

Subsec. (b)(1). Pub. L. 116-180, §101(d)(2)(A), in introductory provisions, substituted “the Office of the Assistant Secretary for Indian Affairs, and the Office of the Special Trustee for American Indians, without regard to the agency or office of that Bureau or those Offices” for “without regard to the agency or office of the Bureau of Indian Affairs” and “and including—” for “and including”, inserted subpar. (A) designation before “any program”, added subpar. (C), and redesignated former subpars. (A), (B), and (C) as subpars. (A)(i), (A)(ii), and (B), respectively, and realigned margins.

Subsec. (b)(2). Pub. L. 116-180, §101(d)(2)(B), substituted “section 5372(c) of this title” for “section 5365(c) of this title” and inserted “and” at end.

Subsec. (b)(3). Pub. L. 116-180, §101(d)(2)(C), substituted period for semicolon at end.

Subsec. (b)(4). Pub. L. 116-260, which directed amendment of par. (4) by adding “and” at end of subpar. (A), striking out “and” at end of subpar. (B), and striking out subpar. (C), could not be executed due to intervening amendment by Pub. 116-180, §101(d)(2)(D). See note below.

Pub. L. 116-180, §101(d)(2)(D), struck out par. (4) which read as follows: “prohibit the inclusion of funds provided—

“(A) pursuant to the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.);

“(B) for elementary and secondary schools under the formula developed pursuant to section 2008 of this title; and

“(C) the Flathead Agency Irrigation Division or the Flathead Agency Power Division, except that nothing in this section shall affect the contract authority of such divisions under section 5321 of this title;”.

Subsec. (b)(5) to (9). Pub. L. 116-180, §101(d)(2)(D), struck out pars. (5) to (9) which set out various requirements and responsibilities related to funding agreements.

Subsec. (f). Pub. L. 116-180, §101(d)(3), struck out “for review” after “Submission” in heading, substituted “such agreement to” for “such agreement to—”, struck out par. (1) designation before “each Indian tribe”, substituted “agreement.” for “agreement;”, and struck out pars. (2) and (3) which read as follows:

“(2) the Committee on Indian Affairs of the Senate; and

“(3) the Subcommittee on Native American Affairs of the Committee on Natural Resources of the House of Representatives.”

Subsec. (k). Pub. L. 116-180, §101(d)(4), substituted “section 5372(c) of this title” for “section 5365(c)(1) of this title”.

Subsecs. (m) to (p). Pub. L. 116-180, §101(d)(5), added subsecs. (m) to (p).

2008—Subsec. (b)(4)(A). Pub. L. 110-315 substituted “the Tribally Controlled Colleges and Universities Assistance Act of 1978” for “the Tribally Controlled College or University Assistance Act of 1978”.

2000—Subsec. (h)(2). Pub. L. 106-568 struck out “and” before “section 5123 of this title” and substituted “and the Act of July 3, 1952 (25 U.S.C. 82a), shall not apply” for “shall not apply”.

1998—Subsec. (b)(4)(A). Pub. L. 105-244 substituted “Tribally Controlled College or University Assistance Act of 1978” for “Tribally Controlled Community College Assistance Act of 1978”.

1996—Subsec. (l). Pub. L. 104-109 added subsec. (l).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of Title 20, Education.

§ 5364. Compacts

(a) In general

The Secretary shall negotiate and enter into a written compact with each Indian Tribe participating in self-governance in a manner consistent with the trust responsibility of the Federal Government, treaty obligations, and the government-to-government relationship between Indian Tribes and the United States.

(b) Contents

A compact under subsection (a) shall—

(1) specify and affirm the general terms of the government-to-government relationship between the Indian Tribe and the Secretary; and

(2) include such terms as the parties intend shall control during the term of the compact.

(c) Amendment

A compact under subsection (a) may be amended only by agreement of the parties.

(d) Effective date

The effective date of a compact under subsection (a) shall be—

(1) the date of the execution of the compact by the parties; or

(2) such date as is mutually agreed upon by the parties.

(e) Duration

A compact under subsection (a) shall remain in effect—

(1) for so long as permitted by Federal law; or

(2) until termination by written agreement, retrocession, or reassumption.

(f) Existing compacts

An Indian Tribe participating in self-governance under this subchapter, as in effect on October 21, 2020, shall have the option at any time after that date—

(1) to retain its negotiated compact (in whole or in part) to the extent that the provisions of the compact are not directly contrary to any express provision of this subchapter; or

(2) to negotiate a new compact in a manner consistent with this subchapter.

(Pub. L. 93-638, title IV, §404, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864.)

Editorial Notes

PRIOR PROVISIONS

A prior section 5364, Pub. L. 93-638, title IV, §404, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4275, related to identification of funds in annual budget request, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5371 of this title. Such section was formerly classified to section 458dd of this title prior to editorial reclassification and renumbering as section 5364.

§ 5365. General provisions

(a) Applicability

An Indian Tribe and the Secretary shall include in any compact or funding agreement provisions that reflect the requirements of this subchapter.

(b) Conflicts of interest

An Indian Tribe participating in self-governance shall ensure that internal measures are in place to address, pursuant to Tribal law and procedures, conflicts of interest in the administration of programs.

(c) Audits**(1) Single Agency Audit Act**

Chapter 75 of title 31 shall apply to a funding agreement under this subchapter.

(2) Cost principles

An Indian Tribe shall apply cost principles under the applicable Office of Management and Budget circular, except as modified by—

(A) any provision of law, including section 5325 of this title; or

(B) any exemptions to applicable Office of Management and Budget circulars subsequently granted by the Office of Management and Budget.

(3) Federal claims

Any claim by the Federal Government against an Indian Tribe relating to funds received under a funding agreement based on any audit under this subsection shall be subject to section 5325(f) of this title.

(d) Redesign and consolidation

Except as provided in section 5367 of this title, an Indian Tribe may redesign or consolidate programs, or reallocate funds for programs, in a compact or funding agreement in any manner that the Indian Tribe determines to be in the best interest of the Indian community being served—

(1) so long as the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law; and

(2) except that, with respect to the reallocation, consolidation, and redesign of programs described in subsection (b)(2) or (c) of section 5363 of this title, a joint agreement between the Secretary and the Indian Tribe shall be required.

(e) Retrocession**(1) In general**

An Indian Tribe may fully or partially retrocede to the Secretary any program under a compact or funding agreement.

(2) Effective date**(A) Agreement**

Unless an Indian Tribe rescinds a request for retrocession under paragraph (1), the retrocession shall become effective on the date specified by the parties in the compact or funding agreement.

(B) No agreement

In the absence of a specification of an effective date in the compact or funding agreement, the retrocession shall become effective on—

(i) the earlier of—

(I) 1 year after the date on which the request is submitted; and

(II) the date on which the funding agreement expires; or

(ii) such date as may be mutually agreed upon by the Secretary and the Indian Tribe.

(f) Nonduplication

A funding agreement shall provide that, for the period for which, and to the extent to which, funding is provided to an Indian Tribe under this subchapter, the Indian Tribe—

(1) shall not be entitled to contract with the Secretary for funds under section 5321 of this title, except that the Indian Tribe shall be eligible for new programs on the same basis as other Indian Tribes; and

(2) shall be responsible for the administration of programs in accordance with the compact or funding agreement.

(g) Records**(1) In general**

Unless an Indian Tribe specifies otherwise in the compact or funding agreement, records of an Indian Tribe shall not be considered to be Federal records for purposes of chapter 5 of title 5.

(2) Recordkeeping system

An Indian Tribe shall—

(A) maintain a recordkeeping system; and

(B) on a notice period of not less than 30 days, provide the Secretary with reasonable access to the records to enable the Department to meet the requirements of sections 3101 through 3106 of title 44.

(Pub. L. 93-638, title IV, §405, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 865.)

Editorial Notes**PRIOR PROVISIONS**

A prior section 5365, Pub. L. 93-638, title IV, §405, as added Pub. L. 103-413, title II, §204, Oct. 25, 1994, 108 Stat. 4276, related to reports, prior to repeal by Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 864. See section 5372 of this title. Such section was formerly classified to section 458ee of this title prior to editorial reclassification and renumbering as section 5365.

§ 5366. Provisions relating to the Secretary**(a) Trust evaluations**

A funding agreement shall include a provision to monitor the performance of trust functions by the Indian Tribe through the annual trust evaluation.

(b) Reassumption**(1) In general**

A compact or funding agreement shall include provisions for the Secretary to reassume a program and associated funding if there is a specific finding relating to that program of—

(A) imminent jeopardy to a trust asset, a natural resource, or public health and safety that—

(i) is caused by an act or omission of the Indian Tribe; and

(ii) arises out of a failure to carry out the compact or funding agreement; or