

(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—

(1) the validity of the grounds for the decision; and

(2) the consistency of the decision with the requirements and policies of this subchapter.

(Pub. L. 93-638, title IV, §415, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

§ 5376. Application of other provisions

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1959), shall apply to compacts and funding agreements entered into under this subchapter.

(Pub. L. 93-638, title IV, §416, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

Editorial Notes

REFERENCES IN TEXT

Section 314 of the Department of the Interior and Related Agencies Appropriations Act, 1991, referred to in text, is section 314 of Pub. L. 101-512, which is set out as a note under section 5321 of this title.

§ 5377. Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this subchapter.

(Pub. L. 93-638, title IV, §417, as added Pub. L. 116-180, title I, §101(e), Oct. 21, 2020, 134 Stat. 878.)

Editorial Notes

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 5368 of this title prior to repeal by Pub. L. 116-180.

SUBCHAPTER V—TRIBAL SELF-GOVERNANCE—INDIAN HEALTH SERVICE**Editorial Notes**

CODIFICATION

Subchapter is comprised of title V of Pub. L. 93-638, as added by Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712. Another title V of Pub. L. 93-638, as added by Pub. L. 106-568, title XIII, §1302, Dec. 27, 2000, 114 Stat. 2936, was redesignated title VIII, and is classified to subchapter VII (§5421 et seq.) of this chapter.

§ 5381. Definitions**(a) In general**

In this subchapter:

(1) Construction project

The term “construction project”—

(A) means an organized noncontinuous undertaking to complete a specific set of predetermined objectives for the planning, environmental determination, design, construction, repair, improvement, or expansion of buildings or facilities, as described in a construction project agreement; and

(B) does not include construction program administration and activities described in paragraphs (1) through (3) of section 5304(m)

of this title, that may otherwise be included in a funding agreement under this subchapter.

(2) Construction project agreement

The term “construction project agreement” means a negotiated agreement between the Secretary and an Indian tribe, that at a minimum—

- (A) establishes project phase start and completion dates;
- (B) defines a specific scope of work and standards by which it will be accomplished;
- (C) identifies the responsibilities of the Indian tribe and the Secretary;
- (D) addresses environmental considerations;
- (E) identifies the owner and operations and maintenance entity of the proposed work;
- (F) provides a budget;
- (G) provides a payment process; and
- (H) establishes the duration of the agreement based on the time necessary to complete the specified scope of work, which may be 1 or more years.

(3) Gross mismanagement

The term “gross mismanagement” means a significant, clear, and convincing violation of a compact, funding agreement, or regulatory, or statutory requirements applicable to Federal funds transferred to an Indian tribe by a compact or funding agreement that results in a significant reduction of funds available for the programs, services, functions, or activities (or portions thereof) assumed by an Indian tribe.

(4) Inherent Federal functions

The term “inherent Federal functions” means those Federal functions which cannot legally be delegated to Indian tribes.

(5) Inter-tribal consortium

The term “inter-tribal consortium” means a coalition of two¹ more separate Indian tribes that join together for the purpose of participating in self-governance, including tribal organizations.

(6) Secretary

The term “Secretary” means the Secretary of Health and Human Services.

(7) Self-governance

The term “self-governance” means the program of self-governance established under section 5382 of this title.

(8) Tribal share

The term “tribal share” means an Indian tribe’s portion of all funds and resources that support secretarial programs, services, functions, and activities (or portions thereof) that are not required by the Secretary for performance of inherent Federal functions.

(b) Indian tribe

In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or ac-

tivities (or portions thereof) on its behalf under this subchapter, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this subchapter). In such event, the term “Indian tribe” as used in this subchapter shall include such other authorized Indian tribe, inter-tribal consortium, or tribal organization.

(Pub. L. 93-638, title V, §501, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 712.)

Editorial Notes

CODIFICATION

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

Another section 501 of Pub. L. 93-638 was renumbered section 801 and is classified to section 5421 of this title.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 106-260, §13, Aug. 18, 2000, 114 Stat. 734, provided that: “Except as otherwise provided, the provisions of this Act [enacting this subchapter, amending sections 5321, 5324, and 5325 of this title, enacting provisions set out as notes under this section and sections 5301 and 5321 of this title, and repealing provisions set out as a note under former section 450f of this title] shall take effect on the date of the enactment of this Act [Aug. 18, 2000].”

FINDINGS

Pub. L. 106-260, §2, Aug. 18, 2000, 114 Stat. 711, provided that: “Congress finds that—

“(1) the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations;

“(2) the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-governance, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

“(3) although progress has been made, the Federal bureaucracy, with its centralized rules and regulations, has eroded tribal self-governance and dominates tribal affairs;

“(4) the Tribal Self-Governance Demonstration Project, established under title III of the Indian Self-Determination and Education Assistance Act ([Pub. L. 93-638, former] 25 U.S.C. 450f note) was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over Federal funding and program management;

“(5) although the Federal Government has made considerable strides in improving Indian health care, it has failed to fully meet its trust responsibilities and to satisfy its obligations to the Indian tribes under treaties and other laws; and

“(6) Congress has reviewed the results of the Tribal Self-Governance Demonstration Project and finds that transferring full control and funding to tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof)—

“(A) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian tribes; and

“(B) strengthens the Federal policy of Indian self-determination.”

DECLARATION OF POLICY

Pub. L. 106-260, §3, Aug. 18, 2000, 114 Stat. 712, provided that: “It is the policy of Congress—

¹ So in original. Probably should be followed by “or”.

“(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

“(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

“(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

“(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 et seq.] relating to the provision of Federal services to Indian tribes;

“(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

“(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

“(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

“(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portion thereof) are assumed by Indian tribes;

“(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act [see Short Title of 2000 Amendments note set out under section 5301 of this title] and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

“(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.”

§ 5382. Establishment

The Secretary shall establish and carry out a program within the Indian Health Service of the Department of Health and Human Services to be known as the “Tribal Self-Governance Program” in accordance with this subchapter.

(Pub. L. 93-638, title V, §502, as added Pub. L. 106-260, § 4, Aug. 18, 2000, 114 Stat. 714.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 458aaa-1 of this title prior to editorial reclassification and renumbering as this section.

Another section 502 of Pub. L. 93-638 was renumbered section 802 and is classified to section 5422 of this title.

§ 5383. Selection of participating Indian tribes

(a) Continuing participation

Each Indian tribe that is participating in the Tribal Self-Governance Demonstration Project under title III¹ on August 18, 2000, may elect to

¹ See References in Text note below.

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