

- (ii) Federal employee retirement benefits;
- (iii) automated data processing;
- (iv) technical assistance; and
- (v) monitoring of activities under this subchapter; or

(D) to pay for costs of Federal personnel displaced by self-determination contracts under this chapter or self-governance under this subchapter.

(h) Federal resources

If an Indian Tribe elects to carry out a compact or funding agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation, including the use of interagency motor pool vehicles), or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall, as soon as practicable, acquire and transfer such personnel, supplies, or resources to the Indian Tribe under this subchapter.

(i) Prompt Payment Act

Chapter 39 of title 31 shall apply to the transfer of funds due under a compact or funding agreement authorized under this subchapter.

(j) Interest or other income

(1) In general

An Indian Tribe may retain interest or income earned on any funds paid under a compact or funding agreement to carry out governmental purposes.

(2) No effect on other amounts

The retention of interest or income under paragraph (1) shall not diminish the amount of funds an Indian Tribe is entitled to receive under a funding agreement in the year the interest or income is earned or in any subsequent fiscal year.

(3) Investment standard

Funds transferred under this subchapter shall be managed by the Indian Tribe using the prudent investment standard, provided that the Secretary shall not be liable for any investment losses of funds managed by the Indian Tribe that are not otherwise guaranteed or insured by the Federal Government.

(k) Carryover of funds

(1) In general

Notwithstanding any provision of an appropriations Act, all funds paid to an Indian Tribe in accordance with a compact or funding agreement shall remain available until expended.

(2) Effect of carryover

If an Indian Tribe elects to carry over funding from one year to the next, the carryover shall not diminish the amount of funds the Indian Tribe is entitled to receive under a funding agreement in that fiscal year or any subsequent fiscal year.

(l) Limitation of costs

(1) In general

An Indian Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds transferred under a compact or funding agreement.

(2) Notice of insufficiency

If at any time the Indian Tribe has reason to believe that the total amount provided for a specific activity under a compact or funding agreement is insufficient, the Indian Tribe shall provide reasonable notice of such insufficiency to the Secretary.

(3) Suspension of performance

If, after notice under paragraph (2), the Secretary does not increase the amount of funds transferred under the funding agreement, the Indian Tribe may suspend performance of the activity until such time as additional funds are transferred.

(4) Savings clause

Nothing in this section reduces any programs, services, or funds of, or provided to, another Indian Tribe.

(m) Distribution of funds

The Office of Self-Governance shall be responsible for distribution of all Bureau of Indian Affairs funds provided under this subchapter unless otherwise agreed by the parties to an applicable funding agreement.

(n) Applicability

Notwithstanding any other provision of this section, section 101(a) of the PROGRESS for Indian Tribes Act applies to subsections (a) through (m).

(Pub. L. 93-638, title IV, § 408, as added Pub. L. 116-180, title I, § 101(e), Oct. 21, 2020, 134 Stat. 872.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(1) and (g)(3)(D), 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. (n), is section 101(a) of Pub. L. 116-180, which is set out as a note under section 5361 of this title.

PRIOR PROVISIONS

A prior section 5368, Pub. L. 93-638, title IV, § 408, as added Pub. L. 103-413, title II, § 204, Oct. 25, 1994, 108 Stat. 4278, authorized appropriations, prior to repeal by Pub. L. 116-180, title I, § 101(e), Oct. 21, 2020, 134 Stat. 864, 872. See section 5377 of this title. Such section was formerly classified to section 458hh of this title prior to editorial reclassification and renumbering as section 5368.

§ 5369. Facilitation

(a) In general

Except as otherwise provided by law (including section 101(a) of the PROGRESS for Indian

Tribes Act), the Secretary shall interpret each Federal law and regulation in a manner that facilitates—

- (1) the inclusion of programs in funding agreements; and
- (2) the implementation of funding agreements.

(b) Regulation waiver

(1) Request

An Indian Tribe may submit to the Secretary a written request for a waiver of applicability of a Federal regulation, including—

- (A) an identification of the specific text in the regulation sought to be waived; and
- (B) the basis for the request.

(2) Determination by the secretary

Not later than 120 days after receipt by the Secretary and the designated officials under paragraph (4) of a request under paragraph (1), the Secretary shall approve or deny the requested waiver in writing to the Indian Tribe.

(3) Extensions

The deadline described in paragraph (2) may be extended for any length of time, as agreed upon by both the Indian Tribe and the Secretary.

(4) Designated officials

The Secretary shall designate one or more appropriate officials in the Department to receive a copy of the waiver request described in paragraph (1).

(5) Grounds for denial

The Secretary may deny a request under paragraph (1) upon a specific finding by the Secretary that the identified text in the regulation may not be waived because such a waiver is prohibited by Federal law.

(6) Failure to make determination

If the Secretary fails to make a determination with respect to a waiver request within the period specified in paragraph (2) (including any extension agreed to under paragraph (3)), the Secretary shall be deemed to have agreed to the request, except that for a waiver request relating to programs eligible under section 5363(b)(2) or section 5363(c) of this title, the Secretary shall be deemed to have denied the request.

(7) Finality

A decision of the Secretary under this section shall be final for the Department.

(Pub. L. 93-638, title IV, §409, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 874.)

Editorial Notes

REFERENCES IN TEXT

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

§ 5370. Discretionary application of other sections

(a) In general

Except as otherwise provided in section 201(d) of the PROGRESS for Indian Tribes Act, at the

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