

ernance tribe is otherwise entitled to receive under its funding agreement or other applicable law, whether or not such funds are apportioned to the Office of Tribal Self-Governance under this section.

(b) Present funding; shortfalls

In such budget request, the President shall identify the level of need presently funded and any shortfall in funding (including direct program and contract support costs) for each Indian tribe, either directly by the Secretary of Health and Human Services, under self-determination contracts, or under compacts and funding agreements authorized under this subchapter.

(Pub. L. 93-638, title V, §513, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 727.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 458aaa-12 of this title prior to editorial reclassification and renumbering as this section.

§ 5394. Reports

(a) Annual report

(1) In general

Not later than January 1 of each year after August 18, 2000, the Secretary shall submit to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives a written report regarding the administration of this subchapter.

(2) Analysis

The report under paragraph (1) shall include a detailed analysis of the level of need being presently funded or unfunded for each Indian tribe, either directly by the Secretary, under self-determination contracts under subchapter I of this chapter, or under compacts and funding agreements authorized under this chapter. In compiling reports pursuant to this section, the Secretary may not impose any reporting requirements on participating Indian tribes or tribal organizations, not otherwise provided in this chapter.

(b) Contents

The report under subsection (a) of this section shall—

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

(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 their members;

(C) the funds transferred to each self-governance Indian tribe and the corresponding reduction in the Federal bureaucracy;

(D) the funding formula for individual tribal shares of all headquarters funds, together with the comments of affected Indian tribes or tribal organizations, developed under subsection (c) of this section; and

(E) amounts expended in the preceding fiscal year to carry out inherent Federal functions, including an identification of those functions by type and location;

(3) contain a description of the method or methods (or any revisions thereof) used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements;

(4) before being submitted to Congress, be distributed to the Indian tribes for comment (with a comment period of no less than 30 days, beginning on the date of distribution); and

(5) include the separate views and comments of the Indian tribes or tribal organizations.

(c) Report on fund distribution method

Not later than 180 days after August 18, 2000, the Secretary shall, after consultation with Indian tribes, submit a written report to the Committee on Resources of the House of Representatives and the Committee on Indian Affairs of the Senate that describes the method or methods used to determine the individual tribal share of funds controlled by all components of the Indian Health Service (including funds assessed by any other Federal agency) for inclusion in self-governance compacts or funding agreements.

(Pub. L. 93-638, title V, §514, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 728.)

Editorial Notes

REFERENCES IN TEXT

Subchapter I of this chapter, referred to in subsec. (a)(2), 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.

This chapter, referred to in subsec. (a)(2), 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.

CODIFICATION

Section was formerly classified to section 458aaa-13 of this title prior to editorial reclassification and renumbering as this section.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

§ 5395. Disclaimers

(a) No funding reduction

Nothing in this subchapter shall be construed to limit or reduce in any way the funding for any program, project, or activity serving an Indian tribe under this or other applicable Federal

law. Any Indian tribe that alleges that a compact or funding agreement is in violation of this section may apply the provisions of section 5331 of this title.

(b) Federal trust and treaty responsibilities

Nothing in this chapter shall be construed to diminish in any way the trust responsibility of the United States to Indian tribes and individual Indians that exists under treaties, Executive orders, or other laws and court decisions.

(c) Obligations of the United States

The Indian Health Service under this chapter shall neither bill nor charge those Indians who may have the economic means to pay for services, nor require any Indian tribe to do so.

(Pub. L. 93-638, title V, §515, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 729.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (c), 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.

CODIFICATION

Section was formerly classified to section 458aaa-14 of this title prior to editorial reclassification and renumbering as this section.

§ 5396. Application of other sections of this chapter

(a) Mandatory application

All provisions of sections 5305(b), 5306, 5307, 5321(c) and (d), 5323, 5324(k) and (l), 5325(a) through (k), and 5332 of this title and section 314 of Public Law 101-512 (coverage under chapter 171 of title 28, commonly known as the “Federal Tort Claims Act”), to the extent not in conflict with this subchapter, shall apply to compacts and funding agreements authorized by this subchapter.

(b) Discretionary application

At the request of a participating Indian tribe, any other provision of subchapter I of this chapter, to the extent such provision is not in conflict with this subchapter, shall be made a part of a funding agreement or compact entered into under this subchapter. The Secretary is obligated to include such provision at the option of the participating Indian tribe or tribes. If such provision is incorporated it shall have the same force and effect as if it were set out in full in this subchapter. In the event an Indian tribe requests such incorporation at the negotiation stage of a compact or funding agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting compact and funding agreement.

(Pub. L. 93-638, title V, §516, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 729.)

Editorial Notes

REFERENCES IN TEXT

Section 314 of Pub. L. 101-512, referred to in subsec. (a), is section 314 of Pub. L. 101-512, as amended, which is set out as a note under section 5321 of this title.

Subchapter I of this chapter, referred to in subsec. (b), 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.

CODIFICATION

Section was formerly classified to section 458aaa-15 of this title prior to editorial reclassification and renumbering as this section.

§ 5397. Regulations

(a) In general

(1) Promulgation

Not later than 90 days after August 18, 2000, 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 by the Secretary no later than 1 year after August 18, 2000.

(3) Expiration of authority

The authority to promulgate regulations under paragraph (1) shall expire 21 months after August 18, 2000.

(b) Committee

(1) In general

A negotiated rulemaking committee established pursuant to section 565 of title 5 to carry out this section shall have as its members only Federal and tribal government representatives, a majority of whom shall be nominated by and be representatives of Indian tribes with funding agreements under this chapter.

(2) Requirements

The committee shall confer with, and accommodate participation by, representatives of Indian tribes, inter-tribal consortia, tribal organizations, and individual tribal members.

(c) Adaptation of procedures

The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian tribes.

(d) Effect

The lack of promulgated regulations shall not limit the effect of this subchapter.

(e) Effect of circulars, policies, manuals, guidances, and rules

Unless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 5324(g) of this title and regulations promulgated under this section.

(Pub. L. 93-638, title V, §517, as added Pub. L. 106-260, §4, Aug. 18, 2000, 114 Stat. 730.)