsibilities of the Secretary; and

(E) any other provision with respect to which the Indian tribe and the Secretary agree.

(e) Subsequent funding agreements

Absent notification from an Indian tribe that is withdrawing or retroceding the operation of one or more programs, services, functions, or activities (or portions thereof) identified in a funding agreement, or unless otherwise agreed to by the parties, each funding agreement shall remain in full force and effect until a subsequent funding agreement is executed, and the terms of

¹ See References in Text note below.